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request them; 3) which do not cause undue hardship on the business. In light of the 2008 amendments, many more cases will survive motions for summary judgment in the judicial context and will result in findings of probable cause in the administrative context. Employers should update personnel policies and provide training for human resources staff regarding the impact of the recent changes to the ADA.

1 A plaintiff need not show disability to sue for medical testing violations under § 12112(d). *See Cossette v. Minn. Power & Light*, 188 F.3d 964, 969 (8th Cir.1999); *Fredenburg v. Contra Costa County Dep't of Health Servs.*, 172 F.3d 1176, 1181-82 (9th Cir.1999); *Griffin v. Steeltex, Inc.*, 160 F.3d 591, 593-95 (10th Cir.1998); *Roe v. Cheyenne Mountain Conf. Resort, Inc.*, 124 F.3d 1221, 1229 (10th Cir., 1997). At least one district court in this circuit has followed those cases. *See Lentz v. City of Cleveland*, 410 F.Supp.2d 673, 700 (N.D. Ohio 2006). Other circuits have declined to address the question. *See Tice v. Centre Area Transp. Auth.*, 247 F.3d 506, 516-17 (3d Cir.2001); *Armstrong v. Turner Ind., Inc.*, 141 F.3d 554, 558 (5th Cir.1998). In all of these cases, however, the courts have required that a non-disabled plaintiff at least show some tangible injury-in-fact caused by the § 12112(d) violation. *See, e.g., Tice*, 247 F.3d at 519-20; *O'Neal v. City of New Albany*, 293 F.3d 998, 1007 (7th Cir. 2002). *See also*, John J. Coleman, *Disability Discrimination in Employment – Law and Litigation*, §3:11 n. 1, p. 3-84 (2008 Thompson Reuters/West). The Sixth Circuit has expressly declined to evaluate the issue, *see Boise v. Capital Area Community Servs.*, 188 F.3d 506 (table, text at 1999 WL 618085) (6th Cir. Aug. 4, 1999).



“Exposing Deceptive Defense Doctors” by Dorothy Clay Sims

A review by Robert L. Abell

“Exposing Deceptive Defense Doctors,” by Dorothy Clay Sims, an Ocala, Florida lawyer, is an excellent how-to book offering outlines and guides for challenging and questioning defense doctors in a number of disciplines, as well as Internet resources and technology uses that can be used in a wide variety of contexts.

The book begins with a discussion of the personality traits that are typical of a deceptive defense doctor. Ms. Sims states that “the really dishonest defense medical examiners appear to have traits from one of these three personality disorders: obsessive compulsive disorder, sociopathic disorder or narcissistic disorder.” This is important because “smart lawyers can *predict* and *modify* the doctors’ behavior based on an understanding of their particular traits.” From this beginning, Ms. Sims provides specific examples of how a lawyer can make this assessment and specific tactics and techniques that can be used for each type.

The book proceeds with detailed chapters on preparing your client for a defense medical exam, documenting the scope of the exam, and sample motions and memoranda. Chapters follow on specific topics including psychological tests, dealing with junk defenses to psychiatric conditions, allegations of malingering, depression, PTSD, somatoform, traumatic brain injury, psychologists, neuropsychologists, and psychiatrists, neurologists and orthopedists, radiologists, spinal cord and disc injuries, pain, RSD/CRPS, functional capacity evaluations and vocational rehabilitation experts. Each chapter includes discussion of issues that typically arise in each of these disciplines and contexts, along with useful information sources and examples of questions.

Ms. Sims also offers very helpful discussions of Internet resources and technology uses a creative lawyer can use effectively to prepare to deposing or examining a defense doctor, to create exhibits and to reduce costs. An example is the use of an Internet-based Webcam that can be used in a most cost-effective way to depose a defense doctor expert while eliminating the all-too-often great expense of traveling to the faraway location of the defense expert. This is something that can be used in any type of case and offers significant savings in both time and money.

“Exposing Deceptive Defense Doctors” is a book any KJA member who must depose and examine a DME will find a very useful and worthwhile investment. Any attorney will find its discussion of Internet resources and technology repeatedly useful in all types of cases and in everyday practice.

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