

# THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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## Practical Tips for Cross-Examining Psych Doctors

In my past newsletters I've written extensively about cross-examining psych doctors. Specifically, I've provided 22 useful tips, over the past five months, to use when questioning a psych doctor's report in deposition or at trial. All of my newsletters are available for free download at my website, [www.DrLeckartWETC.com](http://www.DrLeckartWETC.com). This month's newsletter provides four additional practical tips for cross-examining psych doctors.

When you find yourself preparing to cross-examine a psych doctor, I urge you to utilize my tips listed below. If you feel that you need additional help, perhaps in the form of a list of questions to use when deposing the doctor, you may be interested in commissioning an Apricot™. An Apricot™ is a work product privileged report that describes a psych report's flaws in jargon-free language needed to understand why those flaws are substantial errors; discusses specific techniques used to Cx the doctor; and provides multiple questions for the attorney to use in a deposition or at a trial that get those flaws on the record despite what might be the doctor's non-cooperative behavior. In situations where discovery has closed or the doctor will not be cross-examined, an Apricot™ contains all the psychological information needed to prepare a brief for the court.

The 22 tips discussed in my five previous newsletters are:

1. Never ask the doctor about the patient
2. Always focus on the doctor's diagnosis
3. Determine if the doctor's history supports their diagnosis
4. Find the doctor's data about the patient's credibility
5. Make sure the doctor's Mental Status Examination results are consistent with the doctor's diagnosis

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*If in reading a psych report you find reason not to trust its credibility but you can't put your finger on all of the problems or understand how to expose them on a Cx or in a brief you can send it to me for a thorough analysis.*

6. Be persistent if the doctor is non-responsive
7. Make sure the doctor's psychological testing data demonstrates patient credibility
8. Determine if the doctor's history is complete
9. If you're uncertain where the doctor's report is vulnerable, get expert help
10. Be prepared, don't gamble during a deposition
11. Study up on the validity scales of the Minnesota Multiphasic Personality Inventory (MMPI)
12. The fallacy of the "Cry For Help" explanation of "faking"
13. Determine if the review of medical records supports the doctor's diagnosis
14. Determine if the doctor's Major Depressive Disorder diagnosis is complete
15. Determine if the doctor used the appropriate diagnostic manual
16. Determine if the psych report lacks sufficient data to support the doctor's diagnosis
17. Look for the MMPI testing data
18. Make sure the doctor's diagnosis appears in the DSM
19. Determine if the review of medical records contains psychological-sounding diagnoses made by non-mental health physicians
20. Determine if the doctor's Major Depressive Disorder diagnosis is supported by information about the frequency of the patient's symptoms
21. Know the common flaws in psychological testing reports
22. Determine if the team-approach is appropriate

Here are four additional tips to consider when cross-examining a psych doctor:

23. Look for a current Global Assessment of Functioning (GAF) score and the highest GAF score in the previous year

The Global Assessment of Functioning (GAF) scale is found in the DSM-IV-TR, but was eliminated from the largely discredited and ignored DSM-5. When assigning a GAF score the doctor is required by DSM-IV-TR protocol to provide both the current GAF score and the highest GAF score the patient achieved in the previous 12 months. If the doctor has not provided both GAF scores in their report, they have left out some important and required information about the patient.

24. Testing always requires a test proctor or supervision

The only form of objective data that is usually open to public inspection and can be presented to the court is the psychological testing data. Accordingly, the manner in which those data are obtained, scored, analyzed and interpreted are of primary importance. For example, the testing manual for the MMPI-2 provides information on the administration of the test, including the required testing conditions on pages 8 through 10 of that manual (Butcher, J.N., Graham, J.R., Ben-Porath, Y.S., Tellegen, A., Dahlstrom, W.G. & Kaemmer, B. MMPI-2 (Minnesota Multiphasic Personality Inventory-2) Manual for Administration, Scoring, and Interpretation, Revised Edition, Minneapolis, University of Minnesota Press, 2001). The MMPI-2 testing manual very explicitly states that the MMPI-2 should not be given to the test-taker to complete at home and that the instrument should be administered with supervision by a qualified professional. Most generally, similar “rules” should be followed for all other tests used by the doctor during their evaluation in order to guarantee the credibility of the doctor’s conclusions.

25. Sadness and crying are normal

Psychologists and psychiatrists who write medical-legal reports will often list complaints and observations of the patient that are made during the face-to-face interview that include sadness and crying. In this regard, it should be noted that a reading of page 355 of the DSM-IV-TR and page 168 of the DSM-5 reveals that those manuals explicitly state, “periods of sadness are inherent aspects of the human

experience.” As such, any observations of sadness and related behaviors are not necessarily indicative of psychopathology. Clearly, while it may be tempting to equate sadness, tearfulness and crying with psychopathology, it should be noted that these behaviors are well within the realm of normal human behavior and not necessarily indicative of psychopathology. Individuals may cry for a variety of reasons, including being reasonably, normally, understandably, and expectably upset by physical difficulties, occupational problems and life circumstances. Obviously, if tearfulness was equated with psychopathology almost everyone would be diagnosed with a psychological disorder.

26. Specifying Personality Traits on Axis II

Doctors typically provide information about personality traits in their report to give the reader what they believe is significant information that will be helpful in understanding the patient. Personality traits are enduring patterns of perceiving, relating to and thinking about the environment and oneself that are exhibited in a wide range of social and personal contexts but are not sufficiently maladaptive to warrant concluding that the individual suffers from one of the Personality Disorders. It is only when those traits lead to clinically significant distress or impairment in social, occupational or other important areas of functioning that it is reasonable to diagnose a Personality Disorder. However, since everyone has personality traits, the specification of those traits in a medical-legal report is not especially meaningful if one is concerned with using that report to determine if the person has suffered a psych injury.

In closing, all of the practical tips provided above can be used to see better outcomes in your psych cases. You can find more tips and additional information for cross-examining psych doctors and identifying common flaws in psych reports at my website, [www.DrLeckartWETC.com](http://www.DrLeckartWETC.com) where you can also download a free copy of my book Psychological Evaluations in Litigation: A Practical Guide for Attorneys and Insurance Adjusters. I have also made available sample Apricots™ for download from my website. Please feel free to email me with any questions you have about cross-examining psych doctors, [DrLeckartWETC@gmail.com](mailto:DrLeckartWETC@gmail.com).

This is the ninety-seventh of a series of monthly newsletters aimed at providing information about pre-deposition/pre-trial consultations, psychological evaluations and treatment that may be of interest to attorneys and insurance adjusters working in the areas of workers’ compensation and personal injury. If you have not received some or all of our past newsletters, and would like copies, send us an email requesting the newsletter(s) that you would like forwarded to you.

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