

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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October, 2020
Volume 1, Issue 141

COVID-19 Psychopathology: Normal or an Injury?

It's no secret that vast numbers of people are getting anxious, depressed and experiencing a variety of psychologically produced physical symptoms as a result of the coronavirus pandemic. One cause of these symptoms is the fear of illness to themselves, relatives and friends. Another cause is the disruption of their lives caused by occupational events such as fellow employees coming down with the illness and the potential of becoming infected as a result. Yet, another cause is the potential of their employer either temporarily or permanently closing their doors resulting in unemployment and an inability to provide for loved ones. Still, additional causes are from non-occupational sources such as chance encounters with people on the street, meetings with friends and relatives, attending religious ceremonies, engaging in recreational activities such as picnics or swimming, going to the beach, shopping in stores and eating in restaurants. And of course, there are the deaths and serious illnesses to loved ones, the significant post-infection complications and far-reaching and extensive disabilities that we still do not know much about how long they last. The list is astounding!

In the area of workers' compensation one has to be concerned with whether or not the above-described circumstances constitute a mental health injury as defined by the Labor Code and/or legal regulations in your jurisdiction. In some locales if you contract the virus at work and get psychologically symptomatic as a result of your physical illness that psychological illness is legally not industrially produced. In other jurisdictions the only way your psychopathology is industrially compensable is if it was produced by the coronavirus physical symptoms. In yet other legal entities, both in the United States and abroad, the specific cause is irrelevant as long as it can be attributed to the work environment. However, regardless of where you live the

most important point can be if you meet the definition of a Mental Disorder. In this regard, the DSM-IV-TR is very clear in stating that in order for a person to be considered to have a psychological disorder their condition "must not be merely an expectable and culturally sanctioned response to a particular event." Accordingly, if the person who has anxiety, depression or psychosomatic symptoms is found to have a normal, expectable, reasonable and understandable reaction to their environmental circumstances, whether produced by work or a non-occupational event they have not had a compensable psychiatric disorder regardless of how much anxiety, depression and psychosomatic symptoms they may be having.

Now, the most important question is: How is what is "normal, expectable, reasonable and understandable" defined? The answer is a matter of clinical judgment. It is up to the doctor to decide what is normal. Specifically, is it normal to get fearful, worried, or depressed or to have a variety of physical symptoms such as heart palpitations, diarrhea and cold sweats as a result of your experiences or are these normal reactions to the environment?

In California, in order for your COVID-19 produced psychological symptoms and signs to be compensable they cannot be the result of the physical illness itself but must be produced by some non-physical injury such as a work environment where you become depressed because your employer did not take specific precautions to prevent an infection, regardless of whether or not you develop coronavirus symptoms. In other jurisdictions, the reverse is true. You must have the physical illness for the injury to be judged to be industrially caused. In still other locales the specific cause is irrelevant as long as it can be traced to your job.

In the area of personal injury, there are a variety of circumstances related to COVID-19 that can cause a compensable psychological disorder. For example, a

chance encounter on the street where someone coughs or sneezes in your face resulting in physical illness and/or simply some form of psychopathology. Eating at a restaurant where you discover the owner has not taken precautions to arrange for social distancing or to make sure that the server or other employees are not infected. Going to a supermarket where social distancing, masks and employee testing are not up to minimal medical standards. Shopping at a general store where another shopper physically confronts you in a hostile manner because you are not wearing a mask. When such a personal injury lawsuit is filed claiming a mental health injury, the question becomes, “Did the defendant’s behavior cause the psychological symptoms to arise?” Another question to consider is, “do the plaintiff’s psychological symptoms meet the criteria for a DSM psychological disorder?”

That’s where a complete competent psychological examination will help the doctor, the attorneys and the court come to a reasonable conclusion. The doctor cannot simply provide a summary conclusion without a substantial line of reasoning and a considerable amount of data obtained during a comprehensive examination.

Specifically, the doctor must take a complete history of the patient’s symptoms, including information about their qualitative nature, frequency, intensity, duration, onset and course over time. The doctor must also take a complete history of what occurred in the workplace or the non-occupational environment that could have produced those symptoms. Then, they must decide if those occurrences have, in all reasonable medical probability, caused those symptoms. Without that history the doctor’s report is deficient and neither the attorneys nor the court can decide if there has been a psychiatric injury.

Additionally, just for completeness, I should point out that the doctor should also give a battery of psychological tests that are headed by an instrument such as the Minnesota Multiphasic Personality Inventory (MMPI) capable of determining if the claimant is providing credible historical data and has the symptoms described during the interview. There must also be Mental Status Examination observational data backing up those symptoms. In addition, it would be helpful to have some medical and/or other non-medical records to back up the patient’s history.

In short, in order to conclude that a claimant has had an industrially produced mental injury in the form of a reaction to the coronavirus pandemic the doctor’s report must include:

1. A complete and detailed history demonstrating the existence of abnormal symptoms or complaints.
2. A complete and detailed history of events that could have caused those symptoms.
3. Psychological testing data demonstrating the patient is a credible historian.
4. Mental Status Examination data supporting the patient’s symptoms or complaints.
5. Any available medical and/or occupational data supporting the patient’s history.
6. The doctor’s conclusion, backed up by clear logical reasoning, indicating whether the patient’s reactions were normal, understandable, reasonable and expectable for what occurred, or not.

In summary, in situations where you suspect the doctor has not provided sufficient evidence in their report to support their conclusions you should come up with a series of questions to use in exposing the report’s flaws on cross-examination. That’s where my expertise in reviewing and critiquing psych reports and providing cross-examination questions exposing the flaws in psych reports will be useful to you! Finally, a pattern of failing to obtain comprehensive and credibly detailed psychological examinations in good faith and with due diligence will eventually lead to class action lawsuits that will be extremely expensive for all insurance companies, whether in the personal injury area or in workers’ compensation. Call my office (844) 444-8898 or email me at DrLeckart@DrLeckartWETC.com for more information about my history and ability to provide detailed analyses of psychological and psychiatric evaluative reports used to determine the credibility of psychological and psychiatric opinions about the cause and credibility of COVID-19 litigations.

This is the one hundred forty-first 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.