

# THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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## How To Destroy "Wash-Out" or "Wash-In" Psych Reports

### What is a Psych Pre-Deposition/Pre-Trial Consultation?

I've been doing forensic psychological evaluations for personal injury and workers' compensation for 28 years. I've had a lot of fun doing the work, have found it challenging and have learned a lot. My favorite assignment is writing pre-deposition/pre-trial consultation reports. A pre-deposition/pre-trial consultation provides a complete critical analysis of the psych doctor's evaluation report. This expert consult offers you an in-depth discussion in non-technical terms of each and every flaw contained in the evaluation report as well as a general strategy for approaching a deposition or trial. The pre-depo consult also provides a list of pointed questions to ask in a cross-examination that will expose the flaws and get them on the record. To your delight, the consultation is non-admissible and completely protected under the attorney client privilege and work product doctrines. Best of all, if you are really serious about winning your psych cases you can use these reports to discredit the doctor, get the doctor's erroneous and damaging testimony thrown out of court, negotiate with the opposing counsel, or appeal unfavorable decisions.

### Why you need a Psych Pre-Deposition/Pre-Trial Consultation?

Forensic psychologists and psychiatrists typically write long and detailed reports about the people claiming to have had personal injuries or work-related psychological

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injuries. Some of the times these doctors get it right. However, many times they get it wrong. In fact, on occasions the doctors are deliberately coming to the wrong conclusions. Every attorney or insurance adjuster is familiar with the terms "wash-outs" and "wash-ins." For the uninitiated, a wash-out is a doctor's report that finds nothing wrong with the person, even when there is a modicum of data indicating the patient has a psychological disorder and has been injured. A wash-in is a doctor's report that finds that the patient has a disorder and has suffered an injury despite the fact that there is little or no data to support that conclusion. Since a doctor's reputation precedes them, every experienced attorney knows the names of at least some of the wash-out and wash-in doctors in their area, although the good Lord is making more of each all the time. In fact, in some locations, doctors have built very lucrative careers around their reputations for washing in and washing out patients.

Now there are many "attorney jokes" that have floated around the medical-legal community for decades. However, none of those attempts at humor have ever seriously suggested that attorneys are anything but highly intelligent. Accordingly, virtually all attorneys know when they've been "had" by a wash-in or a wash-out, but doing something about it is another matter. The basic problem is that attorneys went to law school and psychologists and psychiatrists went to graduate school or medical school. As such, they have different areas of expertise and an attorney cannot be expected to find all the weak points in a

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doctor's report and be able to know what questions to ask that clearly and succinctly exposes those weaknesses. Essentially, attorneys simply don't know where the bodies are buried and what questions to ask that will expose a flawed report. That's where I and pre-deposition and/or pre-trial consultations become extremely valuable to the outcome of litigation. If you're really serious about winning your psych cases you ought to consider trying the service.

A pre-deposition and/or pre-trial consultation provides a complete written analysis of the expert witness's written testimony in an easy to read and totally useful attorney-client privileged report. Psychological evaluations typically use five different sources of information: the patient's life history and presenting complaints, the doctor's report of their Mental Status Examination, the objective psychological testing data, the patient's medical records and any sources of collateral information that are available at the time of diagnosis. A predeposition consult looks at the doctor's diagnoses and conclusions and (a) provides information about whether or not the doctor's data warrants their conclusions, (b) summarizes the major flaws found in the doctor's report, and (c) provides a line of very specific and direct questioning that can be used to cross examine the doctor that is designed to expose each and every flaw in their report. Essentially, when I write a pre-depo consult report I always include a list of questions that I wouldn't want asked of me if I were the doctor who had written the report. Thus, you will have all the information you need to ask the right questions and put the doctor on the spot and in a corner. This is just where I think they should be as their arrogance and incompetence has always personally offended me.

If you'd like to see a sample of a written pre-deposition consultation just go to my website and check it out ([www.drleckartwetc.com](http://www.drleckartwetc.com)). In doing so, keep in mind that in order to write one of these reports I do not have to examine the patient. In fact, I can be in my office in Los Angeles and

you, the deposition or trial, or any other legal procedure can be in New York, Dallas, Cleveland or for that matter in Sydney, Australia or London, England and the effect is exactly the same. All I need is the doctor's report and perhaps any other medical records you deem relevant, although typically the doctor's report is enough.

You also want to keep it in mind that it really doesn't matter which side of the fence you are on. If you feel the doctor has over-diagnosed or under-diagnosed, the basic issue is the same. Do the data support the doctor's conclusions? So, if you're a plaintiff or applicant attorney or a defense attorney working on a personal injury or a workers' compensation case, the basics are the same. In the case of a wash-in, the doctor has minimal or no information to support their diagnoses and conclusions. In the case of a wash-out, there is not enough information in the doctor's report to justify concluding that the patient does not have a psychological disorder or a psychiatric injury. You can review some testimonials below written by both defense and applicant/plaintiff attorneys.

Perhaps the biggest advantage of these reports is that they are based on hard facts coming out of the peer-reviewed psychological literature. Opinions are kept at a minimum in deference to hard and cold facts or data found in the doctor's report and the published mental health literature. Thus, when you have the pre-deposition consultation report you can see all the problems in black and white and can refer to those problems when planning your deposition. You can also use the supporting information in the report during the actual deposition or trial should you need, for example, to quote a particular piece of research that is crucial to your line of questioning. In addition to using my written reports to take a doctor's deposition or trial testimony, the same type of report can be used in settlement conferences, negotiations with opposing counsel, or in appeals.

Finally, my policy is if I can't rip the doctor's report to shreds, not only is there no fee for trying, but I'll call you and tell you just why it's a good report, and that consultation is also free.

### Pre-deposition consults involving reports of a

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for more information)

*"I had a lengthy telephone consultation with Dr. Leckart about a rather unusual case. By showing me how to think like a doctor, rather than a lawyer, he provided invaluable assistance in focusing on the issues for the doctor's pending cross-examination as well as providing useful tips for reviewing reports."*

*Amy Stoodly King  
Law Offices of Stoodly & Mills  
Irvine, CA*

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*"Dr. Leckart provided invaluable insight and recommendation in preparing for an effective cross-examination. I was extremely impressed and grateful for his professionalism and generosity."*

*Laila Havre Jacobsma  
Jacobsma & Brau  
Santa Fe Springs, CA*

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*"I am very impressed by your pre-deposition consultation expertise and often share your writings with our attorneys. The deposition questions you provide are going to be very helpful for all our attorneys."*

*Tahmeena Ahmed,  
Managing Partner  
Bradford & Barthel  
Los Angeles, CA*

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*"Dr. Leckart's expertise and assistance are always invaluable and are particularly instrumental in preparing to depose [doctors]. With his guidance, I've been able to discredit medical opinions that have saved my clients tens of thousands of dollars in indemnity, evaluation and treatment liens and future medical care. I will continue to recommend Dr. Leckart's services to my colleagues as I know he will be able to help them as he has helped me. Dr. Leckart is my secret weapon for achieving justice for my clients! Thank you!"*

*Anonymous (Per Firm's Policy)  
Managing Partner  
Leading Defense Firm in California*

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*"Dr. Leckart was most helpful and provided me with guidance and direction in a very difficult cross-examination. I will not hesitate to use him again on another matter."*

*David M. Morin  
Martin & Martin  
Los Angeles, CA*

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This is the fifty-ninth of a series of monthly newsletters aimed at providing information about psychological evaluations and treatment that may be of interest to attorneys and insurance adjusters working in the areas of workers' compensation and personal injury. If you have not received some or all of our past newsletters listed on the next page, and would like copies, send us an email requesting the newsletter(s) that you would like forwarded to you.