



# *Saskatchewan College of Psychologists*

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## **Membership Advisory**

### **Release of Psychology Records**

This practice advisory addresses how to deal with requests for a Member's psychological records. It is not a substitute for, nor may it be relied upon, as legal advice. Rather, it is intended to add detail to the Professional Practice Guidelines in order to assist psychologists who have been asked to release written information to clients or to other people. Psychological records are composed of three types of information. The following definitions of the three types of psychological records are used for the purpose of this practice advisory.

#### **A. DEFINITIONS**

##### **1. Practice Records**

The term "practice records" refers to all psychological records. Thus, "practice records" encompasses all notes, reports, invoices, completed or partially completed test forms and protocol sheets, test results, interview notes, correspondence, other documents, and information stored in digital form or on audio or video tapes that are in the primary control of the Member and related in any way to the Member's provision of psychological services to the client.

##### **2. Test Material**

The term "test material" refers to any records that consist of, or are inseparable from, copyrighted materials or other test forms, that is

- (a) test items, test questions, test stimuli, and test instructions or manuals and/or
- (b) client responses to test questions or stimuli, notes and recordings concerning client statements and behaviour during an examination that is recorded on any copyrighted or other test form, or completed or partially completed test protocols.

##### **3. Test Results**

The term "test results" refers to all written materials concerning the outcomes or data from testing that are not on any copyrighted or other test form. Thus, it includes any summaries of raw or scaled test scores, client responses to test questions or stimuli, and notes and recordings concerning client statements and behaviour during an examination, if it is recorded elsewhere than on test forms or copyrighted material.

#### **B. BACKGROUND**

Requests to release practice records may come from clients, other Members of the College (or other psychological service providers), the court, or from other interested third parties (e.g., SGI, private health insurers, etc.). There are also times when personal information must be disclosed.

The appropriate response to the request is determined by the type of material requested and by the person or organization that has made the request. Important categories of such situations are listed and addressed below. Numbers refer to the relevant section of the Professional Practice Guidelines and will be designated by the initials PG.

## 1. Professional practice guidelines

This advisory must be considered in the context of the Professional Practice Guidelines in its entirety with special reference to the following specific standards:

**PG 11.12 Test Security:** A Member must not reproduce or describe in popular publications, lectures, or public presentations psychological tests or other assessment devices in ways that might invalidate them.

**PG 11.14 Maintenance of integrity of tests:** A Member must make reasonable efforts to maintain the integrity and security of tests and other assessment techniques consistent with law, contractual obligations, and in a manner that permits compliance with the requirements of this guidelines document, the Canadian Code of Ethics for Psychologists 3<sup>rd</sup> Edition (CPA 2000) and the legislation.

**PG 11.16: Assessment/scoring procedures for other professionals:** A Member who offers assessment or scoring procedures to other professionals must accurately describe the purpose, norms, validity, reliability and applications of the procedures and any special qualifications applicable to their use. Members are cautioned to be aware of the credentials of those to whom assessment services/scoring procedures are being offered. Members should not release test protocols or materials which would compromise the integrity of the test to non-Psychologists. Information provided in assessment reports should be consistent with the level of training that the receiver has to understand and interpret psychometric information.

**PG 11.23: Provision of Raw test data:** A Member must provide, within a reasonable time, the original or raw results or data of a psychological assessment to a Member or to a provider of psychological services in another jurisdiction when requested to do so in writing by a client or the legal guardian or agent of a client.

**PG 11.39 Raw Test data and Court Proceedings:** Members may be compelled by the Court to provide raw test data or test materials. Psychologists should endeavour to only release such information to another qualified Registered Psychologist or Registered Doctoral Psychologist. When this is not possible, Members, to the best of their ability, should ensure the materials do not become part of the public record, that they are not disclosed beyond the specific circumstances of disclosure, and are returned to the psychologist after completion.

## 2. Release of Practice Records to the Client or Legal Representative

**PG 6.12 Client Access:** A Member must provide access to and permit the reproduction and release of confidential information about a client to that client unless there is a significant likelihood that disclosure of the information would cause: (a) a substantial adverse effect on the client's physical, mental or emotional health; or (b) harm to a third party.

### 2.1 Practice Records Excluding Test Material.

A basic principle of common law in Canada [See the Supreme Court of Canada's decision in *McInerney v. McDonald*] is that clients [or their legal guardians] have access to any information in a health care provider's file that the provider may have relied on in

giving care, which includes the reports or materials provided by other health care providers. In most clinical situations, clients may request access to, or copies of, their records for themselves, or, with appropriate consent, release their practice records to others. Such requests of clients fall under Sections 3 (Competence), 6 (Confidentiality), and 11 (Assessment procedures) of the Professional Practice Guidelines.

## **2.2 Test Material.**

As per section 11 of the Professional Practice Guidelines (Assessment procedures), and federal and provincial legislation, clients do not have access to test materials unless there is a Court Order (see the Professional Practice Guidelines, section 11.39 - Raw Test Data and Court Proceedings). Federal and provincial privacy legislation provide a statutory definition of what must be released to clients and what may or must be withheld: The Federal Personal Information Protection and Electronic Documents Act (PIPEDA) and Saskatchewan's Health Information Protection Act (HIPA) and other relevant acts provide client access to all correspondence, notes, records and test results, but specifically exclude confidential commercial information (i.e., test stimuli, items, test questions, and test manuals).

### **3. Release of practice records to another Member or other recognized psychological service provider.**

As per Section 11.23 (Provision of raw test data) of the Professional Practice Guidelines, psychology records in their entirety (including test material in the client's file) may be copied and disclosed to another Member or other recognized provider of psychological services with the consent of the client or the client's legal representative.

### **4. Release of practice records to a third party (e.g., SGI, private insurer)**

**PG 6.5 Limited Access:** Members must limit access to client records to preserve confidentiality and must ensure that all persons working under their authority comply with these confidentiality requirements.

### **5. Times when records must be released or when a person or body must be advised of confidential information**

**PG 6.11 Court Order:** Despite any other provision of this guidelines document, a Member must comply with a court order requiring the release of confidential information. Where the Member has concerns regarding the release of confidential information to the court, they must ultimately comply but should also clearly articulate to the court their reluctance to comply and the reasoning behind it.

**PG 6.17 Provision of Records to College:** A Member is not in breach of the confidentiality obligation to their clients if the Member provides their clinical records or other documents related to their practice to authorized persons in response to a request from the College in the course of an investigation of a complaint or a registration matter.

### **6. Release of practice records in the context of litigation.**

As per Section 11.39 (Raw test data and court proceedings) of the Professional Practice Guidelines, Members may be compelled by the court to provide raw test data or test

materials. It is expected that in the context of litigation, a Member would receive a request for release of practice records in one of two ways.

- (a) lawyer(s) will send a consent form(s) signed by the client(s) authorizing the Member to release the complete file, or specific sections of the file, or
- (b) a Notice of Motion will be served on the Member for an Order of the court that the entire practice record or sections of the file be disclosed.

## C. ADVISORY

With reference to the information provided above, the following steps must be followed by Members in response to a request for client records.

### 1. Release of Practice Records to the Client

**1.1 Practice Records excluding test material:** In all circumstances in which a client (or the legal guardian) requests a Member's practice records, excluding copyrighted test material, prior to release of such records the Member must:

- 1.1.1** Obtain a valid consent from the client or a valid legal authorization to release records.
- 1.1.2** Clarify with the client or the requesting party in order to ensure the material requested is actually relevant for the client's purposes (Refer to Section 3.4 and 6.2 of the Professional Practice Guidelines).
- 1.1.3** Evaluate whether or not any harm is anticipated from the release of materials.
- 1.1.4** If harm is likely, explain reasons for withholding material deemed harmful, and offer to provide instead a summary or redacted version of the material.
- 1.1.5** Review the entire record with regard to any legal requirements for redaction<sup>i</sup> or for any information which might identify third parties.
- 1.1.6** If any redaction or withholding of practice records is deemed necessary by the Member, and the client insists on receiving or releasing to a third party the practice records in question, direct the client to the applicable provincial or federal statute regarding release of potentially harmful materials or third party information.
- 1.1.7** When sending data, advise the recipient of the
  - (a) confidential nature of the documents,
  - (b) potential harm to the public of improper use of the information by unqualified individuals,
  - (c) relevant provisions of the Professional Practice Guidelines, and
  - (d) terms of this Practice AdvisoryThis advice should be documented.

**1.2 Test Material:** In all circumstances in which a client (or the client's legal guardian) requests test material, prior to the release of the material the Member must, in addition to 1.1.1, 1.1.2, 1.1.3, 1.1.4 and 1.1.7 above:

- 1.2.1** Explain that the test material requested cannot be released, except to another Member or psychological service provider because (1) releasing the information will compromise the integrity of tests, (2) the requested materials are considered confidential commercial information of the tests developers, (3) the requested

materials are exempt from disclosure under PIPEDA, HIPA or FIPPA, and (4) releasing the materials will breach contractual obligations with the test publishers.

**1.2.2 Offer to:**

**1.2.2.1** Review test results with the client or representative in order to provide information helpful to the purpose of the request or

**1.2.2.2** Provide a summary of results (with explanations that provide meaning and context) without providing copies of any test material or

**1.2.2.3** Send the test material to another Member of the Saskatchewan College of Psychologists or to a psychological service provider in another jurisdiction.

**1.2.3** If measures described under 1.2.2 do not satisfy the client and the client insists on receiving the test material, then direct the client or requesting party to the applicable provincial or federal Privacy Commissioner.

**1.2.4** If the Member has been retained by a lawyer for a legal matter regarding the client, the Member must inform the lawyer of the request prior to releasing any information in the record to ensure that solicitor/client privilege has not been breached.

**2. Release of any records to another Member or other recognized psychological service provider.**

In all circumstances in which a client (or client's legal guardian) requests the release of practice records, (including or excluding test material in the client's file) to another Member or other psychological service provider, prior to the release of the record, the Member must ensure all applicable requirements of sections 1.1 and 1.2 above are met.

**3. Release of any records in the context of litigation.**

In all circumstances in which a practice record, including or excluding test material has been requested in the context of litigation by a lawyer(s) who provides a valid consent form(s) signed by the client (or from both, multiple clients or other parties with relevant legal rights), or where a Notice of Motion or Court Order has been made to access the client's practice records, the Member must, in addition to the requirements set out in 1.1 and 1.2 above, as applicable:

**3.1** Discuss with the requesting party the redaction of information (see footnote regarding "redaction"), which is incidental or irrelevant to the issues in the litigation as per the governing legislation prior to releasing practice records and ensures that any required consent form(s) have been obtained.

**3.2** In responding to a Notice of Motion, request that the Order contain the relevant sections of 3.3 (below) and require the receipt of a properly entered court Order prior to releasing any test material in the record.

**3.3** Attach a written statement to the record including, as applicable, the following as the understanding under which the practice records are released:

**3.3.1** That psychological practice records are of a highly confidential nature.

**3.3.2** That all practice records be returned or confirmed as destroyed at the conclusion of the legal proceedings and any appeals thereof.

- 3.3.3 That the College of Psychologists of Saskatchewan is of the view that raw test data can be easily misinterpreted and need to be discussed with persons who are competent to use or analyze the raw test data.
- 3.3.4 That the contractual obligations of the test purchaser require attempts to be made to protect the integrity of test material.
- 3.3.5 That the practice records or test material will not be further copied except as strictly necessary for the purpose of the legal or other formal proceedings.
- 3.3.6 That access to test material and the testimony regarding material be restricted to the most limited audience possible.
- 3.3.7 That material or any portion of such materials that are disclosed in pleadings, testimony, or other documents, be sealed and or removed from the court record in order to safeguard the integrity of the test material (refer to section 11.14 and 11.39 of the Professional Practice Guidelines.)

#### 4. Release of any records to a third party.

**4.1 Practice Records excluding test material:** In all circumstances in which a Member is employed by a third party or in which a third party requests a Member's practice records, excluding copyrighted test material, prior to release of such records the Member must:

- 4.1.1 Obtain a valid consent from the client or a valid legal authorization to release records.
- 4.1.2 Clarify with the third party in order to ensure the material requested is actually relevant for the third party's purposes (Refer to Section 3.4 and 6.2 of the Professional Practice Guidelines).
- 4.1.3 Evaluate whether or not any harm is anticipated from the release of materials.
  - 4.1.3.1 If harm is likely, explain reasons for withholding material deemed harmful, and offer to provide instead a summary or redacted version of the material.
- 4.1.5 Review the entire record with regard to any legal requirements for redaction or for any information which might identify third parties.
- 4.1.6 If any redaction or withholding of practice records is deemed necessary by the Member, and the client insists on receiving or releasing to a third party the practice records in question, direct the client to the applicable provincial or federal statute regarding release of potentially harmful materials or third party information.
- 4.1.7 When sending data, advise the recipient of the
  - (a) confidential nature of the documents,
  - (b) potential harm to the public of improper use of the information by unqualified individuals,
  - (c) relevant provisions of the Professional Practice Guidelines, and
  - (d) terms of this Practice AdvisoryThis advice should be documented.

**4.2 Test Material:** In all circumstances in which a Member is employed by a third party or in which a third party requests test material, prior to the release of the material the Member must, in addition to 4.1.1, 4.1.2, 4.1.3, 4.1.4 and 4.1.7 above:

- 4.2.1** Explain that the test material requested cannot be released, except to another Member or psychological service provider because (1) releasing the information will compromise the integrity of tests, (2) the requested materials are considered confidential commercial information of the tests developers, (3) the requested materials are exempt from disclosure under PIPEDA, HIPA or FIPPA, and (4) releasing the materials will breach contractual obligations with the test publishers.
- 4.2.2** Offer to:
- 4.2.2.1** Review test results with the third party client or representative in order to provide information helpful to the purpose of the request or
  - 4.2.2.2** Provide a summary of results (with explanations that provide meaning and context) without providing copies of any test material or
  - 4.2.2.3** Send the test material to another Member of the Saskatchewan College of Psychologists or to a psychological service provider in another jurisdiction.
- 4.2.3** If measures described under 4.2.2 do not satisfy the third party then direct the client or requesting party to the applicable provincial or federal Privacy Commissioner.

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<sup>i</sup> “Redaction” means blacking out material that should not be shared. This indicates to the reader that there is missing information but that the reader does not have access to it. One is not allowed to alter the record, but may be required to use redaction.

***Practice Advisories are statements issued by the College of Psychologists with regard to practice issues arising out of investigation of complaints or in response to practice issues raised by Members. Practice Advisories are intended to guide Members in their practice of psychology. Once published to the profession, Members are presumed to have knowledge of Practice Advisories and are required to be guided by them in their practice of psychology. Practice Advisories may be referred to and relied upon by the Discipline Committee to assess the conduct of a Member.***