



Inside this issue:

PTSD Injury not Disease 2

Daubert Standard FRE 702 2

Request for Physical and Mental Examinations 3 & 4

Important Cases

Grounds to object to a mental evaluation *Furlong v. Circle Line Statue of Liberty Ferry*, 902 F. Supp. 65 (S.D.N.Y. 1995)

Claims for damages for emotional pain and suffering or mental anguish do not place the mental condition of the victim in issue so as to justify a mental examination under FRCP 29. *Nolan Int'l Bhd. of Teamsters Health & Welfare & Pension Funds, Local 705*, 199 FRD 272, 276 (N.D. Ill. 2001).

A sexual harassment allegation did not place plaintiff's mental condition in controversy. *Schlagenhaul v. Holder*, 370 U.S. 104, 118-119 (1964); see, e.g., *Robinson v. Jacksonville Shipyards, Inc.*, 118 F.R.D. 525 (M.D. Fla. 1988)

Post Traumatic Stress— Psychiatric Injury Not Mental Disease

The soul wrenching and spirit challenging trauma that creates the wound of PTSD has impact on the individual's pre-trauma worldview, belief system, values and personality. This trauma is a wounding, thus individuals suffering PTSD are injured, not mentally ill. It is important to recognize the distinction between mental disease and a psychiatric injury. To no surprise, both mental health professionals and lay persons find this confusing and this often creates difficulty to understand the symptoms and needs of the person suffering from PTSD.

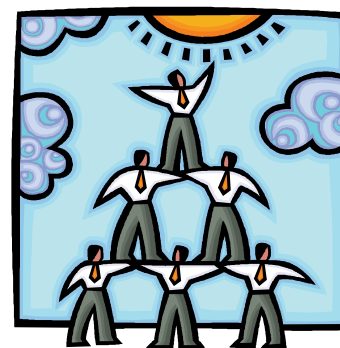


Because PTSD creates a constant state of intense stress the body's reaction to this causes neurobiological changes. Glucocorticoids, epinephrine, and norepinephrine pulse through the body as part of the normal reaction to stress. These chemicals are important for human survival but excessive amounts cause the brain to malfunction. Because of hyper-arousal, the body of an individual suffering from PTSD gets too much of these chemicals, even when no threat is present. The chronic stress promotes physical ailments and a breakdown of the immune system. Other difficulties include increased heart rate and blood pressure, changes to the distribution of cortisol (affecting mood and energy levels), shrinking of the hippocampus (affecting learning and memory), and enlargement of the amygdala (affecting emotional behaviors). Extreme fatigue is a normal reaction under stress.

Because Post Traumatic Stress is essentially "soul murder" and splinters the sense of self, it creates acute mistrust of everyone and everything in the Whistleblower's environment. It is critically important to provide a safe physical environment, which includes food, water, housing, clothing and the other necessities of life. But also important is emotional safety. This is harder to achieve and (con't)

PTSD is an Injury not a Disease (con't)

during the recovery process the Medical Whistleblower will display a wide range of emotions, sadness, grief, guilt, shame, anger, frustration, fear, and anxiety. In order to promote healing of the emotional trauma of the retaliation, care providers and friends & family should be tolerant of a wide range of emotions. A sense of emotional safety is critical to relationship building. Trusting relationships are necessary for long term recovery and restoration to full potential. Whistleblower Retaliation is a dehumanizing experience. Relationships need to be respectful and support the Whistleblower's right to make choices. There should be free sharing of information and also emotional expression.



The potential for human growth after having PTSD is unbounded but the environment must be supportive of all the whistleblowers needs—emotional and physical. The emphasis should be forward thinking and be based on the Whistleblower's strengths not his/her weaknesses. There is a need to consider carefully cultural appropriate means of support and reach out to those aspects of the Whistleblower's past that are not threatening or anxiety producing. Give the Whistleblower a safe place to feel his/her way through his/her newly re-emerging feelings without pressure or embarrassment.

The emotional and behavioral symptoms are based on the Whistleblower's own adaptations to the trauma. These behaviors were very helpful and self protective when the retaliation was occurring and hard to give up once a safe environment is found. But strength can be built from these very vulnerabilities and by exploring their depths and valleys the individual can look spiritually inward. It is from our vulnerabilities that we gain our greatest strengths. Overcoming the retaliation trauma will open new vistas of opportunity for personal growth and fulfillment.

Daubert Standard FRE 702



The *Daubert* standard is used for admitting expert testimony for claims of psychological injuries and places increased emphasis on the scientific basis for professional opinions. Under the Federal Rule of Evidence 702, the *Daubert* standard can be used in evaluating claims of psychological injuries such as Post Traumatic Stress Disorder. This is important in cases of sexual harassment, retaliation and other forms of employment discrimination. The contribution of scientific experts can make a framework by which to understand the nature, duration, intensity and severity of the emotional injuries. In court specialized knowledge of

stressors and the ways in which related symptoms manifest themselves can be very helpful. Qualified experts have a role to facilitate determination of causation by highlighting factors that bear on preexisting harm, intervening injurious events, the exclusion of alternate sources of mental distress, emotional harm and humiliation, and mitigation of damages.

Request for Physical and Mental Examinations or Reports

There are some instances when a whistleblower might need to request a physical or mental examination to be submitted to the court. This may be important when a party claims physical or mental injuries as a result of another's actions such as when one of the parties to the law suit suffers from mental or physical problems that affect his or her testimony. Or if one party's mental capacity is an issue in the case. Parties may stipulate (FRCP 35(b)(3); FRCP 29) or move for an examination (FRCP 35(a)). This would cause the party involved to submit to a physical or mental examination by a



suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. It is advisable to study the reports of the physicians that already treated the party and question the physicians if necessary. You may wish to first determine whether an examination is likely to strengthen your case because under discovery the results of the examination are provided to the opposing party. Consider carefully who you will obtain to do the examination and chose someone with the experience and knowledge to give an accurate evaluation report. For example in evaluating someone with Post Traumatic Stress from Bullying in the Workplace or Whistleblower Retaliation, you will want to have an evaluator who is an expert in those subjects and has previously evaluated or treated persons with a history of PTSD from those causes. An evaluator whose sole credentialing is in evaluation for Substance Abuse Treatment will be incompetent to adequately evaluate a Medical Whistleblower for Post Traumatic Stress Disorder due to Whistleblower Retaliation. Sexual Assault Investigation Evaluations should be done by professionals who are familiar with the effects of sexual violence and have previously evaluated rape victims and therefore knowledgeable in current protocols . Persons unaware of the legal implications of a forensic evaluation in all its complexity should not be doing the evaluation. The evaluator must be questioned in regards to bias as well as professional credentials and experience.

The evaluator should not have legal, financial, political or personal ties to the opposing party. Certainly the evaluator should not be personally gaining financially by finding the party examined to have a particular disorder or disease. But such is the fact of the Washington State's Physician's Health Program's evaluators who then self-refer the "client" to themselves for "monitoring" and thus securing a 5 year contract for \$4,000 per year as a direct result of the conclusions of their evaluation of the "client". This same evaluation system is in place in many



states where the State Physician's Health Program does both the evaluation and then performs "monitoring" by the terms of a State Department of Health Contract for "monitoring" services. This is called

Medical Whistleblower

Dr. Janet Parker

P.O. Box C

Lawrence, KS 66044

Phone: 360-809-3058

Fax: None

E-mail: MedicalWhistleblower@gmail.com

We are on the Web!

MedicalWhistleblower.googlepages.com

Supporting the Emotional Health of All Whistleblowers
and their Friends, Supporters and Families.

The information contained through the Medical Whistleblower Canary Notes Newsletter is provided for general information only. The information provided by the Medical Whistleblower Canary Notes does not constitute legal or professional advice nor is it conveyed or intended to be conveyed in the course of any adviser-client discourse, but is intended to be general information with respect to common issues. It is not offered as and does not constitute legal or medical advice or opinion. It should not serve as a substitute for advice from an attorney, qualified medical professional, social worker, therapist or counselor familiar with the facts of your specific situation. We encourage you in due diligence to seek additional information and resources before making any decision. We make no warranty, express or implied, concerning the accuracy or reliability of the content of this newsletter due to the constantly changing nature of the legal and medical aspects of these issues .

Request for Physical and Mental Examinations or Reports (con't)

Self-referral and is a violation of medical ethics. It makes the evaluation biased and therefore questionable as evidence in court. As the evaluated party, you can limit the scope of the evaluation and direct it's location. Recognize that in the taking of medical history questions can come up which can lead to admissions or inconsistent statements. If you claim that you have mental or emotional distress or some form of disability and are claiming damages then you are exposing yourself to a FRCP 35 examination. It is possible that the examiner may be called to testify as an expert witness. *Lehan v. Ambassador Programs*, 190 F.R.D. 670 (E.D. Wash. 2000). A physical or mental examination, under FRCP 35, is compulsory only if ordered by the court. The court will order an examination for "good cause" shown but the burden of demonstrating good cause rests with the moving party. *Ford v. Contra Costa County*, 179 F.R.D. 579 (N.D. Cal. 1998). If the examined party requests a copy of the examiner's report, it must be produced. Exercise caution in making such a request because the examined party waives any privilege regarding any other examination reports with respect to the same mental or physical condition. The two parties in the dispute should, of course, meet and make initial disclosures as provided by FRCP 26(f) and (a). FRCP 26(d). A FRCP 35 does not provide time limits for conducting mental or physical examinations. But the court's schedule may dictate the latest date by which you may request an examination. The party to be examined can object to the examination if their psychiatric condition is fragile and that conclusion is supported by testimony of a competent psychiatrist. A plaintiff may want an examination early so the examiner can comment on the extent of injury. A defendant may want the examination later to determine the extent of the plaintiff's recovery.

