

## **Third Party Observers During Psychological, Neuropsychological, and Forensic Testing**

Official Statement of the Tennessee Psychological Association Ethics Committee

A third party observer (TPO) is typically defined as the presence, either in person or via electronic means (such as audiotaping or videotaping), of an individual other than the examiner during an examination. The U.S. Supreme Court in *Estelle v. Smith* agreed with a lower court's opinion that the presence of an observer during a forensic evaluation would have little benefit and could harm the evaluation process.

Tennessee Psychological Association Ethics Committee has become aware of three main issues with the presence of third party observers during psychological or neuropsychological assessment:

Problem 1: A TPO compromises the validity of the examination. There are currently no neuropsychological measures that have been developed and standardized to include TPOs during the administration. Therefore, it cannot be assumed that the results are a true reflection of the examinee's scores/abilities. To the contrary, there is an abundance of research demonstrating that TPOs significantly alter test performances: e.g., Horwitz & McAffrey, 2008.

It is a psychologist's ethical obligation to provide standardized test administration and examination conditions to ensure the results are reliable and valid (APA Ethical Standard 9.01; 9.02). In the state of Tennessee, the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct is also the law: see Rules of The Board of Examiners in Psychology Chapter 1180-01 (1180-01-.09 Professional Ethics).

Problem 2: The publishers of the standardized tests require psychologists to maintain test security. The publishers argue that TPOs risk protected materials, such as test questions and stimuli, being released to the general public, and this represents an infringement of copyright (see Harcourt Assessment, 2006). [We defer additional comment regarding copyright to appropriate legal resources.]

Problem 3: There is reasonable concern that if attorneys have access to standardize procedures of neuropsychological assessment (and especially detection of malingering) via observations or recordings, those attorneys will use that information to either knowingly or unknowingly coach their clients in how to respond during those procedures. This will hinder psychologists' abilities to utilize standardized procedures to detect feigning, symptom magnification, and genuine impairment on a reliable basis.

If psychologists believe their instruments used to assess malingering or the effort put forth by the examinee is compromised, they will not be able to provide opinions as to the validity of the examinees' responses.

Circumstances wherein TPOs may be supported are limited to a) training situations, where a student observer has obtained sufficient training and supervision in standardized clinical measurement to minimize interference with the examination process/validity, and b) situations where a parent may be temporarily needed as a calming presence for the assessment of a child, and the parent has been sufficiently instructed to minimize interference with the examination process/validity.

In addition, we acknowledge that the American Psychological Association (APA) Ethical Principles of Psychologists and Code of Conduct section 1.02 (Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority) states that if a psychologist's ethical responsibilities conflict with law, regulations, or other governing legal authority, the psychologist should clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Ultimately, a psychologist may be compelled by court order to conduct examinations under unfavorable circumstances, and should seek compromise, such as allowing TPO interference only during interview segments of the assessment when no standardized measures are administered. The APA also states that under no circumstances may this standard be used to justify or defend violating human rights.

The overarching issue of concern is reflected in APA Ethical Principle C (Integrity), which states that psychologists strive to promote accuracy, honesty, and truthfulness in the science, teaching, and practice of psychology. Psychologists do not engage in fraud, subterfuge, or intentional misrepresentation of fact.

Considering the issues noted above, it is the position of the Tennessee Psychological Association Ethics Committee that, with the exceptions noted above, psychologists should exclude third party observers from psychological and neuropsychological assessments.

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