

# THE WETC PSYCHOLOGY NEWSLETTER

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"Find the Truth, Tell the Story"

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## Deposing a Psych Doctor: Prepare For Battle!

Recently watching an epic battle on the big screen between dinosaurs prompted me to consider the nature of taking deposition and trial testimony from a psych doctor. In *Jurassic World* [Film], the Indominus Rex is a dinosaur groomed to always win the battle. However, a team of intelligent Velociraptors, with help from an expert trainer/researcher, are able to attack the Indominus Rex's weaknesses and ultimately win the fight.

In the world of personal injury and workers' compensation litigation, attorneys and insurance adjusters throughout the country and in many parts of the globe receive reports of psychological evaluations. In most cases, the author of the medical-legal psych report is a psychologist or psychiatrist. Back in May, 2013 I wrote a newsletter titled, *The Mental Health Professionals in Litigation* where I described the extensive educational training required to obtain a degree and license to become a psychologist and/or psychiatrist. In this regard, as one can imagine, the psych doctor has the advantage when being questioned in deposition or trial by an attorney who has probably been trained in the law, but not in psychology or psychiatry.

Browse Dr. Leckart's Book,  
**Psychological Evaluations in  
Litigation: A Practical Guide for  
Attorneys and Insurance Adjusters**  
at [www.DrLeckartWETC.com](http://www.DrLeckartWETC.com)

*Pre-Deposition/Pre-Trial Consult Reports:  
No matter where you are in the country, or for that matter in the world, as long as your report is in English, you can send it to me and I can provide you a critique of either the entire report or just the psychological testing.*

**The purpose of this newsletter is to shed light on pre-deposition/pre-trial consultations which can assist attorneys and insurance adjusters who receive psych reports not in their favor to prepare for battle at deposition or trial, and see favorable outcomes.**

A psych pre-deposition/pre-trial consultation is the action or process of formally consulting with an expert witness in preparation for taking the deposition and/or trial testimony of a psychologist or psychiatrist who wrote a report of their psychological evaluation in association with a mental health claim for benefits.

First the attorney and/or insurance adjuster should weigh the cost benefit factors of such consultation. Once it is determined that paying for a consultation with an expert in psychology or psychiatry will be beneficial to the litigation, retaining an expert with extensive knowledge of critiquing psych reports is essential.

Second, the expert witness will find the flaws in the psych report in question shedding light on all of the many weaknesses in that report. Consultation will also provide the attorney and/or insurance adjuster with a description of the flaws in easy to understand

terms as well as a general strategy for approaching the deposition or trial. The most effective form of consultation is provided in a written report that analyzes the doctor's diagnosis, compares each disorder to the DSM-IV-TR or DSM-5, summarizes the most substantial flaws and provides sample questions specific to that doctor's report.

Third, as alluded to above, the consultation provides the attorney and/or insurance adjuster with an extensive list of questions customized for use at a deposition or trial. As discussed in several of my previous newsletters, particularly those from September and October, 2014, for the best outcome the questions should be directed at the doctor's report and not at the doctor's beliefs or feelings about the patient that do not appear in the report. Additionally, the attorney should always ask the doctor questions directed at their diagnosis. The reason for this is quite simple. If you ask the doctor about the applicant they can feel free to provide information that is not in their report that may justify some of their conclusions. Obviously, that information may or may not be correct for a variety of reasons. However, if you confine your questions to what is in the doctor's report, no new "evidence" can find its way into the testimony and your outcome will most likely be far superior.

Lastly, there are few limitations to the attorney's or insurance adjuster's ability to obtain pre-deposition/pre-trial consultation from an expert

witness. In this regard, the expert witness can provide consultation without being licensed to practice in the state or country of the litigated case. Further, a written consultation is protected under the work product doctrine and therefore, may not be subject to discovery so that the doctor and the opposing attorney will never know where you got your questions or extensive knowledge of psychology and psychiatry.

In summary, much like the upper hand held by the Indominus Rex in *Jurassic World* [Film], psychologists and psychiatrists who author medical-legal evaluative reports for litigation purposes have the advantage in deposition and trial settings because of the simple fact that the doctor is trained in their specialty. Further, doctors who are questioned by an attorney or judge often are given a clear advantage to win the battle because they can simply retreat to his or her "professional opinion." However, much like the Velociraptor's approach as described above, some precision and power in numbers can prove effective and produce favorable outcomes for attorneys and/or insurance adjusters when challenging the psych doctor's report. All the attorney or adjuster needs to do is bring in the reinforcements in the form of an expert psychologist to provide a written pre-deposition/pre-trial consultation.

**You may download a free sample pre-deposition consultation report written for an actual case on my website [www.drleckartwetc.com/sample-reports](http://www.drleckartwetc.com/sample-reports)**

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(e-mail us at [DrLeckartWETC@gmail.com](mailto:DrLeckartWETC@gmail.com) for more information)

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This is the seventy-eight of a series of monthly newsletters aimed at providing information about pre-deposition/pre-trial consultations, 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.