

THE WETC PSYCHOLOGY NEWSLETTER

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November, 2012
Volume 1, Issue 46

Coaching Attorneys To Win Psych Cases

I'm a big fan of Clint Eastwood's Dirty Harry movies. One of my favorite lines comes at the end of Magnum Force where he "puts away" the bad guy and exclaims, "A man's **GOT** to know his limitations." I've always kept that in mind and consequently I know where not to tread. For example, I understand, that when it comes to the law I know a little bit but I'm no expert. However, when the issues involve psychology or psychiatry, that's a different story. In this regard, I also am aware that with very few exceptions attorneys have a limited knowledge of psychology. That's where I come in. While I continue to conduct forensic evaluations of people with litigated psychological claims, my current principal interest is coaching attorneys who are scheduled to take cross examination or trial testimony from psychologists and psychiatrists.

In 2008 I published a book called Psychological Evaluations in Litigation: A Guide For Attorneys and Insurance Adjusters. At that time it was my intention to retire and ride off into the sunset and leave my book as a last contribution to the field of forensic psychology. However, things often don't turn out the way one plans them and here I am. Regardless, as the title implies I intended that book to be used as a guide for attorneys and adjusters who wanted to understand the psych reports that

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come across their desks so that they could more effectively do their jobs. More to the point, I intended my book to be used as a reference in taking deposition and trial testimony from psychologists and psychiatrists. In this respect, I felt that the work was needed since in the 23 years of practice as a forensic psychologist it was apparent to me that the vast majority of psych reports had substantial flaws that rendered their conclusions unsupportable. A second edition of the book is currently available for free on my website, www.drleckartwetc.com where you can read it and/or download the entire book or just the parts you need. However, for purposes of discussion I'll cut to the chase and tell you in as brief a manner as possible what is most important to help win your psych case!

After reading literally thousands of psych reports it is quite clear that the major flaw in all psych reports that spells doom for the doctor's credibility is their diagnosis. Since all of the conclusions concerning an examinee flow from the doctor's diagnosis, if that diagnosis is not correct then all of the conclusions about

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causation, the existence of an injury, temporary or permanent disability, the need for treatment or any other factors are unsupportable.

As it turns out, contrary to what many doctors would have you believe, arriving at a correct diagnosis and supporting that conclusion in one's report is neither rocket science or neurosurgery. In fact, at the risk of destroying the physician's mystique, psychological diagnosis is quite simple because mental disorders are clearly defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR). Every party to litigation involving a psychological claim of any sort should never think about conducting themselves without owning this diagnostic manual. Attorneys who try to conduct depositions and take trial testimony from doctors without being fully aware of what the DSM-IV-TR says about the doctor's diagnosis are not playing with a full deck and will invariably hurt themselves and their clients. Here's a case in point.

Let's say that Dr. Smith has diagnosed a Major Depressive Disorder. It is completely impossible for the court to evaluate the credibility of the doctor's diagnosis without knowing that the doctor has provided objective data consistent with the DSM-IV-TR diagnostic criteria. In this regard, a reading of page 356 of the DSM-IV-TR indicates that in order to diagnose a Major Depressive Disorder correctly the doctor must show that the examinee has at least five of nine very clearly defined symptoms. It doesn't matter what the doctor says during the

deposition or trial, if he or she has not provided clear and explicit data of observations that were made during their face-to-face examination, their diagnosis and all of their conclusions are unsupportable.

Once you understand this basic principle the only thing you need to understand is where to look for the doctor's data. In this regard, psychological diagnoses are made after considering as many as five different sets of information:

1. The examinee's life history and their presenting complaints or, as they are sometimes called, symptoms.
2. The doctor's objective observations of the examinee during their face-to-face meeting, most of which are described in the doctor's report of their Mental Status Examination.
3. The objective psychological testing data.
4. The patient's medical records.
5. Any collateral sources of information in the form of interviews with the examinee's friends, relatives, co-workers and/or other people familiar with their lives and behaviors.

Now the real problem for attorneys, and the reason they need coaching, is that many doctors do not play by the rules. Most unfortunately, they often provide "information" that is misleading, or at times, downright false. I'll give you just one example, and leave it at that. Rest assured there are an almost unlimited number of examples.

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As you undoubtedly know, the major psychological test that is used to determine whether or not a person has a psychological disorder is the Minnesota Multiphasic Personality Inventory (MMPI). At last count, the database maintained by the American Psychological Association indicates that there have been 11,516 journal articles and books written about the MMPI and how to interpret the test's scores. However, I think I'd be safe in betting my house that less than 1% of the attorneys and/or insurance adjusters reading this newsletter can interpret an MMPI correctly. So, if the doctor tells you that the examinee's scores indicate they answered the test in an honest and forthright manner and that their scores also indicate they are clinically depressed, how can you possibly tell if that is true? All of you who said "you can't," take one step forward. The analogy that is most useful, if you need one, occurs when I take my car into my local

mechanic and he or she tells me I need a new "ram cram" that will cost about \$600. However, whenever somebody tells me something like that I can hear my mother saying, "Brucie, what do you know about ram crams? It's a blind item." Nothing personal, but if she was alive she would not be shy about telling attorneys that they know nothing about MMPI scores.

That's all folks, except for one thing: If you send me a psych report and ask me for my opinion I'll be happy to take care of you as I know where all the bodies are buried. However, the best news is that if you don't want me to write a report, I'll spend as much time as necessary talking to you on the phone about the flaws in that report and it won't cost you or your client a dime! You see, I really love my job. Now go ahead, make my day, take me up on this offer.

This is the forty-sixth of a series of monthly [newsletters](#) aimed at providing information about 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 listed on the next page, and would like copies, send us an email requesting the newsletter(s) that you would like forwarded to you.