

1 **OPINION & DECLARATORY RULINGS**

2
3 **Regarding Release of Raw Test Data**

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5 This correspondence is in response to a change in the Ethical Standards of the
6 American Psychological Association regarding the release of raw psychological test data
7 to clients which was necessitated by the requirements of the Health Insurance Portability
8 and Accountability Act of 1996 (HIPAA).

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10 In a prior Opinion & Declaratory Ruling, the Kentucky Board of Examiners of
11 Psychology concluded that psychologists credentialed by the Board must follow the Code
12 of Ethics of the American Psychological Association (1992) and must not release raw
13 psychological test data directly to clients. The Board’s Code of Conduct, 201 Kentucky
14 Administrative Regulation (KAR) 26:145 Section 10(1) mandates that “the credential
15 holder shall treat an assessment result or interpretation regarding an individual as
16 confidential information.” Furthermore, the credential holder is bound to ensure the
17 “protection of integrity of assessment procedures. 201 KAR 26:145 Section 10(2). In its
18 prior Opinion and Declaratory Ruling, the Board concluded that the raw, psychological
19 data must not be disclosed directly to the patient, but only to “other credentialed mental
20 health professionals who have training and experience in psychological testing.”

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22 The 2002 APA Ethical Standards (effective June 1, 2003) supersedes the 1992
23 Code. The change in the Code results in the Board Ruling regarding the release of

24 psychological test data being in conflict with current standards of practice for
25 psychologists as set forth by the 2002 APA Ethical Standards.

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27 This correspondence is an opinion of the Board based solely on the facts
28 summarized below. The Board has authorized this opinion as an Opinion and
29 Declaratory Ruling pursuant to KRS 13A. 130(3) and KRS 13A .010(2)(b) as the agency
30 with jurisdiction to interpret the statutes and regulations in KRS Chapter 319 and 201
31 KAR Chapter 26 which govern the practice of psychology in the Commonwealth of
32 Kentucky

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34 **I. Whether a psychologist may release raw psychological test data directly**
35 **to clients.**

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37 In performing psychological testing of clients, psychologists interpret the raw test
38 data from administration of the psychological test(s). That raw test data is mandated to
39 be retained by the psychologist under the Board's Code of conduct, 201 KAR 26:145
40 Section 3(6)(a)4. ("The credential holder rendering professional services to an individual
41 client, or services billed to a third-party payor, shall maintain professional records that
42 include: . . . Test results or other evaluative results obtained and the basic test data from
43 which the results were derived;")

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45 Such psychological tests are part of various psychological assessment procedures
46 that are routinely used by psychologists in the practice of psychology.

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48 Other provisions of law mandate that a “healthcare provider,” which the board
49 interprets clearly includes psychologist credentialed by the Board, provide one (1) copy
50 of a clients’ record without charge. KRS 422.317 (1) states in relevant part:

51 Upon a patient’s written request, . . . a health care provider shall provide,
52 without charge to the patient, a copy of the patient’s medical record. A
53 copying fee, not to exceed one dollar (\$1.00) per page, may be charged by
54 the health care provider for furnishing a second copy of the patient’s
55 medical record upon request either by the patient or the patient’s attorney
56 or the patient’s authorized representative.

57

58 The issues thus arises as to whether the client is entitled to the raw psychological
59 test data as part of the client’s “medical record” as mandated by KRS 422.317

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61 The Board is of the opinion that the Board’s own Code of Conduct governs the
62 psychologist’s duty in addition to KRS 422.317. 201 KAR 26: 145 Section 10(2) states:
63 “Protection of integrity of assessment procedures. The credential holder shall not
64 reproduce or describe in a popular publication, lecture, or public presentation of a
65 psychological test or other assessment device in a way that might invalidate them.”

66

67 According to 201 KAR 26:145 Code of Conduct Section 7 (8) Release of
68 confidential information. The credential holder shall release confidential information
69 upon court order or to conform with state or federal law or regulation.

70

71 The Health Insurance Portability and Accountability Act of 1996 (HIPAA)
72 requires that a health care provider also make available a copy of the patient's health care
73 record to the patient upon request. The newly effective APA Ethical Principles reflect
74 these mandates.

75

76 According to the American Psychological Association *Ethical Principles of*
77 *Psychologists and Code of Conduct* (December 2002) ETHICAL STANDARDS: 9.
78 ASSESSMENT

79 **9.04 Release of Test Data**

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

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

94 **9.11 Maintaining Test Security**

95 The term *test materials* refers to manuals, instruments, protocols, and test
96 questions or stimuli and does not include *test data* as defined in Standard
97 9.04, Release of Test Data. Psychologists make reasonable efforts to
98 maintain the integrity and security of test materials and other assessment
99 techniques consistent with law and contractual obligations, and in a
100 manner that permits adherence to this Ethics Code.

101 As set forth above, the APA has differentiated between “test data” and “test
102 materials.” The APA now concludes that, in accord with HIPAA, a psychologist must
103 release the test data, as defined above, but shall not release the test materials, which
104 would, of course, invalidate the use of that psychological test. Consistent with this
105 interpretation, the Board now interprets its Code of Conduct to allow the credential
106 holder to release test data, but not to release test materials.

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108 **II. Conclusion.**

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110 As the agency authorized by the Kentucky General Assembly to regulate the
111 practice of psychology in this state, the Board is empowered to interpret its statutes and
112 regulations. In summary, psychologists credentialed by the Board must follow the Code
113 of Conduct and must release raw psychological test data directly to clients and in accord
114 with KRS 422.317 and the requirements of HIPAA. However, in such release,

115 reasonable efforts must be made to maintain the integrity and security of test material and
116 other assessment techniques consistent with law and contractual obligations. A credential
117 holder in Kentucky shall not release test material in order to ensure the “protection of the
118 integrity of assessment procedures.” 201 KAR 26:145 Section 10(2).

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