

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Deposing Psych Claimants: Exposing Wash-Out Reports

In my May, 2016 newsletter I noted that psych doctors make two kinds of serious errors when writing evaluative reports for the courts. The first is failing to diagnose a disorder that is present. The second is diagnosing a disorder that is not there. Reports with these errors are called "Wash-Outs" and "Wash-Ins," respectively.

For a detailed discussion of Wash-Out and Wash-In reports see my Newsletters of March and April, 2014 on my website at www.DrLeckartWETC.com.

For the last eight years of my 31-year career as a forensic psychologist I have helped attorneys expose Wash-Out and Wash-In reports with Apricots™ that assist them in cross-examining the doctor. An Apricot™ describes a psych report's flaws in jargon-free language, offers specific techniques to Cx the doctors, and provides multiple questions to get those flaws on the record despite the doctor's non-cooperative behavior. An Apricot™ also contains all the psychological information needed to prepare a brief for the court if the attorney decides that they wish to petition the court to throw out the doctor's report. Additionally, Apricots™ are work product privileged reports useful in any jurisdiction. Lots of information about Apricots™ and self-help techniques for cross-examining doctors are on my website.

Another opportunity to expose a Wash-Out or Wash-In report occurs when deposing the claimant.

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

If in reading a psych report you find reason not to trust its credibility you can send it to me for a thorough analysis.

But, "How does one expose the flaws in a doctor's report and the weakness in an error-laden case when deposing the claimant?"

The essential element for revealing the flaws in a Wash-Out report when taking testimony from the claimant is ridiculously simple!

Let's say that the doctor has concluded that the patient has no disorders. The first step is to simply ask the claimant to describe their current symptoms or complaints and see if their responses match any disorders found in the American Psychiatric Association's diagnostic manual (DSM). I have read hundreds, if not thousands of deposition transcripts and I can't recall this ever having been effectively accomplished.

Now, here's a script for use in taking the claimant's deposition.

"Mr. Smith, I would like you to provide me with a complete list of your current physical and psychological symptoms or complaints in a specific way I am about to describe. First, I would like you to understand that by "current" I mean anything that has been physically or psychologically wrong with you in the approximately last 30 days. Second, I don't want you to provide me with any details of those symptoms, just a list. Third, you can provide the list of your complaints in any order. And fourth, don't worry about forgetting to put a symptom on the list since we can always add one later. Is this clear?"

Once you have obtained a complete list of Mr. Smith's current symptoms, it is necessary to ask him to describe the symptom as he experiences them as well as to obtain information about the frequency, intensity, duration, onset and course of those symptoms over time. So for each of the symptoms, ask the claimant to estimate how many days a week they have each symptom, how intense each symptom is, how long does each symptom last, when did they first have that symptom, and how has the symptom changed over time since its inception.

The only somewhat problematic issue is obtaining information about the intensity of a symptom. In this regard, the intensity of a symptom has to be subjectively assessed. This can be done as follows: "Mr. Smith, with regard to your complaint of _____ I would like you to tell me how big of a problem this is for you on a ten-point scale by picking a number between 1 and 10 where "1" is the least severe problem that could be called a problem and "10" is the most intense problem imaginable."

Now that you've obtained a detailed history of the symptoms all you have to do is go to the diagnostic manual and find a disorder that fits! If you don't feel sufficiently comfortable with the DSM you can find a friendly psych doctor who will help you out. If not, you can email me a copy of the deposition transcript and I'll help you.

The next step is to address the possibility that Mr. Smith might have had a disorder at the time of the doctor's examination. The script for this is just as ridiculously easy!

"Mr. Smith, now I would like you to provide me with a complete list of all of the physical and psychological symptoms or complaints that you had at the time you were

examined by Dr. Jones. As you did with your current symptoms tell me about every symptom you had when you met with Dr. Jones. Once again, I don't want you to provide me with any of details of those symptoms just a list. Is this clear?"

Once you have established that Mr. Smith is comfortable with the notion that he has provided you with a complete list of symptoms at the time of Dr. Jones's examination it is necessary to ask him to describe the symptoms as he experiences them as well as to obtain information about the frequency, intensity, duration, onset and course of those symptoms over time to determine if he had a disorder when examined by Dr. Jones.

BASICALLY, IF MR. SMITH HAS BEEN COOPERATIVE YOU HAVE ALL THE DATA YOU NEED TO DETERMINE IF MR. SMITH HAD A DISORDER AT THE TIME OF HIS TESTIMONY AND WHEN EXAMINED BY DR. JONES.

In short, a suspected Wash-Out report can be dealt with when taking a claimant's deposition by getting a clear history of their symptoms at the time of the deposition and at the time of the doctor's examination. If there are sufficient symptoms to correspond to a disorder found in the DSM that is strong evidence that the doctor wrote a Wash-Out report. If you're a plaintiff or applicant attorney what more can you want?

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(e-mail us at DrLeckartWETC@gmail.com
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