

# THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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## Neuropsychological Evaluations in Personal Injury Cases

*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)*

Personal injury claims are made for a variety of reasons including automobile accidents, slip and fall incidents, chemical exposures and being hit on one's head with an object. As a result, the plaintiff may undergo an evaluation and subsequent care by a neurologist. In addition, these types of personal injuries often result in a claim of a psychological or a psychiatric injury including an examination and treatment by a psychologist or a psychiatrist. In many cases where the plaintiff has suffered a neurological trauma to the head they may be referred to a neuropsychologist.

Neuropsychologists have obtained either a Ph.D. or a Psy.D. in psychology and a license as a psychologist. Further, in order to specialize in the area of neuropsychology, they typically pursue additional postdoctoral training in evaluating brain functions and correlating specific cognitive and emotional impairments with specific brain pathology. Neuropsychologists who evaluate plaintiffs for personal injury cases often arrive at relatively few American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorder (DSM) diagnoses such as

*"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."*

Dementia Due to Head Trauma (294.1), or a disorder characterized by multiple cognitive deficits, including memory impairments, that are caused by a traumatic head injury. Another possibility is a Cognitive Disorder, which might include findings of memory and/or attention impairment following a head trauma that has caused a concussion. Further possibilities are a variety of dementias, which are characterized by multiple cognitive deficits due to a variety of physical disorders such as Alzheimer's disease, some cerebrovascular diseases, infections due to HIV, traumatic brain injuries, brain tumors, etc. However, all of the above mentioned disorders completely overlap diagnoses that are typically made by a board certified neurologist. Accordingly, to consider the diagnosis of those disorders as evidence of a psychological or psychiatric injury would be to support a double recovery for both a neurological injury and a psychiatric injury as a result of a single set of impairments. In short, although neuropsychological reports are a form of psychological reports written by psychologists, they typically do not provide information about the possibility of a psychological or psychiatric injury that is distinct from a neurological injury. Clearly, those reports are best used by neurologists to discuss the nature of the patient's neurological impairment.

Unfortunately, when I am asked to review reports submitted by a neuropsychologist I find that they contain diagnoses that are purely psychological in nature and do not involve a neurological injury or disorder. Such psychological diagnoses include a Posttraumatic Stress Disorder, an Adjustment Disorder and/or a Major

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Depressive Disorder. Regardless of the diagnosis provided by the neuropsychologist, their report must provide sufficient evidence to support the criteria listed in the DSM for the disorder they provided. In this regard, it should be understood that DSM diagnoses are made after considering as many as five different sources of information. These sources of information are: the patient's life history and presenting complaints, the doctor's report of their Mental Status Examination, the objective psychological and/or neuropsychological test data, the patient's medical records and any sources of collateral information that are available at the time of diagnosis.

In summary, when a neurologist whose techniques, including CAT scans, PET scans and MRI's, cannot assess specific and subtle behavioral deficits by providing detailed information about the extent of an individual's impairment that is due to a neurological injury, a neuropsychological evaluation may be helpful to completely describe the individual's neurological impairment. However, when an attorney has an

evaluative report from a neuropsychologist, they should determine if the neuropsychologist provided information in their report about the possibility of a psychiatric injury that is distinct from a neurological injury. Further, they should check to see if the neuropsychologist has provided a diagnosis that is completely overlapping a neurological disorder. It is also necessary to determine if there is sufficient data in their report to support their diagnosis in the areas of the plaintiff's life history and presenting complaints, the Mental Status Examination, psychological and/or neuropsychological testing, the plaintiff's medical records and any sources of collateral interview information. If you find, or suspect, that the doctor has not provided sufficient data in their report to support their diagnosis, the attorney should cross examine the doctor and ask where in their report the reader can find those data. That's where my expertise in analyzing psych reports and providing cross-examination questions exposing the flaws in neuropsychological reports comes in handy!

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