



American
Conference
Institute



Managing & Litigating

Mental Illness Disability Insurance Claims

May 23-24, 2005

New York Marriott East Side Hotel – New York, NY

Here's what past delegates have had to say about our previous disability insurance conferences:

"Very comprehensive, cutting-edge information in this area. Well-balanced program. Professionally delivered."

Milton Schwartzberg
Partner, Pinta & Schwartzberg, LLP

"This is by far the most relevant and informative seminar I have attended. The speakers were well-prepared and interesting-their topics and info conveyed was timely and useful."

Mindy Chmielarz
Attorney, Dell & Schaefer, PA

"If you practice in this area, you must attend this seminar."

Gregory P. McMahon
Partner, Law Offices of
Gregory P. McMahon, P.A.

A distinguished faculty of leading litigators, insurance executives, mental health professionals, and disability claims consultants will provide the latest in-depth information on how to:

- Evaluate and build a mental illness disability claim
- Defend a decision to deny a mental illness claim
- Make effective use of neuropsychological testing
- Take advantage of medical advances that will decrease claims exposure
- Use an IME to prevail in a mental illness case
- Challenge malingering, misrepresentation and fraud by claimants

Plus!

Attend our pre-conference workshop:

A Mental Illness Primer: What Is—and What is Not—a Disability Caused by Mental Illness?

And one of two post-conference workshops:

B Eliciting Psychiatric Expert Testimony that Will Win Your Disability Case

C Establishing the Vocational Prognosis: 50 Points to Cover with the VE

Register now: 1-888-ACI-2480 • www.AmericanConference.com/mentaldis



Are you paying more than you should for mental illness disability claims?

Not only are mental illness disability claims expensive and complex; they can also take years to resolve. In this environment of ever increasing mental illness diagnoses, only those with a complete understanding of current treatment protocols, the most recent cases and the latest rehab strategies for getting mental illness claimants back to work will be positioned to lower the payment costs and litigation risks of these claims. **With mental illness disability claims expected to climb to more than 60% of the total number of claims over the next three to five years, now is the time to shore up your knowledge of key protocols and strategies in this area.**

American Conference Institute's event on **Managing and Litigating Mental Illness Disability Claims** will get you up to speed on the most challenging aspects of managing and litigating mental disability claims. Top medical experts, plaintiff and defense lawyers and insurance company counsel will provide you will key information on the most critical issues, including:

- **Rehabilitation strategies** for getting mental illness claimants back to work

- How to accurately **evaluate** a mental illness disability case
- Strategies for managing a mental illness claim from start to finish
- How to irrefutably **deny a claim without facing allegations of bad faith**
- Meeting the standard of “appropriate treatment” while keeping costs down
- Ensuring the compliance with the duty to mitigate
- Minimizing the potential for **fraud and malingering** by the claimant

If you've attended the American Conference Institute's highly rated prior conferences on Litigating Disability Insurance Claims, you know that you will learn comprehensive techniques and practical strategies for minimizing losses from disability claims. If you are new to American Conference Institute Disability events, register now to ensure your presence at what promises to be an “enlightening” event with “dynamic” speakers!

Call **1-888-ACI-2480**, fax your registration form to **1-877-927-1563** or visit us online at www.AmericanConference.com/mentaldis.

Continuing Education Credits

Accreditation will be sought in those jurisdictions requested by registrants which have continuing legal education requirements. To request credit, please check the appropriate box on the Registration Form.



This course has been approved in accordance with the requirements of the **New York State Continuing Legal Education Board** in the amount of 12.0 hours. An additional 3.5 credit hours will apply to workshop participation.

ACI certifies that this activity has been approved for **CLE** credit by the **State Bar of California** in the amount of 10.25 hours. An additional 3.0 credit hours will apply to workshop participation.

Who Should Attend

Insurance and Reinsurance Executives including:

- Vice Presidents of Claims
- In-house Counsel
- Claims Managers
- General Adjusters
- Claims Underwriters in Health and Disability
- Claims Consultants

Attorneys practicing in:

- Health Insurance litigation
- Long term Disability
- ERISA
- Employee Benefits Litigation
- Workers' Compensation
- Class Actions
- Insurance
- Personal injury
- Reinsurance

PRE-CONFERENCE WORKSHOP

Sunday, May 22, 2005

4:00 p.m. - 7:00 p.m.
(Registration Opens 3:30 p.m.)

A

Mental Illness Primer: What is — and What is Not — a Disability Caused by Mental Illness?

Mark S. Lipian, MD, Ph.D

Clinical and Forensic Psychiatrist (San Francisco, CA)

Thomas M. Herlihy

Kelly, Herlihy & Klein (San Francisco, CA)

This comprehensive workshop will introduce you to the medical aspects of individual mental illness disability claims and teach you everything you need to know from start to finish about handling such a case. It is specifically designed for claimant and defense attorneys, in-house counsel, claims managers and adjusters. You will walk away with a thorough understanding of the various forms of mental illness and the challenges that each of them poses when you litigate a disability lawsuit. Led by an eminent medical expert whose expertise would be difficult to find anywhere else, you will have an opportunity to learn how to use the latest medical information to your advantage—whether you act for plaintiffs or defendants. Topics to be covered include:

- Diagnostic criteria for evaluating the various forms of mental illness disability claims
 - depression
 - bi-polar disorder
 - schizophrenia
 - psychosis
 - mood disorders
- Distinguishing between physical and mental injury: what factors need to be taken into account?
 - bi-polar disorder: is this a mental or physical illness?
 - is substance abuse considered a form of mental illness?
- Diagnosing the difficult cause of mood disorder
 - is it pre-existing?
 - is it expected to last?
- Differentiating traumatic brain injury from mental illness
- The role of the psychological examination: how does it add to the overall assessment or detract from the true diagnosis?
- How to use the diagnostic criteria to build a successful disability case

Dr. Mark S. Lipian is a prominent clinical and forensic psychiatrist based in San Francisco, CA. Holding both a doctorate in psychology and a medical degree in psychiatry, he is a highly qualified medico-legal witness in the psychiatric field, having given advice in numerous litigation cases involving mental illness disability claims.

Thomas M. Herlihy is a well-known and knowledgeable defense lawyer from San Francisco who acts for a number of disability insurance companies.

Monday, May 23, 2005

8:00 Registration Opens and
Continental Breakfast ☞

9:00 Co-Chairs' Opening Remarks

Thomas M. Herlihy
Kelly, Herlihy & Klein
(San Francisco, CA)

Bonny G. Rafel
Law Offices of Bonny G. Rafel
(Livingston, NJ)

9:15 Evaluating a Mental Illness
Disability Claimant

For the Plaintiff

Bonny G. Rafel
Law Offices of Bonny G. Rafel
(Livingston, NJ)

For the Defense

Thomas M. Herlihy
Kelly, Herlihy & Klein
(San Francisco, CA)

- Non-medical barriers to independent functioning (i.e. the failure to cope)
- Evaluating the sources of data: what to look for in treatment efficacy and its implications
- Assessment of a claim: self-report v. objective evaluations
- How to document conclusions with data
- Using the DSM-IV scale in the evaluation of the claim
 - how firm must a diagnosis be to support the case?
 - overcoming difficulties in assessment
 - differentiating between physical or mental problems
 - are there overlapping diagnoses?
 - dealing with the illness and other overlapping health problems
- How to put the psychological examination to best use
- The different inventories available to test for mental illness and functional capacity
- Understanding the pitfalls of filing a claim
 - what should a claimant be cognizant of when filing a mental illness disability claim?
 - what questions should the claimant be prepared to answer?
- The value of the claimant's self-report on mental illness in making the claim—and putting it to use for the advancement of the claim
- The considerations an insurer should take into account before denying a mental illness claim
- Occupational considerations: why can't the claimant work?
 - what evidence will show that mental illness is causing work-related inability to function
- What is the claimant able to do on a day-by-day basis?
- Medical considerations: collecting and evaluating the available data from the plaintiff

- evaluating the sources of data
- how to provide objective data for the DSM-IV disorder
- Does the claimant have the energy to withstand a challenge to his mental illness disability?
- What records does the insurance company have a right to see?
 - medical records
 - treatment notes
- How deeply can the insurance company probe the claimant's past and present history to learn about the factors leading up to and contributing to the diagnosis?

10:15 **Implementing Claims Management Techniques that Will Optimize Insurance Resources**

Barbara DeCesare, RN, JD, MPH
Supervising Claims Consultant
Swiss Re America Corporation
(New York, NY)

Ronald S. Leopold, MD
National Medical Director and Vice President
MetLife Disability (New York, NY)

- Implementing specific strategies for control of the claims
- Dealing with the treating doctors: what sort of intervention should the insurer require?
- Understanding how the mental illness process affects claims
- How to cope with problems of substance abuse and addiction
- Risk of relapse vs. continuing disability
- Important monitoring and retraining issues
- The reinsurer's role in providing assistance in claim management
- Defending a decision to deny the claim
 - what's required to justify the denial?
 - what information do insurers seek from their attorneys for denial?
 - how to deny with a minimum risk of punitive damages

11:15 **Coffee Break** ☕

11:30 **Neuropsychological Testing in Mental Illness Disability Cases: Ramifications and Limitations**

George J. Carnevale, Ph.D.
Clinical Psychologist and Neuropsychologist
Assistant Director, Dept. of Psychology
and Neuropsychology
Clinical Coordinator,
Kessler Institute for Rehabilitation
(East Orange, NJ)

By using neuropsychological testing, brain function and impairment can be examined. Neuropsychologists can detect and localize organic brain impairment and develop rehabilitation programs for cognitively impaired individuals. A neuropsychological evaluation is more sensitive to the function manifestations of brain impairment than neurological tests, such as an MRI or CAT scan. Learn how these tests can make a major

difference in your claim—whether you are the plaintiff or the defendant.

- How can neuropsychological tests be used in a disability case?
- How do these tests differ from MRIs or CAT scans?
- At what point in the claims process should they be used?
- The value of using the Halstead-Reitan Neuropsychological Test Battery and the Luria-Nebraska Neuropsychological Battery Test
- How neuropsychological testing can assist in rehabilitation—and put claimants back into the workforce
- Understanding the limits of the testing
- Standardized assessment measures
- Assessing the qualifications of the professional who is doing the testing

12:15 **Networking Luncheon for Speakers and Delegates**



1:30 **Medical Advances that will Decrease Claims Exposure**

Mark S. Lipian, MD, Ph.D
Clinical and Forensic Psychiatrist
(San Francisco, CA)

- The impact of genome research on insurance disability policies
- Results of the latest research: can mental illnesses be cured—or simply controlled?
- The new advantages of pharmacological therapy and somatic treatments
- A guide to the successful medications: what new drugs will soon be making their way into the market?

2:30 **The Quickest Route to Recovery: Strategies for Getting Mental Illness Disability Claimants Back to Work**

Bill Asenjo, Ph.D, CRC
Rehabilitation Counselor
Vocational Expert (Iowa City, IA)

Mary R. Hibbard, Ph.D
Professor, Rehabilitation and Psychiatry
Mount Sinai School of Medicine
Mount Sinai Medical Center (New York, NY)

Edward S. Rooney, Jr.
Eckert Seamans Cherin & Mellott LLC
(Boston, MA)

- High risk absences to look out for in mental illness disability claims
- How disability insurers should work with employers to improve workplace re-integration for former mental health claimants
- Utilizing occupational health professionals to your benefit
 - who should be retained?
 - functional capacity evaluations in mental illness disability claims
 - making the most of your vocational expert in these cases
- Rehabilitation techniques for disability and functional impairment due to mental illness
 - what are the available techniques?

Tuesday, May 24, 2005

- reviewing the strengths and weaknesses of the techniques
- how can the evidence be countered?
- finding the weaknesses in the evaluations
- Do insurers play a role in accommodating claimants in the workplace?
 - the new legal requirements
 - the sanctions for non-compliance
- Successful models for mental illness claimants who return to work
- How does the law treat rehabilitation strategies—and what test does it now require insurers to meet?
- Positive mental illness back-to-work strategies from both a plaintiff and defense perspective

3:45 **Refreshment Break**

4:00 **Addressing Malingering, Misrepresentation and Fraud in a Mental Illness Case**

The Clinical Perspective

Jerry J. Sweet, Ph.D., ABPP
Editor, “Forensic Neuropsychology:
Fundamentals and Practice”
Evanston Northwestern Healthcare (Evanston, IL)
Professor, Dept of Psychiatry
& Behavioral Sciences
Northwestern University,
Feinberg School of Medicine (Chicago, IL)

For the Plaintiff

Mark D. DeBofsky
Daley DeBofsky & Byrant (Chicago, IL)

For the Defense

Cheryl Brown
Funk & Bolton, PA (Baltimore, MD)

Mary E. Fuller
Disability Claims Expert
Disability Claims Consulting Services
(Yarmouth, ME)

- Red flags for potential malingering, misrepresentation or fraud: what to look for in the claimant’s statements and medical evidence
- The use of objective psychological test data to support—or rule out—exaggeration or secondary gain
- Differentiating between actual fraud/malingering and honest errors, innocent misrepresentation, illness behavior and somatoform disability
- How to make or break the case that the claimant is malingering
- When and how to use surveillance in a mental illness disability case
 - privacy considerations
 - countering damaging surveillance evidence
- If malingering is suspected and pushed throughout the litigation process—and then not proven—what are the consequences?

5:30 **Conference Adjourns for Day One**

8:15 **Continental Breakfast** ■

8:45 **Co-Chairs’ Opening Remarks**

9:00 **The IME: Critical Elements Needed to Win Your Mental Illness Disability Case**

The manner in which the “independent medical examination” is carried out is fraught with controversy—especially in mental health claims. If the claimant is not properly prepared for what lies ahead, the defense has the opportunity to seriously damage the claim. What are the critical components of an IME in a mental illness disability case? And how can they be put to effective use by both the plaintiffs and the defense? Hear three leading mental health experts discuss how IMEs—which can easily form the basis of a court decision for either side—can be put to very best use—or discredited in litigation.

The Medical Perspective

Wilfred van Gorp, Ph.D
Professor, Department of Psychiatry
Columbia Presbyterian Medical Center
(New York, NY)

For the Plaintiff

Ronald H. Surkin
Gallagher, Schoenfeld, Surkin & Chupein, P.C.
(Media, PA)

For the Defense

Michael J. Hannan III
Thompson, Slagle & Hannan, LLC (Atlanta, GA)

- Exactly when should you get an IME in mental illness disability cases?
- How much background information should you provide to the examiner?
 - psychiatric or psychological?
 - the qualifications to look for
- How to ensure the expert’s objectivity
- How much weight is granted to an IME vs. the opinion of the treating physician?
- Who is best equipped to provide the ultimate determination of disability from the medical perspective: is the process tainted in favor of the plaintiff against the IME?
- When can the IME be taped, videotaped or observed by a “neutral” party or representative of the plaintiff?
- Challenges of assessing mental states that fluctuate over time
- How to qualify—or disqualify—doctors in the mental illness field

10:30 **Coffee Break** ■

10:45 **“Appropriate Care” and the Duty to Mitigate in Mental Illness Disability Cases: What Does the Law Now Require?**

For the Plaintiff

Pamela I. Atkins
Galler & Atkins (Atlanta, GA)

For the Defense

Douglas E. Arpert
Norton, Arpert, Sheehy & Higgins
(Paterson, NJ)

Most disability insurance policies specifically require that an insured submit to medical treatment as a condition of receiving benefits. Generally, the policy will define this requirement and often the definition is in the form of requiring the insured to be under the “regular care and attendance of a legally qualified physician.” Consequently, a claimant who refuses to submit to reasonable medical treatment may find that his or her disability benefits are reduced or denied. The extent to which an insured who has made a mental illness claim is required to follow the advice of his treating physicians presents interesting dilemmas. This session, led by two of the country’s leading disability insurance lawyers, will teach you how to maintain that tricky balance in your favor.

- Is there a distinction between “regular care” and “appropriate care” in mental health circumstances?
- Under what circumstances can a carrier assert the “appropriate care” defense as a reason not to pay benefits?
- Does the law treat invasive v. non-invasive mental illness procedures or treatments differently?
- Weighing the side effects and risk factors of various forms of medication in providing “appropriate care” for the claimant
- What if the claimant refuses to take the medications, believing them to be dangerous for his/her health?
- Challenging the appropriate treatment suggested by the insurer: what should a plaintiff do?
- Potential consequences for both sides if the insurer terminates benefits when the claimant refuses to follow the treatment
- When is an insurer estopped from relying on the “reasonable care” provisions in a policy?
- What is the duty of the mental illness claimant to upgrade educational and vocational skills and take part-time employment?

11:45 Ensuring Against Bad Faith and Punitive Damages in Mental Illness Disability Cases

For the Plaintiff

Brian S. King
Attorney
(Salt Lake City, UT)

For the Defense

Robert J. McKennon
Barger & Wolen
(Newport Beach, CA)

Bad faith claims have exploded in mental illness disability cases. Because of the subjective nature of the claims, findings of both the insurer’s and counsel’s bad faith during litigation are being relied upon to increase punitive damage awards. In this session, find out how to navigate this burgeoning area of insurance law so you can either properly bring—or defend—claims of bad faith.

Making a Bad Faith Claim

- Advising the insured before bad faith litigation: prior to filing the suit and after the denial
- How have courts in different states approached bad faith claims in mental illness disability cases?
- Does Barber v. Unum end all hope of pursuing bad faith claims in ERISA cases?
- Navigating the newest case law for your benefit: Saldi v. Paul Revere Life Insurance Co. and Hangarter v. Provident Life Insurance Co.
- Making a valid bad faith claim: what components are required?
- Use of bad faith experts to establish the claim
- Dealing with the continuing fallout from State Farm v. Campbell in bad faith litigation: discovery, defendant’s financial condition and other economic testimony that is relevant to the claim
- Is it a good idea to name the claims examiner personally in the bad faith action?
- What remedies are available if bad faith is established?

Defending the Bad Faith Claim

- Pre-litigation strategies to avoid bad faith claims in mental illness disability claims
- What are the insurer’s obligations to minimize the risk of a bad faith claim?
- Claiming bad faith in bad faith: the risk of costs against plaintiff’s counsel
- ERISA pre-emption of bad faith claims
- Claims review processes, claims handling statutes and their effect on bad faith and punitive damages
- A case law review of recent punitive damage awards in mental illness cases: just how can the defense be helped with the latest precedents?
- Severing the bad faith claims
- Identifying common threads in bad faith claims brought in mental illness disability cases: practices and defenses
- Overcoming challenges unique to the trial of a mental illness disability bad faith case
- Crafting effective opening statements that will assist the defense at trial

1:00 Conference Concludes

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(212) 352-3220 ext. 238 or
B.Greenzweig@AmericanConference.com

OPTIONAL POST-CONFERENCE WORKSHOPS

Tuesday, May 24, 2005 – 2:30 p.m. – 5:30 p.m.
(Registration begins at 2:00 p.m.)

B Eliciting Psychiatric Expert Testimony that Will Win Your Disability Case

Robert McKennon
Barger & Wolen (Newport Beach, CA)
Bonny G. Rafel
Law Offices of Bonny G. Rafel (Livingston, NJ)
Mary R. Hibbard, Ph.D.
Professor, Rehabilitation and Psychiatry
Mount Sinai School of Medicine
Mount Sinai Medical Center (New York, NY)

Conducting a concise and effective examination of a psychiatric witness can be fraught with complications. How do you explain the medical terms so that a jury can understand? What questions should you ask—and which ones should you avoid? How can complicated medical evidence be presented in the clearest and simplest manner? And then there's cross-examination—an especially daunting task for any attorney and a frightening experience for most obstetrical witnesses. What should be asked? What are the best techniques that any good cross-examiner should deploy? What are the traps that must be avoided?

This intensive workshop, led by attorneys **Robert J. McKennon** and **Bonny G. Rafel**, is your opportunity to improve your strategies and techniques for examination and cross-examination of an obstetric witness. Dr. Mary R. Hibbard, a highly experienced medico-legal witness who has appeared in courts across the United States, will participate as the medical witness. She has successfully tangled with some of the foremost attorneys in the country and will share her tips, traps and techniques with medical practitioners and lawyers who attend the workshop. Using various case scenarios, this formidable team will teach both doctors and lawyers who engage in mental illness disability cases how to:

- Lay the foundations for the examination of a psychiatric or psychological witness
- Attack—and defend—the credentials of an psychiatric witness
- Ask the right medical questions in a mental illness disability case
- Prepare for a rigorous cross-examination and lay the foundations for surprise
- Find the weakness in a specialist's theories
- Search for the weakness in your opponent's case
- Withstand withering cross-examination: tips and traps
- Use medical reports and clinical notes with the witness to make your case
- Ask the right questions—and avoid the wrong ones
- Cut a swath through your opponent's case by using aggressive tactics

Dr. Mary R. Hibbard is a well-known, highly capable and experienced psychologist based in New York City. She is a professor in rehabilitation and psychiatry at Mount Sinai Medical School and has testified in disability cases in various courts in the United States.

Robert J. McKennon is a prominent California disability insurance defense lawyer, concentrating his practice exclusively on the defense side for insurers.

C Establishing the Vocational Prognosis: 50 Points to Cover with the VE

Bill Asenjo, Ph.D., CRC
Rehabilitation Counselor
Vocational Expert (Iowa City, IA)
Michael J. Hannan III
Thompson, Slagle & Hannan, LLC (Atlanta, GA)

Vocational consultants specialize in assessing individuals who have disabilities and assisting them in finding vocational alternatives. As a result, vocational consultants often provide testimony regarding the scope and severity of vocational disabilities, including those that may be subject to claims for monetary damages. Economic loss experts rely on the conclusions provided by the VE to calculate total lost earnings as well as anticipated lost earnings for the remaining post-accident work-life expectancy.

But how can a vocational prognosis be challenged? What questions should an attorney ask a vocational consultant? And how does an attorney conduct a cross-examination of a vocational expert? In an intimate and intensive setting, **Bill Asenjo**, an experienced rehabilitation counselor and vocational expert and Atlanta trial attorney **Michael J. Hannan III**, will guide you through setting:

- The 10 most important areas for cross-examination
- How to identify and analyze weaknesses in opposing vocational expert's testimony
- Lay the foundations for the examination of a VE
- How vocational expert testimony can be challenged effectively in damage cases involving disability
- Where vocational experts are vulnerable in their testimony—and how to cross-examine them about their:
 - qualifications
 - educational background
 - methodology used to evaluate the disabled individual
 - resources utilized in forming opinions
 - calculations determining future earnings loss
- Which facts must a VE examiner consider—and which ones are not as relevant in formation of the opinion?
- Dealing with earning capacity
- The vulnerable points on working life expectancy
- Use medical reports and clinical notes with the witness to make your case
- How to ask the right questions—and avoid the wrong ones

Bill Asenjo, Ph.D., C.R.C., is a vocational consultant based in Iowa City. A certified rehabilitation counselor and vocational consultant since 1994, Bill has written widely on the rehabilitation and vocational process. He has acted for both plaintiffs and insurers in providing analysis and has appeared as an expert witness in a wide number of disability cases.

Michael J. Hannan III is an Atlanta trial attorney who has had extensive experience in the courts, trying personal injury and disability cases. In the course of his practice, he has examined and cross-examined a great many witnesses, including vocational experts.

Managing & Litigating

Mental Illness

Disability Insurance

May 23-24, 2005
New York Marriott East Side Hotel
New York, NY **Claims**



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Registration Fee

The fee includes the conference, all program materials, continental breakfasts, lunches and refreshments.

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