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**Professional Practice Guidelines for
Occupationally Mandated Psychological Evaluations¹**

American Psychological Association

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Introduction

Psychological evaluations are often relied on by employers, professional licensing boards, and civil service commissions to make hiring and employment decisions affecting large numbers of applicants, workers, organizations, and the public at large (Anfang & Wall, 2006; Corey & Borum, 2013; Meyer & Price, 2012; Piechowski & Drukteinis, 2011). In an effort to promote best practices, these professional practice guidelines were developed for use by

¹ This document was developed by the Committee on Professional Practice and Standards (COPPS). Members of COPPS during its development were Marc Martinez (Chair, 2016), Mira Brancu (Chair, 2015), Scott Hunter (Chair, 2014), April Harris-Britt (Chair, 2013), Antoinette Zeiss (BPA Liaison, 2014-2015), Cathy McDaniels-Wilson (BPA Liaison, 2012-2013), David Corey (Development Group Chair, 2013-2015), John Curry, Michael Cuttler, Robin Deutsch, Michael Fogel, Daniel Holland, Timothy Melchert, Ameer Patel, and Jorge Wong. COPPS is grateful for the support and guidance of the Board of Professional Affairs (BPA), and particularly to BPA Chair Patricia Arredondo (2013-2015). COPPS extends its appreciation to the APA Practice Directorate, Elena Eisman, and APA Practice Directorate staff who facilitated both the work of COPPS and its development efforts: Mary G. Hardiman and Sheila Kerr-Wilson.

psychologists who perform clinical evaluations² of individuals for occupational purposes, regardless of whether the evaluation is intended to obtain employment, to achieve licensure/certification, or to maintain either.

An employer's ability to mandate psychological and other health-related evaluations of applicants and incumbents is both legally constrained (Americans with Disabilities Act [ADA], 1991; ADA Amendments Act of 2008 [ADAAA], 2009; *Brownfield v. City of Yakima*, 2010; *Conroy v. New York State Department of Correctional Services*, 2003) and protected (*Brownfield v. City of Yakima*, 2010; *Conte v. Horcher*, 1977; *Sullivan v. River Valley School District*, 1999). Various legal concerns provide impetus for employers to require psychological evaluations of applicants and incumbents in many circumstances, particularly those pertaining to workplace safety and violence (Occupational Safety and Health Act [OSHA], 1970), employer liability for the actions of impaired or violent employees (*Bonsignore v. City of New York*, 1981; *Monell v.*

² Reference to "clinical evaluations" versus "non-clinical evaluations" is intended to reflect the legal distinction between "medical" examinations or inquiries and procedures or tests that generally are not considered medical examinations. This use of "clinical evaluations" is consistent with the concept of "medical examinations" under the Americans with Disabilities Act (ADA, 1991) in that both terms denote any procedure or test that seeks information about an individual's physical or mental impairments or health and includes, but is not limited to, psychological tests that are designed to identify a mental disorder or impairment. In contrast, psychological tests that measure only personality traits such as honesty, preferences, and habits would not be considered a medical examination (Equal Employment Opportunity Commission [EEOC], 2000, at Question 2).

Department of Social Services, 1978), and obligations related to reasonable accommodations for disabled employees (*Barnett v. U. S. Air, Inc., 2000*).

Preemployment psychological evaluations are most commonly mandated for applicants to public safety positions. The Bureau of Justice Statistics (2010) estimates that 72% to 98% of police agencies require these evaluations of police officer candidates, and many states have statutory and regulatory requirements for psychological evaluations of police and other public safety applicants (Corey & Borum, 2013).

Post-hire mental health and neuropsychological evaluations are also required routinely of physicians and other health care workers who exhibit behavior suggestive of impaired mental health or cognitive functioning (Anfang & Wall, 2006; Finlayson, Dietrich, Neufeld, Roback, & Martin, 2013). These evaluations potentially affect an estimated 7% to 10% of physicians (i.e., those practicing medicine while impaired; cf. Korinek, Thompson, McRae, & Korinek, 2009). Police officers and other public safety employees that exhibit post-hire problems are often required to submit to mandatory psychological evaluations of their fitness for duty (Fischler, McElroy, Miller, Saxe-Clifford, Stewart, & Zelig, 2011; Piechowski & Drukteinis, 2011), as are military (Budd & Harvey, 2006) and aviation personnel (Kennedy & Kay, 2013).

More generally, employers are mandated by federal legislation to provide employees with a workplace free from recognized hazards likely to cause death or serious physical harm (OSHA, 1970). In addition to federal legislation, several states have established their own legislation concerning the management of workplace violence risk (Goldstein, 2007; Meloy & Hoffman, 2014). At both the federal and state level, employers are tasked with maintaining a workplace environment that is safe for their employees. Consequently, employers are expected to address potential threats in the workplace. Although a variety of measures are available to an employer,

one option is to refer the potentially dangerous employee for an assessment of his or her risk for violence so that appropriate measures may be enacted to eliminate or reduced the threat (42 U.S.C. §12113[b]; 29 C.F.R. §1630.2[r]).

Occupationally mandated psychological evaluations (OMPEs)³ pose potentially significant legal, financial, and safety consequences for examinees, employers, coworkers, the public, and the psychologists who conduct them. In the interest of reducing these risks and for the benefit of the multiple stakeholders, the American Psychological Association (APA) Committee on Professional Practice and Standards (COPPS) developed these professional practice guidelines.

Purpose

Consistent with APA policy (*Professional Practice Guidelines: Guidance for Developers and Users* [APA, 2015]), these guidelines were created to educate and inform the practice of psychologists who conduct OMPEs, as well as to stimulate debate and research. Inasmuch as these guidelines are the product of deliberation among multiple groups representing several distinct specialties and interests, as well as a broad review of the professional literature, the promulgation of these guidelines is not intended to establish one particular group or specialty as better suited for these evaluations or to exclude any psychologists from practicing in a particular area for which they are adequately prepared (see Standard 2.01, APA, 2010). This document is not intended to provide legal advice, which necessarily requires review by an attorney of the

³ The use of the term “occupationally mandated psychological evaluations” (OMPEs) throughout this document is intended to refer only to clinical evaluations and other medical examinations and inquiries (see footnote 2).

facts of a particular case, state and federal law, and the provisions of any collective bargaining agreement, institutional policies and procedures.

Distinction Between Standards and Guidelines

The term *guidelines* refers to statements that suggest or recommend specific professional behavior, endeavor, or conduct for psychologists (APA, 2015). Guidelines differ from standards in that standards are mandatory and may be accompanied by an enforcement mechanism. Thus, guidelines are aspirational in intent. They are meant to promote a high level of professional practice by psychologists and to facilitate the continued systemic development of the profession. Guidelines are not intended to be mandatory or exhaustive and may not be applicable to every professional and clinical situation. They are not intended to take precedence over the professional judgments of psychologists that are based on the scientific and professional knowledge of the field (APA, 2015). The purpose of these guidelines is not to prescribe rules of professional conduct, but rather to serve practitioners as reflective tools for consideration in an area of practice with potentially serious implications for multiple parties (Heilbrun, DeMatteo, Marczyk, & Goldstein, 2008; Schopp & Wexler, 1989).

Although the terms *professional practice guidelines* and *clinical practice guidelines* are often used interchangeably, APA draws a distinction between the two and encourages consistent use of terminology within the association (APA, 2015). Clinical practice guidelines provide specific recommendations about clinical interventions. They tend to be specific to conditions or treatments and are typically disorder based (e.g., substance use, depression, attention-deficit/hyperactivity disorder). In contrast to clinical practice guidelines, professional practice guidelines consist of recommendations to professionals concerning their conduct and the issues to be considered in particular areas of practice.

Users

These practice guidelines are intended for use by psychologists who conduct clinical evaluations (a) of job candidates, commonly referred to as *preemployment psychological evaluations*, (b) for purposes of maintaining employment or professional credentials, also called *fitness-for-duty* or *fitness-to-practice evaluations*, (c) of persons seeking to obtain medical “clearance” for professional or commercial licensure by a regulatory agency (e.g., state licensing board, Federal Aviation Administration), and (d) to address other questions related to work suitability or functioning (e.g., questions pertaining to workplace safety, return to work, reasonable accommodation, security clearance, promotional suitability, specialty assignment). These guidelines are intended for use by psychologists who conduct evaluations for purposes of addressing the needs of the referring party concerning the examinee’s suitability, fitness, or eligibility for employment. They are not intended for use by psychologists who are evaluating individuals solely for the purpose of obtaining compensatory benefits (e.g., worker’s compensation).

Documentation of Need

APA policy recognizes three categories of potential need for professional practice guidelines: (a) legal and regulatory issues, (b) public benefit, and (c) professional guidance (APA, 2015). Justifications for guidelines on conducting OMPEs are organized according to this structure.

Legal and Regulatory Issues. The legal framework within which OMPEs are conducted involves familiarity with employment-related statutes, regulations, and case law (e.g., ADA; OSHA, Genetic Information Nondiscrimination Act of 2008 [GINA]; Civil Rights Acts of 1964, Title VII; Rehabilitation Act of 1973; and the Uniformed Services Employment and

Reemployment Rights Act [USERRA] of 1994). The impact of these laws and regulations on psychological evaluations of applicants and employees is significant and warrants advisory guidance for psychologists to reduce their risk of legal liability to themselves and the parties to whom they owe a professional duty. Because changes to the legal framework commonly occur over time, there is a diminishing durability of knowledge in this area of practice (Neimeyer, Taylor, Rozensky, & Cox, 2014).

Public Benefit. Psychological evaluations that facilitate or impede an individual's access to or retention of employment, licensure, or credentialing are recognized for the important, direct consequences they hold for the individuals being evaluated, to the referring party, and to the public (American Educational Research Association, American Psychological Association, & National Council on Measurement in Education [AERA/APA/NCME], 2014; Sackett, Borneman, & Connelly, 2008). Thus, to the extent that these guidelines aid psychologists in performing OMPEs in a manner consistent with the aspirational intent of guidelines, substantial public benefit can be expected.

Professional Guidance. Consideration of context is essential in any professional activity. Psychological evaluations conducted for purposes of occupational placement or accommodations, for example, necessarily require attention to institutional, legal, and validity considerations quite different from those required in treatment or criminal forensic contexts. Alerting psychologists to important issues specific to the conduct of psychological evaluations in occupational contexts enhances their ability to navigate a challenging professional landscape.

Compatibility

Few if any guidelines address the issues and concerns of all disciplines, but several national organizations have developed guidelines specific to particular occupations (e.g., the

Police Psychological Services Section of the International Association of Chiefs of Police [IACP] publishes guidelines, updated quintennially, for preemployment [IACP, 2014] and fitness-for-duty [IACP, 2013] evaluations in law enforcement contexts; the American Medical Association has published guidelines for fitness-for-duty evaluations of physicians [Anfang, Faulkner, Fromson, & Gendel, 2005]) and other guidelines have been developed for particular types of employment evaluations (e.g., the Work Loss Data Institute publishes regular updates to its fitness-for-duty evaluation guidelines [WLDI, 2013]). The OMPE practice guidelines were developed to be compatible with existing occupationally-specific guidelines as well as the *Ethical Principles of Psychologists and Code of Conduct* (EPPCC; APA, 2010) and should be considered in conjunction with them.

The *Specialty Guidelines for Forensic Psychology* (hereinafter referred to as the SGFP; APA, 2013) are applicable whenever psychologists apply the science of psychology to questions and issues relating to law and the legal system. As the SGFP make clear, a psychologist's "professional conduct is considered forensic from the time the practitioner reasonably expects to, agrees to, or is legally mandated to provide expertise on an explicitly psycholegal issue" (p. 7). OMPEs involve many of the issues typically related to the forensic evaluation process; therefore, these professional practice guidelines may be appropriately considered a specific application of the SGFP. Psychologists who conduct OMPEs are encouraged to be familiar with and guided by the SGFP in their work, beginning with reliance on the three guidelines contained in the "Responsibilities" section of the SGFP (Integrity, Impartiality and Fairness, and Avoiding Conflicts of Interest) as orienting guidelines in performing this activity.

The *Record Keeping Guidelines* (APA, 2007) are designed to provide psychologists with a framework for making decisions regarding professional record keeping, and psychologists who

conduct OMPEs are advised to be familiar with these guidelines, particularly as they pertain to the responsibility of psychologists for the maintenance and retention of their records; the maintenance and organization of accurate, current, and pertinent records with a level of detail of the content and context of the evaluation appropriate to the professional services they are providing; the maintenance of confidentiality and records security; and the retention of records for the period necessary to comply with legal, regulatory, institutional, and ethical requirements. Psychologists also are encouraged to be familiar with *Strategies for Private Practitioners Coping with Subpoenas or Compelled Testimony for Client/Patient Records or Test Data or Test Materials* (Committee on Legal Issues, 2016).

Practice Guideline Development Process

COPPS, in collaboration with the Board of Professional Affairs (BPA), is established to develop and recommend standards and guidelines for providers of psychological services. As such, COPPS drafted these guidelines with the input and involvement of the public and many professional and specialty-related groups who collaborated in their development and/or review. Solicitation for comment was specifically sought from APA Divisions 14 (Society for Industrial and Organizational Psychology), 18 (Psychologists in Public Service, Police & Public Safety Section), 41 (American Psychology-Law Society), and 42 (Psychologists in Independent Practice), various specialty boards and academies of the American Board of Professional Psychology (e.g., the American Academy of Police & Public Safety Psychology, the American Academy of Forensic Psychology), the Council of Organizations in Police Psychology, and the Council of Specialties in Professional Psychology.

Selection of Evidence

In surveying the professional literature, including but not limited to other professional practice guidelines cited earlier, COPPS applied the following preferential ranking schema (adapted from Heilbrun, DeMatteo, Marczyk, & Goldstein, 2008) in declining order of importance: (a) the EPPCC and pertinent regulations, laws, and case law, which apply to all psychologists; (b) professional practice guidelines published by the APA, and regulatory enforcement guidance (e.g., Equal Employment Opportunity Commission [EEOC] guidance for enforcement of ADA [EEOC, 1991a, 1991b, 1995, 1997, 2000, 2002, 2008] and GINA [EEOC, 2010]); (c) publications that articulate broad principles and are developed using multiple sources of authority; (d) an overall description of research and practice as offered in the literature through, for example, a national survey of views or practices, or a meta-analysis of empirical research; (e) professional practice guidelines prepared through consensus among practitioners (e.g., American Academy of Psychiatry and the Law [AAPL] and IACP Police Psychological Services Section guidelines); (f) the systematic review of what recognized scholars and practitioners in the field have written and taught regarding the elements that comprise competent practice in this area of professional activity; and (g) a single study describing a survey, or offering an empirical description, of some particular aspect of practice.

Practice Guideline Statements

Preparing for an OMPE

- 1. Psychologists strive to understand the referring party's authority for mandating the evaluation and the legitimacy of a particular referral, prior to conducting the evaluation.**

Rationale: The determination of a referring party's authority and the legitimacy of a particular referral are defined ultimately by sources such as law, regulation, institutional policy, collective bargaining agreement, and/or other authoritative guidance. Two related considerations further underlie the legitimacy of a referral for an OMPE: *purpose* and *timing*. A legitimate purpose is one where the facts of the particular referral both permit the evaluation and lead to a reasonable belief that the evaluation will address the referring party's legitimate interests. A properly timed evaluation is one that occurs after certain mandatory conditions have been met, as defined by the aforementioned procedural sources.

Application: Psychologists strive to understand the law, regulation, institutional policy, collective bargaining agreement and/or other sources of authority that define a legitimate referral for an OMPE. For instance, an employer is generally prohibited from requiring a job applicant to undergo a medical examination or making inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of such a disability, including mental or emotional conditions, except after an offer of employment has been made conditioned on the examination or inquiry and only when all entering employees are subjected to such an examination or inquiry regardless of disability (ADA, 1991; 42 U.S.C. § 12112[d][2][A] and [3][A]). Under federal law, the definition of a medical examination includes any procedure that is designed to reveal or is capable of revealing the nature or severity of a medical condition (EEOC, 2002). Although it may appear self-evident that an OMPE of a job candidate could not lawfully take place until a conditional offer of employment has been tendered, the reality is more nuanced. Under the ADA, a job offer is not bona fide unless the employer has completed all non-medical components and contingencies in its application process (see also *Leonel v. American Airlines, Inc.*, 2005). Consequently, evaluations of job applicants to rule out job-relevant

psychopathology are legally prohibited prior to determination of their non-medical eligibility and subsequent conditional offer of employment. Psychologists strive to confirm with the referring party that a conditional offer of employment has been tendered before conducting the evaluation.

Similarly, an employer is generally prohibited from requiring a medical examination or conducting a medical inquiry of an employee unless it is shown to be job-related and consistent with business necessity (42 U.S.C. § 12112[d][4][A]; cf. *EEOC v. U.S. Steel Corp.*, 2013; *Sullivan v. River Valley School District*, 1999; *Watson v. City of Miami Beach*, 1999).

Understanding how the employer has met this “business necessity standard,” and the objective evidence that gave rise to it, can contribute to a more complete understanding of the goals of the evaluation and the psychologist’s ability to meet them.

Other procedural requirements embedded in laws, regulations, formal procedures, or collective bargaining agreements may also impose limits on the timing of an OMPE. For example, under 5 C.F.R. § 339.301(e)(1), covered federal agencies may order an employee to submit to a psychological assessment only when a properly ordered physical examination “indicates no physical explanation for behavior or actions that may affect the safe and efficient performance of the applicant or employee, the safety of others, and/or the vulnerability of business operation and information systems to potential threats,” or a psychological assessment is part of the medical standards for a position (see also *Harris v. Department of Air Force*, 1994).

The pre-evaluation dialogue between the referral source and the psychologist may also avert an unwarranted referral and its commensurate consequences. Occasionally an employer may make a retaliatory referral for a psychological evaluation after the employee lodges a complaint of harassment or discrimination, and conducting such evaluations are potentially damaging to the employee and a misuse of a psychologist’s professional expertise (Gold et al.,

2008). In addition, referral of an employee for psychological evaluation may result from discriminatory motives, including but not limited to those related to age, race, gender, gender identity and expression, religion, nationality, and sexual orientation. The pre-evaluation dialogue can help to ensure that the facts presented by the employer warrant a reasonable suspicion that the employee's job-relevant psychological functioning is impaired.

In situations where an OMPE is inconsistent with proper timing or purpose, a psychologist strives to communicate and resolve the issue(s) with the referring party. If the issue(s) remain unresolved despite attempts at remediation, the psychologist considers the option of declining to conduct the evaluation.

2. In addressing the referral question(s), psychologists endeavor to apply the criterion standard as defined by statutory, regulatory, administrative, and/or other authoritative sources.

Rationale: The focus of the evaluation, the methodology used to conduct it, the analysis of the data, the selection of findings, the formulation of opinions, and the communication of the results are all determined by the referral question(s) (Heilbrun, Grisso, & Goldstein, 2009; IACP, 2014). Understanding the referral question(s) also will assist psychologists in evaluating their own competence to conduct the evaluation. The meanings of the terms “job suitability,” “disability,” “fitness for duty,” and other constructions intended to communicate an individual's readiness or ability to perform essential job functions are informed by law, regulation, and/or institutional policy. Whatever its source, the criterion reference standards for the evaluation will need to be understood by the psychologist in order to address the referral question(s) adequately.

Application: Preemployment evaluations of job candidates involve a comparison of the candidates' personality, abilities, or functioning against a qualifying standard. For some

positions, these standards may be derived through review of a job analysis conducted by the hiring organization or by a global job analysis conducted by a professional/trade association or regulatory agency. For others, the standards may be defined by statute, regulation, or policy, or they may be inferred from the job description, job classification documentation, and/or knowledge of the working conditions associated with the position in question. Without knowledge of the specific qualifying standards applicable to the evaluation, the evaluating psychologist may find it difficult to develop an appropriate evaluation strategy and to assess his or her own competence in addressing the referral question(s).

In contrast to preemployment evaluations, referrals for fitness for duty and workplace safety evaluations focus on questions about the employee's mental or emotional condition and its impact on the employee's ability to perform the essential functions of the position safely and effectively, with or without reasonable accommodation. For example, when evaluating whether the mental health problems of a physician impair his or her professional competence, it will be necessary to understand how the regulatory language of the state licensing board defines professional competence and whether impairment is specifically explicated. When evaluating a police officer, statutes, regulations, and organizational policies may all be relevant to the determination of fitness (e.g., *Brown v. Sandy City Appeal Board*, 2014; *Sager v. Yuba County*, 2007). Therefore, psychologists strive to remain aware of regulatory definitions of impairment. In the absence of definitive guidance, psychologists endeavor to operationalize impairment or fitness through other means such as consultation with appropriate stakeholders.

For OMPEs, the psychologist strives to formulate and communicate opinions only to the extent that they are relevant to the referral question(s). This also helps to limit the disclosure of

private information to the minimum amount necessary to satisfy the referring party's legitimate business needs (see Guideline #11).

3. Psychologists seek to understand the psychologically relevant demands and working conditions of the examinee's position.

Rationale: A psychologist's understanding of the job description and psychologically relevant demands and working conditions of the position is a necessary foundation for judgments about the examinee's ability to perform the essential functions of the position. *Essential job functions* are core occupational duties that are vital to the performance of the job, such that if they are not performed, the very nature of the job is significantly changed (Piechowski & Drukteinis, 2011). In contrast, *marginal job functions* can be modified through reasonable accommodation of a disability (e.g., delegated to others, performed intermittently, removed from an employee's job duties). OMPEs are always conducted with reference to the specific job the worker holds or intends to hold (Work Loss Data Institute, 2013).

Application: Psychologists seek to clarify relevant psychological demands and working conditions of an examinee's position prior to conducting an OMPE. This information is often available through communication with the hiring authority or referring party, a detailed job description, or a job analysis (Weiss, 2010). Psychologists strive to utilize these sources to gather information regarding specific job functions, duties, responsibilities, and working conditions, as well as the knowledge, skills, behaviors, and performance attributes associated with effective or counterproductive job performance (Cascio & Aguinis, 2010; IACP, 2014; Muchinsky, 2012). A psychologist endeavors to appreciate that the selection of appropriate evaluation methods and the formation of conclusions is not possible without a detailed understanding of essential job functions. Standard 9.01(a) of the EPPCC states, "Psychologists base their opinions contained in

their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings." As such, psychologists are encouraged to refrain from conducting OMPEs in situations where relevant demands and working conditions are not adequately understood.

4. Psychologists strive to support conclusions about the job-relevance of a psychological condition with established scientific and professional knowledge.

Rationale: It is not *per se* the diagnosis or mental health condition of an applicant, licensee, or employee that is occupationally relevant, but rather the impact of that diagnosis or condition on the individual's ability to perform the duties of the position in a safe, effective, and/or efficient manner (Gold & Shuman, 2009; Piechowski & Drukteinis, 2011). Consequently, it is important that psychologists conducting these evaluations form evidence-based conclusions about the nexus between an individual's psychological condition, manifested symptoms, and occupational functioning.

Application: In keeping with Standard 2.03 of the EPPCC ("Psychologists undertake ongoing efforts to develop and maintain their competence"), psychologists involved in conducting OMPEs are encouraged to remain informed of recent developments in research and test development that may have direct application to practice. Also, consistent with Standard 2.04 of the EPPCC, psychologists strive to utilize research that is relevant to both the examinee and the referral question(s) (e.g., Adler et al., 2006; McKee-Ryan, Song, Wanberg, & Kinicki, 2005). Psychologists seek to refrain from conducting OMPEs in the absence of a sufficient scientific foundation of knowledge. In instances where there is limited scientific basis for an opinion or evaluation method, psychologists are encouraged to state clearly the limitations of their work.

5. Psychologists endeavor to understand and meet their responsibilities to the referral source, the examinee, and other relevant parties to the evaluation.

Rationale: In the context of an OMPE, the evaluator generally has a duty to the referral source to provide a thorough and impartial evaluation as well as a duty to all parties to maintain confidentiality, barring mandated exceptions and within appropriate limits (AAPL, 2008; APA, 2007; Fisher, 2009; see also EPPCC, Standards 3.06, 4.01 and 9.01). An impartial evaluation, one that strives to remove the impact of outside influence or conflict, permits the psychologist to move “from data to whatever conclusions are best supported by such data” (Heilbrun, Grisso & Goldstein, 2009, p. 102; see also Guideline 7; EPPCC, Standard 2.01; and SGFP, Guidelines 1.02 and 2.07). Nevertheless, a growing number of state courts and attorneys general have concluded that a third-party evaluator also has a limited doctor-patient relationship with the examinee (e.g., *Crandall v. Michaud*, 1992; *Elkins v. Syken*, 1996; *Pettus v. Cole*, 1996; *Simmons v. Rehab Xcel, Inc.*, 1999). In addition, the importance of disclosing key information to the referring party, and obtaining informed consent from the examinee, is well established in high-stakes mental health assessments (Heilbrun, 2001) such as the context in which OMPEs are conducted (Gold & Shuman, 2009).

Application: The course and quality of an OMPE depends in large measure on the quality of information provided by both the employer and the examinee. Communicating expectations to these parties about the type of information (e.g., job description/job analysis, relevant personnel records, access to collateral documents and/or informants, treatment records) needed for a valid assessment may enhance the relevance and reliability of the information provided as well as the accuracy of the evaluation. Other warranted pre-evaluation disclosures may include a description

of fees, the anticipated time required for delivery of a written report, and to whom and how the results will be communicated (cf. EPPCC, Standard 9.10).

It is a cornerstone of professional ethics in psychology that examiners are to be honest about the nature, purpose, intended uses, and possible outcomes of any evaluation. This is especially true in fitness-for-duty evaluations of incumbent employees, where the consequence of an employee's failure to cooperate may result in loss of employment (Anfang & Wall, 2006).

Whether conceptualized as consent, informed consent, assent, or disclosure, psychologists strive to provide examinees in OMPEs with clarification concerning important elements of the examination including (1) a description of the nature and scope of the evaluation; (2) the limits of confidentiality, including any information that may be disclosed to the employer without the examinee's authorization; (3) the party or parties who will receive the written report, and whether the examinee will receive a copy from the psychologist; and (4) the probable uses and potential outcomes of the examination (EPPCC, Standard 3.10; SGFP, Guidelines 6.01 and 6.03). Psychologists conducting OMPEs also are encouraged to be aware of the potential for OMPE reports and records to be sought and/or used for purposes beyond their immediate intent. For example, an examinee may later file a disability claim, and records associated with the OMPE may be requested by the disability determination agency. Psychologists may find it useful to establish and disclose their policies concerning the "ownership" of the OMPE records, and the mechanism for authorizing disclosure of records to a third party.

In some jurisdictions, an employee may also have a right of representation present during the evaluation (e.g., *AFGE Local 596 v. DOJ and Federal Bureau of Prisons*, 2007; *NLRB v. Weingarten, Inc.*, 1975). Other issues that may warrant clarification at the outset of the

evaluation include the examinee's rights and limitations to access records of the examination and to use recording devices or third-party observers during the evaluation.

In the event that an examinee refuses to provide consent and to attest to it in writing, Gold and Shuman (2009) contend that the examination should not take place, noting that failure to obtain consent, which is later determined to be required, cannot be remedied. Anfang and Wall (2006) recommend that the consent document be provided to the examinee with sufficient time in advance of the examination in order to allow for communication with other relevant parties, including attorneys, union representatives, and treating clinicians. In the absence of specific authorization by the examinee to disclose personal health information, privacy statutes generally limit the information that an employer is entitled to discover from an OMPE to a description of any functional limitations in the individual's ability to perform the essential duties of the position.

6. Psychologists are mindful of the importance of maintaining competence when carrying out all phases of the evaluation.

Rationale: Psychologists have a general ethical duty to perform services only within the scope of their competence (EPPCC, Standard 2.01) and to engage in ongoing efforts to maintain them (EPPCC, Standard 2.03). Where the competencies required for effective performance are clearly known and the consequences for not possessing them are high—as when evaluating candidates and employees in positions affecting public health and safety—this general ethical duty warrants particular vigilance.

Application: The professional standard for establishing competence is sometimes specified by regulatory language that has been informed by professional standards of practice. For example, California law specifies that only psychologists meeting certain education and

experience requirements can perform psychological evaluations of police candidates and officers (California Government Code 1031[f]). In addition, California state regulations (California Peace Officer Standards and Training [POST] Commission Regulation 1955) impose an additional requirement that psychologists conducting these evaluations possess eight specific competencies, as identified by specialists who perform those evaluations. These minimum competencies range from gathering, analyzing, and integrating data from multiple domains (*assessment competence*) to knowing and applying professional practice standards and guidelines (*standards competence*). (See Spilberg & Corey, 2017, for a full discussion of how these competencies contribute to the ability to conduct these OMPEs.) Psychologists with limited experience conducting OMPEs are encouraged to seek appropriate training and/or consultation prior to independent practice.

Psychologists strive to familiarize themselves with state and federal employment law that is applicable to OMPEs (e.g., ADA, GINA). When appropriate, psychologists seek the counsel of legal professionals to gain further clarification of applicable statutes, case law, and regulations.

Conducting an OMPE

7. Psychologists strive to ensure their impartiality when conducting occupationally mandated evaluations, as well as when forming their opinions.

Rationale: The referral sources in OMPEs are in a position to shape initial impressions and expectations about the examinee's psychological functioning, prior to the evaluation, through their selection and presentation of information about the examinee. Examinees also may be motivated to present themselves in a false or exaggerated way to optimize their own objectives. Because these evaluations frequently occur in contexts in which the referral source, the examinee, and collateral information sources (e.g., supervisors, coworkers, human resource

personnel) have preexisting and complex relationships, often with competing interests and motives, psychologists who perform these evaluations consider the potential impact of these dynamics on the reliability of the information they receive. Psychologists conducting these evaluations endeavor at all times to maintain their impartiality such that they remain dispassionate advocates for their evidence-based findings and the job-relevant inferences to be drawn from them rather than for particular outcomes (see Guideline #5).

Application: Because of the potential for impression management among the parties involved in an OMPE, psychologists strive to utilize evaluation methods that seek to clarify this influence and weigh information cautiously. When communicating results of an evaluation, psychologists seek to acknowledge the limitations of their findings (APA, 2013).

Throughout the evaluation process, psychologists are encouraged to identify potential sources of bias that may affect the objectivity of their evaluations. The importance of maintaining objectivity is clearly stated in the EPPCC (APA, 2010), AAPL (2005), and the SGFP. Nevertheless, research has shown that psychologists are not immune to the influence of bias (Borum, Otto, & Golding, 1993; Faust, 2012), regardless of years of experience (Grove, Zald, Lebow, Snitz, & Nelson, 2000; Sladeczek, Dumont, Martel, & Karagiannakis, 2006). As such, psychologists strive to become familiar with the most common sources of bias that may affect their objectivity. Examples include anchoring bias (i.e., initial information may lead to the formation of impressions that are difficult to abandon), confirmatory bias (i.e., focusing on evidence that supports rather than disconfirms a hypothesis), allegiance effect (i.e., formation of opinions in favor of a particular party rather than on an objective evaluation of available evidence), and fundamental attribution error (i.e., attributing more weight to dispositional

qualities rather than situational circumstances when assessing someone's behavior) (Borum, Otto, & Golding, 1993; Faust, 2012; Martinez, 2014).

In addition to identifying potential sources of bias, psychologists strive to acknowledge that awareness alone does not mitigate the effect of bias (Croskerry, 2002; Rogers & Shuman, 2000). Therefore, psychologists are encouraged to participate in activities that increase awareness of personal bias (e.g., diversity training), to engage routinely in mitigation or correction strategies, and to self-monitor for patterns of biased decision making. Many of the corrective measures for managing bias rely upon systematic data gathering (e.g., structured interviews, psychological testing) and active consideration of alternative hypotheses prior to forming conclusions and recommendations (APA, 2013; Borum, Otto, & Golding, 1993; Martinez, 2014). Through identifying potential sources of bias and engaging in corrective measures, psychologists strive to maintain objectivity and to reduce the potential influence of bias on their professional activities.

8. Psychologists seek to select and rely on assessment tools validated for use with a population appropriate to the evaluation.

Rationale: OMPEs commonly rely upon various psychological tests and non-test data sources (e.g., third-party information, clinical interview) for probative information, and these data vary in their levels of reliability and validity. Failure to consider the validity and reliability of assessment findings prior to and over the course of an evaluation may increase the potential for inaccurate and inappropriate conclusions and recommendations. The *Standards for Educational and Psychological Testing* (AERA/APA/NCME, 2014) describe validity and reliability considerations as "paramount" when selecting a psychological test (p. 152). Additionally, EPPCC Standard 9.02 requires that "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." The Standard further requires that "psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested." Finally, psychologists strive to ensure that assessment instruments used in conjunction with an OMPE, and their use of those instruments, conform to the "Uniform Guidelines on Employee Selection Procedures" (1978) and the "Principles for the Validation and Use of Personnel Selection Procedures" (SIOP, 2003).

Application: Psychologists conducting evaluations seek to select assessment tools that produce reliable data supporting valid inferences pertinent to the referral question(s). Reliability applied to psychological testing implies a precise estimate of the targeted construct; as applied to non-test information, it refers to accuracy. Data that are unreliable cannot be valid (AERA/APA/NCME, 2014), but reliability alone is insufficient to establish that inferences drawn from the test score, behavioral observation, etc. are valid. Evidence of validity derives from findings of a meaningful association between the datum and the inference (Ebel, 1961). Valid inferences of a test score also require that the test be appropriate to the purpose for which it is being used (AERA/APA/NCME, 2014).

9. Psychologists endeavor to recognize individual and group differences, and the importance of practicing with cultural competence.

Rationale: It is an ethical standard that, 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 (AERA/APA/NCME, 2014; EPPCC, Standard 9.06).

Application: Psychologists are encouraged to consider how the OMPE may be affected by cultural differences between the psychologist and examinee (Butcher, Nezami, & Exner, 1998). If cultural factors associated with an examinee fall outside a psychologist's boundary of competence, the psychologist is encouraged to seek education, training, consultation, or supervision prior to performing the OMPE. In the absence of these remedies, psychologists are urged to decline the evaluation until competency is acquired. When communicating the results of an OMPE, psychologists strive to consider whether an examinee's cultural background may affect evaluation findings. Psychologists also are encouraged to note any significant limitations of their interpretations based on a consideration of situational, personal, linguistic, socioeconomic, and cultural differences.

10. Psychologists strive to use multiple sources of relevant and reliable information collected according to established principles and methods.

Rationale: OMPEs typically involve the administration of psychological testing, an individual interview of the examinee, and a review of relevant historical information (e.g., background investigation), and they sometimes also include collateral interviews (Heilbrun, Grisso, & Goldstein, 2009; Meloy & Hoffman, 2014). In general, psychologists avoid relying on only one source of information and seek to corroborate information whenever possible (AERA/APA/NCME, 2014). Failure to seek out multiple sources of information may compromise the reliability of OMPE findings, especially in high-stakes evaluations in which there is incentive to distort information deliberately (Melton, Petril, Poythress, Slobogin, Lyons, & Otto, 2007). During workplace safety assessments, gathering and considering information

from several collateral sources (e.g., coworker and supervisor interviews, background check of examinee) is considered essential (Meloy & Hoffman, 2014), although redundant test measures are best justified by their contribution of precision, breadth, and incremental validity. When integrating data from multiple sources, psychologists strive to give preferential weight to relevant data with the highest known reliability and validity (Spilberg & Corey, 2017).

Application: Psychologists seek to gather information from more than a single source for corroboration. During the process of selecting sources of information, psychologists attempt to consider whether the source is relevant to the OMPE referral question(s) and is reliable and valid for the purposes it is being used. For example, psychologists seek to consider how an examinee's or collateral informant's motivations may affect the reliability of information obtained. When uncorroborated or limited information is involved in an OMPE, psychologists strive to identify the information as such and provide any associated strengths and limitations. Psychologists are encouraged to consider the influence of impression management on an examinee's presentation, including the possibility of overreporting and/or underreporting (SGFP, Guideline 10.02; Rogers, 2008; Young, 2014).

Reviewing evaluation and treatment records from other providers generally provides information that enhances reliability and validity of findings, particularly those pertaining to diagnosis, symptom nature and course, and compliance with and responsiveness to treatment (Pinals & Price, 2013). Obtaining such records, however, may be contested by the examinee and may require employer and/or legal mediation to remedy (Corey, 2011).

Communicating OMPE Findings

- 11. Psychologists strive to provide opinions and make recommendations that are directly relevant to the referral question(s).**

Rationale: Psychologists necessarily gather private information when conducting OMPEs, but consistent with ethical standards, they “include in written and oral reports and consultations, only information germane to the purpose for which the communication is made” (EPPCC, Standard 4.04). When determining what information will be required to be disclosed in order to satisfy the purpose of the evaluation, psychologists are encouraged to rely upon the referral question(s) for guidance. Psychologists also strive to base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements on information and techniques sufficient to substantiate their findings (EPPCC, Standard 9.01[a]).

Application: It is routine in psychological assessments to acquire information about an individual’s developmental and family history, emotional and interpersonal functioning, history of compliance with social and occupational rules, substance use, and other private domains of life, but disclosure of this information to the employer is warranted only in the service of answering the referral question(s). On those matters about which the employer or other referring party is entitled to receive findings, opinions and/or recommendations, such as the functional work limitations of an employee with a job-impairing mental health disorder (e.g., *Pettus v. Cole*, 1996), care should be taken to limit the disclosure of confidential information, avoid the disclosure of non-relevant private information, and insure that all opinions and findings are adequately supported by the evidence.

12. Psychologists seek to document the bases for their opinion(s) in language that is clear and appropriate to the targeted audience.

Rationale: The quality of the evaluation report is often the most tangible and visible measure of a psychologist’s professionalism (Appelbaum, 2010). Reports that contain jargon, misspellings, carelessness, unnecessary repetitions, overly dense writing, and poorly reasoned

opinions not only obscure the findings of an OMPE but also suggest poor quality opinions (Otto, DeMier, & Boccaccini, 2014). The EPPCC requires psychologists to take reasonable steps to ensure that their conclusions, evidence, opinions, and other professional findings are communicated in a manner that promotes understanding and avoids deception (EPPCC, Standard 5.01).

Application: Psychologists strive to minimize jargon when communicating their conclusions, evidence, opinions, or other professional findings. For example, rather than stating an examinee was "oriented times four," a psychologist may state that the examinee was aware of his identity, his location, the time and day, and the reason for the evaluation. When using technical terms, psychologists seek to explain them in a manner easily understood by the target audience. Psychologists are encouraged to appreciate that the target audience of OMPE findings and conclusions may not be familiar with psychological assessment terms and methods.

Given the high stakes of OMPEs, psychologists are encouraged to recognize the importance of documentation throughout the evaluation process (SGFP, Guideline 10.06). This may include, but is not limited to, notes about conversations with the hiring agency or referral party, interview notes, assessment and test data, scoring reports and interpretations, and all other records that were created or exchanged throughout the OMPE process. Psychologists strive to understand that the basis for conclusions may be scrutinized by others (e.g., referring party, adjudicator).

Psychologists strive to link their conclusions and recommendations specifically to the referral question(s) and job-analytic information. Psychologists are also encouraged to provide adequate support for each opinion generated. Through this process, psychologists are better able to communicate to the target audience how results and conclusions were reached, and they

optimize accountability for the process they followed in coming to their conclusions (Brtek & Motowidlo, 2002).

In exceptional cases, a psychologist may obtain new information that potentially alters or mitigates a previously communicated opinion. If, after evaluating the reliability and relevance of this information, the psychologist determines that the new information justifies modifying the original opinion, the psychologist strives to clearly document the rationale for the revision, including within any revised or supplementary written report.

13. When the referral source or another party is responsible for determining the ultimate issue in a referral, psychologists strive to educate and inform rather than answer the ultimate issue.

Rationale: Except in instances where the psychologist's determination of an individual's job suitability or fitness is established by law, regulation, or policy (e.g., California Government Code § 1031[f]), employers ordinarily retain the ultimate authority for making employment decisions. As such, the psychologist's role is often limited to aiding the decision maker in understanding the issues relevant to the decision.

Application: Psychologists who conduct OMPEs may be asked to opine on ultimate employment issues, including suitability for employment or special duties, fitness for duty, or direct threat. Psychologists strive to be mindful of the influence they may have on employment decisions that are properly made by employers or other referring entities, as well as the pressure sometimes exerted on psychologists to make such decisions unilaterally. As such, it is recommended that psychologists, in advance of the evaluation, clarify the referral question(s) with the referral source (as described in Guideline #2) and discuss their respective roles in addressing them. Similarly, when communicating findings, results, and recommendations of

OMPEs, psychologists strive to clarify the rationale upon which their results and conclusions are based, in order to allow the employer or other referring entity sufficient information to make employment decisions, unless prohibited from doing so by law (e.g., *Pettus v. Cole*, 1996), collective bargaining agreement, or institutional policy.

Status and Expiration Date

This document is scheduled to expire 10 years after date of approval. After this date, users are encouraged to contact the APA Practice Directorate to confirm that this document remains in effect.

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