

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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Cross Examining Shrinks: Leckart's Second Rule

In September, 2014 I described Leckart's First Rule for cross-examining psychologists and psychiatrists, which is: Never ask the doctor about the patient, confine your questions to the doctor's report. As I pointed out, by confining all of the deposition's questions to the doctor's report no new information can be introduced, which will most likely lead to a more positive outcome for your side in the litigation.

Now, on to Leckart's Second Rule. Leckart's Second Rule states that when taking the deposition of a psychologist or a psychiatrist the attorney should always focus their questioning on the doctor's diagnosis.

If you are a defense attorney, the absence of one or more credible current or past American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) diagnoses means that it is not reasonable to conclude that a plaintiff or an applicant has had a psychiatric injury.

If you are a plaintiff or applicant attorney who is dealing with a wash-out report in which the doctor has concluded that the patient does not have a psychological disorder, the crucial issue is still the doctor's diagnosis. In this case the basic question is: Has the doctor's report demonstrated that they obtained sufficient data from the patient's life history and presenting complaints, their Mental Status Examination, the objective psychological testing data and the patient's medical records to support

When a psych doctor's report is not in your favor and you wish to challenge their conclusions, all you need is a report of the flaws in that document as well as a list of questions to ask the doctor that will expose those problems.

the conclusion that they have conducted a complete and comprehensive examination of the patient and found no data supporting a DSM-IV-TR diagnosis?

Stated somewhat differently, without a credible diagnosis there is no reason to suspect that any comments about the existence or absence of a psychiatric injury, the Global Assessment of Functioning (GAF) score, temporary and/or permanent psychiatric disability, apportionment or the need for treatment, which all flow from the same sources of data, are correct.

In taking these approaches it is important to keep a number of things foremost in mind. The first is that DSM-IV-TR diagnoses are clearly empirically defined. Specifically, there is very little ambiguity in the DSM-IV-TR diagnostic criteria. Accordingly, the credibility of any report hinges on the correlation between the doctor's data and their diagnostic conclusions.

In the case of a defense attorney who suspects an unwarranted diagnosis, if the DSM-IV-TR requires that specific diagnostic criteria be met and there are no data in the doctor's report indicating that the patient meets those criteria, then it follows that the diagnosis is not supported.

Similarly, in the case of a plaintiff or applicant attorney who suspects that the doctor has "overlooked" a credible diagnosis, if the doctor has not demonstrated

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that all of the appropriate data have been collected then there is no support for their non-diagnosis. Either way, the data needed to arrive at a diagnostic conclusion must be found in the doctor's report.

Thus, the bottom line according to Leckart's Second Rule is very simple. Essentially, the focus of every deposition of a mental health professional should always be on the diagnosis. If there are no data supporting the doctor's diagnoses then all of the other conclusions in their report fall by the wayside!

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involving reports of an**

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