

# **Statement Opposing the Presence of Third Party Observers and Recording Neuropsychological and Psychological Assessments Performed in the State of Oregon**

**This statement was endorsed by the Board of Directors of the Oregon Psychological Association on January 13, 2012.**

Clinical neuropsychologists and psychologists rely in part on administration of tests to assist clinicians, administrative boards, and the courts in reaching well-informed decisions on diagnoses, treatment, and opinions in instances of presumptive psychological, intellectual, academic, and/or neurobehavioral dysfunction. Intellectual, neuropsychological, and achievement tests have been shown to be reliable and valid measures when administered in a standardized fashion. We are aware that there have been instances when attorneys or other interested parties have required or requested that a third party observer or recording devices be present in the examination room when intellectual, achievement, or neuropsychological tests are administered to a patient or examinee. In some cases in Oregon, the presence of a third party or recording device has been mandated by the courts as a condition of an examination.

We generally oppose the requirement of third party observation (TPO), including audio or video recording, of psychological testing. TPO compromises both the validity and the security of psychological testing, and the opinions or recommendations based on the results of such testing, thereby affecting outcomes for examinees. The reason that TPO compromises the results and opinions resulting from psychological testing, and the outcomes for examinees, is that psychological tests are not developed, and therefore not intended to be used, with third party observers present.

TPO and test standardization: Psychological tests are developed and standardized at great expense and over long periods of time, under a rigorous set of controlled conditions; they are only useful to the extent that standardization is well conducted, and that standardization conditions are maintained during assessment. Mental capacity measures are not normed with third party observers. Therefore, there is no normative base for interpreting scores obtained with third party observers present.

Comparisons between evaluations: In cases where two sets of evaluation data are compared, if one is performed with TPO and the other is not, direct comparisons cannot be made; this includes measures of change over time, which clearly can affect diagnostic formulations and treatment planning. In administrative, civil litigation, and criminal forensic evaluations, decisions by the court, if based on inaccurate findings from psychologists, are therefore poorly informed.

Ethical considerations: We are ethically informed by the American Psychological Association (APA) Ethical Code (2002, revised 2010) Principles A (Beneficence and Non-Maleficence); C (Integrity) and D (Justice), as

well as Standards 2.04, and 9.01, 9.02, 9.06, and 9.08, that guide our thinking and practices. Our position is the same as that taken by the American Academy of Clinical Neuropsychology (2001) and the National Academy of Neuropsychology (1999) opposing the presence of observers and recording devices during neuropsychological testing. Intellectual, achievement, and neuropsychological tests have not been standardized in the presence of an observer. Rather, test administration is likely to be compromised in the presence of a third party.

TPO compromises psychological opinions and examinee outcomes: Psychological assessment is at times essential in both clinical and forensic domains. Mental capacity testing (e.g., IQ, cognitive, language, academic and other functional abilities) is a critical component of many clinical and forensic evaluations. An examinee's health, treatment planning, educational/vocational accommodations, disability benefits, potential civil litigation awards, parental rights, constitutional and civil rights, and personal freedoms can be at stake; thus, the importance of accuracy in clinical and forensic evaluations is far-reaching. Controlled research published in peer reviewed journals (Constantinou et al., 2002; Horwitz & McCaffrey 2008; Howe, (2006); Howe & McCaffrey, 2010; Kehrer et al., 2000) has demonstrated that both recording and observation have significant negative effects on measures of intellectual, achievement, and neuropsychological test performance. Mental capacity test performance has been shown to be artificially lowered when a third party is present; this includes observation by means of direct observation, one-way glass, or electronic/video recordings. Thus, the results obtained may under-represent actual capacities, introducing significant, non-trivial error into our clinical/forensic formulations and opinions. Such measurement error can negatively affect patients, other referring providers, administrative, civil, and criminal legal proceedings and decisions that can directly impact the patient and community health, welfare and rights.

Ultimately, the presence of a third party observer (which includes but is not limited to attorneys, their representatives, and the use of one-way mirrors, or other electronic means such as video/audio taping) during formal testing significantly jeopardizes the validity of the test data, as well as conclusions that are subsequently generated.

Test security: In addition, the presence of an observer taking notes or a recording device makes it impossible to maintain test security, an obligation under the Ethical Code of the APA (2010, Standard 9.11). Test security is essential to preserving the practical utility of these measures in both forensic as well as clinical situations, and lack of security will almost certainly compromise the ability of these tests to assist clinicians, administrative boards, and the courts in any subsequent clinical and/or forensic proceedings. Once notes or a recording exists, nothing prevents an attorney from coaching other clients on how to obtain a certain desired test result.

At the discretion of the examining psychologist, there are situations when a psychologist might decide that the presence of a parent or other family member in the testing room, at least in the initial stages of testing, may improve the performance of the examinee, and when observation may be reasonable (American Academy of Clinical Neuropsychology, 2003; APA, 2007; National Academy of Neuropsychology, 2000). There include

circumstances with preschool children or, occasionally, with child, adolescent, or adult victims of trauma. Circumstances requiring external assistance beyond the psychologist's capacity, such as accommodating foreign language or hearing-impaired individuals would also reasonably warrant a third party during testing. In addition, some psychological assessment training requires observation of an experienced examiner by psychology trainees, who are properly trained to avoid distracting the examiner and examinee and who have an ethical obligation to protect test security.

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