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FEBRUARY 7-10, 2023  
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# The Growing Mental Health Crisis in Workers' Compensation:

*Effective Strategies for Managing and Defending Against  
Claims of Psychiatric Injury in a Post-Pandemic Workforce*

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# The Growing Mental Health Crisis in our Workforce

- PTSD Experienced by Frontline Workers
- Vaccine Mandates
- Negative Impact on Mental Health by Requirement to Return to In Office Work
- Isolation and Loneliness as well as Fear and Loss during Pandemic

# What Do The Studies Show?

- “Since the start of the pandemic, there’s been more than 5,600 employment-related lawsuits due to COVID-19...Some of the most common lawsuits filed are related to leave or employee discrimination. In fact, nearly 49% of cases filed between January 30, 2020 and January 5, 2022 claim at least one of the following: employment discrimination, remote work conflicts, leave conflicts.” These are conflicts with psychological implications.

<https://www.thehartford.com/insights/covid-19/returning-to-the-office-after-covid-19>

- In February 2021, the Kaiser Family Foundation (KFF) conducted a survey to look at the impact COVID-19 had on mental health. The organization found that 4 in 10 adults in the U.S. reported symptoms of anxiety or depressive disorder. This is an increase from the 1 in 10 adults that reported these symptoms from January to June 2019 – about a year before the pandemic.

<https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use>



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# City of Los Angeles:

## Los Angeles Police Department:

70 PTSD Claims Filed Since 1/1/2019

Current Claims: 29, 4 Active Duty and 25 End of Career Claims

## Los Angeles Fire Department:

41 Claims: 30 Active Duty and 11 End of Career Claims



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# Legislative Response:

- Labor Code §3212.15 (1/1/2020-1/1/2025): PTSD Presumption for Firefighters and Peace Officers
- SB 284 (2021, vetoed by Governor): Legislative attempt to expand PTSD Presumption to Include **additional classes of workers, including additional firefighting agencies, additional peace and security officers, public safety dispatchers and communication employees**
- Amendment to Labor Code §3209.5 (SB 1002, passed 9/27/2022): Expanded meaning of “medical treatment” to include Licensed Clinical Social Workers
  - Cannot Address “disability”, Labor Code §3209.8
  - What about Work Restrictions that May Give Rise to TD?



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## Mood Disorders

- Major Depressive Disorder
  - Depressed Mood
  - Loss of interest or pleasure
    - Most of the day
    - Nearly every day
- Depressive Disorder Not Otherwise Specified
- Dysthymic Disorder

## Anxiety Disorders

- Generalized Anxiety Disorder
  - Excessive worry
  - Distress
- Anxiety Disorder Not Otherwise Specified
- Posttraumatic Stress Disorder
  - Witness or exposed to a traumatic death or serious injury
  - Flashbacks
  - Concentration

# Adjustment Disorders

- Adjustment Disorder With Anxiety
- Adjustment Disorder With Depressed Mood
  - clinically significant emotional and/or behavioral symptoms that have developed in response to an identifiable psychosocial stressor.
  - symptoms must begin within three months
  - patient's response must consist of marked distress that is excessive
- Adjustment Disorder With Mixed Anxiety and Depressed Mood
  - combination of pathological anxiety and clinical depression

# PTSD Diagnostic Criteria

**DSM-IV-TR** – diagnostic criteria found on pages 467-468

**DSM-5** – diagnostic criteria found on pages 271-272

- A. Exposure to actual or threatened death, serious injury, or sexual violence
- B. Distressing memories, dreams, flashbacks
- C. Persistent avoidance of stimuli associated with the event...



# Essentials of a Psych Report

## FIVE SOURCES OF DATA FOR EVERY REPORT

1. The patient's life history and their presenting complaints or symptoms
2. The doctor's report of their Mental Status Examination
3. The psychological testing data
4. A review and discussion of the patient's medical records
5. Collateral sources of information

## COMMON FLAWS

# Common MAJOR Errors In Psych Reports

No qualitative description of the patient's **psychopathology** (life history and presenting complaints)

- Every report must have a complete history of symptoms or complaints
- Discussion of symptoms must have **FIDOC data** (Frequency, Intensity, Duration, Onset, Course over time)
- Match symptoms to DSM Criteria



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# City of Los Angeles Case Studies:

**#1** 39 y/o Firefighter/Paramedic, filed PTSD claim with an date of injury of 10/21/21 alleging significant work stress due to witnessing numerous deaths and severe injuries. Employee also alleges an anxiety attack on the date of injury. Employee was working in the dispatch center on the date of injury on a voluntary limited assignment.

**#2** 48 year old Fire Captain who was dispatched to a Thermal Flame explosion. While the employee was descending down that ladder he became engulfed in the flames. Employee was not wearing gloves while holding the radio in his hand descending down the ladder and the radio melted into his hand. The employee sustained excessive full thickness burns of bilateral hands, right upper arm and 2nd & 3rd degree burns to the right upper shoulder and right upper back.

**#3** 42 year old Firefighter who filed a claim with a date of injury of 9/13/2022 alleging mental health stress due to the cumulative effect of the rigorous work, amended claim to add PTSD. While working at his assigned Fire Station he allegedly experienced a mental health episode brought upon by stress. Employee stated that the cumulative effect of the stress brought upon from over 17yrs in the LAFD. He stated that he feels overwhelmed and states he can no longer handle the demands placed upon him at work. Interesting note: Outside family stressor of managing two families. One in Idaho and one in CA.



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# Early Prevention

- Keep Impartial and Contemporaneous Personnel Records
- Be Observant and Intervene with Compassion
  - Train Managers to Recognize Signs of Someone Struggling and How To Initiate a Conversation
  - Be Flexible Where Possible
  - Make Sure Workplace Safety Concerns are Addressed
- EAP Programs
  - Encourage Managers to Make the Initial Connection Between the EAP Program and the Employee
  - Organize Lunch and Learn Sessions for Employees with an EAP advisor so that Employees are Aware of What Benefits are Available, Ensure Confidentiality
- Once Represented, Partner with Your Legal Team
  - Make Sure Your Attorneys are Familiar with Your Return to Work Programs and Processes and EAP Program
  - A Good Defense Attorney Will Use This Knowledge to Diffuse Actions by Applicant's Attorneys
  - Draft and submit a "winning" advocacy letter to psych doctors

# How Do You Defend These Claims?

## Legal Requirements To Establish a Compensable Psychiatric Injury:

### Labor Code §3208.3:

- Diagnosis under DSM generally approved and accepted nationally by practitioners
- Actual events of employment are the predominate cause of the injury (>50%)
  - Exceptions: Exposure to a violent act reduces compensability threshold to “substantial cause” (35-40%)  
PTSD Presumption, Labor Code §3212.15
- Actual events of employment are the predominate cause of the injury (>50%)
  - Flintroy v. Pacific Bell* (2019) CWC PD Lexis 148
  - Exceptions to 6-month Rule: Sudden and Extraordinary employment condition – If the psychiatric injury / PTSD is the result of a “sudden and extraordinary” employment condition, the 6-month rule does not apply.
    - Sudden** – defined as “happening or coming unexpectedly” (Meriam-Webster)
    - Extraordinary** – defined as “going beyond what is usual, regular or customary” (Meriam-Webster)



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# Defenses:

Claims Filed After Notice of Termination or Layoff, Claims of Injury Prior to Termination or Layoff are Barred

- Exceptions:
  - Sudden and Extraordinary Events of Employment are Cause of Injury
  - Employer has Notice of Injury Prior to Notice of Termination or Layoff
  - Evidence of Treatment Prior to Notice of Termination or Layoff
  - Finding of Sexual or Racial Harassment by Any Trier of Fact (contractual, administrative, regulatory, judicial)
  - Date of Injury is After Notice But Prior to Actual Termination or Layoff

Good Faith Personnel Action is Always a Defense: No Compensation is Payable Where an Injury is Substantially (35%) Caused by Lawful, Nondiscriminatory, Good Faith Personnel Action



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# Thorough Discovery is Key to a Successful Defense

Conduct a Thorough Investigation, Speak With All Potential Witnesses

Take A Detailed Deposition, Subpoena All Relevant Records

- Necessary to Impeach Credibility
- Necessary to Prevail on Apportionment
- Use FIDOC
- Partner with your Legal team and/or Consultant to draft a ‘winning’ advocacy letter to the QME.

Apportionment is Viable, even for the PTSD Presumption Claims

- Prior History of Psychiatric Issues, Non-Industrial Stressors
- Apportionment Among Multiple Injuries or Events May Reduce Overall Exposure
- Employer has the Burden of Proof on Apportionment



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# QUESTIONS?





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# Dr. Ron Heredia

## Good Mood Legal

Dr. Heredia is the Director/Founder of Good Mood Legal as well as a n instructor in the Department of Psychology at East Los Angeles College. At Good Mood Legal, our primary focus is providing attorneys and insurance professionals with information they need to successfully challenge the opinions contained in reports from psychologists, psychiatrists and neuropsychologists. We serve attorneys, insurance professionals and the greater medical-legal community with legal research, education, detailed analysis and expert providers who submit competent reports and deliver proficient testimony. We are also focused on supporting medical-legal doctors in their effort to produce the highest quality report and to achieve success in the operations of their practice.

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# Vicki N. Lindquist

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Vicki N. Lindquist is a Partner in our Oakland office. She joined LFLM in 1998. Her practice is devoted to advising and defending employers and insurance carriers in all aspects, and through all phases, of state workers' compensation matters from claim inception through trial, and appeal. She also has extensive experience in defending employers with carveout / ADR litigation, as well as §132a matters involving crossover issues with concurrent FEHA, ADA and EEOC claims.

She frequently presents to clients on issues of interest including recent legislation and legal updates, as well as the practical aspects of successfully defending and litigating state workers' compensation cases, with a focus on proactive litigation strategies, effective case handling and early resolution.

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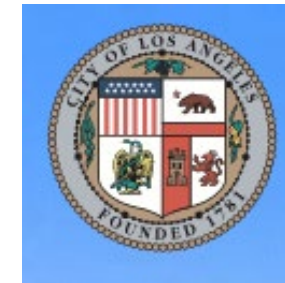
# Dr. Tyrone Spears

## City of Los Angeles

Tyrone currently works for The City of Los Angeles as the Division Chief of Workers' Compensation. He is responsible for managing the day to day operations of all Workers' Compensation programs which includes an open inventory of over 17,000 open claims. Tyrone enjoys mentoring inner city youth and spending time with his family.

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