

December 2017

# Maine Psychologist Today



Welcome to the Maine Psychologist Today, MePA's new online newsletter!

## President's Column



I want to thank you all for the amazing opportunity to serve as your President. It has been an honor and a privilege. I want to thank the Policy Council for all of their hard work and thoughtful deliberations. It would be impossible for MePA to continue to be as successful as we are without the unfailing hard work of Sheila. Thank you to everyone who has made my term of President interesting and fun. I welcome Tom Collins as he switches from being President Elect to being President. I am confident he will do a wonderful job!!!!

Elise Magnuson, Psy.D. LCSW  
President, Maine Psychological Association

# Practice Pointers for Managing Subpoenas Requiring the Release of Test Data and Proprietary Test Information

Diane A. Tennes, PhD, LADC

How should Maine psychologists respond when a subpoena “requires” them to disclose psychological test data (specifically, the raw data)<sup>1</sup> directly to an attorney? Luckily, this does not have to be a challenging or disconcerting event in your practice as there are many available resources to assist you (see references below). This article reviews the basics about subpoenas and then specifically discusses and offers practice pointers for subpoenas related to release of test data and proprietary test information.

It is critical to know that a subpoena is a court process for acquiring information under the civil or criminal discovery rules (which are different). Anyone over 18 years of age can obtain a form subpoena from the Clerk of Courts and sign and serve it on anyone. This is important because a subpoena, after service on you, must be objected to you within a short time. Failure to respond can result in sanctions so it cannot be ignored.

But a subpoena is not a court order. What this means is that you must promptly object to any subpoena when confidential or privileged information under federal and state law is sought by subpoena. Lawyers have an ethical and legal duty to concurrently provide a subpoena to any other lawyers in the case because their clients have an independent right to object to protect their privacy and legal rights. (See Supreme Judicial Court decision, Board of Overseers v. Charles Ferris, Docket No. Bar 13-11 located at: [http://www.courts.maine.gov/opinions\\_orders/supreme/bar\\_decisions/2014/bar-13-11\\_ferris\\_recon\\_order\\_2\\_2014-2-24.pdf](http://www.courts.maine.gov/opinions_orders/supreme/bar_decisions/2014/bar-13-11_ferris_recon_order_2_2014-2-24.pdf), for a fascinating case regarding misuse of the subpoena process.)

If you respond to a subpoena without determining if it was shared with the other lawyers and if the client had notice as well as a chance to object, you may violate the rights of clients even with good intentions. You generally want a court to review the subpoena and order disclosure before you turn over any records. As professionals, we must cooperate with the judicial process, but this is an adversarial system, so you must be very careful to understand the rules and ethics of that environment.

Now to focus specifically on subpoenas requesting the disclosure of psychological or neuropsychological test data and/or proprietary test information, this presented a significant ethical conundrum prior to 2013. There was ethical guidance in sections 9.04 (Release of Test Data) and 9.11 (Maintaining Test Security) of the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct (EPPCC)<sup>1</sup>. Unlike other states, there was no

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<sup>1</sup> *In the Ethical Principles of Psychologists and Code of Conduct (APA Ethics Code 9.04) test data refers to raw and scaled scores, client/patient responses to test questions or stimuli and psychologists’ notes and recordings concerning client/patient statements and behavior during an examination. The portions of test materials that include patient/client responses are included in the definition of test data. Versus test materials which refers to manuals, instruments, protocols and test questions or stimuli and does not include test data 9.11).*

statutory guidance in Maine and many psychologists found themselves valiantly, but unsuccessfully, explaining to attorneys why the release of test data and test information was so problematic.

Maine Psychological Association recognized this emerging issue for psychologists and in 2013, led by Margaret Zellinger, PhD and with the assistance of our lobbyist, Robert Howe, proposed legislation (LD 1155) that became law later that year. In Maine Revised Statutes, Title 22, Chapter 401 §1725, the disclosure of neuropsychological or psychological test data is prohibited unless the test data is disclosed directly to a psychologist who is qualified to interpret the test results. Further, psychologists were prohibited from re-disclosure of the materials to others, including attorneys.

Recently, this statute was challenged in Superior Court in Cumberland County. The particular case dated back to 2011 but was heard in 2017. After conducting an evaluation and being designated an expert witness in the case, the psychologist received a subpoena for all his records and documents, including the neuropsychological and psychological test data. The psychologist legitimately refused to produce this data and cited the statute. The psychologist then contacted MePA, who in turn asked APA Practice Organization's Legal and Regulatory Affairs lawyers for assistance. The APAPO supplied MePA and the psychologists with supporting materials.

A hearing occurred and the Defendants' attorneys argued that the burden was on the psychologist to demonstrate how disclosing the materials would compromise the objectivity or fairness of the evaluation process. In a 12-page ruling, Superior Court Justice Mills sided with the psychologist and opined there was no burden for the psychologist given the statute itself. She denied the Defendants' request to compel production of the test data and, most importantly, concluded that "this statutory language is clear and unambiguous" and required that test data be disclosed only to a qualified neuropsychologist or psychologist designated by the person who was evaluated.

This is a clear victory for psychologists in Maine who can now be assured there is statutory guidance and case law that protects the test data. Ultimately, it ensures broader protections for our clients and those we evaluate from harm that might be created by the disclosure and possible misuse of the test data. Please note, however, that this decision was from a Superior Court trial judge and not the Maine Supreme Court so there is no state-wide binding precedent yet. If you receive a subpoena requesting similar information, it is critically important to promptly consult with a lawyer and respond to the court citing this case and the statute.

Recently, a neuropsychologist brought to MePA's attention that attorneys continue to send subpoenas directly to psychologists requesting the test data be directly released to the attorney. This appears to be an educational opportunity and MePA is in the process of submitting an article to the Maine State Bar Association's newsletter to begin this educational process.

We have developed practice pointers for psychologists who receive this type of subpoena that is in direct opposition to the 2013 statute. Specific to risk management and coping with

subpoenas related to disclosure of test data directly to an attorney, we offer the following practice pointers:

- Familiarize yourself with Maine Revised Statutes, Title 22, Chapter 401 §1725 (text is included at end of this article). As Justice Mills opined, the test data may be released by only to a “qualified neuropsychologist or psychologist.”
- If feasible, contact the person who was evaluated to keep them informed of the issue and how you plan to proceed.
- Be sure that the subpoena was shared with all lawyers before you turn over any records in any case.
- Not all attorneys are aware of this statute from 2013 as it is relatively new. Contacting the attorney directly (preferably in writing) to provide the statute and ask them to identify a qualified psychologist. This may easily resolved the issue if it is a case of an ill-informed attorney.
- Retain your own attorney who can offer legal advice as to how to proceed. Options may include submitting a motion to quash to the court or having your attorney work with the attorney requesting the test data.
- If the attorney persists, then you may be entitled to seek monetary relief from that attorney for the fees and expenses you have incurred.

## Maine Revised Statutes, Title 22, Chapter 401 §1725

### **1725. Neuropsychological and psychological evaluations**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Neuropsychological evaluation" means a testing method through which a neuropsychologist or a psychologist can acquire data about a person's cognitive, behavioral and emotional functioning for purposes of diagnosing or confirming a diagnosis of cognitive deficit or abnormalities in the central nervous system.

B. "Neuropsychological or psychological test data" means raw and scaled scores, a person's responses to test questions or stimuli, a neuropsychologist's or psychologist's notes and recordings concerning the person's statements and behavior during a neuropsychological evaluation or psychological evaluation and those portions of neuropsychological or psychological test materials that include the person's responses.

C. "Neuropsychological or psychological test materials" means manuals, instruments, protocols, assessment devices, scoring keys, test questions and stimuli used in conducting a neuropsychological evaluation or psychological evaluation.

D. "Psychological evaluation" means a testing method through which a psychologist acquires data about a person's cognitive and emotional functioning for purposes of determining cognitive ability, diagnosing a mental health condition or confirming a mental health diagnosis.

**2. Disclosure of neuropsychological or psychological test materials and neuropsychological or psychological test data.** The disclosure of neuropsychological or psychological test materials and neuropsychological or psychological test data is governed by this subsection.

A. Except as provided in paragraph B, neuropsychological or psychological test materials and neuropsychological or psychological test data, the disclosure of which would compromise the objectivity or fairness of the evaluation methods or process, may not be disclosed to anyone, including the person who is the subject of the test, and are not subject to disclosure in any administrative, judicial or legislative proceeding.

B. A person who is the subject of a neuropsychological evaluation or psychological evaluation is entitled to have all records relating to that evaluation, including neuropsychological or psychological test materials and neuropsychological or psychological test data, disclosed to any neuropsychologist or psychologist who is qualified to evaluate the test results and who is designated by the person. A neuropsychologist or psychologist designated to receive records under this paragraph may not disclose the neuropsychological or psychological test materials and neuropsychological or psychological test data to another person.

**References:**

Vanderpool, D. (2014). Requests for disclosure of psychological testing information. *Innovations in clinical neuroscience*, 11(11-12), 41. Accessed 12/06/2017 at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4301032/>

Strategies for Private Practitioners Coping with Subpoenas or Compelled Testimony for Client/Patient Records or Test Data or Test Materials Committee on Legal Issues

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<https://www.apa.org/about/offices/ogc/private-practitioners.pdf>



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# 2017 Fall Conference Highlights



Ron Breazeale, PhD and President Elise Magnuson, PsyD describe the Psychologically Healthy Workplace Award Program.



Graduate Students from the University of Maine Psychology Program during the Fall Business Meeting.

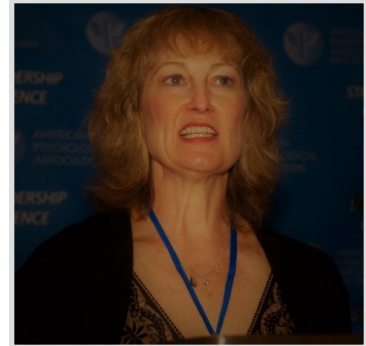


Dr. Eric Youngstrom presents to a attentive crowd on Mood Assessment.

# Diana Prescott, PhD Receives MePA Honor at Fall Conference

Sheila Comerford  
Executive Director

We are delighted to announce that MePA has bestowed the membership status of Fellow to Dr. Diana Prescott at the Annual Meeting in Portland on November 10, 2017. Diana has been a member of MePA for nearly twenty years and during that time she has held many positions of leadership in the organization, including years serving on the governing body of MePA, the Policy Council. She has represented the northern portion of the state as Representative at large, represented Women in Psychology, has served as the Federal Advocacy Coordinator and the Representative to APA Council. Diana has given each one she held the respect and the attention it deserved-being prepared, and always providing thoughtful insights and strategies for moving ahead.



She has a unique ability to motivate psychologists to action, not only with words; but also with her action. Time and time again in her position as Federal Advocacy Coordinator she has rallied the troops on the MePA listserv, through one on one conversations, and at MePA meetings. She has inspired us.

Please join us in congratulating her on this MePA honor.

# Improving Health Outcomes through Plan Design and Partnerships

Michael P. Gendreau

Director, Outreach, Education and Communications

Community Health Options

Integration of these two disciplines can significantly improve health outcomes on both “sides” of what historically has been a significant division between mental health and physical health. Over the last dozen years there has been a rising awareness across the healthcare landscape of the need for integration of behavioral and physical health. Preventive health approaches and the treatment of chronic conditions are effective when the totality of a person’s wellbeing is considered, both mental and physical. Accordingly, Community Health Options’ approach to benefits coverage adheres to this important understanding of the intertwined relationship and how we support recovery, wellness and chronic disease management. This article is intended to inform readers about the work Health Options is doing to integrate behavioral and physical health through benefit plan design and care management, and how behavioral health care providers can optimize their working relationship with Community Health Options.

Community Health Options’ [approach to behavioral health](#) integrates benefit plan designs and a medical management team who provides integrated care management and care navigation to address medical, behavioral health, psycho-social, and other barriers. Outpatient therapy visits by psychologists do not require prior authorization, have no yearly cap, and for most plans (except catastrophic and high deductible plans) Health Options waives the copay for the first three behavioral health visits yearly. Building on this plan design, Health Options’ care management approach and partnership with Members and providers, facilitates Members’ care in their own community with trusted local resources. Health Options partners with the Maine Medical Center PHO (MMCPHO) Behavioral Health Program to support a broad network of licensed clinicians throughout northern New England.

A good case study demonstrating the positive impact provided by our approach is the following recent experience:

Michael, a 19-year-old Health Options Member, struggled with depression, anxiety, panic attacks and suicidal ideation. As a result, he was admitted to a local psychiatric hospital and Health Options Care Management got involved.

A Health Options clinical specialist contacted the hospital staff regarding discharge planning needs and upon discharge, provided Michael with coaching and support. Michael did not have regular access to transportation and wasn’t sure who to turn to for ongoing, outpatient treatment. With the help of Health Options’ care management, Michael gained a clearer understanding of his health plan coverage and found a behavioral health provider within 15 minutes of his home that he could see within seven days after discharge. Michael now feels empowered to take ownership of his treatment needs and is making good progress toward his health and wellness goals.



In review, Health Options' plan designs made it easier for Michael by providing in-network benefits for inpatient, outpatient, and day treatment program services for mental health and substance abuse disorders. Health Options care managers provided Michael the guidance and access to resources afforded by his coverage.

Generally, the medical management team provides services to Members who need an extra level of support to manage their health and healthcare. Care Managers are available to answer both general and specific or complex medical questions, help Members navigate sometimes confusing processes, such as obtaining medical equipment for the home or ordering specialty medications, and can help if Members experience a critical event or diagnosis which often requires extensive use of health services or resources.

Care management does not replace the routine healthcare provided by a PCP. Rather, the team works closely with providers, local care managers, and other community resources, to better understand Members' needs and the best way to support them. Click [here](#) for a Provider Reference Guide with helpful phone numbers.

Community Health Options is pleased to work with the community of psychologists and allied licensed providers to provide integrated behavioral health services to Health Options Members. Please visit [www.HealthOptions.org](http://www.HealthOptions.org) to learn more. A quick reference guide is found at the following link on [Behavioral Health Prior Approval and Notification Requirements](#).

## Welcome New Members!

### **Member**

Elizabeth Knake, PsyD Portland

### **Student/affiliates**

Olivia Bogucki Bangor

Natalie Holbrook Old Town

Amy Halpin Orono

Laura Andrews Old Town

Michelle Buffie Bangor

Jessica Shankman Bangor

Fayeza Ahmed Orono

Colin Bosma Orono

Victoria Quinones Milford

Hannah Lawrence Bangor

Melissa Jankowski Bangor





# Psychology Specialists of Maine

2018 Clinical Training Seminars



Friday, February 9, 2018 ♦ 8:30am - 4:00pm ♦ (6 CEU)

**Bold Moves: Enhancing Your Practice with Acceptance and Commitment Therapy**

*Joel Guarna, Ph.D.*

[Click Here for Description and Registration](#)



Friday, March 2, 2018 ♦ 8:30am - 1:00pm ♦ (4 CEU)

**The Ethical Dilemmas No One Talks About**

*Julie Quimby, Ph.D.*

[Click Here for Description and Registration](#)



Friday, April 6, 2018 ♦ 8:30am - 4:00pm ♦ (6 CEU)

**Making Sense of Relationship Distress: An Intro to Emotionally Focused Couples Therapy (EFT)**

*Jill Fischer, LICSW*

[Click Here for Description and Registration](#)



Saturday, April 7, 2018 ♦ 8:30am - 12:00pm ♦ (3 CEU)

**Emotionally Focused Couples Therapy (EFT): Live Couples Session and Discussion**

*Jill Fischer, LICSW*

[Click Here for Description and Registration](#)



Friday, June 1, 2018 ♦ 9:00am - 4:00pm ♦ (6 CEU)

**Chair Yoga for Emotional Health and Healing: Bring the power of yoga to your clinical practice**

*Kate Graham, LMHC, C-IAYT*

[Click Here for Description and Registration](#)

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