

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Why Are There So Many Weak Psych Reports?

In the words of John Henry Wigmore, cross-examination is "beyond any doubt the greatest legal engine ever invented for the discovery of truth."

3 Wigmore, Evidence §1367, p. 27 (2d ed. 1923)

If you're an attorney or an adjuster in workers' compensation or personal injury you are always confronted with weak psych reports. Allow me to indulge myself and see if I can figure out why?

Many of you who have referred workers' compensation and personal injury cases to me over the last three plus decades know that I have evaluated between 5,000 and 10,000 individuals. As part of my practice I've read tens of thousands of psych reports, the vast majority of which are demonstrably substantially flawed.

First, a little of my professional history will help to understand what I think is going on. For the first 30 years after getting my Ph.D. I was a full time college professor. As part of my job I did a lot of research and widely published my findings in a variety of subject areas and carefully edited professional journals. As a "publish or perish" academic, journal editors would not let me, or anyone else, get away with authoring any conclusions without adequately supporting those comments with hard, cold data describing what I did and what I found. But in the medical-legal arena there are no journal editors to keep forensic psychiatrists and psychologists on their toes. They can write anything they want and most often what they write is nonsense. Worse yet, unless those doctors are correctly confronted to defend their conclusions, their reports stand, to the detriment of almost everyone and every entity in the system except the reporting physicians.

"An Apricot™ is a written-analysis of a psych report that you have that may not be in your favor. I find every flaw in the report, explain why they are flaws, and provide documentation from the published psychological and psychiatric literature that demonstrate that these flaws exist."

Before I started doing forensic work I was amazed when an orthopedist friend showed me some psych reports from his cases. I simply could not believe the weakness of those documents. In fact, what drew me to forensic psychology was the immediate perception I could write better reports standing on my head and could demolish what was passing as professional work and maybe make a positive contribution to the field. In the many years since, nothing has changed except the doctors' names.

It hurts me to say this, but the vast majority of psych reports are substantially flawed, grossly lacking in credibility and completely incapable of proving or disproving a disputed medical fact or a contested claim. The question that has always been with me is, "Why?"

One possible reason I see such bad reports is because the attorneys and adjusters who refer cases to me know I am a demanding critic who does not shy away from "crushing" bad reports, but who loves to do so. According to this explanation, I see a biased sample of incompetent reports because attorneys know a bad report when they see it, but they don't quite know how to reveal the flaws on cross-examination so they send the report to me for help. I doubt it, but according to this theory most of the reports are not worthless, only the ones I get to see.

A second possible reason I see bad reports is despite having gone through medical or graduate school, an internship and a residency, some psychiatrists and psychologists, and maybe those that are most likely to work in a forensic practice, are simply doing what they were taught. Specifically, those doctors have never been trained

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to conduct competent evaluations and write competent reports. Despite all the many hours spent on their education, they were left lacking the basic “non-rocket science” ability to perform competent psychological assessments and write competent reports. I can’t talk about psychiatric training from firsthand experience but I know that with very rare exceptions, graduate school, internships and postdoctoral training in psychology does not teach the doctors how to produce competent evaluations and reports.

A third possibility is that incompetent reports are the result of forensic practitioners never having to suffer the consequences of their poor work, hence they never learn to correct their methods. Here, the major culprit is the legal system. Specifically, attorneys have an understandable lack of knowledge of psychology and psychiatry, which leads them to unsuccessfully challenge the doctors’ reports, in turn resulting in the doctors never learning to improve their work.

A fourth possibility is that the doctors simply do not care if their work is below par since they continue to get paid for bad work. Although these doctors read my critiques and/or encounter them in giving testimony, they follow their same flawed evaluative procedures and report formats because it’s just easier to write off a single bad outcome than change. Or, maybe they just rationalize the bad outcomes and tell themselves, “What does that attorney/judge/jury know about my area? I did a good job. They just don’t understand what I do.” The bottom line here is that the doctors simply do not learn from their experiences to improve their work. If you keep feeding the pigeons they’ll keep coming back for more. Unfortunate for justice!

So here’s the rub! All of the above possibilities lead to the same place. There are so many weak psych reports because a lot of doctors do incompetent work. There, I said it. That was tough. In fact, this had been the most difficult newsletter to write of the over 120 monthly newsletters I have written. Now, I have struggled for some time about whether or not I should write this newsletter, thinking that maybe I’ve missed something and that incompetence is not the main issue. Well, maybe I have made that mistake and someone will soon send me proof.

Finally, I know this newsletter is going to anger a lot of my colleagues, but then I think, “Maybe they should write better reports.”

Now for some good news. For over 10 years I have been writing Apricots™. An Apricot™ is a work product privileged report that lists all of a psych report’s flaws, explains why they are flaws in jargon-free language, provides published references supporting the conclusions, and includes questions to ask on Cx that expose the flaws. Apricots™ are also used to prepare briefs, petitions and/or appeals for the court. If you are an attorney, an insurance adjuster or a supervisor and you suspect you have a substantially flawed psych report, send it to me for a free telephone analysis and cost estimate of an Apricot™. You can reach me at 844-444-8898 and/or DrLeckartWETC@gmail.com.

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