

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT**

CASE NO.: 5D06-2053

Lower Tribunal Case No.:  
05-2003-CA-059773

MICHAEL BERMAN,  
Petitioner,

vs.

DAVID KUCHARSKI,FLOCAR,INC.,  
A Florida Corporation, STATE FARM  
MUTUAL AUTOMOBILE  
INSURANCE COMPANY; and  
WORKMEN'S AUTO INSURANCE  
COMPANY, jointly and severally,  
Respondents.

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**BRIEF OF AMICUS CURIAE  
GROUP PROTECTING THE INTEGRITY OF PSYCHOLOGICAL  
EXAMINATIONS  
IN SUPPORT OF POSITION OF  
RESPONDENT/DEFENDANT**

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Laura Lee Shaw Howe, J.D., Ph.D.  
MEMBER ACTING ON BEHALF OF THE GROUP  
Neuropsychology Post Doctoral Associate

205 SE 16<sup>th</sup> Ave  
Apt. 3G  
Gainesville, FL 32601  
(631) 365-3157 Cell Phone

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## **STATEMENT OF INTEREST OF THE AMICUS CURIAE**

The amicus party called “Group Protecting the Integrity of Psychological Examinations” (hereinafter “G-PIPE”) consists of individual psychological professionals, developers of psychological and neuropsychological tests, a major psychological test publishing and distributing corporation, two separate neuropsychological credentialing board agencies, and organizations that represent psychologists in the State of Florida and across the country. All of these entities have an interest in how psychological examinations are conducted in Florida. The Court's ruling will affect the practice of psychologists in its jurisdiction. At times, courts may rely on decisions held in other jurisdictions as guidance for how they should decide matters. As such, the ruling the Court makes in this case will likely have an impact on how forensic psychology is practiced in other jurisdictions.

Additionally, all psychologists have an interest in how psychology in any jurisdiction is practiced due to the impact it has on the field as a whole. The adverse effects of permitting an involved third party observer during a psychological examination will not be contained by the imaginary border of this Court's jurisdiction. The impact will be felt field wide. Even further, psychologists throughout the United States are held to the same code of ethical standards. When conduct conflicting with those standards occurs, it is of concern to all psychologists regardless of their practicing jurisdiction.

## **SUMMARY OF THE ARGUMENT**

Involved third party observers (hereinafter “TPO”) should not be permitted to be present in an examination room physically or by extenders during civil psychological/neuropsychological (hereinafter “psychological”) examinations except in rare extenuating circumstances to be determined by the psychologist and based on their clinical judgment and expertise. Extenders include, but are not limited to, electronic recording devices, agents, and one-way mirrors. The party requesting the presence of an involved TPO should bear the burden of proving case specific, extenuating reasons why the TPO should be permitted in this instance.

This is the policy we would like the Court to adopt for civil forensic psychological examinations. We demonstrate throughout this brief why physical medical examinations and psychological examinations are distinct entities, each affected differently by TPOs. They should be treated differently, taking their purposes and unique character into account.

TPOs are a distraction by virtue of their mere presence in the room even if they do not engage in any behavior that appears subjectively disruptive. When TPOs are present during psychological examinations it creates internal and external distractions that the examinee is forced to contend with. Examinees may direct their behavior towards the TPO and/or decrease disclosure of sensitive but important information that is needed to interpret the data. The phenomenon of

social facilitation and inhibition creates distortions in the data that may be as large as one standard deviation, which creates exam validity concerns. Allowing TPOs during psychological examinations diminishes the quality of our work product and ability to answer the referral question and assist the legal system.

Aside from introducing an unneeded confound that decreases the plaintiff's ability to get an accurate depiction of their cognitive functioning, TPOs create a conflict with our professional ethics and lead to possible misinterpretation and misuse of tests. Also, TPOs have no compelling reason to protect test content and there is no mechanism to hold them accountable for breaches in test security.

As will be shown, the field of psychology, the psychological professional, test publishers and developers, the plaintiff, and the legal system itself are hurt when involved TPOs are permitted during civil psychological examinations.

## **ARGUMENT**

### **I. Definitions**

**A. Involved TPOs** are defined as those who in the context of civil litigation, directly or indirectly, have an interest in the specific outcome of a particular plaintiff's evaluation. American Academy of Clinical Neuropsychology. (2001) "Policy Statement on Third Party Observers in Neuropsychological Assessments," The Clinical Neuropsychologist, 15, 435-449, Ex. R to Bush Aff., App. 2. This interest may arise from any relationship or benefit including, but not limited to, the

legal, financial, family, and social domains and is irrespective of the level and/or absence of familiarity that the observer has with the party being examined. *Id.* An employee or agent of the participating attorney is considered an involved TPO.

**B. Uninvolved TPOs**, in contrast, have no direct or indirect stake in the outcome of the plaintiff's examination and are instead concerned with one or more of the following; the behavior of the examiner, the examination process, or the behavior of the examinee as a teaching illustration. *Id.* It is irrelevant to the uninvolved TPO who the particular individual is that serves as an exemplar.

## **II. The Current Test: How and Why it Should be Changed.**

Florida courts currently apply a two-part test to determine if an involved TPO may be present during a medical legal examination. The party seeking to exclude a TPO must demonstrate with case specific reasons why a TPO will be disruptive to the examination and show that no other qualified provider in the area would be willing to conduct the examination with a TPO. See, e.g., *Broyles v. Reilly*, 695 So. 2d 832 (Fla. 2d DCA 1997).

It is our stance that requiring case specific reasons for why TPOs should not be allowed during psychological examinations stems from a misunderstanding of the complex nature of the psychological examination itself. It is our position that the party requesting the presence of a TPO should have to show case specific justification allowing for the presence of TPOs sufficient to override the damaging

effects involved TPOs have on psychological examinations and our field. Within the legal system there exist other instances where TPOs are excluded, such as jury deliberations. Psychological examinations are another area where there should not be an absolute right to TPOs.

Another state follows this reasoning. The Texas Supreme Court held that even in a death penalty proceeding the defendant does not have an absolute right to have counsel present during a psychiatric examination “because of the intimate, personal and highly subjective nature of a psychiatric examination, the presence of a third party in a legal or non-medical capacity would severely limit the efficacy of the examination.” *Bennett v. State*, 766 S.W.2d 227 (Tex.Cr.App.1989), reaffirmed in *Lagrone v. State*, 942 S.W.2d 602 (Tex.Cr.App.1997).

We believe a separate rule should be used for civil psychological examinations and are asking the Court to adopt the policy below.

### **III. The Proposed Policy**

Involved TPOs should not be permitted to be present in an examination room physically or by extenders during civil psychological examinations except in rare extenuating circumstances to be determined by the psychologist and based on their clinical judgment and expertise. Extenders include, but are not limited to, electronic recording devices, agents, and one-way mirrors. The party requesting the presence of an involved TPO should bear the burden of proving case specific,

extenuating reasons why the TPO should be permitted in this particular instance.

#### **IV. The Field of Psychology Presents as “Deceptively Simple”**

Psychology is a field that appears “deceptively simple” to many observers. A notion exists that all one has to do to be a competent psychologist is be nice, empathic, and/or a good listener. However, there are actually many specializations within the field of psychology and each typically requires its own set of advanced learning and knowledge. With the accumulation of scientific discoveries, the specialized knowledge needed in each area increases. Neuropsychology, for example, requires advanced training in brain-behavior relationships.

However, because psychologists do not cut people open and remove, repair, or investigate their body parts like a surgeon does, our instruments are not readily apparent and the science behind what we do is somewhat invisible. For psychological testing, our scalpel is our tests, that need to be novel and given under standard administration conditions, and control over our testing environment.

#### **V. Psychological Examinations are Different than Physical Medical Examinations**

The surrounding environment and circumstances required to facilitate a meaningful psychological evaluation differ from what is required to obtain a meaningful physical medical evaluation. During a physical medical examination, physicians conduct procedures and evaluate responses that for the most part are not influenced by surrounding circumstances. Regardless of how the examinee feels

about the examining doctor or how many people are in the room, the examinee's reflexes will be the same and their bones will look the same on an x-ray. This is in stark contrast to a psychological evaluation in which the environment and conditions under which data are collected are important. The goal of a psychological examination is to obtain an accurate measure of the examinee's cognitive, emotional, personality, and/or adaptive functioning. A psychologist does not examine the outer body to see if it hurts but observes behavior and examines individual's thoughts, feelings, understandings, and cognitive processes.

A neuropsychologist, for example, is assessing cognitive abilities by looking at performance. Many things may affect the performance measured during an examination; only one of which is brain pathology. More specifically, attention is the foundation for learning and is required for all other abilities. If one is distracted or if they cannot attend to something they cannot learn it. If they cannot learn it, they cannot later recall the information from memory because it was not put there in the first place. The testing environment can influence a person's ability to pay attention and highlights the importance of minimizing distractions.

Many forensic neuropsychological exams involve individuals who are claiming some type of brain injury in civil litigation. A common symptom of brain injury is distractibility so it has been suggested that when testing individuals with potential brain injury, the assessment should be conducted in an environment as

free from distraction as possible. Lezak, M. D., Howieson, D. B., Loring, D. W. (2004) *Neuropsychological Assessment*. Oxford University Press. This maximizes the individual's attention and leads to data that is a better indicator of the brain-behavior relationship under examination.

An analogy to a medical technique is having a patient obtain a MRI following standard procedure and then while moving. In the first instance, the images are crisp and the radiologist may draw conclusions based on the films. In the second, the resulting images are blurred from movement "artifact" and the radiologist cannot make conclusions with the same kind of confidence and validity. It is equally important in psychology that standardized procedures are followed.

Also, due to the fact that some responses may be sensitive in nature, there is some likelihood an examinee might edit or withhold information when answering with TPOs. Some of this information such as past medical history, previous head injuries, drug and alcohol history, education, special education classes, and difficulties in development impact scoring and interpretation. It is important psychologists obtain accurate information from examinees. Forthrightness and complete disclosure may be impacted by the presence of involved TPOs.

## **VI. Social Facilitation and Inhibition: A Phenomenon that Needs to be Taken into Account**

Social facilitation refers to the impact the presence of a third party, as an observer or performer of the same activity, has on an individual's performance.

McCaffrey, R. J., Lynch, J. K., & Yantz, C. L. (2005) “Third Party Observers: Why All the Fuss?” Journal of Forensic Neuropsychology, 4, 2, 1-15, Ex. O to Bush Aff., App. 2. The social facilitation effect leads individuals to perform better on tasks requiring simple or over-learned skills while causing them to perform worse on more difficult or novel tasks. McCaffrey, R., Fisher, J., Gold, B., & Lynch, J. (1996) “Presence of Third-Parties During Neuropsychological Evaluations: Who is Evaluating Whom?” The Clinical Neuropsychologist, 10, 435-449, Ex. N to Bush Aff., App. 2. The intention, or lack thereof, of the TPO to interfere with the examination is irrelevant because the effects of social facilitation are generated by the third party’s mere presence in the situation. McCaffrey, 2005, *supra*, App. 2, Ex. O, *supra*.

McCaffrey and his colleagues summarized in 1996 the then current literature and demonstrated that the mere presence of a TPO during neuropsychological examination tends to cause a social facilitation effect regardless of whether one has brain damage or not. Subsequent research has shown the effects of social facilitation and inhibition extend to situations where the TPO is an audio-recorder, a video camera, a significant other, or a trained observer and when the examinee has a self-reported history of closed head injury. See, e.g., Constantinou, M., Ashendorf, L., & McCaffrey, R. J. (2002) “When the Third Party Observer of a Neuropsychological Evaluation is an Audio-Recorder,” The Clinical

Neuropsychologist, 16, 407-412 (presence of an audio-recorder caused decline on memory tests); Constantinou, M., Ashendorf, L., & McCaffrey, R. J. (2005) "Effects of a Third Party Observer During Neuropsychological Assessment: When the Observer is a Video Camera," Journal of Forensic Neuropsychology, 4, 39-47, Ex. O to Bush Aff., App. 2 (presence of a video camera caused a decline on memory tests); Kehrer, C. A., Sanchez, P. N., Habif, U., Rosenbaum, J. G., Townes, B. D. (2000) "Effects of a significant-other observer on neuropsychological test performance.," The Clinical Neuropsychologist, 14, 67-71 (presence of a significant other decreased performance on tests of attention, speed of information processing, and verbal fluency while having no impact on motor and cognitive flexibility tests); Yantz, C. L. & McCaffrey, R. J. (2005) "Effects of a Supervisor's Observation on Memory Test Performance of the Examinee: Third Party Observer Effect Confirmed," Journal of Forensic Neuropsychology, 4, 27-37, Ex. O to Bush Aff., App. 2 (presence of someone posing as the examiner's supervisor caused a decline in global memory and verbal memory summary scores); Lynch, J. K. (2005) "Effect of a Third Party Observer on Neuropsychological Test Performance Following Closed Head Injury.," Journal of Forensic Neuropsychology, 4, 17-25, Ex. O to Bush Aff., App. 2.

Various theories are offered for why the phenomenon of social facilitation occurs. McCaffrey, 1996, *supra*, Ex. N to Bush Aff., App 2. One such theory

posits that the presence of a TPO alters the way in which information is processed.

*Id.* This possibility is important because one of the goals of the assessment includes assessing how and how fast an individual processes information.

In summation, the current state of the literature indicates that the phenomenon of social facilitation and inhibition extends to neuropsychological examination and occurs when TPOs are present in the room either physically or through extenders such as electronic means. Notably, verbal memory test performance has been shown to be adversely affected by the presence of TPOs in several studies (see e.g., Constantinou, 2002, *supra*; Constantinou, 2005, *supra*; Kehrer, *supra*; Yantz, *supra*) and verbal memory deficits are among the most common complaints after a head injury. The presence of TPOs may combine with real injury and make the patient appear worse than they are in reality, especially when other performance is enhanced due to the effects of TPOs. When looking at the data from these studies it becomes apparent that the effect sizes may be as large as one standard deviation, which could have the result of changing an average memory score of 90, to an impaired memory score of 75. Thus, TPOs make it more difficult to interpret data and arrive at scientific conclusions that are crucial when the psychologist and neuropsychologist are functioning in a forensic role.

## **VII. External Distractions: Real Life Examples**

In addition to the social facilitation effect, there exist everyday practical

interferences that are caused by involved TPOs. These interferences can range from egregious examples of sabotage to innocent mistakes that will invalidate test results (i.e., coughing or sneezing during a timed test). After conferring with colleagues, a few real life examples of how TPOs have affected actual psychological examinations in the past are presented below. One colleague experienced situations where a lawyer laughed when the examiner mis-stated something, a lawyer mumbled answers to test questions, a lawyer insisted on sitting right next to the desk where examination was taking place, a lawyer argued with an examiner due to interview style, a lawyer walked out of the room in the middle of a test, a lawyer's representative gave an examinee an answer to an interview question while speaking Spanish without realizing the examiner understood Spanish, and a patient turned around to confer with the lawyer's representative regarding if they should answer a question. Another colleague examined a mildly retarded child who frequently looked at both his mother and the attorney for reassurance, which impacted scores on timed tasks and shaped the way the child answered questions. Another colleague had an examination stopped repeatedly by the stenographer. Numerous other examples exist.

### **VIII. Internal Distraction: Real Life Example**

The presence of involved TPOs may lead to a distortion of a patient's motivation, behavioral selection, and the crucial development of rapport with the

examiner. AACN Policy Statement, *supra*. Examinees may alter their behavior towards what they think the TPO would want or be distracted by concern over the TPO's reaction. For example, a colleague examined an individual who repeatedly commented on his own performance until it became apparent the examinee was surreptitiously audio-taping the evaluation and the taping was stopped.

## **IX. Standard Administration**

Standardization implies “uniformity of procedure in administering and scoring tests.” Anastasi, A. & Urbina, S. (1997) “Psychological Testing” (7th ed.), New York: Macmillan Publishing Company. According to the Standards for Educational and Psychological Testing (American Educational Research Association, American Psychological Association, & National Council on Measurement in Education (1999) “The Standards for Educational and Psychological Testing.” Washington, DC: Author, [hereinafter AERA]), test administration should carefully follow standard procedures determined by the test publishers and the environment should minimize distractions as much as possible.

Regarding TPOs, several test manuals specifically address this issue. For example, The Wechsler Adult Intelligence Scale - III, Administration and Scoring Manual (Wechsler, 1997) states, “As a rule, no one other than you and the examinee should be in the room during the testing.” Psychological Assessment Resources, Inc., a Florida Corporation and a major test development company is a

member of G-PIPE indicating their support of the arguments contained herein.

Examination results are compared to normative groups to determine levels of functioning. It is very important to have the circumstances duplicate the conditions of the normative data collection as much as possible. If there is variability in the test conditions, it is unclear if the comparison sample is still applicable. Lee, Reynolds, and Willson (2004) have reviewed the extant literature through 2003 on modifications of standardized administration procedures and conclude clearly that often minor changes in procedure, including alterations in the interpersonal interaction (such as might be affected by a TPO) produce changes in test performance and that the direction of change is often counter intuitive and extremely difficult to predict. Lee, D., Reynolds, C. R., & Willson, V. L. (2004) "Standardized test Administration: Why bother?," Journal of Forensic Neuropsychology, 3, 55-82. The presence of TPOs creates exam validity concerns.

However, there are times when standard administration is altered based on clinical necessity (e.g. a mentally retarded patient, sensory impairment). Since "modifications may invalidate the direct application of the standardized norms," the decision to deviate from standard administration should rest solely with the psychologist conducting the examination. See, e.g., AERA, *supra* at Standard 5.1.

## **X. Test Security**

Another extremely important consequence stemming directly from involved

TPOs is a breach in test security. Many tests used for psychological examination depend on an examinee's unfamiliarity with the items. This requires protecting the test items from general circulation to preserve their uniqueness and usefulness. See, e.g., National Academy of Neuropsychology Policy and Planning Committee.

(2000) "Test Security: Official Position Statement of the National Academy of Neuropsychology," Archives of Clinical Neuropsychology 15, 383-86. Although psychologists are bound by their ethics to treat the materials with care and protect them, no such restraint is placed on others who are not psychologists. If test items become readily available to those without proper training and education, the novelty of the items is compromised and new tests must be developed and standardized which requires an incredible amount of time and financial investment. *Id.*

For these reasons and the potential for misuse of information about tests and/or results, it is of utmost importance that test materials have limited disclosure and only to those appropriately trained to understand, interpret, and protect them.

Additionally, breaches in test security compromise trade secrets and proprietary rights of the test developer and distributor. In a worst case scenario this creates a disincentive for new tests to be developed. Numerous examples exist where materials are protected from general distribution. Law School Admission Test (LSAT) questions and state bar examination questions are two examples. Psychological materials need and should be afforded the same protection.

## **XI. Ethical Conflicts Created by Involved Third Party Observers**

Psychologists in the United States are bound by the Ethical Principles of Psychologists and Code of Conduct (American Psychological Association (2002) “Ethical Principles of Psychologists and Code of Conduct,” The American Psychologist, 57, 1060-1073 [hereinafter APA]) either directly by virtue of being a member of APA or indirectly through the principles being applied by state psychology boards, the courts, and other public entities to non-APA psychologists. Permitting the presence of involved TPOs during psychological examinations conflicts with several of our professional ethical obligations as psychologists.

First, psychologists are encouraged to adhere to standardized procedures and utilize test materials in a manner appropriate based upon the current research. *Id.* at ES 9.02 Use of Assessments. Second, psychologists and “test users have the responsibility of protecting the security of test materials at all times.” AERA, *supra* at St. 5.7. Psychologists are bound by their ethics to “make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques consistent with law and contractual obligations.” APA, *supra* at ES 9.11 Maintaining Test Security. Third, “psychologists do not promote the use of psychological assessment techniques by unqualified persons, except when such use is conducted for training purposes with appropriate supervision.” *Id.* at ES 9.07 Assessment by unqualified persons.

Fourth, a psychologist must protect against misuse and misrepresentation of their work. *Id.* at ES 1.01 Misuse of Psychologists' Work. Neuropsychologists obtain extensive training in brain-behavior relationships necessary to understand and interpret the multiplicity of behavior that occurs during an evaluation. Someone without such expertise and training may likely misinterpret the examinee's performance and not take the whole clinical history and surrounding circumstances into account. This may lead to incorrect attributions for test results. Coaching is another way that a psychologist's work may be misused.

Finally, "psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable." *Id.* at ES 3.04 Avoiding Harm. As shown, the field of psychology, individual practitioners, the plaintiff, and the legal system itself are hurt when involved TPOs are permitted during civil psychological examinations. TPOs diminish the quality of the evaluation and impact the psychologist's ability to answer the referral question and assist the legal system. TPOs lead to potential misuse and misinterpretation of the test measures. TPOs have no compelling reason to protect the test content and if they are careless with the information there is no mechanism by which to hold them accountable.

For these reasons, permitting involved TPOs during civil psychological

examinations conflicts with psychologists' ethical obligations to our profession.

## **XII. Coaching: Inadvertent or Purposeful**

One of the potential effects stemming from breaches in test security is coaching. Coaching refers to giving examinees information about psychological tests that may lead to their being able to alter their presentation on those measures to appear a certain way. Wetter and Corrigan (1995) surveyed 70 practicing attorneys and 150 law students and found that 22% of students and 42% of attorneys indicated they believed an attorney should provide as much specific information as possible about psychological assessment. Additionally, 36% of students and nearly 50% of attorneys responded that an attorney should always or usually inform a client of validity scales on psychological tests. Wetter, M. W., Corrigan, S. K. (1995) "Providing Information to Clients about Psychological Tests: A Survey of Attorneys' and Law Students' Attitudes. Professional Psychology: Research and Practice, 26, 474-477. This is very concerning because studies have found that even minimal coaching can impact assessment procedures. Providing detailed information on the validity scales was shown to enable a third of examinees to successfully elevate their responses on the MMPI-2 clinical scales but not the validity scales. Rogers, R., Bagby, R., & Chakraborty, D. (1993) "Feigning Schizophrenic Disorders on the MMPI-2: Detection of Coached Simulators," Journal of Personality Assessment, 60, 215-226. Giving clients a

general idea of what the day will entail and a brief explanation of the purpose of assessment will possibly help lessen a plaintiff's anxiety regarding the assessment. However, giving clients specific and in depth information regarding psychological and neuropsychological tests can invalidate the assessment and undermine the reason for the referral. There are no specific ethical guidelines requiring attorneys to maintain test security even though they have access to the tests.

An additional concern is that some clients may purposefully alter their behavior to appear a particular way. Having advanced and specific information will increase their ability to alter the test results, akin to knowing the LSAT questions in advance. Youngjohn (1995) reported a case where an attorney admitted that he deliberately coached his client before testing. Youngjohn, J. R. (1995) "Confirmed Attorney Coaching Prior to Neuropsychological Examination." Psychological Assessment, 2, 279-283.

### **XIII. Ingrained Foundation Misconception Leading to Harm**

There is an ingrained foundation misconception that exists in the legal system with regards to this issue. In *Byrd v. Southern Prestressed Concrete, Inc.*, 928 So. 2d 455 (Fla. 1st DCA 2006), the court stated the expert's affidavit failed to contain case specific reasons why the plaintiff's examination would be impacted by the presence of a TPO. This elucidates the fundamental misconception. Based on the information presented above we hope it is resoundingly clear that the mere

presence of an involved TPO impacts psychological testing and the validity of the data obtained. It cannot be remedied after the fact. It is not a case-by-case situation. All cases are affected. TPOs create internal and external distractions for the examinee. Permitting TPOs conflicts with many of our professional ethical responsibilities. The field of psychology, individual practitioners, test publishers and developers, the plaintiff, and the legal system itself are harmed when involved TPOs are permitted during civil psychological examinations.

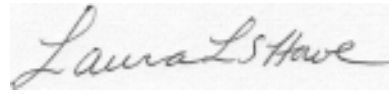
### **CONCLUSION**

Neuropsychology is a science and a clinical practice. However, it is a practice that appears “deceptively simple” and a science that is not readily apparent to those outside of the field. We implore you, please do not take away our scalpel and make us perform our function with tarnished tools. No one benefits when that occurs. Restricting the presence of TPOs in civil psychological examinations is not intended to undermine the discovery of information. Other mechanisms that would not cause the harm that direct oversight does such as, cross examination and review of the data and work product generated should provide adequate oversight.

Please fully consider the information presented and set precedence that in the Fifth District of Florida, Involved Third Party Observers are NOT permitted during civil psychological examinations due to the reasons stated herein.

We thank you in advance for your thoughtful consideration of this issue.

Respectfully submitted,

A handwritten signature in cursive script that reads "Laura Lee Shaw Howe". The signature is written in black ink on a light-colored background.

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Laura Lee Shaw Howe, J.D., Ph.D.  
Neuropsychology Post Doctoral Associate  
Member acting on behalf of the group  
205 SE 16<sup>th</sup> Ave  
Apt. 3G  
Gainesville, FL 32601  
(631) 365-3157 Cell Phone

**Members of the Group Protecting the Integrity of Psychological Examinations  
(G-PIPE)**

**MEMBER ACTING ON BEHALF OF G-PIPE**

Laura Lee Shaw Howe, J.D., Ph.D.  
Member acting on behalf of the group  
Neuropsychology Post Doctoral Associate  
University of Florida  
205 SE 16<sup>th</sup> Ave  
Apt. 3G  
Gainesville, FL 32601

(631) 365-3157 Cell Phone

\*The views contained in this brief do not necessarily reflect the position of the  
University of Florida

**ORGANIZATION MEMBERS:**

**Florida Psychological Association**

408 Office Plaza Drive  
Tallahassee, FL 32301-2757

R. Bob Smith III, Ph.D.  
Chairman and CEO,  
Psychological Assessment Resources, Inc. (PAR)

**On behalf of PAR**

Jerry J. Sweet, Ph.D.  
President, American Academy of Clinical Neuropsychology (AACN)

**On behalf of the entire AACN Board of Directors**

John C. Courtney, Psy.D., MSCP, ABPdN  
Board Certified, Pediatric Neuropsychologist  
Executive Director, American Board of Pediatric Neuropsychology  
**On behalf of the American Board of Pediatric Neuropsychology**

John J. Blase, Ph.D., ABPN  
President, American Board of Professional Neuropsychology  
**On behalf of the members in ABPN**

Elbert W. Russell, Ph.D.  
Fellow: APA Division , 40, 32, 48, APS, NAN  
Chair, Clinical Coalition of Neuropsychology Practitioners (CCPN)  
**On behalf of the entire Board of Directors of CCPN**

**INDIVIDUAL MEMBERS:**

Russell Addeo, Ph.D., ABPP-CN  
Diplomate in Clinical Neuropsychology  
Manager Neurorehabilitation Day Treatment Program  
Brooks Rehabilitation  
Jacksonville, Florida

Ashton Anderson, Psy.D.  
Neuropsychology Post Doctoral Fellow  
University of Florida

Lidia Artiola, Ph.D., ABPP-CN  
Fellow, American Psychological Association  
Fellow, National Academy of Neuropsychology  
Tucson, Arizona

Lee Ashendorf, Ph.D.  
Neuropsychology Post-Doctoral Fellow  
Edith Nourse Rogers Veterans Memorial Hospital  
Bedford, MA

Brenda A. Austin, Ph.D.  
Supervising Neuropsychologist  
Director of Neuropsychology Training Program  
Laguna Honda Hospital and Rehabilitation Center  
San Francisco, CA

Jamie H. Barron, Psy.D.  
Private Practice  
Zephyrhills, Fl.

Russell Bauer, Ph.D., ABPP-CN  
Gainesville, FL

Cynthia L. Beaulieu, Ph.D., ABPP-CN  
Diplomate in Clinical Neuropsychology  
Brooks Rehabilitation Hospital  
Jacksonville, Florida

Paul Beljan, Psy.D., ABPdN  
President, American Board of Pediatric Neuropsychology  
Phoenix, Arizona

Lagen A. Biles, Ph.D.  
Post Doctoral Fellow  
Department of Psychiatry  
University of California at Davis Medical Center

Bruce Bongar, Ph.D., ABPP, FAPM  
Founding Director, Joint Program in Psychology and the Law  
Calvin Professor of Psychology, Pacific Graduate School of Psychology  
Consulting Professor of Psychiatry and Behavioral  
Sciences, Stanford University School of Medicine

Ernest J. Bordini, Ph.D.  
President,  
Clinical Psychology Associates of N. Central Florida, PA.  
Gainesville, FL

Dawn Bowers, Ph.D.  
Professor,  
Clinical & Health Psychology and Neurology  
Director, Cognitive Neuroscience Laboratory  
McKnight Brain Institute  
University of Florida

Jeffrey Browndyke, Ph.D.  
Assistant Professor - Dept. of Psychiatry  
Bryan Alzheimer's Disease Research Center  
Duke University Medical Center

Kaprice R. Brown-Thomas, Ph.D., J.D.  
Assistant Professor Clinical Psychology  
Georgia School of Professional Psychology at Argosy University

Dominic A. Carone, Ph.D.  
Neuropsychologist and Clinical Assistant Professor  
SUNY Upstate Medical University  
Syracuse, NY

David R. Cox, Ph.D., ABPP  
Neuropsychology & Rehabilitation Consultants, P.C.  
Licensed in Florida and North Carolina

Jason A. Demery, Ph.D.  
Clinical Assistant Professor  
Department of Clinical & Health Psychology  
University of Florida  
Gainesville, Florida

Joe Wheeler Dixon Ph.D., J.D. HSP-P  
East Carolina University

Peter Dodzik, Psy.D., ABPdN  
Assoc. Director of Training, Argosy University  
President-Elect, American Board of Pediatric Neuropsychology  
Schaumburg, Illinois

Susan Farella-Busch, Ph.D.  
Private Practice  
Hewlett, New York 11557

Charles A. Filanosky, Ph.D., Ed.M.  
Post-doctoral Fellow  
Department of Rehabilitation Medicine  
The Mount Sinai Medical Center  
New York, NY

Steven M. Frank, Ph.D.  
Private Practice  
St. Petersburg, FL

I. Bruce Frumkin, Ph.D., ABPP  
Diplomate in Forensic Psychology  
American Board of Professional Psychology  
(Licensed in Florida, Illinois, Pennsylvania)

Tannahill Glen, Psy.D., ABPP-CN  
Clinical Assistant Professor,  
Clinical and Health Psychology  
University of Florida  
Neuroscience Institute UF & Shands Jacksonville

Hope E. Goldberg, Ph.D.  
Clinical Psychologist II  
Los Angeles County Department of Mental Health  
Harbor-UCLA Medical Center

Paul Green Ph.D.  
Clinical Neuropsychologist  
Fellow, National Academy of Neuropsychology  
Edmonton, Alberta, Canada

Roger L. Greene, Ph.D.  
Professor  
Pacific Graduate School of Psychology  
Palo Alto, CA

David E. Hartman, Ph.D., ABPN, ABPP-Clinical  
Clinical and Forensic Neuropsychologist  
Chicago, IL

Lars Hungerford, Ph.D.  
California

David A. Kareken, Ph.D., ABPP/ABCN  
Board Certified Neuropsychologist  
Associate Professor & Director of Neuropsychology  
Department of Neurology  
Indiana University School of Medicine  
Indianapolis, IN

Shirley M. Koehler, PhD, ABPP/CN  
Board Certified in Clinical Neuropsychology  
American Board of Professional Psychology  
Brooks Rehabilitation Hospital  
Jacksonville, FL

Brent P. Kolitz, Ph.D.  
Private Practice  
Miami, FL

Thomas T. Lambirth, Ph.D.  
Clinical and Forensic Psychologist

Glenn Larrabee, Ph.D., ABPP-CN  
Sarasota, Florida

Dano A. Leli, PhD, ABPP-CN, ABPP-Clinical Psychology  
Private Practice  
Maitland Psychology P.A.  
Maitland, FL

Mabel Lopez, Ph.D.  
Licensed Psychologist/Neuropsychology  
Private Practice Collier Neurological Specialists  
Naples, Florida

John A. Lucas, PhD  
Jacksonville, FL

William J. Lynch, Ph.D.  
Board Certified in Clinical Neuropsychology [ABPP/ABCN]  
Independent Practice  
Foster City, CA

Robert J. McCaffrey, Ph.D., ABPN  
Albany Neuropsychological Associates  
Guilderlan, NY  
and  
Professor of Psychology  
Department of Psychology  
University at Albany  
State University of New York  
Albany, NY

John E. Meyers, Psy.D., ABPN  
Clinical Neuropsychologist

Emilian Mihaila, Ph.D.  
NYS Licensed Psychologist  
Director, ACT Program  
Queens Hospital Center  
Instructor of Psychiatry  
Mt. Sinai School of Medicine

Dixon H. Miller, PhD  
Director of Neuropsychology Services  
Acadia, Inc.  
Lancaster, PA

Scott R Millis, PhD, MEd, ABPP (CN & RP)  
Professor & Director of Research  
Department of Physical Medicine & Rehabilitation  
Wayne State University School of Medicine  
Detroit, MI

Marnee Milner, J.D., Ph.D.  
San Francisco, CA

Elizabeth Morgan, Ph.D.  
Jacksonville, Florida

Christopher J. Nicholls, Ph.D., ABPdN  
Scottsdale, Arizona

Wendy Packman, J.D., Ph.D.  
Associate Professor, Psychology  
Pacific Graduate School of Psychology  
Director, Joint JD-PhD Program in Psychology and Law  
Palo Alto, CA

Otto Pedraza, Ph.D.  
Jacksonville, FL

Catherine Price, Ph.D.  
Assistant Professor  
Department of Clinical and Health Psychology/  
Neuropsychology Division  
Joint Appointment in Department of  
Anesthesiology  
University of Florida

Cecil R. Reynolds, PhD  
Professor of Educational Psychology  
Professor of Neuroscience  
Distinguished Research Scholar  
Texas A&M University

Warren J. Rice, Ph.D.  
Clinical Neuropsychologist  
Gainesville, FL

Jon Rose, Ph.D.  
Core Faculty, Stanford Geriatric Education Center  
Director, Psychology Services, Spinal Cord Injury  
Clinic of the VA Palo Alto Health Care System

Wilma G. Rosen, Ph.D.  
Neuropsychologist  
Fellow, National Academy of Neuropsychology  
New York, NY

Sally Lynn Kolitz Russell, Ph.D.  
Private Practice  
Miami, Florida

Aida Saldivar, Ph.D.  
Clinical Psychologist  
Neurology Service  
Ortho-Diabetes Service  
Rancho Los Amigos National Rehabilitation Center  
Downey, CA

Sarah Schaffer, Ph.D.  
NY, New York

Gregg Selke, Ph.D.  
Postdoctoral Fellow  
University of Florida  
Clinical and Health Psychology

Barry Skoblar, Psy.D.  
Postdoctoral Associate  
Cognitive Neuroscience Laboratory  
University of Florida

Harold H. Smith, Jr. Ph.D., ABPP  
President, Smith, Sikorski-Smith, P.A.  
Clearwater, FL  
Licensed in FL, NC and WA

William Stiers, Ph.D., ABPP (Rp)  
Rehabilitation Psychology/Neuropsychology  
Johns Hopkins University School of Medicine  
Baltimore, MD

William Stone, Ph.D.  
Assistant Professor of Psychology  
Harvard Medical School  
Department of Psychiatry

Fred W Theye, Ph.D., ABPP-CN  
Palm City, FL

Frederick W. Unverzagt, PhD  
Associate Professor  
Department of Psychiatry  
Indiana University School of Medicine  
Secretary, Indiana Psychological Association

Jeffrey B. Walden, Psy.D.  
Clinical Neuropsychologist  
Florida Institute for Neurologic Rehabilitation  
Wauchula, Florida

Melinda Warner, Ed.D., ABPdN  
Pediatric Neuropsychologist  
North Shore Medical Center,  
Salem, Massachusetts

Nadia Webb, Psy.D., ABPdN  
Treasurer, American Board of Pediatric Neuropsychology  
Harrisonburg, Virginia

Cheryl S. Weinstein, Ph.D., ABPP-CN  
Assistant Professor of Psychiatry  
Harvard Medical School Department of Psychiatry  
Director, Neuropsychology Service at BIDMC  
Deaconess Psychiatry

Jeffrey Wertheimer, Ph.D.  
Staff Neuropsychologist  
Department of Behavioral Medicine  
Brooks Rehabilitation Center  
Jacksonville, Florida

Michael Westerveld, Ph.D., ABPP  
Department of Neurosurgery  
Yale University School of Medicine  
New Haven, CT

Vanessa G. Williams, Ph.D.  
Neuropsychology Postdoctoral Fellow  
Brown University

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the above foregoing has been furnished by U.S. Mail to **E. Peyton, Esquire** and **Billie L. Bellamy, Esquire**, Cameron, Hodges, Coleman, LaPointe & Wright, P.A., 15 West Church Street, Suite 301, Orlando, Florida 32801-3301; **Karla T. Torpy, Esquire**, 10 Suntree Place, Melbourne, Florida 32940, and **Scott A. Turner, Esquire**, The Turner Law Firm, LLC, Wickham Commons II, 7370 Cabor Court, Suite 101, Viera, FL 32940; **P. Raul Alvarez, Jr., Esq.**, Alvarez, Sambol, Withrop & Madson, P.A., P.O. Box 3511, Orlando, Florida 32801 and **Randy Hillman, Esq.**, Post Office Box 420007, Kissimmee, Florida 34742 on this 14<sup>th</sup> day of August, 2006.

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Laura Lee Shaw Howe

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of  
Florida Rule of Appellate Procedure 9.210(a)(2)

Respectfully submitted,

---

Laura Lee Shaw Howe, J.D., Ph.D.  
Neuropsychology Post Doctoral Fellow  
University of Florida  
Acting on behalf of the group  
205 SE 16<sup>th</sup> Ave  
Apt. 3G  
Gainesville, FL 32601  
(631) 365-3157 Cell Phone