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FILED

OCT 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

October 9, 2018

Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

ADKT 0522

RE: IN THE MATTER OF CREATING A COMMITTEE TO UPDATE AND REVISE THE NEVADA RULES OF CIVIL PROCEDURE - (Pertaining to the proposed amendment of Rule 35 - Physical and Mental Examinations).

In this affidavit I will explain how and why I **oppose** the proposed amendment of Rule 35 - Physical and Mental Examinations.

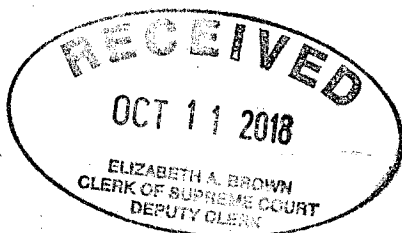
My name is Karen M. Kampfer. I am over the age of twenty-one (21) years and have legal authority in the State of Nevada. I am a Licensed Psychologist in the State of Nevada. My business address is 8475 S. Eastern Avenue, Suite 205, Las Vegas, Nevada 89123. I am an active member of the Nevada State Psychological Association. My practice specialty is psychological and psychoeducational assessment. I also have extensive experience assisting neuropsychologists in conducting evaluations of individuals claiming cognitive injury/impairment in medical/legal contexts.

There are number of ethical and legal concerns regarding the allowance of third parties to be present, observe, and/or record during psychological and neuropsychological evaluations and/or examinations. These concerns have been outlined in detail in written communication to the Nevada Supreme Court's Office from the Nevada State Board of Psychological Examiners dated 10/01/18 and the Nevada Psychological Association's letter dated 09/25/18 (Copies attached).

The proposed amendment has the potential to significantly impact client confidentiality and test material security, and it does not take into consideration that psychologists are professionally responsible to conduct evaluations and examinations in a manner consistent with the American Psychological Association Ethical Principles of Psychologists and Code of Conduct, especially in regards to Section 4: Privacy and Confidentiality, and Section 9: Assessment.

The above is true and correct to the best of my personal knowledge.

[Signature]
Karen M. Kampfer, Ph.D.



18-40021

NEVADA INDIVIDUAL ACKNOWLEDGMENT
NRS 240.166

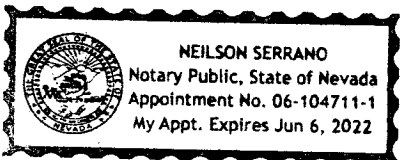
State of Nevada
County of Clark } ss.

This instrument was acknowledged before me
on 16/09/2018 by
Date

KAREN KAMPER (.)
Name of Signer No. 1

(and

_____))
Name of Signer No. 2 (if any)



Place Notary Seal and/or Stamp Above

[Signature]
Signature of Notary Public

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Nevada
Psychological
Association

Advocating for Psychologists in Nevada
Nevada Psychological Association

P.O. Box 400671
Las Vegas, NV 89140
888.654.0050 ph/fax
www.NVpsychology.org

Supreme Court Clerk's Office
201 South Carson Street
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

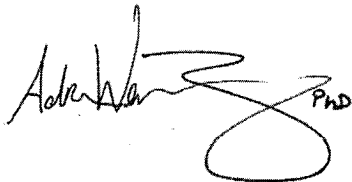
patients can be coached or (inappropriately) prepared for IMEs. Additionally, the tests used in psychological and neuropsychological IMEs are the same tests used across a wide range of evaluations. These include, but are not limited to, determinations of fitness or competency to: (a) parent; (b) pilot 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

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STATE OF NEVADA
BOARD OF PSYCHOLOGICAL EXAMINERS

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John H. Krogh, Ph.D.
Board Member, Reno

Stephanie Holland, Psy.D.
Board Member, Las Vegas

Anthony Papa, Ph.D.,
Board Member, Reno

Pamela L. Becker, M.A.
Public Board Member, Reno

Patrick M. Ghezzi, Ph.D., BCBA-D, LBA
Board Member, Reno

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.
Board Member

John Krogh, Ph.D.
Board Member