

## **Policy statement of the American Board of Professional Neuropsychology regarding third party observation and the recording of psychological test administration in neuropsychological evaluations**

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### **GENERAL**

Neuropsychologists are frequently presented with requests from parents, attorneys, nurse case managers, insurance representatives, school personnel, allied health professionals, family members or other interested parties who have some type of relationship with a patient or client examinee to directly observe or record the administration of psychological tests. Consequently, a number of practice concerns have been raised that include, but are not limited to, the effects on the examinee's performance and the psychologist administering the assessment, violations of testing guidelines, the impact on standardization procedures, the appropriateness of applying test findings to normative samples established under standardized circumstances, and test security. These requests can become even more problematic and complicated when the request occurs within the adversarial process associated with the legal system, such as competency hearings, custody evaluations, divorce proceedings, civil litigation, and criminal investigations (McSweeney et al., 1998; Sweet, Grote, & Van Gorp, 2002; Duff & Fisher, 2005; McCaffrey, Fisher, Gold, & Lynch, 2005; Howe & McCaffrey, 2010).

### **DEFINITION OF THIRD PARTY OBSERVATION**

Third Party Observation (TPO) is defined in this practice guideline as the direct or indirect presence of an individual other than the patient or client and the psychologist or their technician administering a published psychological test in order to obtain objective data under standardized conditions for clinical, counseling, or forensic purposes in order to render clinical conclusions, opinions, interpretations, or recommendations based on the data collected. Direct presence means a person(s) physically present in the room other than the psychologist or his/her technician and the examinee. Indirect presence means viewing through a window, two-way mirror, use of any camera, or audio or video recording device, or any electronic or communication device. The act of recording includes the on-site transcription by a court recorder or reporter during an examination by either direct or indirect involvement (McCaffrey, Fisher, Gold, & Lynch, 1996; Constantinou, Ashendorf, & McCaffrey, 2002; Constantinou, Ashendorf, & McCaffrey, 2005; Barth, 2007; Eastvold, Belanger, & Vanderploeg, 2012).

## **ETHICAL CONSIDERATIONS**

The Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association (hereafter called the Ethics Code) helps guide the thinking and behavior of psychologists, and provides direction with regard to clinical practice standards. Relevant to TPO in the Ethics Code are both the General Principles and a number of the Ethical Standards.

Within the Ethics Code a series of General Principles are outlined with the intent of guiding psychologists to practice at the highest professional level. Relevant to TPO are General Principle: A (Beneficence and Nonmaleficence), B: (Fidelity and Responsibility), C (Integrity), and D (Justice).

In contrast to the General Principles, the Ethics Code offers specific standards that represent obligations to which psychologists are bound, and consequently form the basis for ethical violations and consequently the basis for sanctions. Most relevant to TPO are Ethical Standards 2 (Competence) and 9 (Assessment). (American Psychological Association, 2010).

### **Principle A: Beneficence and Nonmaleficence**

Principle A is applicable and is described as follows: “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.”

It is incumbent on psychologists to be vigilant about the impact of their professional opinion on others, particularly with regard to diagnostic testing. Psychologists’ scientific and professional judgments and conclusions should be based on data from psychological assessments gathered in a standardized manner, and therefore without the influence of extraneous factors that might influence the collection of behavior samples. Psychologists must always be mindful that their verbal and written opinions affect the medical, social, and legal lives of others, and therefore must safeguard those with whom they interact professionally to do no harm.

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### **Principle B: Fidelity and Responsibility**

Principle B is applicable and is described as follows. “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.”

It is the responsibility of all psychologists who elect to perform diagnostic testing, to do so within the established parameters of the instrument(s) they employ and therefore in a standardized manner. Whether or not a psychologist is engaged in a patient-doctor relationship, acting as an independent clinician, a clinician for an institution, state or federal agency, or an independent examiner for an insurance carrier or legal counsel, a professional obligation exists to uphold standards for the delivery of scientific work commensurate with the responsibilities to the profession, community and society in general.

### **Principle C: Integrity**

Principle C is applicable and is described as follows. “Psychologists seek to promote accuracy, honesty, and truthfulness in the science, teaching, and practice of psychology. In these activities psychologists do not steal, cheat, or engage in fraud, subterfuge, or intentional misrepresentation of fact. Psychologists strive to keep their promises and to avoid unwise or unclear commitments. In situations in which deception may be ethically justifiable to maximize benefits and minimize harm, psychologists have a serious obligation to consider the need for, the possible consequences of, and their responsibility to correct any resulting mistrust or other harmful effects that arise from the use of such techniques.”

The practice and promotion of clinical assessment requires that psychologist present themselves and their work to others in an accurate and honest manner, and to avoid any misrepresentation of their findings. TPO alters the accuracy of test findings, and to ignore the considerable body of evidence supporting this fact, results in conscious misrepresentation.

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### **Principle D: Justice**

Principle D is applicable and is described as follows. “Psychologists recognize that fairness and justice entitle all persons to access to and benefit from the contributions of psychology and to equal quality in the processes, procedures, and services being conducted by psychologists. Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices.”

In an attempt to provide fair and just treatment to all patients and clients, psychologists do not modify assessment procedures or alter their work on the basis of personal opinion or professional bias, nor do they neglect to maintain an awareness of their competency level and the limitations of their expertise. To this end, APA and neuropsychology specialty organizations provide multiple continuing education opportunities for psychologists to learn, maintain, and improve their professional expertise, and avoid practices that are irregular or not commensurate with accepted clinical practice. Given the body of literature that exists regarding the negative effects of TPO, it is incumbent on psychologists who provide assessment services to not avoid this practice, but make clear to patients, families, and co-professionals that they do not condone the use of TPO.

### **Ethical Standard 2: Competence**

Ethical Standard 2 is applicable to TPO and the recording of test administration. Section 2.04, Bases for scientific and Professional Judgments describes the following: Psychologists’ work is based upon established scientific and professional knowledge of the discipline. (See also Standards 2.01e, Boundaries of Competence).”

Ethical Standard 2.04. Ethical Standard 2.04 requires psychologists to conduct their practice within the boundaries of scientific knowledge. Texts on psychological testing have long cited the need to conduct testing in a distraction-free environment (Anastasia and Urbina, 1997). With the publication of the Wechsler Adult Intelligence Scale-Third Revision (WAIS-III) the Wechsler manuals have since stipulated “no one other than you and the examinee should be in the room during the testing session.” Administration further states, “Attorneys who represent plaintiffs sometimes ask to observe but typically withdraw this request when informed of the potential effect of the presence of a third person.” (WASI, WASI-II, WAIS-III, WISC-III, WMS-III, WAIS-IV, WMS-IV). Some test manuals indicate that the testing room should be quiet and distraction free limited to “A table or desk and two chairs, one for the examiner and one for the subject.”(WCST) Similarly, the manual for the California Verbal Learning Test- Second Edition (CVLT-II) states “as a rule, no one other than you and the examinee should be in the room during testing.”

### **Ethical Standard 9: Assessment**

Ethical Standard 9 is applicable to TPO and recording. In Section 9.01, Bases for Assessments, the code notes “(a) Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments.)”

Test results generated in nonstandard methods that negatively impact the validity of the findings are insufficient. In forensic settings, psychologists are often required to use their findings in comparison with other evaluations. The ability to compare separate data sets, when one evaluation was conducted following proper testing procedures and the other evaluation had inherent threats to validity such as a third party observer is dubious. Under 9.01 (a) the psychologist cannot provide opinions or evaluative statements because TPO presence yields the evaluation of questionable validity.

(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.”

Section 9.02: Use of Assessments. Section 9.02 describes the following: “(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.”

Section 9.02 (a) indicates that test or instruments used in a manner inconsistent with the standardization of the measure and contrary to the test manual violate this standard. As such, TPO is contrary to this standard.

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Section 9.06: Interpreting Assessment Results. Section 9.06 describes the following:

“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).”

Many authors and organizations (Anastasi and Urbina, 1997; National Academy of Neuropsychology, 2000; Oregon Psychological Association, 2012) emphasize that during test development, procedures are standardized without the presence of an observer and subsequently that data obtained outside the parameters of those procedures lack validity and affect interpretation.

Section 9.11: Maintaining Test Security. Section 9.11 raises the importance of maintaining test security. “Psychologists make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques consistent with law and contractual obligations, and in a manner that permits adherence to this Ethics Code.”

Test security is a critical issue, as it addresses the prevention of unnecessary exposure of psychometric materials that would result in diminishing a test to accurately distinguish between normal and abnormal performance.

Several professional organizations have offered an opinion with regard to maintaining test security to include the APA. The APA describes test security as an important issue in the practice of psychology and states that it incumbent on psychologists to protect the integrity of psychological test materials (APA, 1999).

Other state and national psychological organizations as well as a number of authors have raised concerns about the potential for testing material to be used inappropriately by attorneys or become part of public domain where anyone could access this information (Wetter & Corrigan, 1995; McCaffrey et al., 1996; National Academy of Neuropsychology, 1999; American Psychological Association, 1999; American Academy of Clinical Neuropsychology, 2001; Essig, Mittenberg, Petersen, Strauman, & Cooper, 2001; Victor & Abeles, 2004; Kaufman, 2005; Kaufman, 2009; Morel, 2009; Oregon Psychological Association, 2012). Public accessibility would allow clients involved in litigation to be coached on how to perform on certain measures or give patients the opportunity to learn test material prior to an assessment, both of which would invalidate the results of a psychological assessment. As a result, several psychological organizations have taken a formal position against the presence of TPO during assessment.

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The National Academy of Neuropsychology (Axelrod et al., 2000) advises that TPO is inconsistent with psychological guidelines and practices and as a result threatens the validity, reliability, and interpretation of test scores. The position of the National Academy of Neuropsychology is that TPO should be avoided whenever possible outside of necessary situations involving a non-forensic setting where the observer is both neutral and non-involved.

The American Academy of Clinical Neuropsychology (AACN) has taken the position that “it is not permissible for involved third parties to be physically or electronically present during the course of an evaluation assessment of a plaintiff patient with the exception of those situations specified below” (page 434). Exceptions are described as including young children who require the presence of a family member, etc.

The executive committee of the Oregon Psychological Association (2012) adopted a clear and unequivocal policy that the observation of a third party compromises test validity and security and therefore advises against the presence of TPO during assessment. Similarly, the Michigan Psychological Association Ethics Committee has advised against TPO for the same reasons.

### **RESEARCH EVIDENCE**

In addition to national, local and professional standards of ethical practice, a significant body of research evidence supports the negative impact of TPO. A review of the pertinent literature overwhelmingly supports that both direct and indirect TPO and recording affect the behavior of both the examiner and the examinee, and subsequently the validity of findings obtained in a psychological assessment with by limiting data interpretation and conclusions.

It is self evident that psychological evaluations *must* be conducted in a standardized fashion consistent with the publisher’s directives to ensure valid and reliable results. The consensus among reasonable psychologists is that any attempt by an examiner to modify test procedures or alter administration to accommodate observation or recording compromises test standardization. As a result, findings are likely to be invalid and cannot be determined to reflect a reasonable degree of certainty or fall within an accepted range of probability, as there is no basis for validating an assessment under these (observed or recorded) conditions. Test results therefore lack the normal and accepted parameters of validity and more importantly, do not reflect normal standards of psychological care. Not surprisingly, most publishers of psychological tests have cautioned against TPO in their instruction manuals and national organizations have advised against TPO (National Academy of Neuropsychology, 2000; Committee on Psychological Tests and Assessment, 2007).

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The issue of TPO has been investigated by numerous researchers beginning with a case study by Binder and Johnson-Greene (1995). A substantial amount of research supports that the presence of an observer negatively affects the data obtained during an assessment, and these significant negative effects on test results have been consistently reproduced in all studies. More specifically, research has shown a significant impact on test performance on measures involving areas of executive functioning (Horowitz & McCaffrey, 2008), attention and processing speed (Binder & Johnson-Greene 1995; Kerher, Sanchez, Habif, Rosenbaum, & Townes, 2000), and memory/recall of information (Gavett, Lynch, & McCaffrey 2005; Lynch, 2005; Yantz & McCaffrey, 2005; Eastvold et al., 2012). Eastvold, Belanger and Vanderploeg's (2012) meta analysis found negative effects on multiple cognitive measures and that attention, learning and memory (delayed recall) were most adversely impacted by the presence of an observer.

## **EXCEPTIONS TO TPO**

### **Third Party Assistant (TPA)**

In selected circumstances, the presence of a third party may be necessary to proceed with or complete a psychological assessment. In these cases rather than an involved third party observing or monitoring the behavior of the test administrator or examinee, the third party holds a neutral position and acts in an indirect manner to assist or expedite the completion of the assessment. Given this significant difference of purpose, we suggest that the presence of an additional party during an evaluation in these circumstances is more accurately identified as a third party assistant (TPA).

A TPA may be deemed appropriate in clinical examinations in which the examiner is acting as a clinical treater with an established patient-doctor relationship, as opposed to an independent psychological examination for an insurance companies or a forensic assessment in civil or criminal proceedings. A TPA may be appropriate in a testing situation in which the presence of a parent, family member or family friend is necessary, and without whose presence the examination could not proceed because of a variety of mental disabilities that require accommodations. Examples include patients diagnosed with autism or developmental disorders affecting intelligence, confirmed brain injury that precludes independent living, children who are either too young or too anxious to be left alone, elderly adults with compromised cognition who are unwilling to participate without the presence of a trusted family member or friend, patient's who have a thought disorder impacting reality testing, etc.

Alternatively, there are cases in which a language barrier precludes valid test administration. While the preference is for the examination to be conducted in the examinee's native language, in some these cases an interpreter may necessary because a native speaking psychological examiner is not available or within a practical distance. To avoid conflicts, the interpreter should have no relationship (such as family member) to the person being examined.

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Similarly, if an examinee is deaf or hearing impaired an individual versed in American Sign Language (ASL) or a member of the deaf community would be necessary to complete an examination. Absent a qualified examiner fluent in sign language, a certified specialist may be necessary.

Student training presents another situation in which a TPA is considered appropriate. Not unlike the training of medical students in procedures, psychology students require direct observation and practice in the administration of psychological test procedures.

In the above cases, the examiner is ethically required to document in the procedures section of the psychological report of any deviations of standardization or modifications in test administration. Clear note must be made of the limitations of normative data with subsequent impact on the generalization of findings.

### **FORENSIC EXAMINATIONS, INDEPENDENT MEDICAL EXAMINATIONS, AND ACTING AS AN EXPERT WITNESS**

Psychologists who chose to perform forensic assessments are ethically required to act in a proactive manner and be aware of the pertinent specialty guidelines pertinent to this area of expertise. In forensic situations when retained as an expert witness and in which TPO is requested by opposing counsel or directed by the court, the psychologist should educate the court as to the Ethical Principles of Psychologists and Code of Conduct of the APA and the scientific basis for the negative effects (invalid data) of these intrusions. If counsel or the court insists the psychologists should terminate test administration, and if necessary, seek legal counsel.

It is recognized that often in forensic situations psychological ethics and the adversarial nature of the legal system may not coincide. If directed by the court to proceed with TPO, the psychologist should remove himself/herself from the assessment. Psychologists who regularly provide forensic consultations are expected to inform referral sources ahead of time that if TPO or recording develops as an issue during legal proceedings, they are ethically required to remove themselves from the assessment.

In the very rare exception that the psychologist is *compelled* by the Court to evaluate with a TPO, or if the psychologist is in a situation wherein withdrawing will bring clear and substantial harm to the examinee, the psychologist should explicitly document the manner in which the validity of results may be compromised and following existing recommended guidelines for protecting test security including requesting that the test material and intellectual property be provided only to another licensed psychologist who would be bound by the same duty to protect. Alternatively, with a protective order, the psychologist should request an agreement specifically prohibiting either party from copying test material or intellectual property, using them for any other purpose than the matter at hand, and requiring that they be destroyed at the close of the matter.

### **CONCLUSION**

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TPO and/or any recording of psychological tests or their administration has the potential to influence or compromise the behavior of the examinee and the administrator, the validity of the data obtained under these conditions, and consequently any and all subsequent clinical conclusions, opinions, interpretations, or recommendations. Ethical standards of practice require that psychologists do not engage in or conduct assessments complicated by TPO or recording unless justified by the exceptions described above.

Psychological testing involving TPO should be avoided. A psychologist who allows TPO and/or any recording of the administration of psychological tests compromises the behavior of the examinee and the administrator, the validity of the data obtained under these conditions and consequently, any and all subsequent clinical conclusions, opinions, interpretations, or recommendations. Ethical standards of practice require that psychologists do not engage in, endorse, or conduct assessments complicated by TPO or recording of any kind. In contrast, TPA is acceptable but only under exceptions involving the most extreme or rare circumstances that require, and can be justified only by clinical (not forensic) exception.

In the case of TPA, the psychologist must clarify in the report the rationale for use of TPA, what procedures and standards have been modified, how, and to what degree, and the impact of the findings, results, and conclusions. This should include limitations in the generalization of the diagnostic data and the impact on assessment's findings.

It is the recommendation of the American Board of Professional Neuropsychology that neuropsychologists who find themselves in a position in which TPO is requested or advocated, should decline the request and educate the referral source as to the ethical and validity implications. If a referral source or interested party insists on TPO or recording, such as in legal matters, psychologists should extricate themselves from the situation and document the reason for termination.

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