Regarding Release of Raw Test Data

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

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

The 2002 APA Ethical Standards (effective June 1, 2003) supersedes the 1992 Code. The change in the Code results in the Board Ruling regarding the release of
psychological test data being in conflict with current standards of practice for psychologists as set forth by the 2002 APA Ethical Standards.

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

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

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

Such psychological tests are part of various psychological assessment procedures that are routinely used by psychologists in the practice of psychology.
Other provisions of law mandate that a “healthcare provider,” which the board interprets clearly includes psychologist credentialed by the Board, provide one (1) copy of a clients’ record without charge. KRS 422.317 (1) states in relevant part:

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

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

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

According to 201 KAR 26:145 Code of Conduct Section 7 (8) Release of confidential information. The credential holder shall release confidential information upon court order or to conform with state or federal law or regulation.
The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires that a health care provider also make available a copy of the patient’s health care record to the patient upon request. The newly effective APA Ethical Principles reflect these mandates.


ASSESSMENT

9.04 Release of Test Data

(a) The term test data refers to raw and scaled scores, client/patient responses to test questions or stimuli, and psychologists’ notes and recordings concerning client/patient statements and behavior during an examination. Those portions of test materials that include client/patient responses are included in the definition of test data. Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances releases of confidential information under these circumstances is regulated by law. (See also Standard 9.11, Maintaining Test Security)
(b) In the absence of a client/patient release, psychologists provide test
data only as required by law or court order.

9.11 Maintaining Test Security

The term *test materials* refers to manuals, instruments, protocols, and test
questions or stimuli and does not include *test data* as defined in Standard
9.04, Release of Test Data. 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.

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

II. Conclusion.

As the agency authorized by the Kentucky General Assembly to regulate the
practice of psychology in this state, the Board is empowered to interpret its statutes and
regulations. In summary, psychologists credentialed by the Board must follow the Code
of Conduct and must release raw psychological test data directly to clients and in accord
with KRS 422.317 and the requirements of HIPAA. However, in such release,
reasonable efforts must be made to maintain the integrity and security of test material and
other assessment techniques consistent with law and contractual obligations. A credential
holder in Kentucky shall not release test material in order to ensure the “protection of the
integrity of assessment procedures.” 201 KAR 26:145 Section 10(2).

Adopted February 7, 2005