DISCLOSURE OF TEST MATERIALS AND DATA

Position Statement

Data from tests shall, upon request and with proper authorization, be released. Test material, such as test questions and stimuli, manuals, and protocols are not to be released, except when certain conditions are met.

BACKGROUND

The *Personal Health Information Protection Act*, 2004, Section 52(1) states that "an individual has a right of access to a record of personal health information about the individual that is in the custody or under the control of a health information custodian", with very few exceptions. The *Act* further states, in Section 51(1)(c), that this "does not apply to a record that contains raw data from standardized psychological tests or assessments", unless reasonably severable. Access can also be refused on the basis that access may cause serious bodily harm.

CASLPO recognizes that its members frequently use commercially-developed standardized tests which are similar or identical to those used by psychologists. Such tests are only made available to qualified individuals who are bound by the ethical standards of their profession to protect the integrity of the materials by maintaining the confidentiality of the questions and answers.

It is a widely accepted principle that providing clients with test items, scoring criteria, and other test protocols would compromise the usefulness of the test materials. Studies confirm that if test items and test protocols were readily available, the integrity of the test and scoring model could be compromised and could harm the public. Further, test materials are considered proprietary, copyrighted, confidential commercial information, analogous to trade secrets, and are generally treated and protected accordingly.

CASLPO acknowledges that it is in the best interest of the public to protect the validity and integrity of test materials, and that strong measures are necessary for this protection. As such, CASLPO supports the release of test results provided that the test results can be severed from the confidential commercial information embedded in the test materials, and released in understandable form. This permits the release of test results with an explanation of the results in a summary format (such as a feedback summary) that does not reveal the protected test items and other test protocols. Under no circumstances should individuals requesting results or other information be entitled to copies of test materials, including the actual or blank test forms.

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REQUIREMENTS

Upon request for access and release of test materials, the following guidelines are provided:

1. Provide the client with a detailed description/interpretation of the test results. You may wish to meet with the client to ensure that the client has an opportunity to ask questions.

2. If the client wants a copy of the item booklet, or response sheet that also contains the items, and/or any materials that contain the scoring criteria, algorithm, model, or other test protocols, explain (preferably in writing) that release of these materials is not possible as it will compromise the integrity of the tests and is contrary to the policy of the College. You may further explain that the requested materials are considered confidential commercial information, and that release of such materials may breach the conditions of test user agreements, invalidate the assessment and/or lead to a violation of intellectual property rights.

3. In the case where a member is involved in litigation where a court considers ordering the release of proprietary test materials to non-professionals such as legal counsel, members should request that the court issue a protective order prohibiting parties from making copies of the materials; requiring that the materials be returned to the professional at the conclusion of the proceedings; requiring that the information not be used or disclosed outside of the litigation; and requiring that the materials not be publicly available as part of the record of the case, whether this is done by sealing part of the record or by not including the materials in the record at all.

4. In the event that the client requests that information be provided to another regulated health professional, materials such as completed test protocols may be shared, but should pass directly from professional to professional and not through the hands of the client. An agreement should be in place to ensure that the original copy of the test protocol is returned to the clinician. The member should obtain and document the consent obtained from the client to release the information, and document the fact that the materials have been sent out.

These requirements are not intended to prevent members from allowing caregivers to observe while tests are administered to the patient/client. Nor are they intended to prevent members from citing specific test items in reports, etc. for the purposes of illustrating the skill(s) being assessed. However, the member should minimize the potential for test items to become familiar to the public by:

a) Limiting the number of observers when possible;
b) Cautioning observers against revealing any test content to anyone outside of the testing situation;
c) Avoiding use of actual test items when reporting assessment results, where possible; and
d) Prohibiting any recording by observers of the assessment.

Patients/clients have a right to appeal to the Office of the Information and Privacy Commissioner of Ontario.

REFERENCES

Multi-Health Systems Test Disclosure Policy, Adopted by leading Canadian test publishers and the Canadian Psychological Association, 2004.

Legal Policies, Pearson Education Inc., 2006.

Personal Health Information Protection Act, 2004.

Recent Developments Affecting the Disclosure of Test Data and Materials: Comments Regarding the 1996 Statement on the Disclosure of Test Data, Committee on Psychological Tests and Assessments, American Psychological Association, 2007.

Standards of Professional Conduct, 14.9, Protection of Test Security, College of Psychologists of Ontario, 2009.

Statement on the Disclosure of Test Data, Committee on Psychological Tests and Assessment, American Psychological Association, 1996.

GLOSSARY

Patient/client: Patient/client refers to the individual receiving service and/or the substitute decision maker. Where appropriate, the patient/client may encompass family, significant others, caregivers, teachers, etc.

Test data: Raw and scaled scores, client/patient responses to test questions or stimuli, and member's notes and recordings concerning client/patient statements and behaviour during examination. This includes any information that is unique to a particular patient/client, and incorporates profiles, summaries, or interpretive reports and notes.

Test materials: Manuals, instruments, protocols, and test questions or stimuli. Test materials are those that do not include anything unique to a particular client. Thus, test materials would include kit materials that are reused without alteration, such as stimulus booklets, cards, and manipulatives.