

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Viewing Psych Reports Through A Different Lens

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)

I have been doing medical-legal evaluations on a psychological basis for over 30 years. In addition to evaluating patients with personal injury or workers' compensation claims, I am firmly dedicated to discrediting poorly-written psych reports and helping attorneys see better outcomes with their psych cases. For over 10 years I have been writing Apricots™. Apricots™ are written reports that describe the major flaws that exist in psych reports using easy-to-understand terminology that provides information that an attorney needs to successfully cross-examine a psychiatrist, a psychologist or a neuropsychologist and/or draft a brief for the court. It also provides an extensive list of questions that will expose the flaws in a psych doctor's report during cross-examination.

Through my work over the years, I have become aware that attorneys who cross-examine

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"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."

psych doctors typically prepare for this task by designing questions directed at the doctor's conclusions in one or more of five areas. Those five areas are the doctor's conclusions about

- 1) causation
- 2) the GAF score
- 3) temporary and permanent disability
- 4) apportionment
- 5) treatment recommendations.

To those attorneys, I say "this approach is all wrong! You should never attack the doctor's conclusions in these five areas." Why, you ask? The answer is simple. When asked about their conclusions of causation, the GAF score, disability, apportionment and treatment recommendations, psychologists, psychiatrists and neuropsychiatrists, may simply testify, "What I stated in my report is my best professional opinion." Quite simply, when the doctor resorts to their "best professional opinion," it's case closed. There is little room for the attorney to see good outcomes with the cross-examination at that point.

Therefore, I strongly encourage attorneys to view psych reports through a different lens. Instead of looking for evidence to question causation, GAF, disability, apportionment,

treatment recommendations, question the doctor's data supporting their diagnosis. This is where attorneys will have the most success because the majority of psych reports written for the courts lack sufficient evidence to support the doctor's diagnosis.

The diagnosis is the most vulnerable part of any psych report. When the diagnosis is effectively attacked, this approach will force the doctor to testify that there were insufficient data in his or her report to support their diagnosis. Once these errors are exposed, all of the other conclusions about things like causality, disability, prior pathology and the need for treatment fall by the wayside like a collapsing house of cards.

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This is the one hundred thirty-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.