

National Academy of Neuropsychology

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Releasing Test Materials: Position of The Psychological Corporation

Editors' Note: Dr. Sandra Koffler brought this recent statement to our attention. This statement summarizes the position of The Psychological Corporation on the test confidentiality issues raised by HIPAA, litigation, the Family Education and Privacy Act (FERPA), and other issues. The statement may be found on the web at: <http://marketplace.psychcorp.com/PsychCorp.com/Cultures/en-US/Footer/Legal%2BPolicies.htm>.

HIPAA POSITION STATEMENT

Many of our customers have inquired regarding Harcourt Assessment's position on whether test record forms must be disclosed to patients in order to comply with the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA). The HIPAA Privacy Rule provides that individuals have a qualified right of access to individually identifiable health information maintained by health care providers covered by HIPAA. The widespread dissemination of record forms (which may disclose test questions and answers) would violate restrictions on providers' use of Harcourt Assessment's materials and would render test instruments invalid and therefore useless to the clinical community and to the public at large. In order to obtain clarification regarding this matter, Harcourt Assessment requested an opinion from the U.S. Department of Health and Human Services (HHS), which is responsible for HIPAA. We received a response from Richard Campanelli, the Director of the Office for Civil Rights at HHS, who stated in response:

"[A]ny requirement for disclosure of protected health information pursuant to the Privacy Rule is subject to Section 1172(e) of HIPAA, 'Protection of Trade Secrets.' As such, we confirm that it would not be a violation of the Privacy Rule for a covered entity to refrain from providing access to an individual's protected health information, to the extent that doing so would result in a disclosure of trade secrets."

Accordingly, as we have done for many years, we will continue to advise our customers that Harcourt Assessment's test instruments are trade secrets and their usefulness and value would be compromised if they were generally available to the public. We have stated this position in correspondence, court cases, news articles and on our website for many years. This position is also consistent with our longstanding practice of ensuring through our terms and conditions of use that all purchasers have the appropriate qualifications to administer and interpret the

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instruments being purchased and that such purchasers agree to maintain the confidentiality of the instruments.

Given the above-quoted support from HHS, Harcourt Assessment reiterates that customers may not disseminate copies of test record forms or protocols to persons who erroneously claim that they are entitled to copies under HIPAA. As the HHS has now confirmed, HIPAA does not require any person to disclose any trade secret materials, and all restrictions on the dissemination of test record forms and protocols remain in effect.

POLICY FOR RELEASE/PHOTOCOPYING/VIDEOTAPING OF TEST MATERIALS

This page contains proper security measures with respect to the copying, release, videotaping, and/or audiotaping of various psychological tests for adults and children that are published by Harcourt Assessment, Inc. Categories include trade secrets, copyright, FERPA, second opinions, ethical issues, nonstandard conditions, and litigation.

Harcourt asserts that strong measures are necessary to protect the validity of valuable testing instruments. Harcourt believes that any copying of its tests constitutes copyright infringement. Furthermore, disclosure of the tests threatens the ongoing validity of the test results, and therefore, the commercial value of the test.

Trade Secrets

Harcourt considers its secured tests to be trade secrets. The test questions and answers, manuals and other materials divulging test questions or answers constitute highly confidential, proprietary testing information which Harcourt takes every precaution to protect from disclosure beyond what is absolutely necessary for the purpose of administering the test. Initially, the materials are treated confidentially by Harcourt (including its employees, agents and consultants) throughout the

development process. For example, employees working with test materials must sign a confidentiality agreement, and consultants working in development and examiners administering pilot and standardization editions must sign agreements containing confidentiality obligations.

Harcourt continues to guard the secrecy of its test materials once they become finished products. They are sold only 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. Harcourt has a Qualifications Department consisting of two full-time employees whose sole function is to ensure that only qualified individuals have access to the test materials. In addition, the Registration Form that all purchasers must complete and submit to Harcourt before purchasing contains a statement signed by the purchaser indicating that the purchaser is so qualified, and that all ethical rules will be observed by the purchaser.

Copyright/Fair Use

It is the position of Harcourt that any copying of the tests or audio- or videotaping during test administration constitutes an infringement of the copyright and other proprietary rights in the above-referenced protocols. Such copying does not, in our view, fall under the "fair use" exception of the copyright law. Section 107 of the copyright law states four factors as being among those which should be considered in determining whether unauthorized copying of copyrighted material is a "fair use." These factors are:

- (1) the nature of the use (e.g. commercial vs. non-profit educational use);
- (2) the nature of the copyrighted work (e.g. special consideration such as security issues);

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Message from the President

Robert J. McCaffrey, Ph.D.

As someone who maintains a clinical practice, conducts research, and is involved in the training of graduate students, I find these to be both very challenging and most days troubling times. The practice of clinical neuropsychology has been and remains under siege from a multitude of forces. We are faced with important issues that adversely impact the patient care we are allowed to provide and the profession of neuropsychology itself. These issues must be addressed directly by us to ensure proper patient care and to ensure that the profession may be passed to future generations of clinical neuropsychologists. Some of the key issues are:

- Managed Care reimbursement rates relative to our education, training, professional skills and contributions to patient care
- Denial of coverage for qualified neuropsychological services (e.g., Cognitive Rehabilitation)
- Decline in the number of pre-doctoral and postdoctoral training opportunities
- Medicare Incident-to guidelines and reduction in services available to patients
- Use of neuropsychological CPT codes by non-psychologists (viz. occupational therapists, speech and language therapists)
- Closing of long-standing hospital based clinical neuropsychology assessment labs
- Bundling of services
- Banning of the use of technicians – This has already happened in New York State

NAN must assume a primary role to ensure the needs of clinical practitioners are being met and that the care of our patients is not compromised. The NAN Professional Affairs and Information Office (PAOI) was established to assist members at the “local” level and has done an excellent job. We as a profession; however, must become more involved “nationally” in advocating for our profession to affect significant and lasting change. To this end, the Board of Director has requested that a strategic short-term and long-term plan be developed addressing issues of advocacy. The details of this will be presented to the membership at the earliest possible time, in order to obtain feedback from each of you. The last thought I need to leave each of you with is this: we must work to find ways to collaborate with related organizations in a fabric of trust and collegiality that has long been missing from the profession. Make no mistake; the barbarians are at the gates and nothing less than the long term survival of our profession is at stake. I am confident that we can and will work together to take back control of our profession and to continue to make significant contributions to our patients, their families and society.

The Board of Directors recently received an open letter from Erin Bigler, Ph.D. expressing his concerns regarding a number of issues, several of which require fact finding and serious discussions by the board. In order to address thoroughly these concerns and others, I have set aside a significant portion of time at the upcoming board meeting to discuss and to respond to these concerns. Following the board meeting, Dr. Bigler’s letter and the response from the Board of Directors will be published in the next issue of the NAN Bulletin.

GRAND ROUNDS

Ethics and Decisions in Neuropsychology

Joel Morgan, Ph.D.

Editors' Note: Dr. Morgan, a NAN Fellow, is currently an Assistant Professor in the Department of Neurosciences at UMDNJ - New Jersey Medical School

(Note: The following case was an actual case from the author's clinical practice. Ethical situations arise daily in clinical practice, often seemingly unbeknownst to the neuropsychologist at first glance, as they are typically subtle. The "ethically literate" clinical neuropsychologist will be sensitive to the various guises in which potential ethical pitfalls may present themselves in ordinary clinical practice and understand how to avoid and/or resolve them before trouble arises. The following case is intended to increase clinician's awareness of, and sensitivity to, ethical issues in the everyday practice of clinical neuropsychology)

It's a regular day in your office in the practice of clinical neuropsychology. There's a phone call. It's a new referral – the patient himself. "Hello Doctor, my name is Rolando Vasquez. I need a neuropsychological evaluation." "I see", you say, "what seems to be the problem?" Mr. Vasquez goes on to inform you that he has a learning disability and ADHD. He needs a neuropsychological evaluation in order to satisfy the requirements of the Law School Admissions Board (LSAT developers) to get an accommodation to take the LSAT's without time constraints. You ask the obvious question, "If you have already been diagnosed with these conditions, why do you need the examination now, again?" He tells you that they were not performed by a "neuropsychologist," and the Board requires that. "Who did these evaluations?" you ask. He tells you that they were done by a psychiatrist and a psychologist, and he adds that the evaluations are old and the Board requires something more current. Well, you think, this sounds semi plausible, so you schedule him for an appointment and tell him

to bring all of the records he has with him, everything, including those previous diagnostic evaluations, transcripts from school/college, correspondence with the LSAT people, any medical records, etc. Here, you are thorough and specific. He thanks you profusely.

Mr. Vasquez arrives for his scheduled appointment with records in tow. He somewhat anxiously tells you his story and presents his records to you. It seems that Mr. Vasquez had *already been* to Law School – the Offbrand School of Law in Nebraska (never heard of it, you think). Anyway, the records and correspondence from the school that you review indicate that Mr. Vasquez attended for two semesters, but flunked out! His transcript indicates that he received one "C", three "D's" and five "F's" over two semesters. He proceeds to tell you that he has a LD and ADHD and that he didn't know how to study, and that's why he flunked out. He says that the law school is willing to re-admit him as long as he takes the LSAT – seems he was admitted the first time without ever having taken them. (This is beginning to sound a little fishy, you think). Well, next you ask about college. He shows you his transcript. Seems he got a "B.A." from a "University without Walls" that you never heard of either, and he received over 90 credits (out of the 120 needed for graduation) awarded for his military service. He was a veteran of the USMC and served in the Persian Gulf. He tells you he saw a lot of combat and shows you his discharge papers (DD214), which corroborate this part of his story. (Well, you think, he served honorably in combat. The least I can do is try to help the guy out.) But you wonder about this "college degree". "Is this an *accredited* college?" He tells you, "Sure, I got into law school..."

During your interview with him, he tells you that he is a veteran with a disability – he gets a 30% disability for "PTSD." He is currently working for an attorney. "Oh, what do you

do?," you ask. "I take pictures of accident scenes and deliver reports. Doctor, please, I have always wanted to be an attorney; I must be one. It has been my lifelong dream. It would make my mother so happy. I fought for our country and I deserve another chance." He says all this with tears in his eyes, practically begging, and as sycophantically as one could possibly be. But you are genuinely touched, and decide to help the guy, if possible, and proceed with the evaluation despite some nagging questions and inconsistencies. He is willing to pay you your going rate. The rest of his history is noncontributory. He has no medical history to speak of. He was born in Puerto Rico, but was bilingual from the age of 2 (his English is fine; he completed school in the USA). He denies psychiatric history, substance abuse, or neurological history.

Next, you take another look at these previous diagnostic reports. First is the report from the psychiatrist, Dr. XYXY. Dr. XYXY diagnosed Mr. Vasquez with "ADHD" on the basis of a history and interview. (Indeed, *your* history of the client would be hard pressed to warrant a confirmed diagnosis of ADHD, but this guy's a *psychiatrist*, appropriately board certified). "Yes", says Mr. Vasquez, "Dr. XYXY said I have ADHD. He asked me all kinds of questions for about 15 minutes! He even wanted to give me Ritalin, but I didn't like it. It made me kind of hyper."

Then, you look at the psychologist's report from Dr. ZWZW. Well, its three pages long and it ends with about four different rule-out diagnoses, including R/O ADHD; R/O LD; R/O Cognitive Disorder, NOS; and R/O General Anxiety Disorder. The psychologist is licensed in Nebraska; in fact, has the same address as the psychiatrist. Well, you wonder, "Is this O.K.?" Dr. ZWZW, by the way, administered no tests, none whatsoever, but based his diagnosis on his interview and history *and* the diagnosis of Dr. XYXY! Seems that Mr. Vasquez was admitted to the Offbrand Law School on the basis of these reports. Then he failed out. You wonder what

the story is, even though you are convinced that Mr. Vasquez is sincere. Despite being uncomfortable about this whole thing, you perform the evaluation. "After all, the guy's a combat vet", you think, "let's see if he really does have ADHD...or whatever..."

Evaluation

On day one of the evaluation, you perform a number of tests (BNT, Rey-Osterrieth Figure copy and recall, and the WAIS-R). The client is clearly doing his best. You have no sense that he is not giving it his all, but the results are strange. He earns a WAIS-R FSIQ of only 86. "Can this be right?", you wonder. Yes, you're sure it's right. His Rey Figure copy and memory are almost one SD below the mean too. "Hmmm...what's this all about?" you think.

During the 4-day hiatus between testing sessions, you are really wondering what to do. It's clear that Mr. Vasquez has some basic problems of fundamental abilities. How is he a college graduate, or is he? You decide to call the LSAT folks and, without giving the identity of your client away, ask a few questions. You are directed to a Master's level person at the LSAT Board office. She is knowledgeable - she has a Master's degree in clinical psychology - and polite. You don't say anything about the particulars of the referral, but you want to know about neuropsychological testing for accommodation purposes. She says that yes, they request that a neuropsychologist document an applicant's need for accommodation for time. You ask her how it works if someone has already failed out of a law school. She tells you that, well yes, it would be unusual, but the applicant could take the LSAT with accommodations if he/she met the appropriate diagnostic criteria. So you venture this: "But suppose testing reveals something else, not ADHD or a LD, but just a low IQ." Then she says, "Oh, is this about Mr. Vasquez? We know all about Mr. Vasquez. So, he found his way to *you*, huh?"

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PAIO Notebook
Leslie Rosenstein, Ph.D.

Technician Status Update

Use of Technicians and Medicare

There are currently CMS guidelines published in a 2001 CMS Program Memorandum that do not allow psychologists to supervise others when providing services to Medicare beneficiaries.

The 2001 program memorandum issued by the Centers for Medicare and Medicaid Services (CMS) on diagnostic testing, including services under the Central Nervous System CPT codes 96100-96117, requires that testing be supervised by a physician. There is an exception for psychologists when they directly furnish the testing services. The problem is the exception is too limited in that it does not allow a psychologist to supervise others performing psychological diagnostic tests. According to this memorandum, then, even when psychologists meet the Incident-to requirements for outpatient services, psychologists still may not be able to use technicians for diagnostic testing as they cannot supervise others. The April 2001 Program Memorandum can be found at the following web address:

http://www.cms.hhs.gov/manuals/pm_trans/B0128.pdf

The staff of the APA Practice Directorate's Government Relations office recognizes that this creates a serious problem for psychologists who utilize technicians. In addition, it means that staff providing psychological diagnostic testing are not required to be supervised by practitioners with the greatest level of expertise in this area, i.e., psychologists and neuropsychologists.

The APA Practice Directorate has been working with CMS to address the supervision requirements for diagnostic testing ever since they became aware of the problem. After hearing that CMS would consider changing the rule to allow nonphysicians to supervise others, they sent the agency a formal request, asking that they revise the rule to allow psychologists to supervise staff conducting psychological and neuropsychological testing. The Directorate has continued their advocacy on this issue throughout the year. Diane Pedulla, JD has spoken with CMS in the past few days, and they are now taking steps to have their request for a revision to the requirements placed on the CMS's 2004 regulatory agenda. They will work with CMS to draft language that will expand the rule and allow psychologists to supervise others performing testing under CPT codes 96100-96117.

The NAN PAIO has offered information and assistance to the Practice Directorate in its efforts to have the requirements revised. The Practice Directorate has been very gracious in providing our office with updates, which we will continue to share with our membership through these newsletters. In the meantime, if psychologists are utilizing the assistance of a technician when providing services to Medicare beneficiaries, it may be prudent to contact the local Medicare carrier to determine whether that carrier allows for the use of technicians supervised by the psychologist. The contact and response should be carefully documented in the event that a question is ever raised about the use of technicians.

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(3) the amount of the copyrighted work which is used; and

(4) the effect of the use in a potential market for the copyrighted work.

Although the disclosure of copies of test materials might fall on the “fair use” side of point (1), it almost certainly falls on the “non-fair use” side of the other three, particularly points (2) and (4).

FERPA

Even in a school setting, release of copies of test questions or protocols in any form is not required under federal law. The applicable U.S. statute is the Family Education Rights and Privacy Act (FERPA). This establishes the right of parents “to inspect and review the education records of their children” (20 U.S.C. § 1232G(a)(1)(A)). It requires schools to establish procedures that will enable parents to review their children’s records within a reasonable time after a request is made.

The regulations implementing this section define “the right to inspect and review education records” as including:

“(1) the right to a response from the [school] to reasonable requests for explanations and interpretations of the records; and

(2) the right to obtain copies of the records from the [school] where failure of the [school] to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records” (34 C.F.R. § 99.11(b)).

The import of this section is that only where failure to provide copies would deny the exercise of this right will schools be obliged to provide copies. In all other cases, inspection alone would presumably suffice. If a parent requests an inspection of a child’s

record, once the school agrees to review the content of the child’s test record with the parent, it is most unlikely that a court would find that exercise of the right to review educational records had been denied.

Harcourt encourages professionals to review test results with parents, including, if the psychologist deems appropriate, review of responses to individual items. This may involve showing a test protocol or answer contained in test booklets to parents in order to facilitate discussion. However, we strongly oppose the release of copies of protocols for the reasons noted above. The tests are extremely valuable instruments, which are widely used throughout the world. Impairment of their security could threaten the validity of the tests and, therefore, their value as a measurement tool.

Second Opinion

We recognize that in some cases, parents may wish to consult a second professional regarding a child’s test scores. In these situations, we have no objection to a copy of the completed test protocol being sent to another professional for the purposes of review; however, the materials should pass directly from professional to professional and not through the hands of the parents or their attorney.

Ethical Issues

The original dissemination of these test materials is carefully restricted to individuals with a professional background in psychology, and only individuals with appropriate training in psychological assessment should interpret the tests. Under the Standards for Educational and Psychological Testing (American Psychological Association), psychologists have an ethical duty to protect the integrity of secure tests by maintaining the confidentiality of the questions and answers to the tests and by releasing such tests only to professionals who have the same duty.

The confidentiality of test questions and answers is paramount to maintaining the integrity of the tests and the validity of test results. Unlike many other types of tests, the *Wechsler* tests (and many of our other tests) do not consist of a large collection of test items that are rotated. Rather, these tests have one expensive and highly researched version that should remain intact for 10 to 15 years. Millions of dollars have been spent on the research and “norming” (compiling of statistical data regarding results) of the tests. Any leakage of test items severely compromises the value of the tests.

Non-Standard Conditions

It is our opinion that the presence of a third party (audio- or videotaping or other non-standard condition) may not result in a statistically accurate or psychometrically sound scaled score. As you may know, norms for standardized tests are developed under strict conditions. If such conditions are not met, the scaled scores obtained by application of the test norms are not statistically defensible. Although it is the position of Harcourt that the validity of any scaled score which results from a non-standard administration is suspect, it is the responsibility of the individual psychologist administering the test to determine whether testing under non-standard conditions serves any other purpose.

Litigation

Harcourt does not wish to impede the progress of legal proceedings; however, we are equally unwilling to jeopardize the security and integrity of our test instruments by consenting to the release of copyrighted and confidential material to those not professionally qualified to obtain them. Should litigation in which a psychologist is involved reach the stage where a court considers ordering the release of proprietary test materials to non-professionals such as counsel, we 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; 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.

In addition, testimony regarding the items, particularly that which makes clear the content of the items, should be sealed and again not be included in the record. Pleadings and other documents filed by the parties should not, unless absolutely necessary, make specific reference to the content of or responses to any item, and any portion of any document that does so should be sealed. Finally, we ask that the judge’s opinion, including both findings of fact and conclusions of law, not include descriptions or quotations of the items or responses. We think this is the minimum requirement to protect our copyright and other proprietary rights in the test, as well as the security and integrity of the test.

Please feel free to use this policy statement along with the company’s name in your materials. We very much appreciate your concerns with regard to this issue. If you have other questions, please contact Harcourt at 800-228-0752 and ask for Legal Affairs.

Letter to the Editors

Errors in HIPAA discussion?

Dear Editors:

I recently had the opportunity to read Vol. 18, No. 1 of the *National Academy of Neuropsychology Bulletin*. In the continued discussion of HIPAA on page 15, I found a rather serious mistake. It is certainly understandable that the mistake was made, as I and my fellow psychologists in Michigan initially made the same mistake. The cause for our mistake (and probably yours) was incorrect or unclear information promulgated by the American Psychological Association (APA) in their product *HIPAA for Psychologists*.

In the Psychotherapist-Patient Services Agreement recommended by APA in that product, there is a section headed "Psychotherapy Notes." The last paragraph in that section states:

"These Psychotherapy Notes are kept separate from your Clinical Record. Your Psychotherapy Notes are not available to you and cannot be sent to anyone else, including insurance companies without your written, signed Authorization. Insurance companies cannot require your authorization as a condition of coverage; nor penalize you in any way for your refusal to provide it."

Unfortunately, the last sentence in that paragraph is incorrect. On Page 15 of the *NAN Bulletin* referenced above, it is stated: "3rd-party payors may not require disclosure of psychotherapy notes . . ." That statement essentially agrees with the above information taken from the APA product. I should also note that the same information was verbally provided to those of us who attended Michigan Psychological Association (MPA) seminars regarding the APA product.

A couple of months ago, following an insurance company's refusal to comply with that provision of HIPAA, I contacted APA's legal section on the matter. Much to my surprise (and that of all of my colleagues with whom I have discussed this),

APA said that the insurance company (an automobile no-fault insurance policy) was within their rights.

APA referred me to the United States Department of Health and Human Services (HSS), which is the federal agency that is responsible for interpreting and enforcing HIPAA. According to HSS's interpretation of "Health Plans," the term "Insurance companies" is not an all-inclusive term. HSS has excluded from the definition of "health plans" any insurance company that does not provide health coverage as a primary aspect of the policy, but rather provides health coverage as an incidental benefit to the insurance policy.

The APA legal department's opinion and HSS's documents (available on HSS's web site) mean that the following types of insurance companies are *not* covered under the HIPAA law:

- (a) Automobile medical payment insurance
- (b) Automobile liability insurance
- (c) Accident insurance
- (d) Disability income insurance
- (e) Disability insurance
- (f) Workers compensation insurance
- (g) Coverage for on-site medical clinics

This means that insurance companies other than regular health plan insurance (e.g., Blue Cross) are *not* subject to the provisions of HIPAA. I, as a psychologist, am still subject to HIPAA. So if an automobile insurance company requests psychotherapy notes on my patient, I still don't provide the psychotherapy notes to the insurance company unless the patient has authorized me to do so. But, if the patient declines to provide me with such an authorization, the insurance company can refuse to cover the services I render, *based solely on the patient's refusal to sign the authorization*. The patient, then, assumes responsibility for payment of the services.

Naturally, I am now informing my patients about HSS's interpretation of HIPAA, and they can make the decision on whether or not to receive my services under those conditions. However, for many of us providers, that arrives a little late.

Based on the information contained in the APA product *HIPAA for Psychologists*, when HIPAA went into effect in April of this year, I essentially informed all of my patients that psychotherapy notes were "safe" from examination by insurance companies. As it turns out, I lied. For some patients, that left them with an account in my office that was too large for them to pay. For them, I have decided to "write off" the amount in those accounts.

I find it interesting (and disappointing) that since I learned several months ago about HSS's interpretation. I have not seen any promulgation of that fact by either American Psychological Association (APA) or Michigan Psychological Association (MPA). I hope that National Academy of Neuropsychology (NAN) will take the lead and inform their membership of these events.

Robert J. Rowe, Ph.D.
Livonia, Michigan

From the Editors:

We and Dr. Leslie Rosenstein of the NAN Professional Affairs and Information Office thank Dr. Rowe for this clarification of the HIPAA psychotherapy rules. We appreciate any information such as this which will help us and all of our colleagues in working through and with the complex HIPAA regulations.

Update on Health and Behavior Codes

Colleagues-

As the chair of the Division 40 Practice Advisory Committee, I can provide some additional information about the Health and Behavior Codes (95150-95155), and how to deal with some of the reimbursement issues that have been raised.

These codes became effective in 2002 and were intended to establish that psychologists are health care providers, rather than just mental health providers. As such, the new codes are intended to eliminate the mental health carveout administrative problems that many of us

have faced (i.e., need for precertification), as these codes are to be reimbursed by the major medical component of health plans. For many of our patients, this means 80% rather than 50% coverage and less out-of-pocket expense. Also, note that NO physician referral is needed for these codes. Of course this also means that these procedural codes need to be paired with an ICD-9 diagnosis rather than DSM-IVTR. In short, these codes are a major step forward for our profession.

Here is the most updated information that I have regarding reimbursement issues for the codes:

- According to the APA Practice Organization, CMS is now reimbursing for this code in all states EXCEPT for Florida, so getting paid by Medicare for most of us should no longer be a problem.
- There is less consistent reimbursement from private insurance companies, which have been slow to follow suit (especially in the Midwest).
- According to the Practice Directorate, the following companies now will reimburse for this code:

Aetna
Anthem BC/BS
MAMSI
Carefirst BC/BS
Cigna
Hanover
Mutual of Omaha
WPPA

The reason that these companies are now reimbursing these codes is because the APA Practice Directorate has been assertive in their communications to make these companies aware of the fact that CMS has accepted these codes.

Why are the above listed companies reimbursing for these Health and Behavior codes? Because APA members on an individual basis have let the Practice Directorate know about their trouble getting reimbursed from specific companies, and this is a key point:

- APA needs to know when you are having trouble being reimbursed for these new codes by a private insurance company and they can provide documentation that hopefully will help you get paid. One person to contact is Diane Pedulla (dpedulla@apa.org)
- Final point: If we don't use these codes, we will lose them, and in my view that would be a major step backward in our quest to be recognized as independent health care providers. All CPT codes undergo periodic review, and if few people use them then they are likely to be undervalued or eliminated. If you are having trouble getting reimbursed for the code, let APA know which company is refusing to acknowledge the codes.

Progress may be slow, but if at all possible, we need to keep pushing the private companies to pay for these codes.

Neil Pliskin, Ph.D.
Chair,
APA Div 40 Professional Affairs Committee

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Trailblazers and Technicians

NAN members have provided our office with information regarding the supervision of technicians by psychologists. Page 34 of the following document indicates that Trailblazers allows test administration by

employees under the direct supervision of psychologists within certain constraints:

<http://trailblazerhealth.com/partb/books/psychiatricervices.pdf>

Thanks are extended to Dr. Robin Hilsabeck for providing the web address for the Trailblazers document above. If others have similar information regarding different carriers, please forward such to this office at PAIO@nanonline.org so that we may share the information with our colleagues.

Technicians in Texas – Clarification from the Texas Board of Examiners of Psychologists (TSBEP)

The following letter was written by the TSBEP Executive Director in response to the PAIO formal request for clarification on the use of technicians. The PAIO, at the request of a NAN member in Texas, asked the TSBEP for formal clarification of what was meant by “psychological services” and “psychological education.” The state rules in Texas allow for the use of technicians as long as they are not providing psychological services (services requiring psychological education):

<http://www.nanonline.org/downloads/paio/TSBEP.pdf>

From Gary Souheaver, Ph.D.

Use of Technicians affirmed in Arkansas

After two meetings of a special Technician Interim Study Commission created by the Arkansas Legislative Joint Health Committee, the use of technicians in the practice of neuropsychology in Arkansas was approved. Final details about definitions in neuropsychology and educational standards remain to be completed, but these relatively minor details are not expected to be “deal breakers,” according to the mediator that was employed by the legislature to seek resolution of the issue. The Interim Study commission was charged with developing consensus proposals that will be agreed upon by the various factions within

psychology prior to the 2005 session of the Arkansas legislature.

The agreement was a major accomplishment for neuropsychologists in Arkansas and comes after more than two years of conflict between the Arkansas Psychological Association (ArPA) and the Arkansas Board of Examiners in Psychology (ABEP). Two years ago the ABEP reversed a twenty-year stance that allowed the use of supervised specially trained technicians as outlined by APA Division 40. Soon after the new rule was approved, several neuropsychologists, with the assistance of the ArPA, filed a lawsuit against the ABEP to prevent implementation of the rules change. During the 2003 session of the Arkansas Legislature, the licensing board agreed to hold the rule in abeyance after it's budget was put on hold by the Senate Budget Committee. At the urging of the ArPA, the legislature placed the technician issue into an Interim Study commission by the Joint Health Committee in an effort to resolve the controversy.

A special consultant in governmental operations appointed by the Joint Health Committee mediated the proceedings. Created to seek consensus on the technician issue, the members of the Technician Interim Study Commission appointed by the legislature included clinical psychologists, licensed (MA level) psychological examiners, school psychologists, neuropsychologists, researchers, private practitioners, and academic faculty from various universities in Arkansas.

After the December 12, 2003 meeting, the special group agreed that the use of non-licensed technicians, as outlined by APA Division 40 and ASPPB guidelines, would be proper. The group, however, must meet at least one more time to define educational and supervision standards of both the supervising psychologist and the technician. The use of technicians would be restricted to neuropsychology.

Morgan - from page 5

You do *not* acknowledge that your client is Mr. Vasquez, but politely thank her and hang up. "God, what's this all about?" you think. You also think that perhaps you should tell Mr. Vasquez the results and ask him if he wants to stop testing. After all, ADHD/LD or not, how can someone with an IQ of 86 become a lawyer (though you think maybe you've met some!)?

You decide to give Mr. Vasquez some feedback. You tell him in a nice way that he's just not bright enough to become a lawyer, even at Offbrand Law School. You tell him that you don't have enough data to tell whether or not he has ADHD or LD, but you suggest the testing stop here, since his abilities are out of line with his goals. Well, Mr. Vasquez falls apart. He completely breaks down, crying, begging, pleading with you, and not crocodile tears at all. "Please doctor, I am begging you. Please finish the testing. I'll do anything, pay you double. Please, this is my only dream, my last chance." He grabs your arm and holds it to his tear-streamed face. God, you've never seen anything like this. You're a wreck!

"Okay, okay, Mr. Vasquez. Pull yourself together. We'll finish the testing. Please do your very best on everything." "Doctor, I am, I will, I promise." (That's what you were afraid of!). Well you give him the TOMM, just to be sure, and he does O.K. (Trial 1 = 48; Trial 2 = 50). Just as you thought, he's not faking bad, at least so far.

So, you administer the entire battery. Results are fairly consistent: he's scoring between one and 1½ standard deviations below the mean on *all of your tests* (including: CVLT, HRB, WCST, Stroop, WMS-R, etc.). His MMPI-2 results in a profile of questionable validity because of its elevated "F", but the TRN and VRIN are O.K. He scores between a T of 85 and 110 on the D, Pt, and Sc scales. "Oh my", you think...oh my, indeed.

Case Analysis, Ethical Concerns, & Resolution:

This case, as with many, has a number of ethical issues (American Psychological Association, 1992) embedded within it. Let's examine each of the potential ethical issues in this case. At the point in time where the neuropsychologist has completed the evaluation and formulated a diagnostic impression, it is clear that the basis for the other psychologist's R/O diagnoses becomes very questionable. In his formulation of Mr. Vasquez's problems, did the other psychologist, "...rely on scientifically and professionally derived knowledge when making his ...professional judgment" (Ethical Standard 1.06, Basis for Scientific and Professional Judgments)? The answer is likely to be "no." Further, you now begin to wonder if the previous psychologist was performing services beyond the boundary of his competence (Ethical Standard 1.04, Boundaries of Competence). These issues then raise the question of what precisely constitutes a professionally appropriate and scientifically valid assessment for ADHD/LD. That question is left for the reader to think about.

But, you did perform an appropriate, complete evaluation. You did not base your evaluation entirely on interview, history, or the impressions of another professional, but you performed your own assessment. Your conclusions were quite different from the previous psychologist's, and they were based on empirically-derived evidence (test data). You fulfilled Standard 2.02 (Competence and Appropriate Use of Assessments and Interventions). You took care to interpret your results with caution, providing your client with the most accurate assessment possible and conformed with Standard 2.05 (Interpreting Assessment Results). In addition, you took great care to explain to the client the basis for your conclusions, as painful as it was for both of you, conforming to Standard 2.09 (Explanation of Results).

Unlike the original psychologist, you were not so quick to see things Mr. Vasquez's way. Although both you and the previous psychologist no doubt wanted to help the client, you did not believe that a cursory analysis of his situation would suffice. You understood that only an empirically valid assessment could help the client and society. How does it really help Mr. Vasquez, after all, if he were to be admitted to law school and flunk out again, as surely you know he would? In so doing, you adhered to all of the Principles of the Ethics Code: Competence, Integrity, Professional and Scientific Responsibility, Respect for People's Rights and Dignity, Concern for Other's Welfare, and Social Responsibility.

Lastly, the reader may ask what, if anything, should be done about the other psychologist's work? After all, he couched his impressions tentatively with the "Rule Outs." That question is left for the reader to think about, with emphasis that when one encounters an unethical psychologist twice, the need to take action becomes increasingly imperative.

It is hoped that this case will increase awareness of, and sensitivity to, ethical situations as they arise in every day clinical practice. The "ethically literate" clinical neuropsychologist serves his patients and society well.

Reference

American Psychological Association (1992). Ethical principles of psychologists and code of conduct. *American Psychologist*, 47 (12), 1597-1611. Washington, DC: Author.

Official Minutes, Board of Directors Meeting

Montreal May 30-31, 2003

May 30, 2003

Present: Zillmer, Harris, Hom, Ruff, Uzzell, McCaffrey, Zeifert, Wilkening, Gouvier, Reynolds, Perry, Webbe, Bush, Koffler, Lee, Lucas, Arnett, Barth, Pliskin, Puente, Golden, Schatz, Rosenstein, Berg

PRESIDENT'S REPORT (Eric Zillmer)

The meeting was called to order at 8:00am. The President welcomed the Board and Committee members to Montreal, and introduced new members. He reviewed the rules of order for the meeting, and went over the agenda. Primary areas of focus will be finances and cost saving. He noted that the Montreal Tourist Bureau was paying for part of our meeting expenses to introduce us to the city.

SECRETARY'S REPORT (Penelope Zeifert)

Board meeting minutes were reviewed and amended.

MOTION: Moved that the October 2002 Board minutes be accepted with amendments. Moved by Perry. Seconded.
VOTE: Passed - Unanimous

Business meeting minutes were reviewed and amended.

MOTION: Moved that the October 2002 Business minutes be accepted with amendments. Motion by Ruff. Seconded.
VOTE: Passed - Unanimous

The policy for voting in business meetings was discussed, including the need for a quorum, and suggestions were made to identify members who make a motion and to accurately count the vote.

There was a pending business item forwarded to this meeting from October 8, 2003, and Dr. Zillmer asked that this be resolved during this meeting. The amended motion read: "Moved by Wilkening and Seconded by Perry that 5% of all budgets be sequestered until a vote by the Board of Directors in May-June 2003."

TREASURER'S REPORT (Greta Wilkening)

The Treasurer's term was clarified. An Amendment to the Bylaws (Article III, Section 8H) was reviewed, "The Treasurer shall serve a four year term, the first year as non-voting Treasurer-Elect, and then three years as Treasurer."

Reimbursement for the meeting attendance was reviewed and clarified, as laid out in the President's February 20, 2003 letter.

NAN check-writing procedures are currently as follows:

- All bills/invoices go to the ED office
- Checks are approved by ED (e.g., that the service or materials have been provided)
- Payments are coded by the office staff
- All coding is reviewed by the Treasurer (coded for "Job" and for type of expense)
- Check is cut in ED office and sent to Treasurer
- All checks are signed by the Treasurer (with co-signature for checks \geq \$2500)

Advantages of this process- unified books, consistent coding, and ability to easily have Treasurer outside of immediate proximity to ED office.

There was a discussion regarding the 2002 budget, collections and expenses. Concerns were raised about the lack of clarity inherent in the current accounting program and the need to develop a system that is readily understandable by the Board. NAN currently has one firm that does both bookkeeping and accounting, but NAN will need to organize the data.

Action item: Set up a new system for a standard accounting system that will be consistent over time. This will require a consultant and there will likely be an additional expense.

MOTION: Move that the Finance Committee be charged with the task of creating an intelligible accounting system for the members of the Academy.
 Motion by Uzzell. Seconded.

VOTE: Passed (9 for, 1 abstained)

The Finance Committee consists of the President, Immediate Past President, President Elect, Treasurer, Secretary, and Executive Director.

Revenues for 2002

Budgeted or proposed	
\$769,120.00	
Total expenses including Elsevier bill	\$683,764.71
Excluding PAIO	
Total revenue	\$638,405.18
Loss	\$45,359.53

In summary, we spent less than we budgeted, but we did not take in as much as we spent. The 2002 deficit was discussed. The discrepancy was attributed to a variety of factors. There was less revenue to the annual conference (\$40,000 less than 2001 in San Francisco, and almost \$90,000 less than 2000). Free CE was offered for two courses, and this may have decreased revenue. The NAN office was asked to provide more data regarding the number of 2002 paid registrants.

Gross convention revenues were reviewed and show a decline over the last five years. In 1998, income was \$324,209. In 1999, income was \$392,636. In 2000, income was \$373,415. In 2001, income was \$319,396. In 2002, income was \$294,907.

Other factors impacting income include effects of September 11 as well as the poor economy and decreased interest earnings. In 2002, the NAN office spent \$44,900 on the web based data based system and this was not budgeted. Dr. Wilkening clarified that the Board did authorize the web based data based system and the web page upgrade but this was months after the 2002 budget was set up. Dr. Harris explained that the original plan was to do the web-based data based system in 3-4 phases with E-commerce and conference registration slated for next year. However once the membership data-base and dues payment was on-line, the office was committed to speeding up the process or they would be operating inefficiently with two separate systems.

Dr. Golden noted that we are currently using a cash based accounting system and this is problematic, as we need to set up an accrual accounting system. This will be addressed in the Finance Committee as per this morning's motion.

There needs to be an audit and Dr. Wilkening asked for direction from Board. Given the change in the Treasurer's term, there is no middle year.

Projected budget for 2003

We originally budgeted \$733,000 but sequestered 5% so the current budget is \$696,000. Usually we project the budget based on the previous year's revenue. There was a discussion about the need to be more prudent. There are 20% fewer abstract submissions than last year and this means there will likely be fewer attendees than last year. APA was also described as having decreased revenue and journal submissions this year. Regarding membership revenue, dues collected were \$178,000 by May 25 (last year at this time, we had collected \$192,000.)

Given that we are \$44,000 short of our projections, we need to cut expenses. The Board had agreed upon a 5% sequestered cut until today. Two options were to continue the 5% cut until the end of the year or to cut \$44,000 (the 5% sequestered money plus \$10,000.)

FINANCE COMMITTEE REPORT (Eric Zillmer)

Dr. Zillmer discussed NAN's investment portfolio and the strategy for financial investment of NAN assets. There is 1.1 million dollars in reserve. The committee has been consolidating accounts and \$860,000 has been invested with Merrill Lynch. At present, the money is all invested, accessible and diversified. Dr. Hom noted that in the past, 400,000 dollars was considered a reserve fund for emergencies and was not to be touched. The plan was to invest the rest.

It was clarified that non-profit organizations have no limit on the amount of profit they can make. A discussion ensued regarding how conservative to be, how much surplus should be accrued, and possible uses for surplus. Given the volatility of the market, the finance committee's approach is to manage and grow the money in case of emergencies. The Board thanked Dr. Zillmer and the Finance Committee for their efforts.

MEMBER-AT-LARGE REPORT (Bill Perry)

Dr. Perry presented on NAN's possible interface with the pharmaceutical industry. Options include NAN providing educational materials, a speaker's bureau roster, and research consultants to the pharmaceutical companies. Other recommendations were to invite them to participate in and promote workshops. The Board sees this as a good step in developing public relations. It was clearly stated that the focus was separate from the pursuit of pharmaceutical privileges for psychologists.

President Zillmer appointed a Task Force chaired by Dr. Perry to come up with a plan for developing some of the ideas presented today. The Board expressed appreciation for Dr. Perry's work.

Action Item: Dr. Perry will set up and Chair the Task Force on Partnership with the Pharmaceutical Industry. He will report back to the Board at the Annual meeting regarding

implementing specific tasks as outlined above. Since this is an advocacy effort, PAIO and the grass roots network will need to be incorporated into these plans.

IMMEDIATE PAST PRESIDENT REPORT (Jim Hom)

The NAN Commission on Education report by Chair Gerald Goldstein was reviewed. The Board agreed that we want to and need to be included in providing standards for educational training. The Board thanked Dr. Goldstein and invited him to present at the Annual meeting when he may have more information. Dr. Koffler suggested we get more involved with Synarchy meetings; the President and President-Elect are members, and Dr. Uzzell also attends. It was also recommended that we meet with Division 40 regarding lobbying of APA for accreditation of neuropsychology training programs.

EDUCATION COMMITTEE REPORT (Shane Bush)

APA approved sponsorship continues, but NAN will need to reapply for this status in 2004. NAN is currently able to offer CE for the annual conference, distanCE, and BookCE.

DistanCE is currently offering one course but there is a plan to offer an Ethics course this summer, and plans for a TBI course in the fall. Steve Moelter, Program Coordinator and Co-Director will present to the Board at the Annual Meeting in 10/03. The Board will review the DistanCE program in the fall of 2004.

Regarding the annual conference, Dr. Zillmer raised a proposal to offer CE for two hour Special Topic courses without charging a fee. A discussion ensued regarding possible financial considerations on our income from the conference. The free Special Topics workshops this year would compete with paid test workshops for CE, and there was a consensus that we hold the issue over until next year.

Pros and cons of offering CME for the conference were again discussed. Offering CME was described as good for public relations, advocacy, and a way to interface with pharmaceutical companies.

Action item: NAN will offer CME through Stanford for the annual conference

The Board thanked Dr. Bush for taking on the added responsibility of overseeing distanCE and CME.

NAN FOUNDATION MEETING (Jim Hom)

Dr. Hom presented the minutes of the Oct 7, 2002 meeting. He clarified that the Research Grants Committee chaired by Dr. Golden is funded through the NAN Foundation. The NAN Foundation has been in existence one year (*three years*.) The Officers include the President, Treasurer, Secretary, three Past Presidents and the Executive Director. They are required to meet at least once a year, and will do so in Dallas in 10/03. In 2003, NAN funded the Foundation \$ 54,000 for clinical research grants. The Grants Committee charge is to award grants for research that will be published, that will benefit the NAN membership, and that is applied in content. The Foundation is investigating fundraising opportunities and individuals with fundraising knowledge/skills.

CULTURE AND DIVERSITY COMMITTEE REPORT (Peter Arnett for Ruben Echemendia)

Dr. Echemendia will serve as the editor of a special issue of *Applied Neuropsychology* on ethnic and cultural diversity. One article in that edition will be authored by members of the committee and will focus on describing the diversity within neuropsychological organizations and training programs. The committee also plans to translate the NAN brochure into Spanish in conjunction with the Hispanic Neuropsychology Society. The committee will then present it to the Board for approval.

PAIO is interested in making articles available to NAN members, and asked Dr. Uzzell to look into this possibility. The committee was asked to provide something for the Website on culture and diversity. They were encouraged to look into research for tests with good normative values, to explore gender issues, and to generate a plan to have more leadership positions within NAN.

EXECUTIVE DIRECTOR'S REPORT (Josette Harris)

The NAN office has been working extensively on the web based program and particularly on-line membership. The only part left of the transition project is conference registration. The office staff has been working hard helping people to use the on-line program, and Dr. Harris asked that we let the staff know of our appreciation.

The 2003 dues deadline was extended and the office has only recently labeled members as overdue. This was done to give them time to adjust to the on-line system and e-commerce, as well as to deal with problems with journal fulfillment.

Dr. Harris reported that the bylaws were updated and placed on the Website.

Action Item: Remove strikeouts from the Bylaws on the Website.

Action Item: The Secretary should include Bylaws in every Board meeting packet.

Dr. Harris asked that the Board consider a retirement plan for the office staff; this issue was raised in the past with staff but has not progressed.

Action Item: The Policy and Procedures Manual needs to be updated, with input from all officers, board members, and committee chairs.

The tax-exempt status of the NAN Foundation expires on 12/31/04 and the Treasurer and ED will need to show this status should continue.

Conference sites were reviewed and include: 2003 Dallas, 2004 Seattle, and 2005 Tampa. Proposals for sites in 2006 would usually be in the mid-western [central] states and they include San Antonio and New Orleans. Montreal is interested in hosting the conference and is in large part paying for this meeting to introduce the Board to the city. They asked to be on the short list for 2006 and this was accepted. Another possibility would be to accept a multi-year proposal from a hotel chain, in which we would agree to book with them for five consecutive years and thus gain a lower rate. This discussion was deferred until Saturday after the Strategic Planning Task Force presentation. (After the meeting, Dr.

Zillmer suggested that Baltimore or Philadelphia should be considered as well.)

PROGRAM CHAIR (Frank Webbe)

There is no current Policy and Procedure description for Program Chairs. Dr. Webbe went over the process he used for developing a curriculum. Dr. Moelter coordinated the solicitation of posters on-line and will chair a committee judging posters at the conference. There were a third fewer abstract submissions this year, down from 390 in 2002 to 306 and this is down from approximately 500 in the past. This year, there was no limit on numbers that could be submitted per individual, although this may not have been well-publicized. APA has had a high number of submissions this year due to aggressive solicitation.

Dr. Webbe thanked Dr. Robert Denney for his assistance and reminded the Board that Dr. Denney will take the lead next year as Program Chair.

Dr. Webbe reviewed the program. Special topic workshops are grouped into two afternoons. There will be two special events to lead off special topic workshops, with Dr. Uzzell conceptualizing practice, and Dr. Gouvier and journal editors discussing the journal submission process.

To increase conference revenue, there was a proposal to increase workshop fees by \$5, raising it from \$65 to \$70 per workshop.

MOTION: Move to increase workshop fees by \$5 from \$65 to \$70. Moved by Ruff. Seconded.

VOTE: Passed (6 for, 2 opposed, 2 abstained)

Dr. Zillmer has set up a co-sponsored workshop with CCPN on Saturday afternoon in Dallas. All proceeds will go to NAN. CCPN will start their own meeting at 5pm Saturday so there will be no overlap of time with the NAN conference. He stated that this step is in accordance with our Bylaws ("...to join with other professional groups to exchange information and further the preceding goals.")

Dr. Reynolds clarified that this move by NAN does away with the need for CCPN to have a separate block of hotel rooms. In the past, CCPN needed their own block of rooms in order to get free meeting space. Now CCPN will stay in the NAN block of rooms for which NAN will get credit, and NAN could use its clout with the hotels to get Saturday night and Sunday free meeting space for CCPN. Dr. Uzzell and Dr. Perry commended Dr. Zillmer for making these arrangements.

There was some discussion of possible liability in this arrangement. Dr. Harris clarified that two different organizations requested space at the NAN conference. For reasons of both potential insurance liability and conflict of interest, she did not want the responsibility of booking hotel space for them. She did contact the hotels to determine if there was available space, and then directed the organizations to contact the hotels directly. According to Dr. Webbe, any confusion has been clarified and CCPN has apparently booked their rooms.

Dr. Ted Blau passed away this year and there was a discussion about how to honor him. Possibilities raised were to dedicate a workshop and/or to acknowledge him in the presidential address.

The Board expressed appreciation for the thoughtfulness and hard work shown by Dr. Webbe.

PUBLICATIONS REPORT (Greg Lee)

Dr. Lee presented the ACN Editor Succession proposal as requested by the Board. The Board expressed their thanks to the committee for their input. This proposal will be incorporated into an overall blue-print for all non-elected positions. The Strategic Planning Task Force will present their Emergency Personnel Replacement Plan in Dallas, and this can then go into the Policy and Procedure manual.

The Board unanimously passed approval of the ACN Editor Contract signed by Dr. Gouvier.

The Board accepted the Journal Editor Job description. The Board asked that it be placed in the Policy and Procedures manual under Publications, but that reference to specific funds from Elsevier be removed.

The Spring Bulletin is delayed by a month. The next issue is set to be released in September and will be used to advertise the conference. The Bulletin is in print and online. The editors, Dr. Drane and Dr. Williamson were praised for their work. There was a discussion of advertising fees and the price of \$400 per half-page. Only one ad has been sold, and this may be because the fee is too high or the ads have not been well publicized. One suggestion was to lower the fee to \$300 per half-page, and \$500 per full page.

***Action Item:** The Publication Committee was asked to review Bulletin advertisement fees.*

With regard to the NAN Book series, the book by Drs. Prigitano and Pliskin has sold 160 copies. Fifteen people have signed up for the CE program but none have paid for CE. Expenses were \$15,000 for getting the book published. The BOD discussed how to market this book and whether or not to continue with the series. Dr. Lee was unable to provide further information regarding the first book, noting that it was negotiated between Dr. Prigitano and the publisher without input from the Publications Committee. Dr. Zillmer suggested that if NAN is to continue the series it has to take more control over the negotiation process as well as the marketing of the book.

***Action Item:** The book should be more prominently advertised at the next conference, with clear statements that it is a NAN book offering CE and a sizable cost reduction for members. All books should have the same format and the NAN logo.*

Psychology Press is offering to produce a second book at its own expense. There is no outlay and all royalties on net sales go to NAN, with a generous stepped rate. There is an advance as well as a discount for members. Psychology Press has agreed to cover the cost of four pages of colored illustration. The book content will be structural and functional imaging, and Andrew Saykin will be the editor. We can offer BookCE and possibly develop a distance course. Various issues were raised including that color pages are expensive and four pages may not be enough. A general question about potential conflict of interest was raised since NAN is broadening its revenue

producing activities. The discussion was deferred until the Conflict of Interest presentation tomorrow.

***Action Item:** Gather further information from the publisher about costs and discuss with Dr. Saykin, his costs and the number of color pages needed. Dr. Lee will provide this information on the Board listserv.*

With regard to the Elsevier fulfillment problems, a chronology of events was provided in written format. Elsevier had major acquisition and reorganization changes resulting in missing issues, mailing list problems, and lack of responsiveness. There remain problems in receiving earlier missing issues, less so for more recent ones. There has been some progress but Dr. Lee recommended that we wait to pay the bill until they had delivered all issues.

***Action item:** The Treasurer and Executive Director will estimate NAN's actual expenses as a result of Elsevier's fulfillment problems.*

***Action item:** The President, with the assistance of Dr. Reynolds who originally set up the Elsevier contract, will use this information to negotiate a reduced bill.*

The Board expressed awareness and appreciation of the great amount of time and effort that Dr. Lee has spent on this particular issue, and this will be factored into the negotiations with Elsevier. They also thanked him and his committee for their work on the publication issues detailed above.

Dr. Gouvier presented an update on ACN. He noted a large backlog of articles in the queue to be published and proposed a catch-up issue.

***Action Item:** Determine the number of articles in the queue for publication in ACN, and evaluate the need and cost of an additional issue.*

Dr. Uzzell stated that Laurence Erlbaum (LEA) would like to offer NAN members a half-price discount (\$45 per member) on a journal subscription for Applied Neuropsychology in exchange for the mailing list. This discount would have no end-date and LEA would like the mailing list each year in order to extend the offer to new members.

MOTION: Gouvier moved that NAN give LEA a one time free copy of our mailing list with the understanding that the journal *Applied Neuropsychology* would be half-price (\$45) and this discount would be renewable.

Moved by Gouvier. Seconded.

VOTE: Passed (6 for, 2 opposed, one abstained)

There was a discussion and concern that other journals in the past have made a similar offer and in those instances, we have refused them. There is potential conflict of interest as a number of Board members are editors or contributors to journals. It was suggested we make the policy for all journals the same, and that we have journals place ads in the Bulletin rather than give the mailing list away.

Action item: The Policy and Planning Committee is to come up with a uniform policy for dealing with these proposals from journals, and present it in October.

NOMINATIONS COMMITTEE (Jim Hom)

According to the 1% rule, two nominees per office currently qualify as candidates. Dr. Hom clarified that if there were more than two candidates who qualify by the 1% rule, there would be a primary run. The current candidates for President are Robert Elliott, PhD and Keith Yeates, PhD. The candidates for Treasurer are Rosmarie Moser, PhD and Michael Westerveld, PhD. The candidates for Member-At-Large are Eileen Fennell, PhD and Robert Leark, PhD.

MOTION: Move to accept the slate of nominees for office. Moved by McCaffrey. Seconded.

VOTE: Passed (9 for, 1 abstained)

INFORMATION TECHNOLOGY COMMITTEE (Phil Schatz)

Use of the website has greatly increased, and is currently being used to disseminate information, offer distance, and receive poster submissions, as well as to serve as the primary database for administration of much of the NAN Main Office membership-related business. Financially, IT is doing well with much of the funding coming from PAIO. Dr. Zillmer acknowledged that NAN is taking a leadership position in the area of technology and commended Dr. Schatz for his hard work over many years.

MEMBERSHIP COMMITTEE (John Lucas)

New committee members were announced and it was noted that the composition of the committee is diverse with regard to type of practice and geographical region.

As of May 29, we have 2,529 active paid members (1,553 Professional Members, 415 Associates, 248 Students, 155 Affiliates, 156 Fellows, 2 Special Category members.) As of May 29, 1,057 members were classified as overdue in regard to payments. It is estimated that half of these overdue members will pay later this year.

There was a question about whether these new statistics would have changed the 1% rule for NAN candidates. Dr. Hom stated that the Nominations Committee used the April 30th statistics.

The number of new members is on par with past years, but there has been an increase in membership closings (nonpayment of dues for two consecutive years.) There was a discussion about the potential reasons for lapsed membership and possible mechanisms for encouraging lapsed members to re-join.

The Membership Committee reviewed its policies regarding member requests for dues waivers. The Board concurred with the committee's policies and recommendations.

The committee presented the cases of six members requesting Special Category Membership Status for the Board's approval. Two additional members requested Special Category Status but did not meet eligibility criteria. The membership committee recommended that these members be asked to reapply when they meet criteria

MOTION: Move to approve the Special Category Status of the six members as recommended by the Membership Committee. Seconded.

VOTE: Unanimous

The committee presented a proposal to revise the current Special Category membership by dividing it into two distinct classes of membership: one class for retired members and a separate class for disabled members. The committee proposed a combined "Senior/Emeritus" class of membership for older members with slightly modified eligibility criteria and benefits modeled after those employed by APA and INS. The Board expressed interest in the proposal, and made further recommendations regarding eligibility criteria. The Board also suggested that the Senior and Emeritus classes of membership be separated. It was recognized that adding a new member status would require a Bylaws change and vote from the membership. Proposed changes might also have a financial impact. A vote on this issue was deferred.

Action item: The Membership Committee was asked to incorporate the Board's suggestions into a revision of the membership criteria and provide a financial impact analysis of the proposed changes at the Fall Board meeting.

Dr. Koffler asked that we consider including high school students in the student membership category, and noted that it would not be necessary for these students to receive journals.

The Board commended Dr. Lucas and his committee for their thoughtful work.

The Board Meeting was adjourned at 4:10 pm. The Executive Board Meeting began at 4:20 pm and adjourned at 7 pm.

May 31, 2002

A quorum being present, a meeting of the Board of the National Academy of Neuropsychology was reconvened and called to order at 8:00am.

Present: Zillmer, Hom, Ruff, Uzzell, McCaffrey, Zeifert, Wilkening, Gouvier, Reynolds, Perry, Webbe, Bush, Koffler, Lee, Lucas, Arnett, Barth, Pliskin, Puente, Golden, Schatz, Rosenstein, Berg. Dr. Harris arrived at 10:20. Guest: Daniel Marson, JD, PhD.

PRESIDENT'S REPORT (Eric Zillmer)

Dr. Zillmer welcomed Daniel Marson, JD, PhD, Chair of the Task Force on Conflict of Interest. He reviewed the 2003 budget situation and suggested we accept the 5% sequestered cut only.

Motion: Move that the 2003 budget be set at \$696,832.60 which represents a 5% cut from the budget set in Miami. Moved by Perry. Seconded.

Vote: Passed (9 for, 1 abstained)

POLICY AND PROCEDURE COMMITTEE (Jeff Barth and Neil Pliskin)

Two papers were presented to the Board: Precertification white paper, and Informed Consent white paper. Two papers will be finished shortly and sent to the Board by email: Test Security white paper and Contrasting Neuropsychology

chological and Psychoeducational white paper. By October, there will be a paper on Independent Medical Examinations and a NAN position paper on Boxing.

There was a discussion regarding how papers are conceptualized and implemented. Nine of eleven ideas for papers have come from the Board. The minutes do not reflect that the Board has directed them so this may need an action item in the future. Papers are always voted on by the Board. Papers are published and available to the community. Dr. Barth asked that the papers be consolidated in one place. There was an unresolved discussion about placing them in a pamphlet/binder or publishing them in an Archives edition. There was a request that the format for the papers be the same.

There was a concern that the Precertification paper endorses a precertification process by managed care. The Board asked that it be revised. Dr. Barth requested that the Board make suggestions and comments prior to Board meetings.

MOTION: Move to accept the paper, Informed Consent in Clinical Neuropsychology paper. Moved by Wilkening. Seconded.

VOTE: Passed (6 for, 4 abstained)

Dr. Barth and Dr. Pliskin will step down this year, but hope the committee will continue. They suggest that the Chair position again be shared by two people, and preferably that they reside in close proximity. They request a Bylaw change so that a Past-President does not have to be Chair but could be on the committee. They gave the names of people they recommend to the Board.

Dr. Zillmer expressed gratitude and appreciation for the excellent work done by Dr. Barth and Dr. Pliskin, and by their committee.

REPORT OF THE TASK FORCE ON CONFLICT OF INTEREST Chair: Daniel Marson, JD PhD
Committee: J.D. Ball, Bruce Becker, Gordon Chelune, Carl Dodrill, Michael Franzen, Kathleen Welsh-Bohmer

The task force was formed to address concerns raised at the 2003 Annual meeting regarding conflict of interest. The members were selected by the Policy and Procedure Chairs, and include two Past NAN Presidents. Dr. Marson has expertise in this area, and was asked to Chair the committee.

The Task Force concluded that NAN has grown rapidly as a professional organization. There is a significant potential for conflict of interest (COI). There is no NAN policy addressing conflict of interest matters. There is a compelling immediate need to develop a COI policy to define, monitor and remedy both potential and actual COI. A COI policy should be based on voluntary disclosure by NAN leaders of any relevant relationships.

The Task Force report was viewed as a first draft and there were requests for more clarity (a definition of terms and examples/scenarios) as well as statements of concern about confidentiality, the use of disclosure forms, and the process of handling complaints. There were also requests for conceptualization of an overarching structure for a COI policy, including a way of identifying or electing COI committee members and laying out potential Bylaw

changes that would reflect the policy. It was also proposed that a member of the Board, or possibly the Chair of the Membership Committee work with the Task Force in developing a COI policy to present to the Board. Finally, it was agreed that a Conflict of Interest policy and committee are necessary and that the focus should be educative rather than punitive.

Action item: *The Task Force is asked to continue to be charged with this process, and to modify the document based on feedback given today. The message board will be used to facilitate discussion among Board members. The current report should be published as a working document in the Bulletin, to inform NAN members of progress to date.*

MOTION: Move that the Policy and Planning Committee and the Task Force on Conflict of Interest continue with their work and that the Board supports and appreciates their efforts on developing a policy on conflict of interest. Moved by Perry. Seconded.

VOTE: Unanimous

Dr. Zillmer thanked Dr. Marson and his committee for their hard work and their thoughtfulness.

FELLOWS COMMITTEE (Ron Ruff)
Seventy-four members were nominated. Thirty-three did not qualify, 41 were qualified and they received 16 applications by the deadline. The committee proposed 11 individuals for Fellow.

MOTION: Move to accept the committee's recommendation for Fellows as presented. Moved by Gouvier. Seconded.

VOTE: Passed (9 for, 1 abstained).

The Board Meeting adjourned at 11:50 for an Executive Board meeting.

The Board Meeting reconvened at 12:45

Dr. Zillmer announced the recipients of 2003 NAN awards. Dr. Koffler is the recipient of the Distinguished Service award. Dr. Golden is the recipient of the Distinguished Neuropsychologist award. Dr. David Allen is the recipient of the Early Career Award and Drs. Iverson, L.M. Allen, Green, and Rohling won the Nelson Butters award.

RESEARCH GRANTS COMMITTEE (Charles Golden)
The Grants Committee reviewed 18 applications and chose two applicants with applied research proposals, for a total of \$29,785. The money was approved by the Foundation at the October Annual meeting.

MOTION: Move to forward the nominations to the NAN Foundation. Moved by Perry. Seconded.

VOTE: Passed (9 for, 1 abstained)

Next year, the Grants Committee will be requesting less than \$50,000 as part of overall budget saving. In addition, the first group to get grants under a more stringent proviso will report in Dallas. This is required in order for them to receive their full grant monies, as is a submission to ACN.

***Action item:** Develop an evaluation procedure by which the Research Grants can be evaluated once they have been awarded (e.g., # that have been published).*

PAIO (Leslie Rosenstein)

Dr. Rosenstein requested decisions be made regarding three issues:

1) Procedures for obtaining BOD approval for activities/products – when is it required and how to proceed. Related to this, there are letters she would like to post on the NAN website and requested approval to do so. There was some concern about the amount of material generated for the BOD to review by email, and the number of iterations required per product. There was concern that decisions might be made too quickly which might then become policy.

MOTION: Move that a Subcommittee be made up of the PAIO Committee and a Member at Large who will decide on what issues to pursue, what the process will be, and an analysis of the work product. After that, it will be submitted to the Board for consideration. Moved by Ruff. Seconded.

VOTE: Passed (9 for, 1 abstained)

Dr. Rosenstein noted that this is actually the process that has been taking place, with Dr. Reynolds serving in this capacity. She and Dr. Schatz suggested reviewing activities and proposals by messageboard.

MOTION: Move that the Board accept the three letters on Technicians, Videotaping Minors, and Capital Punishment and Mental Retardation, and these will be placed on the webpage. Moved by Gouvier. Seconded.

VOTE: Passed (7 for, 3 abstained)

2) Acquisition of a new Director of Professional Advocacy. Progress to date: The PAIO Committee has generated four names of possible Directors. There was some discussion about how to choose a Director, given the importance of the position. One suggestion was to use a subgroup of the Board and charge them with the task of choosing a Director. The Board expressed interest in interviewing the last two or three candidates.

***Action item:** Dr. Zillmer and Dr. Rosenstein will develop a job ad for a Director of Professional Advocacy, post it on the website, and set up interviews for Dallas.*

3) Development of Advocacy/Legislative Agenda with the New Director. Dr. Rosenstein notes that in Dallas, the PAIO Committee will be halfway through their three-year term. Dr. Rosenstein requests that the PAIO Committee meet together and hammer out procedures and agenda – location to be determined.

The Board expressed its view that Dr. Rosenstein has done an outstanding job. Her productivity and energy have been remarkable, and has resulted in much greater progress than expected. The Board expressed gratitude for her fine work.

TASK FORCE ON LONG-TERM AND STRATEGIC PLANNING
(Cecil Reynolds)

Dr. Horn set up this Task Force and charged them with four tasks: Annual conference planning, NAN membership and recruitment planning, development of an emergency personnel replacement plan, and future plans for the NAN office. The Task Force consists of the following members, who were divided into four working groups: Cecil Reynolds, Jeff Barth, Tim Bennett, Jill Hayes-Hammer, Ruben Echemendia, Eric Zillmer, Glenn Larrabee, Tony Puente, Bob McCaffrey.

The membership report and the emergency personnel replacement policy plan are in draft form and need to be circulated within the task force before presentation to the Board. The Board requested that the Membership Committee consult with the membership planning subcommittee.

A report on annual conference planning by Drs. Barth and Bennett was presented. A discussion ensued regarding the need for the Task Force to come up with an overview and overarching goals before focusing on specific content areas. There was also a request for the Board to clarify what the Task Force is charged to do and to give them a clearer mandate. Dr. Ruff suggested that the Board have a retreat and use a consultant to work on a strategic plan which the Task Force can then develop.

With regard to the report on annual conference planning, the Board noted several good suggestions. The Task Force subcommittee was asked to consult with the Program Committee and Executive Director, solicit comments from the Board, modify the report, and then bring it back to the Board. Dr. Webbe is having a meeting in Dallas with all Past Program Chairs, and he will share this information with the subcommittee. It was suggested that the final report, once approved, become part of Policy and Procedures.

Drs. McCaffrey and Puente presented a preliminary report on a permanent location for the NAN office. The benefits of moving to Washington DC were reviewed and included greater access to and potential influence on APA and Congress. Primary concern about the move was financial (rent and salaries), and preliminary information about renting from APA or APS were reported. Two options raised were to move the office to Washington in order to increase advocacy vs. hiring a lobbyist in Washington and putting the office in a less expensive location. There was discussion about how PAIO Directors would be involved if they lived outside of Washington. It was agreed that this was an important issue and needed strategic planning.

***Action Item:** The Task Force subcommittee is asked to investigate this move further, and various options related to it, and report back in Dallas.*

***Action Item:** Dr. Reynolds asked that Board members and Committee Chairs send him their ideas regarding what NAN's goals and plans ought to be so they can be incorporated into a strategic plan.*

The Executive Director was asked to present options for the 2006 annual conference site, and these consist of Montreal, San Antonio, and New Orleans.

The Executive Director presented two bids for Montreal that were within ten dollars of each other, but the second hotel was smaller than we would need. Given concerns about

meeting outside of the US, a survey of the members has been conducted which revealed interest in attending a conference in Montreal. The Board expressed concern about the lack of large hotels in Montreal that would allow competitive bidding, as well as the possible impact of a fluctuating exchange rate.

MOTION: Move to accept Montreal as the site for the 2006 Annual meeting. Moved by Wilkening. Seconded.

VOTE: NOT PASSED (5 NO, 3 FOR, 2 ABSTAINED)

A request was made for the Executive Directory to obtain competitive bids in the Midwest for 2006, but to keep Montreal in the mix for 2006 and 2007.

PAST PRESIDENT'S REPRESENTATIVE (Richard Berg)
Dr. Berg noted that there has been ongoing discussion by the Past Presidents about finding a permanent location for the central office and they will be pleased to hear that the Strategic Planning Committee is reviewing this. They affirmed that they remain very interested in the activities and evolution of NAN.

NEW BUSINESS (Eric Zillmer)
There are a number of people interested in joining committees. Dr. Hom suggested we develop a list that Committee Chairs look at first when adding to their committees.

The Board thanked Dr. Zillmer and Dr. Harris for setting up a memorable trip and a productive conference. Their efforts are recognized and appreciated. Dr. Zillmer thanked the Secretary for her efforts, and again congratulated award winners, Dr. Koffler and Dr. Golden.

MOTION: Move that we adjourn the meeting. Moved by Ruff. Seconded.

VOTE: Unanimous

The Board meeting was adjourned at 3:15pm.

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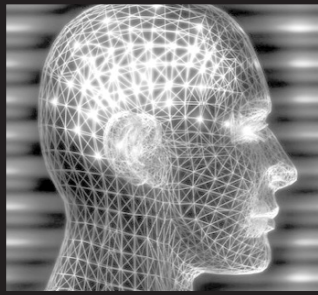
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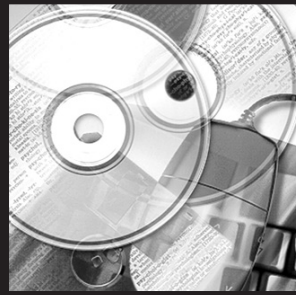
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Correspondence regarding this issue should be addressed to: Daniel Drane, Ph.D., Harborview Medical Center, University of Washington Regional Epilepsy Center, Box 359745, 325 Ninth Avenue, Seattle, WA 98104. Fax: (206) 731-6007. Submissions for future issues should be sent via email or on CD to Dr. D.J. Williamson, 3343 E Lake Shore Lane, Clearwater, FL 33761-1717, email dj.williamson@alumni.duke.edu.

Send change of address to:

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2121 South Oneida Street, Suite 550

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