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February 15, 2016

Mary G. Hardiman, MS, Director of Board Operations
Governance Operations Department
Practice Directorate
American Psychological Association
750 First Street NE, Washington, DC 20002-424

Re: Comments on APA Guidelines of Occupationally-Mandated Psychological Evaluations (OMPEs)

Dear Ms. Hardiman:

The Association of Test Publishers (“ATP”) submits these comments in response to the proposed guidelines for Occupationally-Mandated Psychological Evaluations (OMPEs), and we wish to acknowledge your cooperation in extending the time for us to do so until February 15, 2016. This additional time has provided the ATP with the opportunity to work with its Industrial/Organization Division, as well as its Certification/Licensure and Workforce Skills Credentialing Divisions, to develop comments on the proposed guidelines, which we hope the Committee will find useful.

The ATP is the international trade association representing approximately 175 publishers, developers, and vendors of assessments and assessment services (both non-profit and for profit) used in a variety of settings, including virtually every purpose for which the APA has developed its proposed guidelines, as well as for similar non-clinical purposes. The ATP has served as the “Intelligent Voice for Testing” for 25 years, providing input to the United States Congress, state legislatures, and federal and state agencies and courts in their efforts to examine and resolve issues surrounding testing and the use of test data. For decades, ATP members have provided assessment products and services that potentially are affected by the proposed guidelines. Therefore, we deeply appreciate the opportunity to submit these comments.

The ATP commends the Committee on Professional Practice and Standards for its efforts in developing the proposed OMPE guidelines. Overall, the guidelines, their rationale, contextual framework, supporting citations, and accompanying caveats are clearly articulated

and explained in a sensible manner. Consequently, the guidelines provide relevance for competent and responsible practices by psychologists in conducting these types of evaluations. Nevertheless, the ATP submits it is important to clarify the focus of the proposed guidelines in order to enhance their usefulness, while not precluding customary evaluation and assessment practices that are well-established and lawful. Accordingly, the ATP wishes to share five specific comments and suggestions for improving the proposed guidelines.

1. The proposed guidelines draw a distinction between “professional practice guidelines” and “clinical practice guidelines” (page 5, lines 82-90). Although such a distinction makes complete sense, in our opinion, the overall guidelines routinely merge the two and often cross over into discussions about diagnostic clinical evaluations despite the purported distinction. The ATP firmly believes that the proposed guidelines must adhere more fully to the suggested distinction – it is absolutely necessary that practices related to actual clinical, diagnostic evaluations not be confused with “professional practice guidelines.”

Not only must the clinical/practical dichotomy be rigorously observed, the ATP submits that the guidelines should also draw a clear distinction between non-clinical assessments of risk-oriented characteristics, behaviors or attitudes, which may be used in conducting OMPEs for pre-employment screening purposes, and clinical assessments designed to assess psychopathology, neuropsychological issues, or purely diagnostic disorders identified by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (“DSM-5”), which can only be used as part of post-conditional job offer medical exams. The proposed guidelines need to be carefully written not to encircle practices that are non-clinical in nature, because those assessments have a long history of appropriate use in pre-employment settings.

2. Moreover, the proposed guidelines do not appear to take fully into account the use of clinical and non-clinical assessments for promotion and other in-house purposes (e.g., terminations, suspensions, maintenance of performance and/or issuance of certifications/credentials) within an organization after and/or apart from when the person has been initially hired, certified or retained (see page 2, lines 19-21). Although the proposed guidelines reference “promotional suitability” (page 5, line 99), the ATP contends that those two words are hardly sufficient to deal with the unique settings encompassed by using assessments for promotional purposes. In many of these settings, the employer already possesses abundant data about the individual, some of which might well be considered clinical if it was obtained during pre-employment screening. Accordingly, we recommend that the Committee needs to prepare additional commentary to cover this situation, as well as evaluations of “ongoing competency” or “renewal of certifications/credentials” of existing employees, giving appropriate recognition to the fact that the employer/organization already has collected both clinical and non-clinical data about such a person that was gathered in accordance with the law – and in a manner consistent with these guidelines.

The ATP also submits that a clear distinction should be made between the use of clinical assessments that may be used in conjunction with OMPEs to help evaluate fitness-for-duty,

fitness-for-practice, awarding of certifications or credentials, and the use of non-clinical assessments designed to assess safety-oriented constructs (e.g., safety awareness and locus of control, sensation-seeking), that may be used to identify individual behavioral tendencies that reflect lack of safety, conduct organizational training needs analysis, and guide training intervention strategies. Of course, the ATP notes that, as discussed in Guideline 8, the use of assessments must be aligned with their expressed purposes, as published by technical examination/testing manuals and references in credible publications.

4. Consistent with all of the above distinctions, the ATP suggests that the guidelines should stress clearly that any clinical assessment instruments used as part of workplace OMPEs (and other clinical-related evaluations conducted for selection, placement or promotion) still need to be job relevant and conform to the EEOC *Uniform Guidelines on Employee Selection Procedures*, as well as with ADA/ADAAA, HIPPA, and pertinent clinical standards, including the *Ethical Standards and Code of Conduct* (“ESCC”). Ideally, such assessments also should be validated for use in work settings, as set forth by the SIOP *Principles for the Validation and Use of Personnel Selection Procedures*.

Related to reliance on the ESCC, the ATP also observes that it would be useful for the proposed guidelines to discuss the need for the psychologist to use appropriate security in handling and storing personal and assessment data of individuals in order to protect their privacy. This discussion should contain guidance on the need for information security policies to protect an examinee’s data, especially assessment data, as well as specific practices that may be required (e.g., mitigation strategies for a breach of security).

5. As a corollary to the above comments, the proposed guidelines should unequivocally state that the use (including both administration and interpretation) of non-clinical assessment instruments for pre-employment screening, promotional uses, or training needs analysis OMPEs for current employees is not restricted to only licensed psychologists. The ATP has long adhered to the principle that the use of any assessment should be governed by the requirement that the person possess the competency to use a particular assessment, whether by education or training, or both. Thus, use of any assessments, whether for OMPE or otherwise, should NOT be linked to the holding of a particular degree or license. Indeed, many pre-employment assessments, both clinical and non-clinical in nature, have been developed by non-PhD psychologists, so it would be ironic to prescribe their use by some artificial designation other than true competency.

Similarly, the proposed guidelines should explicitly demarcate the aspects of practice they are intended to address so as to not afford opportunity for misinterpretation or misapplication by non-psychologists. Otherwise they may potentially have an unintended consequence of prompting calls for new regulatory or legislative restraints on the legitimate use of pre-employment assessments by psychologists in occupational evaluations. Therefore, it seems relevant to include an additional guideline such as the one below.

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“14. Nothing in these Guidelines concerning clinical psychological assessment should be taken as prohibiting psychologists, especially those with relevant I/O training, from performing their customary efforts to gather information regarding specific job functions, duties, responsibilities, and working conditions, or their customary pre-employment or post-employment assessment of an individual's knowledge, skills, behaviors, and performance attributes associated with effective or counterproductive job performance.”

Conclusion

The Association of Test Publishers applauds the work of the Committee and appreciates this opportunity to provide input on the proposed guidelines. We hope these comments will stimulate further discussions by the Committee to develop additional language to address our comments. The ATP stands ready to provide assistance in that work if requested.

Sincerely,

A handwritten signature in cursive script, appearing to read "William G. Harris".

William G. Harris, PhD
CEO