

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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May, 2021
Volume 1, Issue 148

Pitfalls in Telemedicine Psych Evaluations

Telemedicine has become all the rage since the onset of the global pandemic, but are telemedicine evaluations a reasonable procedure for forensic psychological evaluations? Certainly, one can attempt to conduct a psychological or psychiatric evaluation by telemedicine. Additionally, at the conclusion of the evaluation the evaluator may even feel comfortable with their methods and the data collected. However, a variety of pitfalls exist when doing psychological and psychiatric evaluations using telemedicine, some of which the examiner may not even have considered. Most of these pitfalls are also found in other medical disciplines using telemedicine. This newsletter will discuss some of the major pitfalls in telemedicine psych evaluations.

Technology Difficulties in Telemedicine Psych Evaluations

Pitfalls in telemedicine psych evaluations can present themselves in the form of technological difficulties. I think we can all agree that current computer technology often presents challenges when there is a single user. In the situation of telemedicine psych evaluations, there are two users, the doctor and the examinee and sometimes three users when an interpreter is required further complicating the process. These added variables increase the chance for technological difficulties to interfere with a credible telemedicine psych evaluation.

For example, in order for a telemedicine psych evaluation to work, the patient, the doctor and an interpreter must have access to a computer, tablet, smart phone or some other device that allows for a video and audio connection. All three possible participants must also have a reliable and relatively strong Internet connection for the telemedicine evaluation to be successful. Further, all three participants must have proficient knowledge of the device and Internet

connection to be able to navigate a successful login, maintain a connection and to troubleshoot any technology- or device-difficulties that present during the evaluation process. When any one of the variables discussed above goes awry, the emotions and the behaviors of the patient, doctor and/or interpreter can be impacted in a negative way. In this regard, it would not be unreasonable for technological difficulties to cause irritability, agitation, frustration, anxiousness, tearfulness or a variety of other symptoms that would affect the credibility of the examination's conclusions by mistakenly attributing those negative behaviors and emotions to a claimed injury.

Psychological Testing Pitfalls in Telemedicine Psych Evaluations

Psychological testing is another problematic area in telemedicine psych evaluations. In this regard, the only acceptable way to administer a battery of psychological tests in a telemedicine psych evaluation would be to have a test proctor go to the examinee's home and arrange the environment to be quiet, have adequate lighting and comfortable ventilation. A test proctor would also arrange the environment so that the examinee's friends, relatives and potential "coaches" are literally incapable of disturbing or influencing them during the testing session.

The above notwithstanding, probably the worse abuse of testing procedures that I've become aware of is that many psych doctors doing telemedicine evaluations mail the tests to the patient's home asking them to complete the tests and mail them back to the doctor. However, mailing the test materials to the patient's home completely compromises the integrity of the test results. In this regard, even if the doctor decides to attempt to proctor the tests by video there is no way of guaranteeing that the answer sheets were not completed by someone other than the patient, either before or after the video session. Additionally, since there is no way of keeping others out of the "testing room," or knowing if others are in the "testing room" out of sight of the camera, there is no way of preventing a "claimant's helper" from

producing answers that are communicated non-verbally. Clearly, there are a whole host of possible pitfalls in telemedicine psych evaluations.

Another major potential problem of not using a test proctor at the patient's home is the deliberate interference with the testing process by an unscrupulous mental health worker, or even an amateur with little or no professional background, who could easily read any of the many texts on the various MMPI's, MCMI's or the Cattell and fill out the answer sheets to artificially and fraudulently produce scores indicating that the examinee was "responding honestly" to the test questions and had the psychopathology claimed in the examinee's litigation. Since psychological testing is absolutely essential to assessing the examinee's credibility, as well as any current psychopathology, any question about the credibility of these data is completely unacceptable. This is obviously crucial since psychological testing provides the only objective evidence of the patient's credibility and mental health condition that can be presented to the court.

Clinical Interview Problems in Telemedicine Psych Evaluations

In addition to the above, the patient's environment can contain significant pitfalls for conducting a credible telemedicine psych evaluations. In this regard, the doctor doing such an evaluation has no way of monitoring the environment of the patient during the face-to-face interview. Since, the video feed typically only presents the upper body and face, the psych doctor will have no way of assessing the patient's body language. For example, the doctor would typically not be able to observe a patient's leg shaking uncontrollably or hand wringing. Worse yet, if the examinee takes breaks the physician would typically have no way of preventing coaching outside of the camera view. To be really cynical about it, a party to the litigation could send a "coach" to meet with the examinee on multiple "bathroom breaks" and tell them how to provide a variety of historical information or change any history already given.

That same unscrupulous "coach" could brief the applicant just prior to the interview on what history to provide and to avoid. They also could easily instruct them on the complaints to be made that would be consistent with the psychological disorder claimed. That same person could also be in the room and surreptitiously communicate with the applicant during the interview without the

evaluator being the least bit capable of determining the fraudulent behavior. Think about how newscasters are cued on what to say by producers and directors that are off camera. This can easily be done with miniscule earpieces and microphones or simply creating "temporary unavoidable interruptions" of the Internet connection. Where there is a will, there is a way. Especially in a multimillion-dollar personal injury case, no such schemes are beyond reality.

In fact, all of the above led me to decide not to participate in the use of telemedicine evaluations during the pandemic but to close my office in August, 2020 rather than expose my referral sources to these potentially undetectable fraudulent activities, which would invariably result in gross miscarriages of justice.

In summary, there is no way telemedicine works successfully for psych evaluations without enormous holes in the methodology. Especially since the COVID-19 vaccines are virtually 100% effective, there is no reason for a physician not to conduct a face-to-face exam at the current time. Additionally, attorneys should cross-examine every psych doctor, whether a treating physician, an AME and IME or a PQME, who produces a telemedicine report using a series of specific and direct questions that are designed to determine if any of the above-described problems in the evaluation could have or were likely to have occurred. Further, I would like to encourage all the attorneys out there to use this information when deposing the doctor, writing trial briefs or taking trial testimony in cases where telemedicine has been used.

For assistance with reviewing telemedicine reports and drafting questions to use in effectively exposing the pitfalls of a telemedicine psych report, call or email me. (844) 444-8898, DrLeckart@DrLeckartWETC.com. In this regard, I will be very happy to read any and all telemedicine psych evaluation reports and provide a free telephone consultation.

This is the one hundred forty-eighth 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.