

## **Public Safety Psychology Newsletter**

April 5, 2007

Over the 18 years that I have been doing psychological evaluations of public safety applicants, it feels that the legal constraints and considerations have grown increasingly important. Although I am not a lawyer, I have become familiar with a couple of details in various laws and how these laws apply to what we do. I thought I would take this opportunity to share with you some of what I have learned.

The Americans with Disabilities Act (ADA) governs when you can ask applicants certain questions in the hiring process. Basically, any medically related questions need to wait until after a conditional offer of employment (COE) has been made. Because the pre-employment psychological evaluation asks some medical questions (“Have you ever been hospitalized for psychiatric reasons?”), it is imperative that the psychological evaluation be done after a written conditional offer of employment has been given to the applicant. What constitutes a bona fide COE is a technical question that your legal counsel needs to answer. The practical implication is that completing steps such as the background investigation and the polygraph (if used) before advancing on to the psychological is the safest practice.

The Health Insurance Portability and Accountability Act (HIPAA) regulates how private health information is handled. The unofficial legal opinions I have heard suggest that the pre-employment psychological evaluations are not covered by HIPAA because insurance is not involved in the process. But this is something we won’t know for sure until someone litigates it and the courts hand down a ruling. However, the pre-employment psychological evaluations may be covered under HIPAA somewhere down the road if the evaluation report gets brought into some other matter that does involve insurance, for example, a worker’s comp case. So the safest way to operate is to treat the report as private information and maintain it in the employee’s medical record, not the personnel record. However, the cover page on our reports is designed to give a bottom line recommendation about the applicant’s suitability for the job and can be easily detached to be included in the personnel file. Thus, the full report stays in the medical file and the recommendation goes into the personnel file.

Of course, the opinions reviewed above are my layman’s understanding of the relevant laws and you would be wise to discuss these matters with your agency’s legal counsel before doing anything.

If you have any questions about pre-employment psychological evaluations and our approach to this important component of the hiring process, please call me at (518) 432-4678.

William F. McIntyre, Ph.D.