

Defense mental exams and plaintiff's psychiatric diagnosis

What you must know before your plaintiff is exposed to the pain of a mental exam

By Justine Durrell and Ronald B. Schwartz

Defense mental examinations are a unique and troubling discovery tool; the only discovery procedure requiring plaintiff to submit to hours of adversarial examination outside the presence of counsel. During evaluation, the mental probing can be painful to a sensitive plaintiff and the examiner's later disclosed conclusions are damaging to plaintiff, both personally, and in the context of the lawsuit. The defense expert uses the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), in making a diagnostic assessment. Prior to the release of the most recent DSM-5, clinical assessment and diagnosis were organized into axes or dimensions addressing different aspects of a disorder and usually resulting in several diagnoses for the plaintiff.[1] For defendant the diagnoses provide alternative theories of causation for plaintiff's complaints, and have the intentional, or inadvertent, consequence of creating a bias against plaintiff and undermining his or her credibility.

Education and a full appreciation of the plaintiff's injuries are essential to deciding what claims to tender and possibly withdraw. The following discussion covers: (1) the basics of the defense mental examination and ways of limiting, or avoiding, it; (2) anticipating the types of cases and claims that lead the Court to grant mental examinations; and (3) breaking down the reasons defendants want psychiatric examinations and the impact on the plaintiff.



The nuts and bolts of defense mental examinations

• Compelling a mental examination of the plaintiff

Mental examinations *may* be obtained of a party whose mental condition is placed in controversy. (Code Civ. Proc., § 2032.020(a).) Unless the parties agree, leave of Court is required to obtain a mental examination. (Code Civ. Proc. § 3032.310(a).) A motion shall be granted only for *good* cause (Code Civ. Proc., §2032.320(a)), which generally requires (1) relevancy and (2) specific facts justifying discovery. (Weil & Brown, California Practice Guide, Civil Procedure Before Trial, Chap. 8, section 8:1557, p. 81-16.)

For example, in *Vinson v. Superior Court of Alameda County* (*Peralta Comm. College Dist.*) (1987) 43 Cal.3d 833, plaintiff alleged, among other causes of action, sexual harassment. She pleaded, "diminished self-esteem, reduced motivation, sleeplessness, loss of appetite, fear, lessened ability to help others, loss of social contacts, anxiety, mental anguish, loss of reputation and severe emotional distress" (*Id.* at 840). Defendants pointed out plaintiff's allegations, and because the truth of these claims was relevant and specific justifying facts were shown, the Court found good cause demonstrated to allow a defense mental examination. (*Id.* at 840-841). In distinguishing the particular facts of the case, the Court emphasized that a simple sexual harassment claim would not normally create a controversy regarding plaintiff's mental state. (*Id.* at 840.)

In *Reuter v. Superior Court of San Diego County* (*Tag Enterprises*) (1979) 93 Cal.App.3d 332, the Appellate Court decided the mother of a minor plaintiff could not be compelled to undergo a mental examination as collateral to her son's mental evaluation because the mother's mental condition was not in controversy. (*Id.* at 341-342.)

Good cause for a defense mental examination requires a two-step proof. First, plaintiff's mental condition must be in controversy. Second, there must be a demonstration of specific facts justifying the discovery. For instance, in an employment action, a plaintiff may have previously been tested and interviewed by a psychologist for worker's comp, and making that evaluation available to defendant can preclude justifying another mental exam, even though the mental condition has been tendered.

Defendants often initiate the procedure by sending a notice of mental exam as a meet-and-confer attempt. The parameters of the examination(s) should be clearly defined, either through agreement

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among counsel, or by Court order. An order helps minimize potential misunderstandings, particularly with defendant's examiner(s). The adversarial mental examination can be an ordeal and establishing clear time frames, and other limiting parameters is helpful to minimize the hardship and privacy invasion.

Parameters of the motion and examination

• ***Time, Place, Scope, Number***

The motion must specify the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty of the person or persons performing the examination. (Code Civ. Proc., § 2032.320(b).) The examiner must provide a specific list of the diagnostic tests and procedures to be used. (*Carpenter v. Superior Court of Alameda* (*Yamaha Motor Corporation, USA*) (2006) 141 Cal.App.4th 249.) Examination is to be conducted within 75 miles of plaintiff's residence, unless there is good cause to increase it, and defendant pays related expenses. (Code Civ. Proc., § 2032.020(e).) There is no specified limit on the number of mental examinations, only the necessity of showing "good cause" for each particular exam. (*Shapira v. Superior Court of San Mateo County* (*Sylvestri*) (1990) 224 Cal.App.3d 1249.)

• ***Requirements for who can perform it***

Mental evaluations must be performed by a licensed physician, or a licensed clinical psychologist who holds a doctoral degree in psychology and has had at least five years of postgraduate experience in the diagnosis of emotional and mental disorders. (Code Civ. Proc., § 2032.020(c).)

• ***Only examiner and examinee can attend***

Audio taping the examination is permissible, but no attorney or third parties are allowed to be present. (Code Civ. Proc., § 2032.530(a)-(b).) The exclusion of everyone, other than the examiner and plaintiff, is purportedly based upon the need to establish rapport and to avoid interference with the psychological process. (See, *Edwards v. Superior Court of Santa Clara County* (*Santa Clara Unified School District)* (1976) 16 Cal.3d 905; *Toyota v. Superior Court of Los Angeles County* (*Braun*) (2010) 189 Cal.App.4th 1391.)

However, in at least one reported case involving a minor, through the parties' stipulation, the mother was allowed to be present during the mental examination of her brain damaged 10-year-old son. (*Golfland Entertainment Centers v. Superior Court of San Joaquin County* (*Nunez*) (2003) 108 Cal.App.4th 739.)

Disagreement exists among the Courts as to whether the examinations can truly be impartial.[2] In *Whitfield v. Superior Court of Los Angeles County* (*Cleveland Wrecking Company*) (1966) 246 Cal.App.2d 81, the plaintiff was ordered to appear for a psychiatric examination without the presence of counsel. The Court found the examination required an atmosphere conducive to freedom of expression, and assumed defendants would select a doctor to make an unbiased and objective psychiatric examination in order to be convincing at trial. (*Id.,* at 86.) In his dissent in *Edwards*, *supra,* 16 Cal.3d at 914, Justice Sullivan strongly disagreed with this view: "where a court orders a psychiatric examination at the request of one party, I find it difficult to believe that the atmosphere of the examination will be conducive to 'a special and private rapport between examiner and examinee'."

• ***Getting the results***

Plaintiff may demand the psychiatrist/psychologist produce, within 30 days, a detailed report setting out the history, the examination findings, test results, diagnosis, prognosis, and conclusions. (Code Civ. Proc., § 2032.610; *Kennedy v. Superior Court of Marin County* (*Lucky Stores, Inc.*) (1998) 64 Cal.App.4th 674, 678 (it is not optional, the examiner is required to produce a report).) This demand triggers plaintiff's simultaneous obligation to produce all reports recorded by any physician, psychologist or licensed health care provider who previously examined him or her. (Code Civ. Proc., § 2032.630.) Any work product privilege is waived as to any such reports. For this reason, it may be prudent to advise plaintiff's expert(s) not to write a report.

As part of the demand, make sure defendant's psychologist's raw testing data is sent to your psychologist for review, including the scoring, interpretation and computerized print-outs.

Avoiding the mental examination

• ***Stipulation***

Plaintiff can stipulate that no claim is being made for mental or emotional distress over and above what is usually associated with the physical injuries claimed and no expert testimony regarding this usual mental distress will be offered at trial. (Code Civ. Proc., § 2032.320(c).) Where plaintiff offers a stipulation, the Court cannot order a mental examination "except on a showing of exceptional circumstances." (Code Civ. Proc., § 2032.320(b).) Exceptional circumstances might be based on plaintiff's irrational behavior or a physical appearance suggesting mental illness. (Weil & Brown, *supra,* at section 8:1568, pg. 81-20.)

• ***No continuing mental distress***

If plaintiff's emotional distress ceases during the course of the litigation, it is no longer at issue. The Appellate Court in *Doyle v. Superior Court of Santa Clara County* (*Caldwell*) (1996) 50 Cal.App.4th 1878, found plaintiff's past mental suffering no longer in controversy because she alleged she was not suffering current mental injury. *Doyle* accorded its holding with *Vinson* as follows:

> The California Supreme Court expressly based its holding in *Vinson* on the nature of the plaintiff's allegation of continuing emotional distress. ...[Mental] examinations may ordinarily be considered *only* in cases in which the alleged mental or emotional distress is said to be *ongoing*.

(*Vinson* at p. 847, italics added.) (*Doyle v. Superior Court, supra,* 50 Cal.App.4th at 1885.)

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Circumstances wherein mental examinations may be required

• Plaintiff claims mental disability caused by defendant's conduct

When a plaintiff alleges defendant's conduct caused him or her severe emotional distress, or other types of mental injury, a mental examination may be granted. (Code Civ. Proc., § 2032.020(a); *Edwards v. Superior Court, supra*, 16 Cal.3d 905; *Vinson v. Superior Court*, *supra*, 43 Cal.3d 833.) This often results in not just one, but two examinations. The first by a psychologist administering testing, and the second by a psychiatrist interviewing plaintiff, reviewing test results, and writing an opinion report. For the plaintiff individually, it multiplies into four exams as he/she requires like experts to explain and counter the defense doctors' opinions.

To be placed in controversy, plaintiff's emotional distress must be greater than what is normally associated with the garden variety emotional distress accompanying physical injuries.[3] And even with a general allegation of *severe* emotional distress, the opposing party may not require plaintiff to undergo psychiatric testing solely on the basis of speculation that something of interest may surface. (*Vinson v. Superior Court*, *supra*, 43 Cal.3d 840.)

Defendant's conduct causing extreme mental problems, typically includes claims for sexual abuse, sexual harassment, and/or other employment abuses. A mental injury can also arise with accompanying physical injuries including sexual abuse, rape, and cases with critical bodily injuries.

Occasionally a plaintiff may allege an exacerbation of preexisting Post Traumatic Stress Disorder (PTSD), caused by defendant's conduct. This claim usually opens the door for defendant's discovery of all records, reports, and treatment pertaining to the original traumatic event. Still, it is instructive to look at the "good cause" criteria used by the Eastern District Court in *Robinson v. HD Supply, Inc.* (2013) 2013 U.S. Dist. LEXIS 101703 (28 Am. Disabilities Cas. (BNA) 807), in deciding whether to compel a mental examination for plaintiff who claimed an exacerbation of PTSD from a hostile work environment. The Court agreed that plaintiff's mental state was in controversy, but after considering the factors for assessing good cause, found defendant's arguments unpersuasive.

> Factors considered in assessing whether "good cause" exists include, but are not limited to: (1) "the possibility of obtaining desired information by other means;" (2) "whether plaintiff plans to prove her claim through testimony of expert witnesses;" (3) "whether the desired materials are relevant:" and (4) "whether plaintiff is claiming ongoing emotional distress.

(*Robinson v. HD Supply, Inc.*, *supra*, 2013 U.S. Dist. LEXIS at *15-16, and cases cited therein.)

• Defense claims physical injuries uncorroborated by test results

Occasionally, a plaintiff will have bodily injuries uncorroborated by medical testing and defendant is anxious to use this to compel a mental examination. In *Shapira v. Sylvestri, supra*, 224 Cal.App.3d 1249, plaintiff claimed that during a dental procedure she sustained organic brain damage caused by the administration of drugs, which were counter-indicated due to her preexisting heart murmur. Plaintiff suffered a *grand mal* seizure and while being rushed to the hospital briefly stopped breathing. After 22 days in the hospital, she exhibited a stroke-like state and upon leaving required a walker to ambulate. (*Id.* at 1251.) The contested issue was whether Ms. Shapira's disabilities were of organic or psychological origin. A physical examination for the defense was conducted by Dr. Newton who concluded the diagnosis of organic encephalopathy was inaccurate, biologically implausible, and unsubstantiated by objective data; that plaintiff had a chronic emotional disturbance manifesting in *somatization*[4] and pseudo-neurological dysfunction. (*Id.* at 1252-1253.)

Thereafter, plaintiff submitted to a defense neuropsychological examination by Dr. Munday, who concluded the clinical picture was not explainable on the basis of brain damage, believing the symptoms to be either functional (psychological) or frank malingering. (*Id.* at 1253.) Both defense doctors agreed plaintiff needed a psychiatrist's evaluation. Plaintiff objected to a second mental examination, but the Appellate Court ordered superior court to vacate its order denying the second exam and conduct a hearing on the question of whether good cause existed for it. (*Id.* at 1256.) When plaintiff has physical injuries uncorroborated by medical testing, be proactive and retain a consulting psychiatrist/psychologist to determine if good cause, in fact, exists for a mental examination by defendant.

Breaking down defendant's reasons and the fallout

Defendant's primary reason to compel a mental evaluation is to prove alternative causes for the alleged injuries. Unfortunately, given a general bias against people with psychiatric diagnoses, the defense mental examination also tends to cast plaintiff in a negative light, undercutting his/her character and credibility.

• Discovering alternative causation theories

By asserting a causal link between mental distress and defendant's conduct, plaintiff implicitly claims it was not caused by a preexisting condition, thereby raising the question of alternative sources for the distress. (*Vinson v. Superior Court*, *supra*, 43 Cal.3d at 840.)

In *Golfland Entertainment Centers v. Superior Court*, *supra,* 108 Cal.App.4th at 739, the Court allowed defendant's neuropsychologist to conduct a mental examination of a 10-year-old who claimed brain damage from a boating accident. Good cause was demonstrated by the neuropsychologist's declaration claiming an interview with the child was "necessary to rule out alternative etiologies (preexisting

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cognitive impairment or emotional problems, or problems caused by concurrent factors unrelated to the accident)." (*Id.* at 743.)

Guard plaintiff's privacy and, to the extent possible, limit defendant's discovery in search of alternative etiologies. In *Mendez v. Superior Court of Merced County* (*Perry*) (1988) 206 Cal.App.3d 557, a female county employee filed a claim against a deputy and his employer, alleging defendant Mendez accosted her, locked her in a room, and forced her to orally copulate him. Defendants sought to discover all sexual conduct of plaintiff with anyone other than Mendez, alleging she had engaged in numerous extramarital affairs. Defendants argued plaintiff's sexual conduct with others was relevant to, among other things, alternative causation for her emotional distress. The court denied the discovery and on appeal, defendants' writ of mandate was denied.

The *Mendez* Court thoroughly discussed Code of Civil Procedure § 2017, subdivision (d) (now Code Civ. Proc., § 2017.220(a)), prohibiting discovery into a plaintiff's sexual conduct with individuals other than the alleged perpetrator in sexual misconduct cases. It concluded in order to justify an inquiry into plaintiff's sexual conduct with others, either the plaintiff must claim some special damage, or defendant must demonstrate some extraordinary circumstance attendant to plaintiff's claim. (*Mendez v. Superior Court, supra*, 206 Cal.App.3d at pp. 565-573.)

• ***Psychiatric diagnoses***

"There is overwhelming evidence that being labeled with a psychiatric diagnosis changes people's view of individuals. There is no reason to believe that this prejudice does not transfer into the courtroom. . . . Legal scholars have written extensively on the impact of stigma associated with mental illness." (Deirdre M. Smith, *The Disordered and Discredited Plaintiff: Psychiatric Evidence in Civil Litigation*, 31 Cardozo L. Rev. 749, 808-809, (2010); Rachel V. Rose, Arlie N. Wallace, Ann M. Piccard, *Another Crack in the Thin Skull Plaintiff Rule: Why Women with Post Traumatic Stress Disorder Who Suffer Physical Harm from Abusive Environments at Work or School Should Recover from Employers and Educators*, 20 Tex. J. Women & L. 165, 184-185 (2011) (and articles cited therein).)

In addition to recognizing the bias against people with a psychiatric diagnosis, there is general unrest over the validity of psychiatric diagnoses. On April 29, 2013, Dr. Thomas R. Insel, director of the National Institute of Mental Health (NIMH) posted a blog about the soon-to-be-released DSM-5 by the American Psychiatric Association (APA). In part, Dr. Insel stated:

> While the DSM has been described as a "Bible" for the field, it is, at best, a dictionary, creating a set of labels and defining each. . . . The weakness is its lack of validity. . . .the DSM diagnoses are based on a consensus about clusters of clinical symptoms, not any objective laboratory measure.

(Thomas Insel, Director's Blog: Transforming Diagnosis, (April 29, 2013), http://www.nimh.nih.gov/about/director/2013/transforming-diagnosis.shtml (last visited 02/11/14)

Later, Insel qualified his comments, approving the DSM-5, as a useful but limited tool, and promoting his own new diagnostic approach using biology and neuroscience, to better understand brain circuitry problems. (Benedict Carey, *Blazing Trails in Brain Science*, New York Times, Science Section, Profiles in Science, Dr. Thomas R. Insel, (Feb. 3, 2014).) He explained his ongoing concern with the field as follows: "We've had this huge increase in the use of all interventions, a 250 percent increase in use of antipsychotics, without any change in the morbidity or mortality in people with mental disorders; it hasn't budged." (*Ibid.*)

The publication of the DSM-5, took nearly 15 years, cost $25M, and garnered strident criticism from all corners.[5] (Gary Greenberg, "The Rats of NIMH," The New Yorker, (May 16, 2013), http://www.newyorker.com/online/blogs/elements/2013/05/the-scientific-backlash-against-...)

The problem is not just that the DSM criteria is based on symptoms and not brain science, but there is widespread disagreement among mental health professionals about accurate diagnoses. For example, common symptoms of mental disorder – sadness and worry, or delusions and hallucinations – appear as criteria for many different diagnoses; many patients can be diagnosed with more than one disorder; and the few solid findings that have emerged from genetic and neuroscience studies indicate that the DSM's categories simply don't correspond to biological reality. (Greenberg, "The Rats of NIMH," *supra*; also see, Lars Noah, *Pigeonholing Illness: Medical Diagnosis as a Legal Construct,* 50 Hastings L.J. 241, 248 (Jan. 1999).) Although evidence of the lack of validity for psychiatric diagnoses is unlikely to be raised by either party at trial, with both needing to rely on their psychiatrist's diagnoses and opinions for causation and damage, the topic may offer fertile ground for deposition questions.

• ***Undermining plaintiff's credibility***

Mental examinations are not authorized for the purpose of testing a person's credibility. (*Doyle v. Superior Court, supra* 50 Cal.App.4th at 1886.) Practically speaking, however, the presentation of alternative theories of causation combined with plaintiff's psychopathology diagnoses operate to undermine his or her credibility. Defendant's psychiatric experts will give the opinion that plaintiff had numerous preexisting problems that caused the mental condition long before he or she encountered defendant. These alternative diagnoses serve to cast doubt on plaintiff's reliability as a witness and his or her veracity.

Plaintiff's counsel can argue against any attempt by the defense experts to use their opinions to undermine plaintiff's credibility, as it is the duty of the jury to determine a witness' credibility (Evid. Code § 312(b)). However, it may be more prudent to attempt to limit the type of information available to the defense expert, and the parameters of the examination

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before it occurs. *Mendez*, with 'tongue in cheek', was informative on this point. Defendants contended, as one of their reasons for discovering plaintiff's sexual history, that it "bears upon her credibility," the Court responded that, "[a]lthough finely framed, County's argument appears to assert, and conclude, that sexually-active people may be less credible than more chaste individuals." (*Mendez v. Superior Court, supra*, 206 Cal.App.3d at pp. 565-573.)[6]

Conclusion

Our legal foundation honors logic over emotion, asking jurors to turn off their emotions and rely on rational executive thinking. (Teneille R. Brown, *The Affective Blindness of Evidence Law*, 89 Denv. U.L. Rev.47 (2011).) However, recent neuroscience testing demonstrates there may be little to no ability of our brains and our consciousness to separate out cognitive processing from emotional responses. (*Id.* at 100-124.) There is an inherent contradiction in asking jurors to award damages for emotional distress when their own emotions are deemed less important in making decisions than their logical and rational thoughts. This incongruity should be addressed at trial.

Weigh all the above considerations before deciding what damages to tender and the scope of your mental distress pleading. One way to sidestep the examination is by stipulating pursuant to CCP § 2032.320. If defendant files a motion, oppose, and if possible defeat it by (a) limiting emotional distress to "garden variety," and/or (b) denying there is any current continuing mental distress. If the Court finds good cause and specific facts justifying the need for a mental examination, advocate for parameters (a) protecting plaintiff's privacy, limiting discovery into his or her personal life[7], and (b) limiting the time required for examination, the number of examiners, examinations, and tests administered. Ensure a clear order is issued. Take the defense expert's deposition fully educated, so cross-examination at trial will be logical and compelling. For the jury, be aware and prepared for the bias the psychiatric diagnosis may impart and the capacity it has for undermining plaintiff's credibility.


Durrell

Justine Durrell has furthered the practice of plaintiff's law in the areas of sexual abuse, toxic exposures, and biotechnology. Now a sole practitioner, she was formerly partners with Maja Hanks/Kristin, and they handled some of the first priest abuse cases in the United States. Ms. Durrell engages in extensive research and writing in advanced areas where law, science, and ethics meet, having published, "Can the Law Handle Human Cloning?" in TRIAL, *October 2002, and "Women's Eggs: Exceptional Endings", in* Hastings Women's Law Journal, *January 2011.*


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Endnotes

[1] DSM-5, released in May, 2013, shifted to a single axis system. Whether forensic experts will now limit the number of diagnoses, remains to be seen. A DSM-5 introductory note, cautions that the definitions of mental disorders were developed for clinicians, public health professionals and research investigators rather than for the technical needs of the courts and legal professionals, and the DSM does not provide treatment guidelines for any given diagnosis.

[2] In *Mercury Casualty Company v. Superior Court of Los Angeles County* (*Garcia*) (1986) 179 Cal.App.3d 1027, where a defense physical examination was conducted, the Appellate Court indicated it was not meant to be impartial and the best protection against misconduct by a physician is cross-examination during trial. (*Id.* at 1034.)

[3] California CACI Instruction 3905A includes physical pain, mental suffering and emotional distress as part of compensation for noneconomic damages. "In general,. . . the unitary concept of "pain and suffering" has served as a convenient label under which a plaintiff may recover not only for physical pain but for fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal." (*Capelouto v. Kaiser Foundation Hospitals* (1972) 7 Cal.3d 889, 892-893, citing to *Crisci v. Security Ins. Co*. (1967) 66 Cal.2d 425, 433.)

[4] DSM-5 has replaced disorders of somatization disorder, hypochondriasis, pain disorder, and undifferentiated somatoform disorder with Somatic Symptom Disorder. The DSM-5 does not require the somatic symptoms of an SSD diagnosis to be medically unexplained; it is not appropriate to diagnose individuals with a mental disorder solely because a medical cause cannot be demonstrated.

[5] Much of the criticism relates to what some see as a too cozy relationship between the APA and pharmaceutical companies. In "The Book of Woe: the DSM and Unmaking of Psychiatry," author Gary Greenberg indicates 56 percent of the APA's DSM-5 work group members received money from big pharmaceutical companies. (http://www.naswil.org/news/chapter-news/featured/book-reviews-the-book-or-woe-the-ds (Aug. 1, 2013).) With 15 new mental disorders included in the DSM-5, it is expected that the legitimization and expansion of certain disorders will pave the way for pharmaceutical companies to develop and sell more drugs to treat them, with the approval of the FDA. (http://www.marketwatch.com/story/new-psych-manual-could-create-drug-windfalls-2013 (June 5, 2013).)

[6] For discussion on the admissibility of sexual conduct at trial to attack plaintiff's credibility see, Evidence Code section 783 addressing this issue specifically in the context of civil actions alleging sexual harassment, sexual assault, or sexual battery. Also, see *Winfred D. v. Michelin North America* (2008) 165 Cal.App.4th 1011, where the Court of Appeal reversed a jury verdict, based in part, on the admission of the plaintiff's polygamy and extramarital affairs after he suffered severe brain damage in a vehicle rollover. In *Patricia C. v. Mark D.* (1993) 12 Cal.App.4th 1211, the Court of Appeal affirmed an allowance of plaintiff's sexual history and conduct, in her medical malpractice case against her psychologist for sexual misconduct.

[7] Non-tendered medical and emotional conditions are protected by the constitutional right to privacy, Cal.

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Constitution, Art. 1, §1, as well as the doctor-patient (Evid. Code, § 992), and psychotherapist-patient privilege (Evid. Code, § 1014). For limiting the extent of discovery of plaintiff's medical records, see the following cases: *Bearman v. Superior Court* (2004) 117 Cal.App.4th 463 (records from doctor prescribing marijuana disallowed); *Britt v. Superior Court* (1978) 20 Cal.3d 844 (waiver of physician-patient and psychotherapist-patient privileges re medical conditions extends only to information relating to medical conditions in question); *Hallendorf v. Superior Court* (1978) 85 Cal.App.3d 553 (medical history limited to what was put into controversy); *Roberts v. Superior Court* (1973) 9 Cal.3d 330 (plaintiff in auto accident did not claim emotional or mental suffering and her psychiatric records pertaining to a suicide attempt a couple years before were not discoverable); *In re Joseph E. Lifschutz* (1970) 2 Cal.3d 415 (there is no absolute constitutional right protecting patient-psychotherapist records from disclosure, but discovery is limited by what is relevant to the controversy).

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