

Evolve Policy for Third Party Observers at Independent Medical Evaluations



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A “third party observer” (TPO) is an observer who is present at a third party examination. (A “third party examination” generally refers to examinations that are completed for purposes other than the provision of health care). There are various forms the observation may take that range from the making a video or audiotape of the assessment, to sitting behind a one-way mirror, to more direct involvement such as sitting in on the assessment, or to actual participation in the assessment by offering observations and/or clarifying information relative to the assessment. The observer can be “involved”, with some stake in the outcome of the assessment—for example, a legal representative or a member of the treatment team; or “uninvolved”, someone who does not have a stake in the outcome of the assessment and is present to support the individual undergoing the assessment—for example, the parent of a child, a friend of the client.

Evolve’s mission statement is “to conduct evidence-based independent medical evaluations and treatment services through a focus on second-to-none customer service, impartiality, ethics, and financial prudence”. With respect to third party observers, the evidence is clear that this can have a detrimental effect on the assessment results, and therefore the presence of third party observers during independent medical evaluations will only be allowed in exceptional circumstances at the discretion of the evaluator and with consent of the client. This is the recommended policy of many professional groups. A third party observer would be allowed in cases where the evaluation could otherwise not proceed, it is in the best interest of the client, and the third party observer facilitates the assessment in some manner. An example would be a child with a behaviour disorder whose parent would be able to facilitate the assessment or the presence of an interpreter where the client’s English or French is not sufficient for the purposes of the assessment. In cases where a third party observer is deemed to be necessary, the following guidelines should be followed:

- The presence of the TPO must be arranged prior to the assessment, not at the time of the assessment.
- An interpreter and/or chaperone can be arranged for an assessment upon request and for some assessments is provided as part of the assessment protocol e.g. male physician assessing a female client. An uninvolved TPO is preferable over an involved TPO.
- The least obtrusive method of observation should be utilized (e.g. use of a one-way mirror or sitting behind the client to prevent cueing or any other form of interaction.)
- No recordings of the assessment shall be taken, nor should any notes be taken.
- The TPO should be a passive witness with no role beyond reassurance of the client.
- The TPO should not participate, advise, interfere, or disrupt the assessment in any manner that would compromise the validity or reliability of the assessment. If the TPO becomes involved in the assessment in any manner they will be asked to leave the assessment.

Background Information with Respect to Third Party Observers

The issue of third party observers (TPOs) has been the focus of much research and many professional groups have issued statements regarding the presence of TPOs during third party examinations. Some of these are referenced here. This discussion is not meant to be an exhaustive study of the topic, but rather, to provide some background information utilized to determine Evolve's policy with respect to TPOs.

The College of Occupational Therapists of Ontario (COTO) advises members that Occupational Therapists who are performing Independent Examination are not required to agree to have a treating therapist present at an assessment¹. They note various effects (e.g. the performance of the client being impacted by the observer, the OT's performance being impacted, additional stress to the client, a distraction to the OT) and state that if the OT feels that the observation will negatively impact the assessment, then "the OT has the right to refuse" this observation². The document "*Guidelines For Working With Third Party Payers*"³ (COTO, 2017) discusses the presence of a treating OT at an Independent medical evaluation (IME) as a potential "conflict of interest". It states that in addition to ensuring that the client consents to the presence of the TPO, the independent evaluator should confirm expectations "to ensure the presence of the treating OT does not influence the assessment, recommendations or outcome prior to proceeding" (p. 11). This document also advises that the "treating OT must also understand why their presence has been requested and consider the appropriateness of their participation as an observer" (p. 11).

The Ontario Society of Occupational Therapists (OSOT) addresses the presence of TPOs during independent Insurer Examinations in a position statement entitled *Guideline Regarding Third Party Observers Present During An Independent Insurer Examination Completed By An Occupational Therapist*. In this position statement, OSOT concludes that:

the presence of an involved Third Party Observer at an OT IE may potentially alter the assessment process, thereby influencing the outcome of the assessment and for this reason, should be avoided whenever possible. Unless there is an exceptional circumstance, when requested to provide consent for a TPO to attend, the Society advises occupational therapists to decline such requests... The presence of a TPO should only be accepted in exceptional cases and at the discretion of the OT examiner⁴ (p. 1&2).

The OSOT document notes that "there is evidence in the literature to indicate that the presence of TPOs can have undesired effects and even disrupt the assessment, negatively influencing the outcome." The OSOT position statement further recommends that occupational therapists refrain

¹ College of Occupational Therapists of Ontario. Questions and Answers, *On the Record*. Volume 13 Issue 3 Fall 2013.

² College of Occupational Therapists of Ontario. Questions and Answers, *On the Record*. Volume 13 Issue 3 Fall 2013.

³ College of Occupational Therapists of Ontario (2017). Guidelines for working with third party payers. www.coto.org Published May 2017.

⁴ Ontario Society of Occupational Therapists (2017). *Guideline Regarding Third Party Observers Present During An Independent Insurer Examination Completed By An Occupational Therapist*.
Policy on Third Party Observers (TPOs) (June 2, 2020)

from accepting the role of a TPO, noting that this may be a conflict of interest or a perceived conflict of interest and may present significant ethical concerns (p. 2).

The OSOT position statement describes TPO effects as “the influence of an observer’s presence on human behavior; more specifically, to the potential negative effects that a present third party may have on the process, results, and outcome of an assessment” (p. 2). The Society notes that the examinee may behave differently with the observer present, particularly when the observer is an “involved” party. (An “involved” party is someone who has a stake in the outcome of the assessment—e.g. the legal representative, the treating therapists. An “uninvolved” party does not have a stake in the outcome of the assessment but is only there to support the client.) When a TPO is present, the examinee may answer questions or behave in such a manner to please the observer or perhaps refrain from statements they otherwise might make. The presence of an observer can also impact the standardization of the assessment, and may invalidate the results of testing. The presence of an observer also adds potential distractions. The OSOT position statement references an arbitration hearing in Alberta (*Powanda vs. Langstone*, June 26, 2013) regarding the use of TPOs, where the judge supported restricting the use of TPOs. The judge cited a 2001 document from the American Academy of Clinical Neuropsychology that stated:

The introduction of potential distractions and a social facilitation/inhibition effect may alter the performance such as to invalidate the normative comparisons for psychological tests that were standardized in the absence of observers and the presence of an involved third party may distort results through alterations in the patient’s motivation, behavioural self-selection, and rapport with and attention to the examiner (p. 5, 6).

The Ontario Society of Occupational Therapists also cites the Canadian Society of Medical Evaluators’ position against the use of electronic recordings of assessments (i.e. video or audiotapes) as undesirable, unnecessary, and creating a “significant potential to invalidate the evaluation process” (p. 6), noting this is “akin to a TPO taking notes”. The Society states that “The presence of a third party other than a court approved interpreter or chaperone, in the case of a female patient and male doctor, can seriously compromise the credibility and defensibility of the forthcoming assessment report” (p. 6). Obviously that is not what Evolve wants for any of our assessment reports, nor is this in the best interest of any of the involved parties, particularly the client. It is not in the best interest of a client to undergo an evaluation that results in a report that is less defensible than it might otherwise be.

The policy statement published by OSOT provides guidance for the use of a TPO in those rare circumstances where the use of an observer would be beneficial. It recommends that the presence of an observer be arranged prior to the assessment with the parameters clearly defined. This should be arranged to be as unobtrusive as possible.

Other regulatory bodies and/or professional groups have similar recommendations and policy statements to the one provided by OSOT. The Canadian Psychological Association states that:

The presence of a third party observer presents various threats to the accuracy of the assessment. The introduction of potential distractions and a social facilitation/inhibition effect

may alter the performance such as to invalidate the normative comparisons for psychological tests that were standardized in the absence of observers.

The presence of an involved third party may distort results through alterations in the patient's motivation, behavioral self-selection, and rapport with and attention to the examiner⁵.

The Canadian Psychological Association summarizes their policy as

It is not permissible for involved third parties to be physically or electronically present during the course of neuropsychological or similar psychological evaluations of a patient or plaintiff. Exceptions to this policy are only permissible when in the sole professional opinion of the assessing psychologist, based on their clinical judgment and expertise, that a third party would allow more useful assessment data to be obtained. Typical examples may include the inclusion of a parent or caregiver until a full rapport is gained. The presence of these observers should be cited as a limitation to the validity of the assessment.

The College of Physicians and Surgeons of Ontario advises that physicians are not required to agree to the presence of an observer in a third party examination. In their *Policy Statement With Respect To Third Party Reports*⁶, they advise that physicians are not obligated to conduct an examination in the presence of an observer. The College of Physicians and Surgeons of Ontario also point out that for court-ordered examinations, the Rules of Civil Procedure (outlining the rules for civil proceedings in the Superior Court) state that observers *shall not* be present during examinations unless the court orders otherwise⁷ (p. 4).

The presence of third party observers in assessments has been studied extensively. *The Clinical Neuropsychologist* published a policy on the presence of TPOs in neuropsychological assessments in 2001. This article states that “The presence of an involved third party observer during the neuropsychological examination may distract the examinee or distort patient motivation which could adversely affect test performance.” It describes the potential distracters as both internal and external. External distractions are described as “external to the patient and are potentially observable” and include sights, sounds, physical movements, body language, or facial expressions. Internal distracters arise from within the patient and may involve “such stimuli as perceptions, attitudes, and social expectations on the part of the patient.” The article states that:

McCaffrey, Fisher, Gold, and Lynch (1996) summarized the recent literature on social facilitation in their article on the presence of third party observers during neuropsychological evaluations. The social facilitation literature provides empirical evidence that the presence of a third party observer can alter cognitive and motor test performance whether or not the patient has a brain injury or disease. The social facilitation effect causes examinees to perform better

⁵ The Canadian Psychological Association (2009). The presence of involved third party observer in neuropsychological Assessments. <http://www.cpa.ca/aboutcpa/policystatements/#Thirdparty> [Accessed December 1, 2017].

⁶ College of Physicians and Surgeons of Ontario (2012). Policy Statement #2-12. Third Party Report: Reports by Treating Physicians and Independent Medical Examiners. Published in the *Dialogue*, Issue 2, 2012.

⁷ College of Physicians and Surgeons of Ontario (2012). Policy Statement #2-12. Third Party Report: Reports by Treating Physicians and Independent Medical Examiners. Published in the *Dialogue*, Issue 2, 2012.

than usual on tests of simple or overlearned skills and poorer on tasks that are more difficult for them (McCaffrey et al., 1996). These adverse effects have been shown to occur even when the observer is behind a one-way mirror.⁸

A 2007 statement by the American Psychological Association echoes this statement, noting that:

Research in social psychology demonstrates that individuals' behavior frequently changes in the presence of a third party (e.g., Chekroun & Brauer, 2002). Therefore, there is substantial reason to suspect that the inclusion of a third party in an assessment may influence the examinee's behavior.⁹

The statement by the American Psychological Association then goes on to state that:

Because some examinees may be less likely to share personal information if they believe that others are observing or could observe their actual statements or behavior (e.g., Sattler, 1998), the validity of nonstandardized or non-test assessment procedures, such as interviews or observations, may also be affected by the perceived or actual presence of a third party. For example, one study suggests that interviews conducted in the presence of a third party may elicit qualitatively or quantitatively different (though not necessarily invalid) responses than those conducted in the absence of a third party (Podmore, Chaney, & Golder, 1975).

More recent documents describe research findings, position statements by different professional groups, and legal considerations. Dr. Ernest Bordini, Licensed Psychologist in Florida, outlines some of the issues with TPOs and describes more recent research findings in his website "thirdpartyobservers.com". He notes that,

The presence of third party observers in psychological evaluations, assessment or testing is a controversial topic. It has generated both empirical research, position papers by national organizations and has been the subject of legal decisions.

Dr. Bordini outlines various research findings, for example stating:

Howe, Rice, and Hoese (2007) reviewed third party observer issues for psychologists in Florida with a primary focus on neuropsychological evaluations. Concerns about reliability and validity were noted...

The above authors cited research support that even unobtrusive observers or simple recording effects and alters neuropsychological test performance, citing effect sizes of 1 to 1.5 Standard Deviations on tests of attention, memory, learning, and verbal fluency. Effects of this size are

⁸ (2001) Policy Statement on the Presence of Third Party Observers in Neuropsychological Assessments, *The Clinical Neuropsychologist*, 15:4, 433-439

⁹ Committee on Psychological Tests and Assessment, American Psychological Association. Statement on Third Party Observers in Psychological Testing and Assessment: A framework for decision making. American Psychological Association (2007).

large enough, on a memory test to shift performance into different categories and cause interpretation errors¹⁰.

An effect size of 1-1.5 standard deviations is significant and could mean the difference of scores being deemed “average” versus “outside the norm”. Dr. Bordini adds that Florida case law does not differentiate between medical and psychological examinations, i.e. TPOs are not just deemed problematic in psychological assessments, but also in other independent medical examinations. Dr. Bordini also referenced a 2010 article described as follows:

Howe and McAffrey (2010) published an article which outlines major objections to third party observation and recording, noting that there are many false arguments such as minor contradictions in professional position papers which distract from the fact that to preserve the science, accuracy and validity of the measures, observation, or recording of any kind should be avoided.

The Pacific Northwest Neuropsychological Society discussed some of the issues presented by third party observers noting:

Likewise, observation of an examination being conducted for a second opinion may fundamentally alter the test session, in comparison to the initial examination that the patient has already undergone, potentially creating an adversarial atmosphere, and increasing the risk of motivational effects related to secondary gain. Observer effects can be magnified by the presence of involved parties who have a significant relationship with the patient (e.g. legal representatives who have a stake in the outcome of the examination; cf. Binder and Johnson-Greene, 1995). Thus, the presence of a third party observer during formal testing may represent a threat to the validity and reliability of the data generated by an examination conducted under these circumstances, and may compromise the valid use of normative data in interpreting test scores.¹¹

The Pacific Northwest Neuropsychological Society concludes:

The weight of accumulated scientific and clinical literature with respect to the issue of third party observers in the forensic examination¹² provides clear support for the official position of the National Academy of Neuropsychology that neuropsychologists should strive to minimize

¹⁰ Bordini, E (2017). Thirdpartyobservers.com [accessed December 1, 2017].

¹¹ Pacific Northwest Neuropsychological Society “Presence of Third Party Observers During Neuropsychological Testing” citing the “Official Statement of the National Academy of Neuropsychology Approved by the Board of Directors 5/15/99. www.pnns.org/professional-issues/observers [accessed December 1, 2017].

¹² Note: The terms “forensic examination”, “medico-legal examination”, and “third party examination” all describe the same type of assessment i.e. an assessment that is not performed for the purpose of providing health care.

all influences that may compromise accuracy of assessment and should make every effort to exclude observers from the evaluation¹³.

The attendance of third party observers at medico-legal assessments can be contentious; however, when the end goal is an assessment report that is objective, impartial, and defensible, which is in the best interest of all involved parties, the evidence would support restricting third party observers at assessments except in exceptional cases.

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¹³ Pacific Northwest Neuropsychological Society "Presence of Third Party Observers During Neuropsychological Testing" citing the "Official Statement of the National Academy of Neuropsychology Approved by the Board of Directors 5/15/99. www.pnns.org/professional-issues/observers [accessed December 1, 2017].