

**Affidavit pertaining to proposed amendment to Rule 35. Physical and Mental Examinations**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY Sharon Jones-Forrester  
DEPUTY CLERK

I, Sharon Jones-Forrester, Ph.D., make the following declaration based on personal knowledge and under penalty of perjury:

1. I am a licensed Clinical Psychologist in the State of Nevada with specialty training in Clinical Neuropsychology. I make this declaration based on my own personal knowledge.

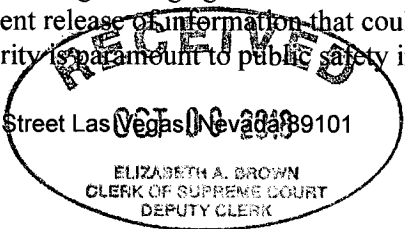
2. As part of my practice I conduct psychological and neuropsychological evaluations of patients, in both clinical and forensic contexts, and am obligated to strictly adhere to professional standards and practices for the administration of psychological and neuropsychological examinations.

3. I am deeply concerned about any factors, including third-party in person, audio, or video-recorded observation, or access to raw data and test materials that could render the test results invalid, and undermine expert opinions that could be offered regarding a given examinee/patient.

4. My professional Code of Ethics obligates me to refuse to perform an examination that would be directly observed or audio or video recorded by an external third party, for the reasons noted above. This obligation is based upon a) the fact that third-party observation either live or recorded has been shown to skew and potentially invalidate test results, b) I am ethically bound by my profession to protect the confidentiality of the testing materials and methods as required by state law, my contracts with the test publishers, and the ethical guidelines dictated by the American Psychological Association Ethics Code that guide my profession, c) I am also ethically bound by my professional licensing Board, the State of Nevada Board of Psychological Examiners, which has formed an official position on third-party observers in psychological/neuropsychological evaluations, as provided to the Nevada State Supreme Court as public comment regarding the proposed changes to Rule 35 of Nevada Civil Procedure.

5. Recording during psychological and neuropsychological testing is inappropriate because the presence of an observer has consistently been shown to undermine testing protocol and impair, and potentially invalidate test results. As such, allowing third-party observers or recording can have significantly negative effects on test results including undermining our professional ability to validly distinguish between the effect of recording or third-party observation and the effect of other genuine psychological and neuropsychological factors, including any genuine illness or injury that can impact psychological/neuropsychological test performance. This finding has been consistently supported by psychological and neuropsychological research studies, leading to a consensus that this practice should be guarded against to the greatest extent possible. In fact, these research findings led the National Academy of Neuropsychology to publish a professional Position Paper entitled the Presence of Third Party Observers During Neuropsychological Testing Official Statement of the National Academy of Neuropsychology that concluded: "The weight of accumulated scientific and clinical literature with respect to the issue of third party observers in the forensic examination provides clear support for the official position of the National Academy of Neuropsychology that neuropsychologists should strive to minimize all influences that may compromise accuracy of assessment and should make every effort to exclude observers from the evaluation". Archives of Clinical Neuropsychology, Vol. 15, No. 5, pp. 379-380, (2000) Copyright © 2000 National Academy of Neuropsychology.

6. In addition to the concerns about effects on the validity of the testing noted above, the Ethics Code of the American Psychological Association also obligates me to protect the security of the test materials that are critical for obtaining clear and accurate evaluation of examinee's abilities and diagnoses, and the presence of any genuine clinical factors that may be contributing to their given test performance. Additionally, protecting test security is critical for guarding against the release or potential misuse of test materials in order to ensure public safety and to prevent release of information that could potentially be used in a manner to obscure attempts at malingering. Test security is paramount to public safety in many ways, as these testing measures are routinely used to make critical,



high-stakes decisions, including for their use in aeromedical clearances to assess a Pilot's safety to fly, Fitness for Duty decisions for Law Enforcement and Military Service Members, and to allow us to assess for any appropriate and necessary accommodations for professional entrance examinations, such as the LSAT, MCAT, or Medical Board Certifications. Certainly compromising test security can thus have very significant negative consequences that could threaten public safety, and compromise public trust in psychologist's and neuropsychologist's ability to provide accurate, thorough, and valid assessments.

7. Our professional ability to provide accurate, thorough, and valid evaluations rests on the use of strict, standardized protocols about how, where, with whom, and under what conditions evaluations may be conducted. Strict adherence to these protocols is essential to our ability to render professional opinions that are ultimately required by the Triers of Fact in forensic cases. The Third Party Observers During Neuropsychological Testing Official Statement of the National Academy of Neuropsychology, previously referenced above, summarized that allowing third-party observers and recording clearly compromises our ability to adhere to test standardization in a manner sufficient to ensure accurate and valid test results, free of potential degradation of validity. Specifically: *"neuropsychological test measures have not been standardized in the presence of an observer. In fact, neuropsychological test measures have been standardized under a specific set of highly controlled circumstances that did not include the presence of a third party observer. The presence of a third party observer introduces an unknown variable into the testing environment which may pervert the examinee's performance from being compared to established norms and potentially precludes valid interpretation of the test results (p.379)."* I strongly agree with these opinions.

8. My concerns about this proposal are also guided by the American Psychological Association Ethics Code (American Psychological Association Ethical Principles of Psychologists and Code of Conduct, 2017). This Ethics Code mandates in Subsection 9 that evaluations and opinions rendered by psychologists/neuropsychologists must be guided by strict adherence to standards of practice, guarding against any issues that can compromise the validity of findings or potential misuse, and using all test measures, interviews, and assessment techniques in a manner that is guided by knowledge of research with regard to issues of validity and reliability. These practices have been consistently shown to be undermined by allowing third-party observation. As such, I am ethically bound to provide reports that are as accurate as possible, and am prevented from doing so when any factors that skew test results, such as recording, are introduced into the test environment. Psychologists/neuropsychologists are also ethically bound to protect the security of testing materials and methods. Therefore, proposed video/audio taping or live third-party observation would violate these standards. It should also be noted that this concern can not be ameliorated by simply requesting that recording be completed in a manner that is hidden from the patient/examinee, as this too would be misleading, unethical, and has also been shown to undermine test accuracy and validity. Thus, it should be clearly noted that any third-party observation, even if it is unknown or hidden from the patient (a clear violation of informed consent), would be in conflict with our Ethics Code and would carry with it the same risks of undermining validity. The issue of using "secret recording" as a means of guarding against third-party observation, is clearly unethical, as was addressed in the National Academy of Neuropsychology Position Paper entitled Secretive Recording of Neuropsychological Testing and Interviewing: Official Position of the National Academy of Neuropsychology, which mandates that: *"neuropsychologists do not, and should not, encourage, condone, or engage in secret recording of neuropsychological interviews or testing. For the protection and benefit of the individual examinee, the public, referral sources, and the examining neuropsychologist, secretive recording of neuropsychological interviews or testing should not be introduced into the neuropsychological examination process."* Archives of Clinical Neuropsychology, 24, pp 1-2, (2009).

9. The Nevada Board of Psychological Examiners, the professional licensing Board for all Clinical Psychologists in Nevada, has formed an official position on third-party observers in psychological evaluations. This statement has been provided to the Nevada State Supreme Court as public comment regarding the proposed changes to Rule 35 of Nevada Civil Procedure. The official position of Nevada Board of Psychological Examiners is that: *"allowing third-party observers, monitors, and/or electronic recording equipment during psychological and neuropsychological evaluations poses a significant threat to public safety. Observation, monitoring, and recording can significantly alter the credibility and validity of results obtained during psychological and neuropsychological medical evaluations, as well as forensic evaluations completed for judicial proceedings. Research indicates that the presence of observers, monitors and recorders during patient clinical interviews and evaluations directly impacts patient behavior and performance such that patients may avoid disclosing crucial information essential to diagnosis and clinical recommendations. Additionally, (neuro)psychological tests and measures are developed and standardized under highly controlled conditions. Observation, monitoring, and*

recording of these tests is not part of the standardization. Observation, monitoring, and recording of psychological assessment components (i.e., testing) of evaluations may distort patient task performance, such that patient weaknesses and strengths are exaggerated, yielding inaccurate or invalid test data. ... Ultimately, deviations from standardized administration procedures compromise the validity of the data collected and compromise the psychologist's ability to compare test results to normative data. This increases the potential for inaccurate test results and erroneous diagnostic conclusions, thus impacting reliability of results and future treatment for the patient. In addition, the risk of secured testing and assessment procedures being released to non-Psychologists poses risk to the public in that exposure of the test and assessment confidentiality can undermine their future validity and utility" State of Nevada Board of Psychological Examiners (2018) position on third-party observers in psychological evaluations, provided to the Nevada State Supreme Court as public comment regarding the proposed changes to Rule 35 of Nevada Civil Procedure. This position is also strongly consistent with the Nevada Psychological Association, which was also provided to the Nevada State Supreme Court, and which asserted that "In the interest of protecting the needs of the public, it is the position of the Nevada Board of Psychological Examiners that allowing third-party observers, monitors, and/or electronic recording equipment during psychological and neuropsychological evaluations poses a significant threat to public safety." Nevada Psychological Association Executive Board (2018). I stand in full support of these concerns and strongly agree with the positions expressed by my professional licensing Board and State and Federal professional organizations.

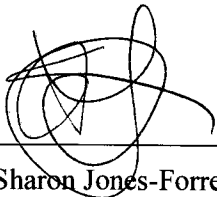
10. As such, if I am ordered to conduct a Independent Medical Evaluation (IME) or Civil or Criminal Forensic Evaluation with live third-party observation or audio/video recording, I will be ethically obligated to decline to perform the evaluation or would be extremely limited with regard to any opinion I could validly render in order to opine as to the issues at hand in the requested evaluation.

11. Finally, I am deeply concerned that requiring third-party observation in psychological/neuropsychological evaluations would significantly undermine our professional ability to render Expert opinions about psychological and neuropsychological matters that can be essential to weigh in IME, Civil, and Criminal cases for the legal Triers of Fact due to the above ethical, legal, and test security concerns. As a clinical psychologist and neuropsychologist who frequently does forensic work, and has deep appreciation and respect for the difficult work done by all members of our legal community, I believe that this would be a disservice to the community of legal and mental health professionals, and to the public trust.

Thank you very much for the opportunity to share these concerns with the Court. Please do not hesitate to contact me should there be any additional information that would be helpful.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

Dated this 5th day of October, 2018,



Sharon Jones-Forrester, Ph.D.



AMERICAN PSYCHOLOGICAL ASSOCIATION

# ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT

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Adopted August 21, 2002

Effective June 1, 2003

(With the 2010 Amendments  
to Introduction and Applicability  
and Standards 1.02 and 1.03,  
Effective June 1, 2010)

With the 2016 Amendment  
to Standard 3.04

Adopted August 3, 2016

Effective January 1, 2017

# ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT

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The modifiers used in some of the standards of this Ethics Code (e.g., *reasonably, appropriate, potentially*) are included in the standards when they would (1) allow professional judgment on the part of psychologists, (2) eliminate injustice or inequality that would occur without the modifier, (3) ensure applicability across the broad range of activities conducted by psychologists, or (4) guard against a set of rigid rules that might be quickly outdated. As used in this Ethics Code, the term *reasonable* means the prevailing professional judgment of psychologists engaged in similar activities in similar circumstances, given the knowledge the psychologist had or should have had at the time.

In the process of making decisions regarding their professional behavior, psychologists must consider this Ethics Code in addition to applicable laws and psychology board regulations. In applying the Ethics Code to their professional work, psychologists may consider other materials and guidelines that have been adopted or endorsed by scientific and professional psychological organizations and the dictates of their own conscience, as well as consult with others within the field. If this Ethics Code establishes a higher standard of conduct than is required by law, psychologists must meet the higher ethical standard. If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner in keeping with basic principles of human rights.

## PREAMBLE

Psychologists are committed to increasing scientific and professional knowledge of behavior and people's understanding of themselves and others and to the use of such knowledge to improve the condition of individuals, organizations, and society. Psychologists respect and protect civil and human rights and the central importance of freedom of inquiry and expression in research, teaching, and publication. They strive to help the public in developing informed judgments and choices concerning human behavior. In doing so, they perform many roles, such as researcher, educator, diagnostician, therapist, supervisor, consultant, administrator, social interventionist, and expert witness. This Ethics Code provides a common set of principles and standards upon which psychologists build their professional and scientific work.

This Ethics Code is intended to provide specific standards to cover most situations encountered by psychologists. It has as its goals the welfare and protection of the individuals and groups with whom psychologists work and the education of members, students, and the public regarding ethical standards of the discipline.

The development of a dynamic set of ethical standards for psychologists' work-related conduct requires a

personal commitment and lifelong effort to act ethically; to encourage ethical behavior by students, supervisees, employees, and colleagues; and to consult with others concerning ethical problems.

## GENERAL PRINCIPLES

This section consists of General Principles. General Principles, as opposed to Ethical Standards, are aspirational in nature. Their intent is to guide and inspire psychologists toward the very highest ethical ideals of the profession. General Principles, in contrast to Ethical Standards, do not represent obligations and should not form the basis for imposing sanctions. Relying upon General Principles for either of these reasons distorts both their meaning and purpose.

### Principle A: Beneficence and Nonmaleficence

Psychologists strive to benefit those with whom they work and take care to do no harm. In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons, and the welfare of animal subjects of research. When conflicts occur among psychologists' obligations or concerns, they attempt to resolve these conflicts in a responsible fashion that avoids or minimizes harm. Because psychologists' scientific and professional judgments and actions may affect the lives of others, they are alert to and guard against personal, financial, social, organizational, or political factors that might lead to misuse of their influence. Psychologists strive to be aware of the possible effect of their own physical and mental health on their ability to help those with whom they work.

### Principle B: Fidelity and Responsibility

Psychologists establish relationships of trust with those with whom they work. They are aware of their professional and scientific responsibilities to society and to the specific communities in which they work. Psychologists uphold professional standards of conduct, clarify their professional roles and obligations, accept appropriate responsibility for their behavior, and seek to manage conflicts of interest that could lead to exploitation or harm. Psychologists consult with, refer to, or cooperate with other professionals and institutions to the extent needed to serve the best interests of those with whom they work. They are concerned about the ethical compliance of their colleagues' scientific and professional conduct. Psychologists strive to contribute a portion of their professional time for little or no compensation or personal advantage.

### Principle C: Integrity

Psychologists seek to promote accuracy, honesty, and truthfulness in the science, teaching, and practice of

## **1.07 Improper Complaints**

Psychologists do not file or encourage the filing of ethics complaints that are made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

## **1.08 Unfair Discrimination Against Complainants and Respondents**

Psychologists do not deny persons employment, advancement, admissions to academic or other programs, tenure, or promotion, based solely upon their having made or their being the subject of an ethics complaint. This does not preclude taking action based upon the outcome of such proceedings or considering other appropriate information.

## **2. Competence**

### **2.01 Boundaries of Competence**

(a) Psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience.

(b) Where scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, or socioeconomic status is essential for effective implementation of their services or research, psychologists have or obtain the training, experience, consultation, or supervision necessary to ensure the competence of their services, or they make appropriate referrals, except as provided in Standard 2.02, Providing Services in Emergencies.

(c) Psychologists planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies new to them undertake relevant education, training, supervised experience, consultation, or study.

(d) When psychologists are asked to provide services to individuals for whom appropriate mental health services are not available and for which psychologists have not obtained the competence necessary, psychologists with closely related prior training or experience may provide such services in order to ensure that services are not denied if they make a reasonable effort to obtain the competence required by using relevant research, training, consultation, or study.

(e) In those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect clients/patients, students, supervisees, research participants, organizational clients, and others from harm.

(f) When assuming forensic roles, psychologists are

or become reasonably familiar with the judicial or administrative rules governing their roles.

### **2.02 Providing Services in Emergencies**

In emergencies, when psychologists provide services to individuals for whom other mental health services are not available and for which psychologists have not obtained the necessary training, psychologists may provide such services in order to ensure that services are not denied. The services are discontinued as soon as the emergency has ended or appropriate services are available.

### **2.03 Maintaining Competence**

Psychologists undertake ongoing efforts to develop and maintain their competence.

### **2.04 Bases for Scientific and Professional Judgments**

Psychologists' work is based upon established scientific and professional knowledge of the discipline. (See also Standards 2.01e, Boundaries of Competence, and 10.01b, Informed Consent to Therapy.)

### **2.05 Delegation of Work to Others**

Psychologists who delegate work to employees, supervisees, or research or teaching assistants or who use the services of others, such as interpreters, take reasonable steps to (1) avoid delegating such work to persons who have a multiple relationship with those being served that would likely lead to exploitation or loss of objectivity; (2) authorize only those responsibilities that such persons can be expected to perform competently on the basis of their education, training, or experience, either independently or with the level of supervision being provided; and (3) see that such persons perform these services competently. (See also Standards 2.02, Providing Services in Emergencies; 3.05, Multiple Relationships; 4.01, Maintaining Confidentiality; 9.01, Bases for Assessments; 9.02, Use of Assessments; 9.03, Informed Consent in Assessments; and 9.07, Assessment by Unqualified Persons.)

### **2.06 Personal Problems and Conflicts**

(a) Psychologists refrain from initiating an activity when they know or should know that there is a substantial likelihood that their personal problems will prevent them from performing their work-related activities in a competent manner.

(b) When psychologists become aware of personal problems that may interfere with their performing work-related duties adequately, they take appropriate measures, such as obtaining professional consultation or assistance, and determine whether they should limit, suspend, or terminate their work-related duties. (See also Standard 10.10, Terminating Therapy.)

cies with Current Therapy Clients/Patients; 10.06, Sexual Intimacies with Relatives or Significant Others of Current Therapy Clients/Patients; 10.07, Therapy with Former Sexual Partners; and 10.08, Sexual Intimacies with Former Therapy Clients/Patients.)

### **3.09 Cooperation with Other Professionals**

When indicated and professionally appropriate, psychologists cooperate with other professionals in order to serve their clients/patients effectively and appropriately. (See also Standard 4.05, Disclosures.)

### **3.10 Informed Consent**

(a) When psychologists conduct research or provide assessment, therapy, counseling, or consulting services in person or via electronic transmission or other forms of communication, they obtain the informed consent of the individual or individuals using language that is reasonably understandable to that person or persons except when conducting such activities without consent is mandated by law or governmental regulation or as otherwise provided in this Ethics Code. (See also Standards 8.02, Informed Consent to Research; 9.03, Informed Consent in Assessments; and 10.01, Informed Consent to Therapy.)

(b) For persons who are legally incapable of giving informed consent, psychologists nevertheless (1) provide an appropriate explanation, (2) seek the individual's assent, (3) consider such persons' preferences and best interests, and (4) obtain appropriate permission from a legally authorized person, if such substitute consent is permitted or required by law. When consent by a legally authorized person is not permitted or required by law, psychologists take reasonable steps to protect the individual's rights and welfare.

(c) When psychological services are court ordered or otherwise mandated, psychologists inform the individual of the nature of the anticipated services, including whether the services are court ordered or mandated and any limits of confidentiality, before proceeding.

(d) Psychologists appropriately document written or oral consent, permission, and assent. (See also Standards 8.02, Informed Consent to Research; 9.03, Informed Consent in Assessments; and 10.01, Informed Consent to Therapy.)

### **3.11 Psychological Services Delivered to or Through Organizations**

(a) Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about (1) the nature and objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services

provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality. As soon as feasible, they provide information about the results and conclusions of such services to appropriate persons.

(b) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

### **3.12 Interruption of Psychological Services**

Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, relocation, or retirement or by the client's/patient's relocation or financial limitations. (See also Standard 6.02c, Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work.)

## **4. Privacy and Confidentiality**

### **4.01 Maintaining Confidentiality**

Psychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium, recognizing that the extent and limits of confidentiality may be regulated by law or established by institutional rules or professional or scientific relationship. (See also Standard 2.05, Delegation of Work to Others.)

### **4.02 Discussing the Limits of Confidentiality**

(a) Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives) and organizations with whom they establish a scientific or professional relationship (1) the relevant limits of confidentiality and (2) the foreseeable uses of the information generated through their psychological activities. (See also Standard 3.10, Informed Consent.)

(b) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.

(c) Psychologists who offer services, products, or information via electronic transmission inform clients/patients of the risks to privacy and limits of confidentiality.

### **4.03 Recording**

Before recording the voices or images of individuals to whom they provide services, psychologists obtain permission from all such persons or their legal representatives. (See also Standards 8.03, Informed Consent for Recording Voices and Images in Research; 8.05, Dispensing with Informed Consent for Research; and 8.07, Deception in Research.)



they take precautions to ensure that statements (1) are based on their professional knowledge, training, or experience in accord with appropriate psychological literature and practice; (2) are otherwise consistent with this Ethics Code; and (3) do not indicate that a professional relationship has been established with the recipient. (See also Standard 2.04, Bases for Scientific and Professional Judgments.)

### **5.05 Testimonials**

Psychologists do not solicit testimonials from current therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence.

### **5.06 In-Person Solicitation**

Psychologists do not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence. However, this prohibition does not preclude (1) attempting to implement appropriate collateral contacts for the purpose of benefiting an already engaged therapy client/patient or (2) providing disaster or community outreach services.

## **6. Record Keeping and Fees**

### **6.01 Documentation of Professional and Scientific Work and Maintenance of Records**

Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain, and dispose of records and data relating to their professional and scientific work in order to (1) facilitate provision of services later by them or by other professionals, (2) allow for replication of research design and analyses, (3) meet institutional requirements, (4) ensure accuracy of billing and payments, and (5) ensure compliance with law. (See also Standard 4.01, Maintaining Confidentiality.)

### **6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work**

(a) Psychologists maintain confidentiality in creating, storing, accessing, transferring, and disposing of records under their control, whether these are written, automated, or in any other medium. (See also Standards 4.01, Maintaining Confidentiality, and 6.01, Documentation of Professional and Scientific Work and Maintenance of Records.)

(b) If confidential information concerning recipients of psychological services is entered into databases or systems of records available to persons whose access has not been consented to by the recipient, psychologists use coding or other techniques to avoid the inclusion of personal identifiers.

(c) Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice. (See also Standards 3.12, Interruption of Psychological Services, and 10.09, Interruption of Therapy.)

### **6.03 Withholding Records for Nonpayment**

Psychologists may not withhold records under their control that are requested and needed for a client's/patient's emergency treatment solely because payment has not been received.

### **6.04 Fees and Financial Arrangements**

(a) As early as is feasible in a professional or scientific relationship, psychologists and recipients of psychological services reach an agreement specifying compensation and billing arrangements.

(b) Psychologists' fee practices are consistent with law.

(c) Psychologists do not misrepresent their fees.

(d) If limitations to services can be anticipated because of limitations in financing, this is discussed with the recipient of services as early as is feasible. (See also Standards 10.09, Interruption of Therapy, and 10.10, Terminating Therapy.)

(e) If the recipient of services does not pay for services as agreed, and if psychologists intend to use collection agencies or legal measures to collect the fees, psychologists first inform the person that such measures will be taken and provide that person an opportunity to make prompt payment. (See also Standards 4.05, Disclosures; 6.03, Withholding Records for Nonpayment; and 10.01, Informed Consent to Therapy.)

### **6.05 Barter with Clients/Patients**

Barter is the acceptance of goods, services, or other nonmonetary remuneration from clients/patients in return for psychological services. Psychologists may barter only if (1) it is not clinically contraindicated, and (2) the resulting arrangement is not exploitative. (See also Standards 3.05, Multiple Relationships, and 6.04, Fees and Financial Arrangements.)

### **6.06 Accuracy in Reports to Payors and Funding Sources**

In their reports to payors for services or sources of research funding, psychologists take reasonable steps to ensure the accurate reporting of the nature of the service provided or research conducted, the fees, charges, or payments, and where applicable, the identity of the provider, the findings, and the diagnosis. (See also Standards 4.01, Maintaining Confidentiality; 4.04, Minimizing Intrusions on Privacy; and 4.05, Disclosures.)

ed duration, and procedures; (2) their right to decline to participate and to withdraw from the research once participation has begun; (3) the foreseeable consequences of declining or withdrawing; (4) reasonably foreseeable factors that may be expected to influence their willingness to participate such as potential risks, discomfort, or adverse effects; (5) any prospective research benefits; (6) limits of confidentiality; (7) incentives for participation; and (8) whom to contact for questions about the research and research participants' rights. They provide opportunity for the prospective participants to ask questions and receive answers. (See also Standards 8.03, Informed Consent for Recording Voices and Images in Research; 8.05, Dispensing with Informed Consent for Research; and 8.07, Deception in Research.)

(b) Psychologists conducting intervention research involving the use of experimental treatments clarify to participants at the outset of the research (1) the experimental nature of the treatment; (2) the services that will or will not be available to the control group(s) if appropriate; (3) the means by which assignment to treatment and control groups will be made; (4) available treatment alternatives if an individual does not wish to participate in the research or wishes to withdraw once a study has begun; and (5) compensation for or monetary costs of participating including, if appropriate, whether reimbursement from the participant or a third-party payor will be sought. (See also Standard 8.02a, Informed Consent to Research.)

### **8.03 Informed Consent for Recording Voices and Images in Research**

Psychologists obtain informed consent from research participants prior to recording their voices or images for data collection unless (1) the research consists solely of naturalistic observations in public places, and it is not anticipated that the recording will be used in a manner that could cause personal identification or harm, or (2) the research design includes deception, and consent for the use of the recording is obtained during debriefing. (See also Standard 8.07, Deception in Research.)

### **8.04 Client/Patient, Student, and Subordinate Research Participants**

(a) When psychologists conduct research with clients/patients, students, or subordinates as participants, psychologists take steps to protect the prospective participants from adverse consequences of declining or withdrawing from participation.

(b) When research participation is a course requirement or an opportunity for extra credit, the prospective participant is given the choice of equitable alternative activities.

### **8.05 Dispensing with Informed Consent for Research**

Psychologists may dispense with informed consent only (1) where research would not reasonably be assumed to create distress or harm and involves (a) the study of normal educational practices, curricula, or classroom management methods conducted in educational settings; (b) only anonymous questionnaires, naturalistic observations, or archival research for which disclosure of responses would not place participants at risk of criminal or civil liability or damage their financial standing, employability, or reputation, and confidentiality is protected; or (c) the study of factors related to job or organization effectiveness conducted in organizational settings for which there is no risk to participants' employability, and confidentiality is protected or (2) where otherwise permitted by law or federal or institutional regulations.

### **8.06 Offering Inducements for Research Participation**

(a) Psychologists make reasonable efforts to avoid offering excessive or inappropriate financial or other inducements for research participation when such inducements are likely to coerce participation.

(b) When offering professional services as an inducement for research participation, psychologists clarify the nature of the services, as well as the risks, obligations, and limitations. (See also Standard 6.05, Barter with Clients/Patients.)

### **8.07 Deception in Research**

(a) Psychologists do not conduct a study involving deception unless they have determined that the use of deceptive techniques is justified by the study's significant prospective scientific, educational, or applied value and that effective nondeceptive alternative procedures are not feasible.

(b) Psychologists do not deceive prospective participants about research that is reasonably expected to cause physical pain or severe emotional distress.

(c) Psychologists explain any deception that is an integral feature of the design and conduct of an experiment to participants as early as is feasible, preferably at the conclusion of their participation, but no later than at the conclusion of the data collection, and permit participants to withdraw their data. (See also Standard 8.08, Debriefing.)

### **8.08 Debriefing**

(a) Psychologists provide a prompt opportunity for participants to obtain appropriate information about the nature, results, and conclusions of the research, and they take reasonable steps to correct any misconceptions that participants may have of which the psychologists are aware.

tion and techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments.)

(b) Except as noted in 9.01c, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions, and appropriately limit the nature and extent of their conclusions or recommendations. (See also Standards 2.01, Boundaries of Competence, and 9.06, Interpreting Assessment Results.)

(c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

### 9.02 Use of Assessments

(a) Psychologists administer, adapt, score, interpret, or use assessment techniques, interviews, tests, or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.

(b) Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such validity or reliability has not been established, psychologists describe the strengths and limitations of test results and interpretation.

(c) Psychologists use assessment methods that are appropriate to an individual's language preference and competence, unless the use of an alternative language is relevant to the assessment issues.

### 9.03 Informed Consent in Assessments

(a) Psychologists obtain informed consent for assessments, evaluations, or diagnostic services, as described in Standard 3.10, Informed Consent, except when (1) testing is mandated by law or governmental regulations; (2) informed consent is implied because testing is conducted as a routine educational, institutional, or organizational activity (e.g., when participants voluntarily agree to assessment when applying for a job); or (3) one purpose of the testing is to evaluate decisional capacity. Informed consent includes an explanation of the nature and purpose of the assessment, fees, involvement of third parties, and limits of confidentiality and sufficient opportunity for the client/patient to ask questions and receive answers.

(b) Psychologists inform persons with questionable

capacity to consent or for whom testing is mandated by law or governmental regulations about the nature and purpose of the proposed assessment services, using language that is reasonably understandable to the person being assessed.

(c) Psychologists using the services of an interpreter obtain informed consent from the client/patient to use that interpreter, ensure that confidentiality of test results and test security are maintained, and include in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, discussion of any limitations on the data obtained. (See also Standards 2.05, Delegation of Work to Others; 4.01, Maintaining Confidentiality; 9.01, Bases for Assessments; 9.06, Interpreting Assessment Results; and 9.07, Assessment by Unqualified Persons.)

### 9.04 Release of Test Data

(a) The term *test data* refers to raw and scaled scores, client/patient responses to test questions or stimuli, and psychologists' notes and recordings concerning client/patient statements and behavior during an examination. Those portions of test materials that include client/patient responses are included in the definition of *test data*. Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances release of confidential information under these circumstances is regulated by law. (See also Standard 9.11, Maintaining Test Security.)

(b) In the absence of a client/patient release, psychologists provide test data only as required by law or court order.

### 9.05 Test Construction

Psychologists who develop tests and other assessment techniques use appropriate psychometric procedures and current scientific or professional knowledge for test design, standardization, validation, reduction or elimination of bias, and recommendations for use.

### 9.06 Interpreting Assessment Results

When interpreting assessment results, including automated interpretations, psychologists take into account the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences, that might affect psychologists' judgments or reduce the accuracy of their interpretations. They indicate any significant limitations of their interpretations. (See also Standards 2.01b and c, Boundaries of Competence, and 3.01, Unfair Discrimination.)

#### **10.04 Providing Therapy to Those Served by Others**

In deciding whether to offer or provide services to those already receiving mental health services elsewhere, psychologists carefully consider the treatment issues and the potential client's/patient's welfare. Psychologists discuss these issues with the client/patient or another legally authorized person on behalf of the client/patient in order to minimize the risk of confusion and conflict, consult with the other service providers when appropriate, and proceed with caution and sensitivity to the therapeutic issues.

#### **10.05 Sexual Intimacies with Current Therapy Clients/Patients**

Psychologists do not engage in sexual intimacies with current therapy clients/patients.

#### **10.06 Sexual Intimacies with Relatives or Significant Others of Current Therapy Clients/Patients**

Psychologists do not engage in sexual intimacies with individuals they know to be close relatives, guardians, or significant others of current clients/patients. Psychologists do not terminate therapy to circumvent this standard.

#### **10.07 Therapy with Former Sexual Partners**

Psychologists do not accept as therapy clients/patients persons with whom they have engaged in sexual intimacies.

#### **10.08 Sexual Intimacies with Former Therapy Clients/Patients**

(a) Psychologists do not engage in sexual intimacies with former clients/patients for at least two years after cessation or termination of therapy.

(b) Psychologists do not engage in sexual intimacies with former clients/patients even after a two-year interval except in the most unusual circumstances. Psychologists who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client/patient bear the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including (1) the amount of time that has passed since therapy terminated; (2) the nature, duration, and intensity of the therapy; (3) the circumstances of termination; (4) the client's/patient's personal history; (5) the client's/patient's current mental status; (6) the likelihood of adverse impact on the client/patient; and (7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient. (See also Standard 3.05, Multiple Relationships.)

#### **10.09 Interruption of Therapy**

When entering into employment or contractual relationships, psychologists make reasonable efforts to provide for orderly and appropriate resolution of responsibility for client/patient care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the client/patient. (See also Standard 3.12, Interruption of Psychological Services.)

#### **10.10 Terminating Therapy**

(a) Psychologists terminate therapy when it becomes reasonably clear that the client/patient no longer needs the service, is not likely to benefit, or is being harmed by continued service.

(b) Psychologists may terminate therapy when threatened or otherwise endangered by the client/patient or another person with whom the client/patient has a relationship.

(c) Except where precluded by the actions of clients/patients or third-party payors, prior to termination psychologists provide pretermination counseling and suggest alternative service providers as appropriate.



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# Presence of Third Party Observers During Neuropsychological Testing

## Official Statement of the National Academy of Neuropsychology

Approved 5/15/99

Forensic neuropsychological evaluations are often constrained by the demand that a third party observer be present during the course of interview and formal testing. This demand may originate from counsel's desire to ensure that the neuropsychologist does not interrogate or unfairly question the plaintiff with respect to issues of liability and to ascertain if test procedures are accurately administered. In general, neuropsychologists should have the right to carry out their examination in a manner that will not in any way jeopardize, influence or unduly pressure their normal practice.

The presence of a third party observer during the administration of formal test procedures is inconsistent with recommendations promulgated in *The Standards for Educational and Psychological Testing* (APA, 1985) and Anastasi (1988), that the psychological testing environment be distraction free. More recently, standardized test manuals (for example, *The WAIS-III, WMS-III Technical Manual*; The Psychological Corporation, 1997) have specifically stated that third party observers should be excluded from the examination room to keep it free from distraction. The presence of a third party observer in the testing room is also inconsistent with the requirements for standardized test administration as set forth in the APA's *Ethical Principles Of Psychologists and Code Of Conduct* (APA, 1992) in that it creates the potential for distraction and/or interruption of the examination (McSweeney et al., 1998).

A second issue that relates to the potential influence of the presence of a third party observer is the reliance upon normative data. Neuropsychological test measures have not been standardized in the presence of an observer. In fact, neuropsychological test measures have been standardized under a specific set of highly controlled circumstances that did not include the presence of a third party observer. The presence of a third party observer introduces an unknown variable into the testing environment which may prevent the examinee's performance from being compared to established norms and potentially precludes valid interpretation of the test results (McCaffrey, Fisher, Gold, & Lynch, 1996). Observer effects can be such that performance on more complex tasks declines, in contrast to enhanced performance on overlearned tasks, leading to a spuriously magnified picture of neuropsychological deficit (McCaffrey et al., 1996). Likewise, observation of an examination being conducted for a second opinion may fundamentally alter the test session, in comparison to the initial examination that the patient has already undergone, potentially creating an adversarial atmosphere, and increasing the risk of motivational effects related to secondary gain. Observer effects can be magnified by the presence of involved parties who have a significant relationship with the patient (e.g.

legal representatives who have a stake in the outcome of the examination; cf. Binder and Johnson-Greene, 1995). Thus, the presence of a third party observer during formal testing may represent a threat to the validity and reliability of the data generated by an examination conducted under these circumstances, and may compromise the valid use of normative data in interpreting test scores. Observer effects also extend to situations such as court reporters, attorneys, attorney representatives, viewing from behind one-way mirrors and to electronic means of observation, such as the presence of a camera which can be a significant distraction (McCaffrey et al., 1996). Electronic recording and other observation also raises test security considerations that are detailed in the National Academy of Neuropsychology's position statement on Test Security.

It should be noted that there are circumstances that support the presence of a neutral, non-involved party in nonforensic settings. One situation might be when students or other professionals in psychology observe testing as part of their formal education. These trainees have sufficient instruction and supervision in standardized measurement and clinical procedures, such that their presence would not interfere with the assessment process. Other situations might include a parent's calming presence during an evaluation of a child.

The weight of accumulated scientific and clinical literature with respect to the issue of third party observers in the forensic examination provides clear support for the official position of the National Academy of Neuropsychology that neuropsychologists should strive to minimize all influences that may compromise accuracy of assessment and should make every effort to exclude observers from the evaluation.

*The NAN Policy and Planning Committee*

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Position Paper

Secretive Recording of Neuropsychological Testing and Interviewing:  
Official Position of the National Academy of Neuropsychology<sup>†</sup>

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Abstract

Neuropsychologists are occasionally asked to have neuropsychological testing observed via the presence of a third party, through one-way mirrors, or with audio or video monitoring or recording devices. The primary reasons for not allowing observation are its effect on the validity of the examination results and the security of copyrighted test materials. To overcome the problem of observer effects on the examinee's performance, some individuals have suggested that examinations be monitored or recorded without the examinee's awareness (i.e., secretly). However, secretive recording of neuropsychological interviews and testing is deceptive, which is inconsistent with ethical principles. In addition, such recording may affect the behavior of the examiner. For these reasons, neuropsychologists do not, and should not, encourage, condone, or engage in secret recording of neuropsychological interviews or testing.

**Keywords:** Secret; Recording; Neuropsychological; Evaluation; Forensic; Ethical

Secretive recording of neuropsychological interviews and testing is inappropriate. The rationale for not engaging in, encouraging, or supporting secretive recording of neuropsychological interviews or testing is described subsequently.

Neuropsychologists are occasionally asked to have neuropsychological testing sessions observed via the presence of a third party, through one-way mirrors, or with audio or video monitoring or recording devices. With the exception of a few specific contexts (e.g., training purposes), the profession of neuropsychology has taken a strong stance against the observation of evaluations in any format (American Academy of Clinical Neuropsychology, 2001; National Academy of Neuropsychology, 2000). The primary reasons for not allowing observation include its effect on the validity of the evaluation results and the security of copyrighted test materials (McCaffrey, 2005). Specifically, the following concerns exist: (1) tests were not standardized with observation or recording devices present, which limits the applicability of normative data in such instances; (2) the presence of

<sup>†</sup> This paper has been written, reviewed, and edited by members of the National Academy of Neuropsychology (NAN) Policy and Planning Committee. The Policy and Planning Committee is charged with writing position papers regarding important issues that affect the profession of neuropsychology and consumers of neuropsychological services. Possible topics for the position papers are suggested by the NAN Board of Directors, members of the NAN Policy and Planning Committee, or individual NAN members. Primary authors are identified and approved by the NAN Policy and Planning Committee. These authors typically are experts on the topic and can come from within or outside the Policy and Planning Committee. Primary authors, Policy and Planning Committee members, and selected outside reviewers provide extensive peer review for all papers. All topics and the final manuscripts submitted by the Policy and Planning Committee are reviewed and approved by the NAN Board of Directors.

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a third party or device can affect the examinee's performance; (3) the examiner's behavior may be affected; (4) test security may be compromised, allowing prospective examinees to determine their responses in advance of the evaluation; (5) copyright laws may be violated; and (6) evaluation content may be misused. For these reasons, the mandate to avoid recording neuropsychological testing sessions applies to all situations, including those in which examinees or their legal representatives are aware of, and provide consent for, such recording.

To overcome the problem of observer effects on the examinee's performance, some individuals have suggested that evaluations be monitored or recorded without the examinee's awareness (i.e., secretly). Although this suggestion may help to eliminate the effect of the observer on the examinee's performance (i.e., points 1–2 above), the other areas of concern remain (i.e., points 3–6 above). In addition, an element of deception is introduced into the evaluation context. Under most circumstances, deception in the context of neuropsychological examinations or in research conflicts with ethical requirements (American Psychological Association, 2002, Ethical Standards 4.03, Recording; 8.07, Deception in Research; and 9.03, Informed Consent in Assessments). Secretive recording of neuropsychological interviews and testing is deceptive and is therefore inconsistent with the respect for autonomous decision making that underlies most clinical services (Beauchamp & Childress, 2001).

In addition to instances in which secretive recording of neuropsychological interviews or testing is requested of the examining neuropsychologist, there have been instances in which treating neuropsychologists have encouraged their patients to secretly record independent neuropsychological examinations performed by other neuropsychologists. This practice, although not affecting the examiner's behavior, can affect the examinee's presentation and performance and, therefore, affect the validity of the examination results. In addition, the examiner, like the examinee, has a right to be protected from intentional deception in the examination process. Thus, this practice is also inappropriate and inconsistent with ethical practice.

Furthermore, examinees often spontaneously confide information to examiners while testing is in process that the examinees consider confidential and want to be kept 'off the record.' If this were to occur while an examinee is being recorded, the neuropsychologist would be obligated to inform the examinee that the information had been secretly recorded. This situation would very likely have a detrimental effect on the rapport between the examinee/patient and the neuropsychologist and compromise the work being performed. In addition, obtaining consent retrospectively is unethical. Thus, just as psychotherapy is never recorded without the patient's consent, neuropsychological interviews and testing must never be recorded secretly.

In summary, neuropsychologists do not, and should not, encourage, condone, or engage in secret recording of neuropsychological interviews or testing. For the protection and benefit of the individual examinee, the public, referral sources, and the examining neuropsychologist, secretive recording of neuropsychological interviews or testing should not be introduced into the neuropsychological examination process.

### Conflict of Interest

None declared.

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Furthermore, examinees often spontaneously confide information to examiners while testing is in process that the examinees consider confidential and want to be kept 'off the record.' If this were to occur while an examinee is being recorded, the neuropsychologist would be obligated to inform the examinee that the information had been secretly recorded. This situation would very likely have a detrimental effect on the rapport between the examinee/patient and the neuropsychologist and compromise the work being performed. In addition, obtaining consent retrospectively is unethical. Thus, just as psychotherapy is never recorded without the patient's consent, neuropsychological interviews and testing must never be recorded secretly.

In summary, neuropsychologists do not, and should not, encourage, condone, or engage in secret recording of neuropsychological interviews or testing. For the protection and benefit of the individual examinee, the public, referral sources, and the examining neuropsychologist, secretive recording of neuropsychological interviews or testing should not be introduced into the neuropsychological examination process.

### Conflict of Interest

None declared.

### References

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STATE OF NEVADA  
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October 1, 2018  
Governor

Elizabeth Brown  
Clerk of the Supreme Court  
201 South Carson Street  
Carson City, NV, 89701.

Dear Ms. Brown:

Please see below the Licensing Board's position on third-party observers in psychological evaluations. This statement has been provided to the Nevada State Supreme Court as public comment regarding the proposed changes to Rule 35 of Nevada Civil Procedure.

In the interest of protecting the needs of the public, it is the position of the Nevada Board of Psychological Examiners that allowing third-party observers, monitors, and/or electronic recording equipment during psychological and neuropsychological evaluations poses a significant threat to public safety. Observation, monitoring, and recording can significantly alter the credibility and validity of results obtained during psychological and neuropsychological medical evaluations, as well as forensic evaluations completed for judicial proceedings. Research indicates that the presence of observers, monitors and recorders during patient clinical interviews and evaluations directly impacts patient behavior and performance such that patients may avoid disclosing crucial information essential to diagnosis and clinical recommendations. Additionally, (neuro)psychological tests and measures are developed and standardized under highly controlled conditions. Observation, monitoring, and recording of these tests is not part of the standardization. Observation, monitoring, and recording of psychological assessment components (i.e., testing) of evaluations may distort patient task performance, such that patient weaknesses and strengths are exaggerated, yielding inaccurate or invalid test data. Furthermore, research highlights that this impact on performance is independent of method of observation. In other words, there is no "good" or "safe" way to observe, monitor, or record such (neuro)psychological evaluations without impacting and potentially invalidating the evaluation. Ultimately, deviations from standardized administration procedures compromise the validity of the data collected and compromise the psychologist's ability to compare test results to normative data. This increases the potential for inaccurate test results and erroneous diagnostic conclusions, thus impacting reliability of results and future treatment for the patient. In addition, the risk of secured testing and assessment procedures being released to non-Psychologists poses risk to the public in that exposure of the test and assessment confidentiality can undermine their future validity and utility.

Sincerely  
for the Board of Psychological Examiners

Morgan Gleich  
Executive Director

Michelle Paul, Ph.D.  
Board President

Whitney Owens, Psy.D.  
Board Secretary/Treasurer

Pam Becker, MA  
Public Member

Stephanie Holland, Psy.D.  
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Nevada  
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Supreme Court Clerk's Office  
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Carson City, Nevada 89701

September 25, 2018

**RE: THE MATTER OF CREATING A COMMITTEE TO UPDATE AND REVISE THE NEVADA  
RULES OF CIVIL PROCEDURE**

The Executive Board of the Nevada Psychological Association **opposes** third party observation of the administration of standardized measures during psychological and/or neuropsychological independent medical evaluations (IMEs). Our organization opposes this proposed revision to the Nevada Rules of Civil Procedure for the following reasons. Additionally, no licensed psychologist in the State of Nevada would be able to conduct psychological and/or neuropsychological IMEs under the conditions of observation and recording proposed for these same reasons:

1. **Decreased Patient Disclosure:** Observation, monitoring, and recording can directly impact the behavior of the patient during psychological clinical interview such that the patient may avoid disclosing crucial information essential to diagnosis and clinical recommendations. The patient may also avoid disclosing critical information related to their safety or the safety of another person (e.g., child abuse or abuse of a vulnerable adult).
2. **Test Standardization & Compromised Validity:** The clear and well-established standard of practice is that standardized psychological and neuropsychological tests must be administered under standardized conditions (i.e., conditions that closely replicate the conditions under which the tests were standardized during the test development process). The standardization process does not include third party observation, monitoring, or recording. Deviations from standardized administration procedures compromise the validity of the data collected. When the validity of testing data are compromised, the accuracy of the diagnosis is compromised.
3. **Social Facilitation and Observer Effects & Compromised Validity:** Research consistently demonstrates that patient performance can be impacted (negatively or positively) by the presence of an observer (including live observation, remote observation, or recorded observation). Observation, monitoring, and recording can artificially strengthen or weaken the patient's performance on psychological and neuropsychological test, thus compromising the validity of the data and the accuracy of diagnostic conclusions.
4. **Test Security & Social Harm:** Psychologists have a legal and ethical requirement to maintain the "integrity and security" of tests and other assessment techniques. Permitting individuals who are not licensed psychologists to observe a psychological examination, either live or via recording, compromises test security. Dissemination of psychological and neuropsychological test materials when test security is breached carries a risk for significant social harm. Future

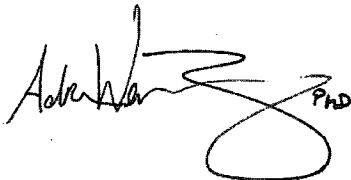
patients can be coached or (inappropriately) prepared for IMEs. Additionally, the tests used in psychological and neuropsychological IMEs are the same tests used across a wide range of evaluations. These include, but are not limited to, determinations of fitness or competency to: (a) parent; (b) pilot an airplane; (c) practice medicine or surgery; (d) stand trial; (e) work in law enforcement or at a nuclear power facility, etc. The Court might also be interested to know that these same tests are used to determine if an applicant is eligible to receive special accommodations when taking the Bar Exam.

As stated by the National Academy of Neuropsychology in 2003, "Maintaining test security is critical, because of the harm that can result from public dissemination of novel test procedures. Audio- or video recording a neuropsychological examination results in a product that can be disseminated without regard to the need to maintain test security. The potential disclosure of test instructions, questions, and items by replaying recorded examinations can enable individuals to determine or alter their responses in advance of actual examination. Thus, a likely and foreseeable consequence of uncontrolled test release is widespread circulation, leading to the opportunity to determine answers in advance, and to manipulate test performances. This is analogous to the situation in which a student gains access to test items and the answer key for a final examination prior to taking the test."

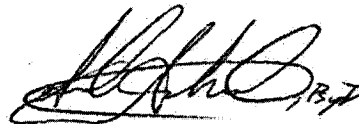
In summary, the proposed changes which would allow third party observation, monitoring, or recording in IMEs would have a profound deleterious impact on the ability of licensed psychologists to appropriately conduct valid psychological and neuropsychological IMEs.

We have enclosed a list of references, as well as complete copies of the most relevant position and consensus statements. Please do not hesitate to reach out with any questions.

Respectfully,



Adrianna Wechsler Zimring, PhD  
Past President 2018/2019  
Nevada Psychological Association



Sarah Ahmad, PsyD  
President 2018/2019  
Nevada Psychological Association



Noelle Lefforge, PhD  
President-Elect 2018/2019  
Nevada Psychological Association