

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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More Essential Tips for Cross-Examining Psych Doctors

This month's newsletter offers four additional tips that are essential for cross-examining psych doctors. In my past five newsletters I've provided 18 tips that are useful for cross-examining psych doctors about their medical-legal reports. More than 30 years of experience in reading tens of thousands of psychological and psychiatric evaluative reports reveals that the vast majority of those documents contain multiple substantial flaws that go unquestioned by the attorneys. This occurs largely because it is difficult for the attorney to identify the flaws and effectively expose those errors on cross-examination. That is where I can be helpful to attorneys and insurance adjusters working on psychiatric injury claims.

You may already know that I absolutely enjoy writing Apricots™. An Apricot™ is a clearly written work product privileged report that describes all the substantial flaws in a psych report in jargon-free language and discusses specific techniques to cross-examine the doctor. An Apricot™ also provides a list of multiple, simple questions to ask the doctor that will reveal the flaws found in their report. If you're cross-examining a psych doctor without my help you're leaving money on the table. I can show you how to get it.

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 if the attorney decides that they wish to petition to have the court throw out the doctor's report. For your convenience, I've provided sample Apricots™ on my website for download, www.DrLeckartWETC.com.

Browse Dr. Leckart's Book at
www.DrLeckartWETC.com

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.

The 18 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
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

Four additional tips essential for cross-examining psych doctors are discussed below.

19. Determine if the review of medical records contains psychological-sounding diagnoses made by non-mental health physicians

Reports of psychological and psychiatric evaluations typically contain a section dedicated to a review of the patient's medical records. That section often reveals that physicians in a wide variety of medical specialties make comments, and even diagnoses, indicating that the patient may be depressed, anxious or was having other psychological problems or disorders. However, with all due respect to my colleagues in the various medical fields, a psychological diagnosis offered by, let's say, an orthopedist, is no more credible than a psychologist's diagnosis of an orthopedic condition. Thus, psychological-sounding diagnoses made by non-mental health physicians should not be considered to be support for the psych doctor's diagnosis.

20. Determine if the doctor's Major Depressive Disorder diagnosis is supported by information about the frequency of the patient's symptoms

In psychological and psychiatric examination reports it is simply not enough to provide a listing of the patient's complaints or their direct statements. Specifically, the doctor must describe the qualitative nature of those complaints as well as their frequency, intensity, duration, onset and the course over time of those complaints. Think of this as a series of questions that have to be answered: What does it feel like when you are depressed? (qualitative nature). How often do you feel/think that way? (frequency). In cases where the doctor diagnoses some form of a Major Depressive Disorder, the provision of this information, especially the data about frequency, is quite crucial since according to the DSM-IV-TR criteria, eight of the nine complaints must be found to be present at least "nearly every day." In cross-examination, you can expose a flawed history of the patient's complaints by simply asking the doctor to tell you where in their report you can find information about the frequency of the patient's complaints that indicate that they were occurring at least "nearly every day."

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21. Know the common flaws in psychological testing reports

In addition to taking a complete history, administering a Mental Status Examination, and reviewing the patient's medical records, psych doctors should administer a battery of psychological tests during their medical-legal evaluation that will provide information about the patient's credibility and psychological status. Essentially, it is the psych doctor's responsibility to use valid and reliable tests; administer, score and interpret the tests in a standardized fashion; determine if the patient took the tests in a credible manner; and draw conclusions about the patient consistent with the psychological testing literature. If the psych doctor has not done these four things, their report is flawed and incapable of providing any meaningful psychological information about the patient.

22. Determine if the team-approach is appropriate

Psychological and psychiatric reports written for the court that are signed by the appointed physician may also be signed by a second or third physician who participated in the evaluation's procedures. However, if the law has intended to have a single physician conduct the medical-legal evaluation, the use of the "team approach" may constitute a violation of the law and by itself question the substantiality and admissibility of the doctors' report. At the very least, in situations where there is some ambiguity in the doctors' report, the "team approach" to producing a medical-legal psych report makes it difficult to decide who to contact and who to question on cross-examination.

In summary, the tips discussed above are essential to cross-examining a psych doctor about reports written for the court. These tips can also be helpful in preparing a brief for the court if the attorney decides that they wish to petition to have the court throw out the doctor's report. You can find more information on effectively cross-examining psych doctors and identifying common flaws in psych reports at my website, 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. Sample Apricots™ are also available for download from my website. Enjoy!

This is the ninety-sixth 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.