THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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The Key to Understanding Psychiatric and Psychological Forensic Testimony

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)

Psychologists and psychiatrists are frequently asked to be expert witnesses in criminal cases, personal injury litigation, criminal cases, workers' compensation cases and commitment hearings. In all cases there are four steps to the process of obtaining information to present to the courts.

First, is the evaluation of the patient to determine if there is any psychopathology and, if so, to provide a diagnosis. Any such diagnosis is based on five sets of information or data. The patient's life history and their presenting symptoms or complaints, the doctor's face-to-face Mental Status Examination, the objective psychological testing data, the patient's medical records and any sources of collateral information in the form of interviews with the patient's friends, relatives and/or co-workers.

Once those data are collected the doctor uses the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) to formulate a diagnosis. The diagnostic manual is very clear and explicit in defining a wide variety of mental disorders. The doctor's task is simply to look at the list of defining criteria and pick the disorder or disorders that best explain the patient's clinical presentation. In personal injury and workers' compensation cases the disorder, or lack thereof, is used to determine if there was an injury. In criminal cases this information is most frequently used to determine competence to stand trial and/or sentencing. In commitment hearings the doctor's conclusions are used to determine if the patient can take care of himself or herself.

"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."

The second step that is usually of interest to the parties involved in the litigation answers the question: How did the patient get that way? The answer to that question is nowhere near as clear cut as determining the diagnosis. Essentially, drawing inferences about causation is a theoretical exercise. Generally speaking, there is no clear answer but different doctors ascribing to different views of how people become what they are, offer an interpretation or theory about the cause of a mental illness. Consider for a moment the case of a heroin addict. As an exercise in futility, you can sit down and come up with a large number of possibilities such as poor parenting, peer pressure, poverty, a lack of education, etc. The only thing that can be said about these theories is that while the doctor can make a cohesive argument to support any one, or a combination of two or more, there is no way of determining if the doctor's theory is correct. That's why it's called a theory and not a fact.

The third step is often an attempt to attribute or apportion the cause of the psychopathology. Here the doctor provides their opinion about how much weight is given each theoretical cause. This is done verbally

by making a statement such as, "It is my opinion that the vast majority of the cause of the patient's heroin addiction is peer pressure." Or in some cases, like workers' compensation, the doctor is asked to assign percentages to the various theoretical causes of the patient's psychological or psychiatric disability. So, for example, if a patient is found to be clinically depressed, the doctor might provide their opinion that they believe that 55% of the patient's psychiatric disability, as a result of their clinical depression, is due to their work experiences, 30% is due to their marital problems and the remaining 15% is due to child abuse in their youth. Now, where do those numbers come from? Certainly, not from a clear and rational arithmetic formula derived from the data collected. Not at all! Instead, those opinions come from the doctor's subjective feelings, just like the doctor's determination of the cause of the disorder itself. That's just reality. There is no objective formula that can be applied to these type of calculations.

The fourth and final step typically involves looking into the future and predicting the best way to help the individual recover from their disorder. This is also highly subjective. There are many schools of psychotherapy, each subscribing to different methods. However, no one school has ever been shown to provide the best way of alleviating psychopathology. Think about that for a second. If there was a best method there would only be that method! The same can be said about psychotropic medications. If there was a single best medication for dealing with a clinical depression or schizophrenia there would only be that medication on the market. However, there are multiple psychotropic medications and psychotherapeutic methods for treating a variety of mental disorders. Again, we have ambiguity.

The only place in the entire forensic psychology and psychiatry practice where there is no or very little ambiguity is the doctor's diagnosis. Thanks to the diagnostic manual we have a checklist of signs and symptoms for what are thousands of different mental disorders. At the simplest level, the doctor looks at the patient's history and presenting complaints, the doctor's data from their Mental Status Examination, the objective psychological testing data and the patient's medical records and any collateral interviews and simply decides which disorder best fits the data in the diagnostic manual's checklist.

This brings us to the point where we can understand the adversarial nature of psychological and psychiatric testimony in the courts. The only place that factual material comes into play is in the doctor's diagnosis. The data either support that diagnosis or they do not. Unlike all the other aspects of a doctor's testimony, this is cut and dry. If the doctor's data do not support their diagnosis then nothing else they have to say matters. If the data do support the diagnosis then it's a matter of the doctor's credibility during their presentation that determines whether or not the judge and/or jury accepts their subjective opinions about causation, apportionment and treatment. But make no mistake, without a supported diagnosis nothing the doctor can say is, in the least bit credible.

The bottom line here is that the diagnosis is the most crucial part of the doctor's testimony and if that diagnosis can be successfully challenged the doctor's testimony and the examinee's litigation simply fall apart.

That's where I come in. I write clean, easy to understand, well-documented reports that pose questions that are the worst nightmare for a doctor who has misdiagnosed a patient. Call me for a totally free analysis and cost estimate at 844-444-8898.

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