

THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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The Art of Cross-Examining a Psych Doctor

Cross-examination of a psych doctor can turn out to be a beautiful masterpiece for the attorney taking the doctor's testimony. It can also turn out to be a complete disaster. To avoid a tragic outcome, it is a good idea to carefully plan and prepare for the deposition of a psych doctor. There are many important aspects of a psych report to consider during the planning and preparing process. First, one should think about the desired outcome. In my experience, being deposed and communicating with personal injury and workers' compensation attorneys for over 30 years, it is my understanding that one desired outcome of cross-examining a psych doctor is to get the doctor to change their opinions. Further, attorneys and carriers have been known to engage the doctor in cross-examination with the intent of getting the doctor's report dismissed. A third outcome, and probably a more viable outcome in my opinion, is to use the transcript of the doctor's testimony as leverage to negotiate a settlement with the opposing attorney that is favorable to your side of the case.

While the desired outcome of a deposition may vary from case to case and person to person, the common denominator is the psych doctor's report. In the course of over 30 years I've reviewed about 50,000 reports from psychologists and psychiatrists and, unfortunately, I've rarely seen a report that would constitute substantial medical evidence. Stated differently, nearly every psych report written for a workers' compensation and/or personal injury claim is substantially flawed. The good news is that the report's substantial flaws can be exposed during cross-examination.

Discredit the Diagnosis

The most substantial flaw in a psych report is the doctor's unsupported diagnosis. In this regard, the diagnosis is the most vulnerable part of a psych report. Specifically, psych doctors are notorious for failing to provide sufficient data to support their diagnosis. To provide a credible diagnosis the doctor must use at least three sources of information and show that the patient meets the DSM diagnostic criteria for the disorder they diagnosed. First, psych doctors must report the patient's life history, including a complete accounting of their current symptoms or complaints, with a history of their frequency, intensity, duration, onset and course over time. Second, they have to provide sufficient observational data they collected from a Mental Status Examination that measures the patient's memory, concentration, judgment and insight with a battery of well-known face-to-face administered procedures. Third, the doctor must provide the results of objective psychological test data. Specifically, the doctor's report should contain data from a psychological test battery that is capable of assessing the patient's credibility and their psychological condition. Additionally, when available, the psych doctor must review the patient's records for data confirming their diagnosis and interview the patient's friends, relatives and/or co-workers for further substantiation of their diagnosis. Unfortunately, the vast majority of the psych reports I've read in over 30 years from psych doctors doing personal injury and workers' compensation evaluations and/or treatment lack sufficient data to support the doctor's diagnosis.

When an attorney discredits the doctor's diagnosis with a carefully-crafted list of simple and direct questions, none of the doctor's conclusions will have a leg to stand on. In this regard, if there is no supported psychological disorder, then there is no reason for psychological or psychiatric treatment, and the doctor's conclusions about causation, apportionment, disability and the GAF score go out the proverbial window.

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Ask About The Contents of The Report

In order to expose the psych report's substantial flaws on the record during cross-examination it is imperative that the doctor only be asked about their report. The doctor's report is their work-product and the evidence that the doctor has submitted to the court. Therefore, it is essential for the attorney to stick to asking questions directed at the doctor's report. For example, when it is found that the psych report lacks observational data in the Mental Status Examination, a reasonable question to use during cross-examination would be, "Doctor, will you please tell me where in your report of your Mental Status Examination I can find where you described what you observed of the patient's behaviors that led you to conclude the patient was clinically depressed?" This technique in questioning the doctor will force them to state on the record, "I didn't put that information in my report," or "I can't tell you where that data is in my report." Forcing the doctor to testify that their report lacks the necessary support for their diagnostic conclusions is exactly what you want for the duration of the cross-examination process. At the conclusion of the cross-examination, you will have positioned yourself to get the doctor to change their opinions, get the doctor's report tossed by the judge, or perhaps, negotiate a settlement with the opposing attorney.

Be Persistent When Questioning the Doctor

Using questions during cross-examination that are directed at discrediting the doctor's diagnosis and asking questions directed at their report will likely

stump the doctor or back them into a corner, so to speak. In a scramble to come up with a reasonable response to the questions being asked, the doctor may evade the question. Further, when asked a simple question like, "Where in your report can I find information about the onset of the patient's depression?" they may testify using statements like, "The information is in the report," or "I talked about the patient's depression in the testing section." When the doctor's response does not answer the simple and direct question posed, it is imperative for the attorney to be persistent in getting the doctor to answer the question asked. Simply restate the question and let the doctor know that you will not move on until the question is answered. Perhaps use a slightly more specific question like, "Doctor, thank you for your response, but you did not answer the question. Will you please identify the page number and line number in your report where you stated the onset of the patient's depression?"

In summary, there is an art to cross-examining a psych doctor. Essentially, every attorney who has a psych report that is not in their favor, and who plans to depose the psych doctor, should review the report and identify the flaws that exist. Using the information discussed in this newsletter will help you to plan an approach for the cross-examination and to develop questions that will expose the flaws that exist in the doctor's report. For more information on cross-examining psych doctors and finding the flaws in their reports and conclusions check out my website at www.DrLeckartWETC.com where you can also download a free copy of my book [Psychological Evaluations in Litigation: A Practical Guide for Attorneys and Insurance Adjusters](#).

This is the one hundred fifty-second 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.