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The 2002 APA Ethics Code: Select Changes Relevant to Neuropsychology

**Shane Bush, Ph.D.
Stephen Macciocchi, Ph.D.**

In 1995, Binder and Thompson published the first article directly applying the 1992 APA Ethics Code to neuropsychological practice (Binder & Thompson, 1995). Following Binder and Thompson's article, a number of additional perspectives on ethical issues in neuropsychological practice were published (see Bush & Drexler [Eds.], 2002, for a recent review). In addition, professional organizations such as the American Psychological Association (APA) and the National Academy of Neuropsychology (NAN) have developed guidelines for clinicians who face complex ethical and professional decisions (APA Committee on Psychological Tests and Assessment [CPTA], n.d.; NAN Policy and Planning Committee, 2000a; NAN Policy and Planning Committee, 2000b; NAN Policy and Planning Committee, 2000c). In combination, these efforts have sensitized neuropsychologists to ethical issues commonly incurred in clinical practice and research.

On 8/21/02, APA's Council of Representatives adopted a new version of the Ethics Code (APA, 2002). The new code became effective June 1, 2003. As in previous versions of the Ethics Code, the new code consists of General Principles, which are aspirational in nature, as well Ethical Standards, which are enforceable and are used to adjudicate complaints of ethical misconduct. Because the new code has changed with respect to several standards that have implications for neuropsychological practice, we should have a clear understanding of how these changes impact service delivery and research. While neuropsychologists should become familiar with all of the changes and additions to the Ethics Code, several standards appear to have particular relevance for neuropsychological practitioners.

Ethical Principles

Former APA Ethics Codes have relied heavily on principlism, but the new Ethics Code has formally incorporated principles espoused by biomedical ethicists such as Beauchamp and Childress (2001) in the General Principles (GP) section (see redline comparisons at <http://www.apa.org/ethics>). The principles incorporated into the new Code include Beneficence and Nonmaleficence (GP A), Justice (GP D), and Autonomy (GP E, Respect for People's Rights and Dignity). Additional General Principles are Fidelity and Responsibility (GP B) and Integrity

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(GP C). One major change of interest to all psychologists is the reorganization of ethical guidelines regarding Competence. In the new Ethics Code, Competence is no longer a GP, but an Ethical Standard (ES), a change that clearly elevates competence to a higher level of importance and accountability. Although professional competence was addressed under specific standards in the 1992 code, such as ES 1.04 (Boundaries of Competence) and 2.02a (Competence and Appropriate Use of Assessments and Interventions), the concept of professional competence is now represented much more comprehensively in ES 2.

For some time, neuropsychologists have attempted to reach a consensus on neuropsychological competence. Thus far, competency has been addressed by specifying education and training models, as evidenced by the Houston Conference Policy Statement and the more recent NAN definition of a neuropsychologist (www.nanonline.org). Board certification in neuropsychology provides evidence of competence, but certification guarantees neither competence in all areas of neuropsychological practice nor adherence to ethical standards of practice. Competency is a multifaceted and thorny problem that will require further attention, particularly since psychologists providing neuropsychological services will be held ethically responsible under a more stringent set of ethical guidelines with the new code.

Ethical Standards

Release of Raw Data

Changes in both the form and content of the Ethical Standards are apparent in the new Ethics Code. For example, the 1992 standard that focused on assessment (ES 2; Evaluation, Assessment, or Intervention) is now ES 9 (Assessment). During the revision process and following finalization of the 2002 code, ES 9.04 (Release of Test Data) received considerable attention. ES 9.04 of the 2002 Ethics Code states:

- (a) The term *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. Those portions of test materials that include

client/patient responses are included in the definition of *test data*. Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances release of confidential information under these circumstances is regulated by law.

- (b) In the absence of a client/patient release, psychologists provide test data only as required by law or court order.

The implications of these changes are multifaceted. In the past, neuropsychologists were required to refrain from releasing raw data to anyone (other than the patient under certain circumstances) not qualified to interpret or appropriately use the data. Under current guidelines, with a patient release, neuropsychologists must "provide" test data (broadly defined) to "the client/patient" or to anyone identified in the release, unless the neuropsychologist believes that "substantial harm, misuse, or misrepresentation" may result (applicable laws must also be considered). While this change represents a significant alteration in how neuropsychologists are required to respond to requests for raw data, ES 9.04 continues to contain ambiguity regarding exclusionary circumstances as defined by "substantial harm or misuse", particularly when considered in conjunction with other ethical principals, such as ES 9.11. Release of test data, protocols (copyrighted), and reports is likely to continue to be somewhat contentious depending on the circumstances of the case (see *Neuropsychology Review* 10 (3), 2000).

ES 9.11 (Maintaining Test Security; previously ES 2.10) states, "The term test materials refers to manuals, instruments, protocols, and test questions or stimuli and does not include test data as defined in Standard 9.04, Release of Test Data. Psychologists make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques consistent with law and contractual obligations, and in a manner that permits adherence to this

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Message from the President

Eric A. Zillmer, Psy.D.

Forensic Neuropsychology: Art or Science?

The courtroom is old and dark, with elaborate decoration such as one would see in a Grisham movie. If you were to pass by Room 404A there would be an illuminated red light indicating that the "Court is in Session." It is 3:00 in the afternoon and I have been on the witness stand since 9:00 am. Across from me are eight jurors who have wrestled staying awake for the last two hours. To my right, and somewhat elevated sits the judge, stern and formal. No nonsense allowed here. The proceedings are being audio- and video-taped, and a PA system echoes the sound around the mostly empty room making it even more surrealistic.

I am at work as an expert witness.

I am four hours into cross-examination and it has been tough - intellectually and physically. The case is in its eighth day and I am the last witness called by the defense. Tomorrow it will go to the jury for a verdict. The case is the "bread-and-butter" of forensic neuropsychologists, a motor vehicle accident litigation involving a mild head injury. This morning I have testified that, in my opinion, the review of the medical records and my independent neuropsychological evaluation of the plaintiff indicate that he has a mental disorder, which is responsible for his cognitive and emotional presentation. I have presented evidence that premorbid ER visits are in fact psychiatric hospitalizations, that his father has committed suicide and suffered from a bipolar disorder, and that his psychological presentation is consistent with a long-standing Axis-I diagnosis. Interestingly, his manic presentation includes paranoid symptoms that are related to his perception that he has been "wronged" by this traffic accident.

The plaintiff's counsel argued that the earning power of his 40-year old client would equal at least his current annual salary of \$70,000 for the rest of his working life or \$1,750,000. Lawyers always round numbers up, so the

plaintiff sued the large corporation that owned the vehicle that caused the accident for a total of 10 million dollars. My "psychiatric" conceptualization of the case was new to the plaintiff's two lawyers, a husband-wife team who were in solo personal injury practice. A deposition of me would have provided an opportunity for the opposing attorneys to find out the essence of my testimony. But they neglected to depose me, probably in an effort to save preparation fees.

My evidence has been deliberately prepared. I have carefully researched all medical records and I evaluated the plaintiff over two days. I have used charts and graphs to demonstrate the results of my testing to the jury, and I have enlarged hospital records on poster boards that support my conclusions. My experience as a PSYCH101 teacher came in handy here. I feel sorry for the husband-wife team because they seem to have been taken by surprise, but I am amused by the presence of a book on their desk entitled "Psychiatry for Idiots" and wonder if the jury can see this. Of course I am trying to stay neutral, but it is difficult. The opposing counsel is badgering me, having received permission from the judge to classify me as a "hostile witness." The wife's job seems to be confined to looking at me and shaking her head in disgust anytime I say a word.

The tension in the courtroom can be cut with a knife. It is in fact distressing to all participants. Somehow these proceedings have come to a delicate point and I happened to be in the middle of it. The lead plaintiff's counsel, a middle-age man who is sweating profusely, is trying to make one final stand to undermine my testimony, which is needless to say damaging to his case. With great drama he stands up and walks over to the podium bringing with him an assortment of papers. He pauses for effect and then announces in an accusatory voice, "Did you author the textbook *Principles of Neuropsychy-*

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The Role of the Neuropsychologist as an Expert Witness

Elaine D. Hanson, Psy.D., J.D.

In these litigious times it becomes necessary for the clinical neuropsychologist in private, group or an institutional practice to be informed of certain of the legal developments that impact and, at times, hinder the practice of the clinical neuropsychology. No matter how hard we try to limit our practices to areas that do not interface with the legal system, we are inevitably confronted by demands placed upon us by that system. For example, we conduct neuropsychological evaluations for clients who choose to pursue civil cases to obtain damages for neurological injuries. More recently, neuropsychologists have become involved in criminal cases when they are called to testify about legal issues such as competency, insanity and premeditation that inherently involve an investigation of an individual's cognitive functioning.

The neuropsychologist called to testify as an expert in either court or in a deposition faces a daunting task. We are asked, either willingly or unwillingly, to immerse ourselves in a system that is by its very structure adversarial and, at times, downright unpleasant. Despite our level of education, training and clinical expertise, our credentials are attacked as is the very basis of the practice of neuropsychology. We are forced to defend our profession and our professional reputation at every step of the process, which can be simultaneously intellectually stimulating and personally frustrating.

NAN, and most recently the newly formed committee to address professional practice issues, seeks to support its members when they face questions, concerns and often uncertainty in meeting the demands of the legal system. Previously, NAN provided guidelines for responding to subpoenas and requests to produce raw test data to its members. The present article continues that tradition and provides a discussion of issues regarding expert testimony and reviews developments in the courts surrounding the expertise of neuropsychologists to testify about the causation of traumatic brain injury.

Over the past ten years or so, courts of various states have confronted challenges to the quali-

cations of neuropsychologists to testify as to the *cause* of traumatic brain injury. The case of Huntoon v. TCI Cablevision of Colorado, Inc. (969 P.2d 681, 1998) is an example of a decision that had great potential to limit the practice of neuropsychology in the forensic arena. A defense against the attack on neuropsychologists was successfully fought by a coalition of representatives from NAN, APA, the Colorado Neuropsychological Society and the Colorado Psychological Association. It serves as an example of the challenges and fights that have been fought and that will continue to be fought in other state courts.

In Huntoon the pertinent issue was whether a neuropsychologist was properly qualified as an expert to testify regarding *causation of traumatic brain injury* under the applicable rules of evidence. Rule 702 of the Colorado Rules of Evidence, which is similar to the applicable rule in the federal courts, provides that expert testimony is admissible if the "proffered testimony will assist the jury." The expert must possess some special knowledge, above and beyond that generally known to the average or layperson that will help the members of the jury decide the issue in the case. The rule has been liberally applied and it is at the sole discretion of the trial judge to determine whether or not to qualify someone as an expert. The judge will decide whether a witness may qualify as an expert following a line of questioning regarding the witnesses' credentials. The attorneys for both sides will generally get a chance to ask the proffered expert about their education, training, prior testimony, publications and other relevant professional experience prior to the trial judge's ruling. The period of questioning by the attorneys for both sides is generally brief but can be quite lengthy in a highly contested case. It is only after the judge has ruled that the witness qualifies as an expert under the rules of evidence that the expert is allowed to testify about the particulars of the case being litigated.

The plaintiff, Huntoon, was injured in an automobile/truck accident and consequently was

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The Case for the Case Study

A Review of Kenneth Heilman's *A Matter of Mind*

M. Frank Greiffenstein, Ph.D.

Behavioral neurologist Kenneth Heilman is best known for his studies of apraxia and cognitive-motor integration. Nevertheless, his book, *Matter of Mind*, makes clear that Heilman is a master of behavioral neurology who has collected important case material on just about every conceivable brain-behavior relationship. *Matter of Mind* is a compilation of case studies spanning Heilman's long career, from the earliest days of his residency to the present. Heilman chose a popular science format to include as wide a lay audience as possible.

Heilman's goal is modest: Using intensive case studies to prove the modularity of brain function. Heilman wastes little time developing a foundation in history or in comparative analysis. His nine-page "Introduction" is a very brief historical overview of the brain-behavior sciences from antiquity to formation of the International Neuropsychology Society. Despite the volume and breadth of Heilman's published contributions over a 3-decade span, he avoids any grand theorizing and he does not relate his findings to any important social issue. He allows himself only a few cursory reflections, e.g., pride in working at a hospital for the poor or his distaste for Skinner's theories. Each chapter ends with a brief summary of an essential brain-behavior relationship, there are few citations, and there is no conclusory chapter providing any global theory of brain function, consciousness, research directions or social policy implications.

This represents a departure from other books in the behavioral neurology sub-genre of popular science books. Heilman writes in a disciplined, didactic style. The reader should not expect a memoir, and Heilman even subordinates personal anecdotes to his teaching goals. The book reads like a transcribed and polished Neurology Grand Rounds presentation. Although the dust jacket markets the book to the families of brain-damaged patients, some sections of the book, such as modeling of language processes, are too technical for the lay reader. His book lacks the rich historical tableaux of Howard Gardner's *The Shattered Mind* (1977). There is little of the "color" or human-interest angle that permeates Oliver Saks' stories. Heilman also avoids Damasio's bold attempts to storm the gates of philosophy in *Descartes' Error* (1995). These are not faults, just differences with other books in the same genre.

The book contains eight chapters divided like a neuropsychology report: "Language", "Emotions", "Attention", "Self-awareness", "Memory", "Cognitive-motor Skills", "Sensory-perception" and "Recognition" and "Conation/Intention". Most chapters rely on single case studies of persons with rare focal or regional lesions, although Heilman occasionally references group studies. The strength and length of chapters correspond to the amount of research published on a topic by Heilman. "Language" is the longest (42 pages), reflecting Heilman's many published case materials on aphasic phenomena. The language chapter illustrates the evolution of information processing models from Wernicke's simple flow-chart to Heilman's adaptation of Kussmaul. Heilman provides many case studies of expressive, receptive, conduction, transcortical, optic and non-optic aphasias. This chapter is strongest and offers the reader complex modeling of linguistic processes. The chapter entitled "Attention" is also strong. Here, Heilman does a masterful job of integrating animal, normal groups and case material into a comprehensive system of attention's neurological basis. "Emotions" (chapter 3) is another broad and deep integration of evidence from multiple sources.

The weaknesses of the book are evident in the shortest chapters. Most neuropsychologists would probably agree they concern themselves most with memory and executive-cognitive functions, as they are affected by a wide variety of lesions. Thus, the typical reader may be disappointed in the two chapters on these topics. Chapter 6 ("Memory") is especially disappointing. It contains only one personally experienced case study of a patient with Wernicke-Korsakoff disease. The remainder

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Note from the Editors: This is the first in an occasional series of “practice case studies.” There are as many different ways to practice clinical neuropsychology as there are neuropsychologists, and none are completely generalizable to anyone else. However, in reading one clinician’s experience, it is hoped that many others will be able to take away some ideas relevant to their own practice.

“You’re a Neuro . . . What?” Stephen Honor, Ph.D.

Some time ago, D.J. Williamson approached me about writing a piece concerning my experiences developing and establishing a private practice as a neuropsychologist. What convinced me to go ahead with this project was D.J.’s belief that there might be interest in “...how you managed to set up a busy, profitable, and managed-care-free private practice in a managed care saturated market...I think a lot of folks...would love to see how a success story worked...”

I preface the rest of this article by stating that I credit my success to the characteristics of hard work, high standards, perseverance, a supportive wife and some good luck.

To be clear, I am in the independent practice of forensic and neuropsychology in Smithtown, NY, a Long Island suburb. I belong to no managed care organizations, although the majority of my patients do receive reimbursement for the neuropsychological services that I provide. I have “opted out” of Medicare, but will see Medicare patients who understand they are responsible for fees that ordinarily would be covered by Medicare. I will take on a pro bono case or a reduced fee case when I believe it is appropriate.

The nature of my work breaks down as follows:

- examination of patients, children and adults, suffering with a variety of medical/neurological conditions, including head injuries,
- “independent medical examinations” for private disability insurers,
- evaluations of children and adolescents who experience a variety of problems in learning,
- evaluation of individuals applying for professional examinations (e.g. law boards, medical boards) who may require a modification of the testing circumstances
- personal injury litigation plaintiff or defense referrals,
- criminal matters where “brain functioning” is an issue,
- custody evaluations

As suggested above, my primary referral sources include neurologists, other “neuro” people, as well as attorneys.

I entered the independent full time practice of clinical psychology in 1972. In 1983 I received my ABPP in Clinical Psychology. In 1987 I began to notice a change in insurance reimbursement for psychological services. Having originally worked with children as a school psychologist, and then evaluating children based upon pediatric referral, I had had a longstanding interest in the relationship of those problems to brain functioning. I decided to take continuing education courses in neuropsychology and, with my wife, I made the career altering decision of pursuing training in neuropsychology. Having a full time practice in clinical psychology, and having the financial responsibilities for a growing family, I did not feel that I was in a position to “close up shop” and seek out full time post-doctoral training. I had the good fortune of training with Dr. Steven Mattis, who was then the Director of the Neuropsychology Program at New York Hospital-Cornell Medical Center, White Plains (New York) Division, who set up a part time “individualized” program for me which lasted for approximately three and a half years.

Having been established for about fifteen years as a clinical psychologist, I began to “remarket myself” to my referral sources as developing a specialty in neuropsychology. I can’t quite remember

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Ethics Code.”

A key issue in the release of raw data appears to involve the definitions of “substantial harm or misrepresentation” and “integrity and security” of test materials. Release of “raw data to a client/patient or an attorney could be viewed as a violation of both ethical principles depending the reason for the release. The ethics of releasing raw data has been extensively debated without reaching a general consensus (Barth, 2000; Lees-Haley & Courtney, 2000a; Lees-Haley & Courtney, 2000b; Shapiro, 2000; Tranel, 2000). Some professionals argue that many tests are already in the public domain and trying to protect test security is an illusion. In contrast, other neuropsychologists believe test security must be maintained and to release raw data is a “slippery slope” which will ultimately destroy test validity.

The chair of APA’s Ethics Code Task Force, Celia B. Fisher, Ph.D., reported that the new stance regarding the release of raw data was taken in part because of the Health Insurance Portability and Accountability Act (HIPAA) requirement that psychologists must release health information to clients who sign an appropriate release (APA, 2002b). Dr. Fisher stated that the previous stance “would have put some psychologists in conflict with the law and with their clients” (p. 56). Dr. Fisher further stated that, despite the exceptions that would allow psychologists not to release raw data, “psychologists would need to carefully consider withholding any test data information” (p. 56).

However, considered together, the mandates of ES 9.04 and 9.11 to release test data without releasing test materials seem present a substantial problem for neuropsychologists. This dilemma appears still more problematic when one considers that in some cases test “data” and test “materials” are inseparable. For example, with most measures of verbal memory, the stimuli provided by the neuropsychologist and the data produced by the examinee are one and the same. The same situation is found with graphomotor reproduction tests. Thus, in such situations, it is impossible to meet the APA mandate to release test data

but not test materials.

ES 9.04 requires psychologists to refrain from releasing data when the potential for misuse or misrepresentation of the data exists. Yet, it seems likely that without the context of the test questions and other stimuli present on the protocols, it would be difficult for a non-psychologist to accurately represent much of the data. Thus, the potential for misuse of the data would appear to be high.

In addition to the APA Ethics Code, readers should also consider the Standards for Education and Psychological Testing (American Educational Research Association, APA, National Council on Measurement in Education, 1999) and other relevant publications (e.g., those of NAN and APA’s CPTA) when determining appropriate testing practices.

Informed Consent

In the 2002 Ethics Code, a standard was added to the assessment section that addresses issues of informed consent (ES 9.03, Informed Consent in Assessments). Previously, specific discussion of informed consent had been limited to therapy (ES 4.02) and research (ES 6.11). The 2002 code provides guidance for general informed consent issues in ES 3.10 (Informed Consent) and for specific informed consent issues related to research and recording (ES 8.02 & 8.03, respectively), assessment (ES 9.03), and therapy (ES 10.01). Ethical Standards 3.10 (b) and 9.03 (b) provide direction on how to negotiate informed consent issues when patients have or may have diminished decision-making capacity.

Informed consent is a complicated concept (Johnson-Greene et al., 1997; Maccicchi, 2001). While the need for consent for treatment has historically been established, the need to obtain informed consent for neuropsychological assessment had not traditionally been seen as particularly necessary (Binder & Thompson, 1995). The new Ethics Code clearly mandates consent for assessments (ES 9.03). The language appears to utilize a “reasonable person” standard for consent. In other words, neuropsychologists have a duty to provide information necessary for a “reasonable person” to make a decision regarding consent. Since many neuropsychologists examine persons

who are questionably competent, consent issues become more complicated (American Psychological Association Presidential Task Force on the Assessment of Age-Consistent Memory Decline and Dementia, 1998). In addition, in many cases, neuropsychologists cannot provide information on how test findings will be used or what the implications of findings will be.

Neuropsychologists working in forensic contexts should be aware that Ethical Standard 7 (Forensic Activities) from the 1992 code has been deleted. Although some mention is given to forensic contexts or testimony in the 2002 code, forensic neuropsychologists should continue to consult the ethical guidelines provided by the Committee on Ethical Guidelines for Forensic Psychologists of Division 41 (Psychology and Law) of APA, as well as relevant articles, chapters, and case illustration (e.g., Sweet, Grote, & van Gorp, 2002).

Conclusions

The 2002 Ethics Code clarifies a number of ethical issues faced by neuropsychologists, but the new code also creates a series of new challenges for clinicians. While requiring informed consent for assessment, issues related to impaired mental status and disclosure of the implications of test findings are not clearly specified. Clinicians must use judgment when obtaining consent by erring on the side of obtaining surrogate consent when competence /capacity is an issue. Disclosure of how test results will be used by others is more complicated and requires additional attention by professional organizations. Release of raw data is also an unsettled issue in many clinicians' minds, but release issues can be handled by balancing test security with proper authorized requests for release of information. In most cases, negotiation is the key. While readers are referred to the NAN (2000c) decision tree for release of information for guidance, combining decision trees with informed judgment may be the best option when ambiguity exists. As always, if release issues become contentious, it is best to consult a colleague experienced with such matters or an ethics committee.

As neuropsychology continues to develop, psychological and neuropsychological ethics will also continue to evolve, and

neuropsychologists have a basic ethical obligation to stay abreast of changing ethical guidelines that either affect or may affect their professional activities.

Dr. Bush is in private practice in Smithtown, NY. Dr. Macciocchi is Director of the Neuropsychology Division of Shepard Center in Atlanta, GA. For questions or comments, please contact Dr. Bush at 222 Middle Country Rd., Ste. 217A, Smithtown, NY 11787, Tel: (631) 334-7884, E: sbushphdnp@medscape.com.

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evaluated by a neuropsychologist. At trial, the neuropsychologist testified that the plaintiff suffered from an organic brain injury sustained in and caused by the accident. The jury found for the plaintiff. The case was appealed to the Colorado Court of Appeals, which held that the admission of neuropsychological testimony on causation of physical injuries was *always* an error because a clinical neuropsychologist lacks the title of "medical doctor." (Amicus Curiae Brief filed on behalf of APA, NAN, Colorado Psychological Association and the Colorado Neuropsychological Society, page 2.) The appellate court held that neuropsychologists, *as a class*, were not qualified to testify about the physical causation of organic brain injury.

The Colorado Supreme Court reversed the ruling of the appellate court and held that neuropsychologists should not be excluded as experts *as a class* to offer opinions about the etiology of traumatic brain injury. Rather, the Supreme Court held that the qualifications of each expert presented by a party in court must be reviewed *individually* as provided by the rules of evidence. It is the responsibility of the judge hearing the evidence at trial to decide the adequacy of the qualifications of an expert to testify regarding causation. In making such a decision, the judge is instructed to consider 1) whether the testimony of the expert will be helpful to the jury in understanding the evidence or an issue in a case and 2) whether the qualifications of the expert is sufficient training for the opinion offered. The trial judge reviews the qualifications including knowledge, skill, experience, training or education of the neuropsychologist. The court cited the rule of law that a witness is not required to hold a specific degree, have specified training, membership in particular professional organizations, etc. in order to testify regarding a specific issue. The court stated, "We therefore join the majority of states that have resisted the creation of artificial barriers to the admission of expert testimony by drawing lines between the various professions" In addition, the court went on to reiterate that a trial judge's decision whether or not to qualify a witness as an expert will not be disrupted "without a clear showing of an

abuse of discretion" on the part of the judge. An abuse of discretion is found only if, in the context of that particular case, the ruling was manifestly arbitrary, unreasonable or unfair.

Other states have faced similar challenges to the expertise of neuropsychologists. The Supreme Court of North Carolina was reluctant to decide the issue as presented in the case of *Martin v. Benson and Industrial Electric, Inc.* (1998). The North Carolina court did not decide the issue but rather refused to address it finding that the attorneys opposing the admission of the neuropsychologists' testimony refused, as a matter of law, to adequately take the steps necessary to preserve the issue for appeal. Georgia reached an arguably different result from Colorado in the case of *Chandler Exterminators, Inc. v. Morris* (262 Ga. 257, 416 S.E. 277 (1992)). In *Chandler* the court refused to allow a neuropsychologist to offer an opinion about the etiology of a brain injury. In that case the trial judge refused to qualify a neuropsychologist as an expert to testify about the cause of brain injury involving exposure to the chemical, Aldrin. The trial judge stated that neuropsychologist was not competent to testify about causation without medical knowledge of significant toxicity levels. The Georgia Supreme Court held that the admission of expert testimony is within the sound discretion of the trial judge and in the circumstances present in *Chandler*, the trial court did not abuse its discretion by excluding the testimony of the neuropsychologist. Other courts in other states have allowed neuropsychologists to testify regarding the causation of organic brain injury.

Where does this issue stand at the present time and what are the implications for neuropsychologists called as expert witnesses? The only certainty to be taken away from these decisions is that a trial judge will be allowed great latitude in determining the qualifications of an expert neuropsychological witness to testify regarding the causation of organic brain injury in a particular case. The appellate courts are very reluctant to overturn the discretion of the trial judge regarding the admission of expert testimony. Decisions will only be reversed on appeal if it can be established that there was an abuse of discretion. What qualifies as an abuse of discretion is dependent on the facts in a specific case and great deference is afforded the trial

judge.

One can posit that trial judges are less likely to admit the testimony of a neuropsychologist when the issues involve cases which present more complex, and perhaps less litigated, issues of causation of brain injury, such as chemically caused neurocognitive deficits. However, we cannot begin to predict the outcome of these cases.

If you are called as an expert witness in a traumatic brain injury case be familiar with the status of the court decisions in your state, if any, addressing this issue. Be aware that the decision regarding your ability to testify regarding the issues in a specific case lies within the discretion of the trial judge. It is he or she who must decide whether the jury can hear what you have to say. Once that decision is made, and you are allowed to testify, it is the job of the jury to decide the ultimate issues in a case. The factors upon which a jury makes its decision are the topic for another day. When called, be prepared and be professional. If possible, know the judge who will preside over the trial. Be familiar with the facts of the case, the research regarding the issues in the case, as well as the work and opinion of the opposing expert. Do not extend your opinions beyond your professional expertise no matter how hard the attorneys push. Only offer opinions that you are professionally qualified to render. Be prepared for an adversarial process that can be challenging and, at times, unpleasant. Prepare for attacks on the practice of clinical neuropsychology, your expertise, your opinions, your degrees and your reputation. Most of all, know the strengths and weakness of the opinions that you offer. If we are prepared, as a profession, to work within the legal system when called, the practice of neuropsychology will benefit as a whole and we will continue to be viewed with the professionalism that we have worked so hard to obtain.

Elaine D. Hanson, Psy.D., J.D. is an Assistant Professor at the University of Denver Graduate School of Professional Psychology who teaches Forensic Psychology and Mental Health Law. She is also a clinical neuropsychologist with a private practice in Boulder, Colorado, and a practicing attorney who specializes in the representation of mental health professionals in a variety of legal contexts.

Honor - continued from page 6

when or how I “moved” into the neurological community, but within a short period of time I began to receive referrals from neurologists, a number of which revolved around head injury. I also learned that many attorneys were generally unfamiliar with neuropsychology and how it could be integrated into head injury litigation. I then made a second significant decision – I was going to learn about forensics, and I was going to attempt to “create” a market for forensic neuropsychology on Long Island. In addition to my training in neuropsychology, I took on the task of training in forensic psychology. I received a diplomate in forensic psychology 1989 and a diplomate in clinical neuropsychology in 1990.

My goal was now to establish my practice in the specialty areas of forensic and neuropsychology. I saw this not only as an avenue allowing me to devote my professional time to those areas in which I experienced professional pride and satisfaction, but it also allowed me to avoid participating in managed care. Aside from the fact that forensic work is not generally payable by insurance dollars, I strongly believed that neuropsychology was a “health” rather than a “mental health” service. I then persistently attacked the problem of payment for neuropsychological services by insurers. I wrote a “position paper” (which was later expanded and adopted by the Neuropsychology Division of the New York State Psychological Association) on the status of neuropsychology as a “medical” rather than “mental health” service.

I took every opportunity to let other professionals know the change in the nature of my practice. I spoke to as many professional groups as possible. I did not make “cold contacts.” I took every opportunity to send copies of my reports to professionals involved in the different cases. I spent a great deal of time working on report writing in terms of style and content, believing that it was this document that, other than the visibility of court work, which would speak on my behalf. I found that within a year or so the overwhelming majority of my referrals were now for forensic and neuropsychological cases.

Regarding the issue of providing neuropsychological services under a managed care paradigm, it was my belief, and it has been my

experience, that if one was an in-network neuropsychologist, getting authorizations was no easier than if one was an out-of-network provider. As long as "medical necessity" was established, authorization was assured whether or not one was in- or out-of-network. But since almost no network of which I was aware had an actual category of "neuropsychology," it meant that in-network neuropsychologists were lumped under "psychology." Since I had for all intents and purposes phased out my practice in clinical psychology, I could "market" myself exclusively as a neuropsychologist without the confusion and difficulty that arises when one describes (markets) oneself dually as a clinical psychologist and a neuropsychologist (as least as far as managed care networks). By not participating in managed care, I anticipated that I would lose some neuropsychological referrals (which is the case), but I believed that the significant reduction in fees that would arise by participating in managed care would cause a significant reduction in income. I reasoned (and it has come to pass) that the loss of some referrals would be more than offset by only accepting fee for service patients.

One question I have faced is how I deal with the issue of the expense of the examination ("...how do you keep people from freaking out when you tell them how much the service will cost?"). My comprehensive examination includes an initial consultation and concluding ("informing") visit, a review of educational and medical records, all testing and a comprehensive report. Unless specifically asked when the appointment is made, examination expenses are discussed in the initial consultation. I am "up front" with patients/parents about costs (also providing Informed Consents which must be signed) and the fact that "up front" payment is required. The fee, which is based upon the extensive time expended, is explained, as well as the rationale and importance of the examination. I find that people understand the time-cost factor, and when they acknowledge the importance of the examination for their purposes, the expense is worked out. With forensic cases, fees are paid up front by the attorney(s); rarely does the expense, which is substantially greater in forensic cases, pose a problem. On limited occasions I will accept payment from an insurer, or even waive a part of the examination fee, but it is clear that the

patient/parents are responsible for all fees not paid by some other means (e.g. insurance). Between the various payment sources, including personal resources, health insurance, no-fault and workers' compensation payments, attorney retainers, and payment by other agencies (e.g. schools that recommend the examination), I have not found the cost to be terribly prohibitive to most patients or their families.

By maintaining myself as an independent (i.e. managed care free) neuropsychologist, I am free to set my own fees, which more than makes up for those referrals that I cannot see because of insurance issues. I am very clear to patients that I am not affiliated with any managed care networks, and that they are responsible for all fees; I make the commitment (which I carefully honor) that although the fees for most of my examinations are paid up front (usually over the course of the examination), I will assist them in obtaining appropriate reimbursement from the insurer if they are covered (and almost everyone is covered to a greater or lesser extent). In some cases it is necessary to write several letters to make sure that the patient receives the full reimbursement to which they are entitled. On some occasions patients pay only a part of the fees up front, but they are aware that a report will not be provided until payment is completed. As a rule I will not accept legal cases on lien, and in the few occurrences when liens become necessary they must be paid prior to any court testimony. I also have made sure that referring physicians, who most typically are in-network providers, are aware that my services as an out-of-network neuropsychologist are reimbursable and that my office will work with their patients in this vein. Since most insurers do not include a neuropsychology section, and yet "must" cover this form of neurodiagnostic examination, on almost all occasions my services will be covered even though I am an out-of-network provider. Admittedly, there are times when an insurer does have an in-network neuropsychologist (although almost never listed as a neuropsychologist per se) without an out-of-network benefit; those referrals cannot be serviced - but the freedom to charge my fee more than makes up for these losses.

With experience, maintaining a referral basis

continued on page 15

Official Minutes, Board of Directors Meeting

Miami, FL October 7-8, 2002

October 7, 2002

Present: Barth, Elliott, Echemendia, Harris, Hom, Korzora, Lee, Perry, Pliskin, Reynolds, Rosenstein, Ruff, Schatz, Troster, Uzzell, Wilkening, Zeifert, and Zillmer.

Proxies: Provided by Reynolds representing Gouvier and by Ruff representing Cullum.

PRESIDENT'S WELCOME (Jim Hom)

Dr. Hom called the meeting to order at 6:45pm, October 7, 2002 and welcomed the board and committee members to Miami Beach, Florida. The agenda was reviewed.

Committee appointments: Dr. Hom accepted the recommendations made by the outgoing committee chairs. The incoming committee chairs will assume the responsibilities of the offices January 1, 2003. The newly appointed chairs are:

Awards Committee: Dr. Peter Arnett
 Education Committee: Dr. Shane Bush
 Membership Committee: Dr. John Lucas

New Committee appointments: Dr. Hom announced three new Presidential Ad Hoc Committee appointments:

Houston Conference Committee: Dr. Gerald Goldstein. The ad hoc committee's first meeting will be on 10/10/02 at 11:30 am.
 Strategic Planning Committee: Dr. Cecil Reynolds. The task of this committee will be to develop three and five year plans. The committee will draft recommendations which will be presented at the Spring 2003 board/committee meeting.
 Interorganizational Relations Committee: Dr. Eric Zillmer.

SECRETARY'S REPORT (Robert Elliott)

Minutes Approval (Spring 2002): The minutes for the Spring 2002 board/committee meeting were presented to the board for review. They were amended and accepted.

MOTION: Moved by Ruff and Seconded by Zillmer that the minutes be accepted, as presented.

VOTE: Passed Unanimously.

Election Results: The recent election results were announced and presented to the board/committee chairs. The newly elected officers for 2003 are as follows:

President Elect: Dr. Robert McCaffrey
 Member at Large: Dr. Cecil Reynolds
 Secretary: Dr. Penelope Zeifert

MOTION: Moved by Ruff and Seconded by Zillmer to approve the election results.

VOTE: Passed Unanimously.

Twelve invalid ballots were rejected. Ballots were rejected because: lack of signature (6); ballot received after deadline (4); voted twice (1); and not a member (1).

EXECUTIVE DIRECTOR (Josette Harris)

Web site: The Executive Director is working closely with David Kutcher of Confluent Forms and his staff on the NAN web site.

PAIO: Seven people resigned NAN membership because of the \$50 special assessment. All seven were contacted in an effort to maintain their membership.

NAN Foundation: There are four officers in the foundation—President, President Elect, Secretary and Treasurer. The Board of Directors includes the President, President Elect, Treasurer, Secretary, the three immediate Past Presidents and Executive Director as a non-voting member. The Grants Ad Hoc Committee will be funded via the NAN Foundation organization.

Conference and Site Selection: Montreal has contacted the NAN Executive Director about hosting the annual conference for 2006. The Montreal Tourism Board has offered to reimburse 75% of travel expenses of attendees to the board meeting in June 2003. It is estimated that this reimbursement will save NAN \$12-15,000 on the Spring 2003 board meeting. The dates of the Montreal board meeting are 5/29 - 6/1/03. The location of the Spring 2003 board meeting is yet to be determined but will probably be held at the Fairmont.

Decade of Behavior nominee: NAN recommended Carl Dodrill as a NAN nominee for Decade of Behavior Representative to the APA Decade of Behavior National Advisory Committee. No feedback has been received as yet.

Business Meeting agenda items: A number of years ago NAN reviewed the process for handling motions from members during the general business membership meeting. Today, approximately 35 NAN members who attend the general membership business meeting would constitute a quorum. Dr. Reynolds pointed out that motions made from the floor during the annual Business Meeting have been passed in the past. The process of tabling a motion has been used in the past to defer action on a motion until the board carefully considered the motion during the next board meeting.

CONFERENCE PROGRAM COMMITTEE (Alex Troster)

2002 Program: The program for 2002 is on track with registrations. Current registration numbers are similar to the same day count in 2001. The inclusion of neurology as a track is a new element this year. Special topics are offered every day this year. The budget for speaker stipends was reduced to \$26,000 for 2002. Approximately \$38,000 was spent on speaker stipends in 2001. There was discussion about the stipend amounts that are paid to speakers and the potential impact of reducing stipends for speakers.

Commendations: The board and committee chairs offered commendations to Dr. Troster and his committee for the splendid program and the conference committee's work efforts on behalf of NAN.

Chair for 2004: Potential candidates to replace Dr. Troster as Program Chair were discussed.

ACTION ITEM: Dr. Troster will submit his nominees to Dr. Hom for his consideration.

POLICY AND PLANNING COMMITTEE (Neil Pliskin and Jeff Barth)

Pediatric Starter Set: Dr. Lynn Blackburn, with St. Louis Children's Hospital, is the primary author for the Pediatric Starter Set. An announcement about the starter set will be presented at the 2002 Annual Conference. The Pediatric Starter Set is already available on the NAN web site. This project was strongly encouraged by Dr. Uzzell.

Other White Paper Projects:

Dr. Barth announced that several papers would be generated in the future. Each position paper will be considered on its own merit. Dr. Barth noted that each paper is designed for NAN membership use.

Essentials of Neuropsychological Practice paper: This document is a work still in process. There has been much debate about the content of the paper. The hope is that the paper will be available for review by the board for the Spring 2003 board meeting. The paper needs to meet the standard of care before a final draft is produced.

Test Security paper: Other organizations have cited NAN's paper on Third Party Observers in documents they have drafted. Dr. Reynolds noted that the National Association of School Psychologists has recognized the NAN position paper.

Informed Consent paper: Dr. Green is a consultant.

Managed Care/Certification for Services paper: Dr. Reynolds is a consultant. There was brief discussion about a need for a standard of care paper.

Other papers: Independent Medical Evaluations and Malingering/Effort testing are other topic areas being considered.

Commendations to Dr. Pliskin, Dr. Barth and their committee for their excellent work on behalf of NAN.

PUBLICATIONS COMMITTEE (Greg Lee)

Bulletin editors Dan Drane and David Williamson accepted a reduction in stipends as editors for **Bulletin**. They will receive \$1000 per year each.

Archives of Clinical Neuropsychology is cited #5 in 2000 and #8 in 2001 for the ISI list of **Citations for Neuropsychology**.

The Publications Committee will review the journal for the first time next year. The operations and statistics of the journal will be reviewed. There was discussion about the need for a process for selection of replacement editor should such a need develop. Dr. Reynolds noted that the current lag time is about 12 months. Submissions are down for reasons unknown.

ACTION ITEM: The Publications Committee will develop a proposal for selection of a replacement editor if such a need develops. The Publication Committee's recommendation will be presented to the board for the Spring 2003 board meeting but may be considered via email before the Spring 2003 meeting.

The **Archives** has associate editors who can assume responsibilities if the editor becomes unavailable. Responsibilities of the associate editors are assigned by the editor.

Future Book Series: The first book series will be coming out at this conference. To date NAN has spent approximately \$15,000 in the development of the Book Series. The pre-print of the book will be available at this conference for a 50% reduction in the \$75 price for NAN members at this conference and 40% off during off-conference periods. Continuing Education (up to 20 credits) will be available in association with this book.

If there is another proposal on the table the board will consider the proposal. Dr. Hom encouraged additional proposals.

MEMBERSHIP COMMITTEE (Elizabeth Koroza)

Update: Current membership status is 3,365 as of 9/16/02. Another 80 applications are in process. The membership count was 3,418 in 10/11/01. An update of the membership count will be available at the end of the current conference. NAN has seven members who have not renewed because of PAIO assessment.

Membership Chair: John Lucas will become the Membership Chair 1/1/2003. He has been on the committee for two years.

Application: Membership applications are encouraged to be submitted electronically.

Budget: The NAN office will absorb the major costs of the Membership Committee.

Recruitment: Zillmer led discussion about recruitment of new membership. Dr. Reynolds pointed out that it has been more than 10 years since NAN has actively recruited members through mailings to APA or INS membership.

ACTION ITEM: Strategic planning is assigned the task of discussing recruitment of new members.

Commendations to Dr. Kozora and her committee for her outstanding work for NAN.

AWARDS (Ruben Echemendia)

The board has approved the following awards for 2002:

Distinguished Service Award:	Dr. Lawrence Hartlage
Butters Award:	Llorent et al and
McCaffrey et al	

Early Career Award:

Dr. Roy Martin

Dr. Peter Arnett will become the new Awards Chair 1/1/2003. Dr. Echemendia will be rotating off the committee.

DIVERSITY COMMITTEE (Ruben Echemendia)

NAN does not keep records on the diversity of the membership. There is a need for a tally of the diversity of the membership and a survey of their perceived needs. The committee has already developed a liaison with the Diversity Committee of Division 40.

Dr. Echemendia plans to meet with the Diversity Committee to re-energize their efforts. Currently, there are eight members on the Diversity Committee.

MOTION: Moved by Zillmer and Seconded by Ruff to adjourn the Executive Board and Committee Chair meeting at 9:30 p.m. and to reconvene October 8, 2002 at 8:00 a.m.

VOTE: Passed Unanimously.

October 8, 2002

Present: Barth, Cullum, Elliott, Echemendia, Gouvier, Harris, Hom, Korzora, Lee, Perry, Pliskin, Puente, Reynolds, Rosenstein, Ruff, Schatz, Troster, Wilkening, Zeifert and Zillmer.

PRESIDENT (Jim Hom)

Dr. Hom called the second day of the Board and Committee Chair meeting to order at 8:10 a.m.

EDUCATION COMMITTEE (Penelope Zeifert)

APA sponsorship has been continued until 2004. Listing of Learning Objectives is an APA criterion that must be included in the description of each course. Both the book and distanCE have been approved for CE but will be reviewed in the future by APA. The Book Series will be offered by NAN for up to 22 CE credits.

California Board of Psychology now accepts Continuing Education courses offered by APA approved CE providers for meeting California's biannual requirement for CE.

CME for physicians was discussed. The application fee to become a provider is \$500. Additionally, NAN would have to purchase the physician mailing list (\$600 per specialty). In 2002 eleven physicians attended the NAN annual conference. NAN does have physician members who have neuropsychology background. Eligibility for membership determination falls within the jurisdiction of the Membership Committee.

ACTION ITEM: The Education Chair and Program Chair will review the benefits of adding CME to the annual program.

Dr. Shane Bush will assume the position Chair of the Education Committee effective 1/1/2003. Dr. David Lechuga will be rotating off of the Education Committee 12/31/2002.

Commendations to Dr. Zeifert for her work in securing approval from APA for the Book Series and distanCE.

FELLOWS COMMITTEE (Barbara Uzzell)

There were 136 candidates submitted for consideration. The Fellows Committee reviewed 50 candidate applications. 25 individuals qualified for Fellow status for 2002.

MOTION: Moved by Zillmer and Seconded by Wilkening to approve the recommended list of individuals submitted by Uzzell.

VOTE: Passed Unanimously.

Dr. Uzzell led discussion about the process of collecting documentation for applications and the required letters of recommendation.

Chair of the Fellows Committee will be assumed by Dr. Ruff on 1/1/2003.

There was discussion about the need to increase diversity within the Fellows group. Mentoring of potential members was discussed. Some applicants have had difficulty articulating background experiences that justify designation of Fellow status. Currently, there is a 50% rejection rate. There are currently 192 Fellows in NAN.

There is no requirement that new Fellows be approved each year. Dr. Ruff expressed concern about any member who is rejected and a need for the member to be informed about the criteria they did not meet.

ACTION ITEM: Dr. Hom charged the Fellows Committee to develop refined criteria for Fellow status and report recommendations for the Spring, 2003 board meeting.

PROFESSIONAL AFFAIRS AND INFORMATION OFFICE (PAIO)

(Leslie Rosenstein)

Budget: Revenue collected from PAIO during 2002 is \$122,000. The current budget includes a stipend of \$25,000 for the Chair and \$10,000 stipend for the co-chair and the consultant.

Insurance Issues: Ms. Shelly Harrington-King is collecting and entering information into the insurance database. A primer on Blue Cross/Blue Shield written by Dr. Shanna Kurth was published on the NAN webpage and in the Bulletin. Dr. Puente has agreed to write a primer on Medicare, and Dr. Rosenstein will be writing a primer on Medicaid. Authors for additional primers were being recruited.

Consultation: Dr. Puente has been answering phone calls on Wednesday, 11:00 am to 1:00 pm. Dr. Rosenstein has also been responding to emails.

On-line Information: Diagnostic information will be posted on-line and will be ready by January, 2003.

Dr. Schatz has been working on downloads onto the NAN website. These downloads include all NAN papers and relevant papers from other organizations.

Advocacy: Dr. Pliskin and Dr. Rosenstein have spearheaded Advocacy efforts. Dr. Pliskin has requested an invitation to the state leadership conference. Letters to each of the state associations has been initiated. Dr. Rosenstein reported that a letter was written on behalf of a neuropsychologist in New York, and additional general advocacy letters are being drafted.

CPT work efforts continue to be led by Dr. Puente.

Legislative information continues to be collected by PAIO and listed on the NAN website.

Information technology efforts will allow members to list practice information on NAN website.

Positions: PAIO recommends that the co-chair position be filled with a new member. Dr. Pliskin, who is resigning from the co-chair position, will continue on a consultant basis.

MOTION: Moved by Perry and Seconded by Uzzell to increase the co-chair's stipend to \$15,000 year for 2003.

VOTE: PASSED Unanimously.

An Executive Session was called by President Dr. Jim Hom at 9:35 a.m.

Attendees: Barth, Elliott, Harris, Hom, Perry, Reynolds, Ruff, Uzzell, Wilkening, and Zillmer. Pliskin, Puente and Rosenstein attended for short periods of time. Potential candidates for the office of Co-Chair were briefly discussed.

The Executive Session adjourned at 11:30 a.m.

The Executive Board/Committee Chairs Meeting reconvened at 11:30 am.

PAIO (continued)

Dr. Hom announced that the Board will conduct a search for a candidate for the new co-chair position to assume advocacy responsibilities. The board thanked Dr. Pliskin for his work efforts and for acting as co-chair during the last several months. Dr. Pliskin will continue on the PAIO as a liaison for Policy and Planning Committee.

MOTION: Moved by Perry and Seconded by Uzzell to increase the Co-Director's stipend to \$15,000 per year.

VOTE: PASSED (6 in favor, 1 abstention)

Amicus brief involvements: Dr. Rosenstein asked the BOD to discuss its desires for PAIO involvement in amicus briefs. Dr. Puente recommended that NAN solicit support from the APA Practice Directorate with NAN serving as a consultant to APA on such cases. Dr. Hom recommended that PAIO review amicus briefs requests submitted to NAN. If PAIO believes that any warrant involvement of NAN, the requests should be submitted to the Board for consideration.

Survey: Dr. Schatz has a new survey being developed by one of his graduate students that will be reviewed by PAIO. The survey has been peer-reviewed and will be presented to the membership at this conference for response.

INFORMATION TECHNOLOGY COMMITTEE (Phil Schatz)

Welcome: Dr. Schatz introduced Dave Kutcher and Tom Leen of Confluent Forms. Dr. Schatz briefly reviewed his report.

Website review: The NAN website is being utilized increasingly. The highest utilization appears to be during the workweek.

Ongoing Projects: Online membership renewal, the conference enrollment procedure and the membership directory are to be upgraded. The issue of whether PAIO website should be open to the public or restricted to the NAN membership will need to be discussed at a future date.

Confluent Forms, LLC: Tom Leen presented to the board an outline of recent work efforts in expanding the web site and consolidation of different databases that currently exist in NAN.

Budget: Originally the Information Technology Committee had budgeted \$38,000 for 2002. Expenses to date have been \$16,390 with ancillary expenses of \$14,730. The budget proposed for 2003 is \$29,000.

Funding: Dr. Wilkening indicated that funds for various committee projects that involve Information Technology will be reported in the budgets of the requesting committees. Each committee will request funds for Information Technology and report such funds as a line item in their financial reports. Dr. Schatz requests a single line item for his stipend for management of Information Technology Committee.

Commendation: The board wanted to extend commendations to Dr. Schatz and his committee for their work efforts on behalf of NAN.

DISTANCE PROGRAM (Sandra Koffler and Phil Schatz)

Budget: Dr. Koffler reported on the status of distanCE Program. Only one course has been offered this year. Expenses for 2002 FY amount to \$10,411 with \$5,069 residuals. Revenues collected total \$15,950 for 32 participants in the Neuroanatomy course. The 2002 FY profit is \$5,539.

The budget is determined by the cost of instructors, technical support, course materials, mailings, partial support of the distanCE Coordinator's stipend and ancillary expenses. For FY 2003 it is estimated that distanCE costs will be approximately \$32,000 and minimum revenues with two courses offerings and 20 participants in each offering would be estimated to be \$36,075.

Continuing Education: APA has approved NAN's CE program. Specific program components, including distanCE and the Book Series, will be subject to review by APA. There was open discussion about NAN's CE offerings. NAN is able to offer CE for any program that falls within the guidelines of APA's CE program.

Reassignment: There was discussion about the reassignment/oversight of the distanCE program.

MOTION: Moved by Zillmer and Seconded by Reynolds to assign the distanCE program to the NAN Education Committee.

VOTE: PASSED Unanimously.

ACTION ITEM: The Education Chair will assume responsibilities for oversight of the CE program including distance.

ACTION ITEM: Dr. Hom announced that the distance program will undergo a review in Fall 2004. New technology will be introduced January, 2003.

The board commended Dr. Koffler, Dr. Phil Schatz, and Dr. Zeifert for their efforts and NAN support.

GRANTS PROGRAM (Charles Golden)
Dr. Golden reviewed the NAN web site description of the Grants Program. The BOD approved the program a number of years ago.

Typically, the grants awarded have been for projects for which there was no other funding available. In the past salary was not a disallowed expense. There was discussion about salaries as an allowable expense during the last meeting.

MOTION: Moved by Ruff and Seconded by Perry to fund the clinical research grants program.

VOTE: PASSED (6 in favor; 3 abstentions)

The Grants Program is requesting \$60,000 for FY 2003.

MEMBER AT LARGE (William Perry)
Relationship with pharmaceutical industry: Dr. Perry led discussion about developing a relationship with the pharmaceutical industry.

ACTION ITEM: Dr. Hom charged Dr. Perry with investigating a relationship with pharmaceutical industry.

BOD members' meeting reimbursement: Dr. Perry led discussion about expected attendance and participation by the board and committee chair members and reimbursement for additional expenses associated with their required attendance.

MOTION: Moved by Zillmer and Seconded by Ruff that, because of the commitments the Board and Committee Chairs make towards the entire NAN conference, to increase reimbursement for board members and committee chairs by one additional night of hotel accommodation, effective 2003.

VOTE: PASSED (6 in favor, 1 opposed and 3 abstentions)

TREASURER (Greta Wilkening)
FY 2003 Budget proposal: Dr. Wilkening reviewed the proposed budget for 2003. The current proposed budget was contrasted with the budget for 2002. Each board member and committee chair reviewed their proposed budget for 2003. Most board members and committee chairs reduced their proposed budget by a substantial amount to accommodate the overall proposed budget for 2003. Actual expenses for 2001 were \$685,795 and income was \$675,483.

The proposed revised budget for FY 2003 is \$733,508 with an anticipated income of \$705,000. A fair estimate of conference registrations for 2002 is \$349,850.

ADMMENDED MOTION: Moved by Wilkening and Seconded by Golden that we approve a budget of \$696,382, as proposed with the sequestered amount.

VOTE: PASSED (5 in favor; 3 abstentions)

ADMENDENT: 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.

VOTE: PASSED (5 in favor; 3 abstentions)

NEW BUSINESS

CAPPS Observer (Barbara Uzzell): The board recommended that NAN continue to provide an observer for this organization. Division 22 already has an observer with this organization. Dr. Uzzell recommends that we collaborate with Division 22 as an observer. Dr. Hom will collaborate with Dawn Schagle to coordinate this effort.

School Neuropsychology Training Program (Robert Elliott): Led

discussion about the development of a school neuropsychology program sponsored by the Texas Woman's University's Office of Lifelong Learning. Controversy surrounds the development of a school psychologist program that leads to a certificate.

ACTION ITEM: Dr. Hom directed Dr. Zillmer, as Chair of Interorganizational Committee, to discuss the issue of the School Neuropsychology Program with the President of Division 40 (Tony Puente).

CCPN (Jim Hom): Dr. Hom has not been on the board of CCPN since January, 2002 when he resigned. Dr. Ralph Reitan has requested a straw vote of the NAN board regarding a future overlap of the NAN meeting with the CCPN meeting. CCPN will be meeting Friday morning to discuss future plans and directions.

MOTION: Moved by Elliott and Seconded by Reynolds to adjourn the Board of Directors and Committee Chair meeting at 5:05 p.m.
VOTE: PASSED Unanimously.

NAN:BoardMeeting 10-7-02
125/02
Approved 5-30-03

Honor - continued from page 11

seems not to be a problem. Positive feedback from patients to referring health care practitioners and well written reports not only help to maintain current referral sources, but, especially in the legal community, "people talk" and one's name gets around over time. It is also of great advantage to be diplomated as a forensic and neuropsychologist, especially in dealing with attorneys, and insurance companies who seek qualified neuropsychologists to evaluate (disability) cases.

I am sometimes asked about my role as an independently practicing neuropsychologist my role in the Neuropsychology Division of NYSPA. I am more than willing to share my experiences with peers, working from the belief that there is "safety in numbers." I am very active as the insurance chair of the division, and as a member of the NYSPA Insurance Committee, and I believe that my own professional experiences have been of benefit not only to me, but colleagues as well.

Putting aside competence and luck, perseverance is absolutely essential - the persistence to fight for our patients, to fight the insurance companies, and to smartly and proactively tout the importance of our services as neuropsychologists. I understand that as a private practitioner I have certain advantages; however, the ability and willingness to consolidate these advantages is as much a matter of personality (and "chutzpah" if you will) as it is of opportunity.

Zillmer - from page 3

chology?" I acknowledge that I did, together with my co-author, and breath a sigh of relief , since the person who would know most about my book would be ME! After hours of reviewing voluminous medical charts and being reminded every 15 minutes "But you are not a physician, are you?" this seems like a reprieve. "Did you write the paragraph on page 320 and can you please read it to the jury?" For the next 20 minutes I am asked to read different passages from my book. Of course I know what is going on here. Opposing counsel is trying to demonstrate to the jury that, in my own words, the sequelae of concussions can have significant psychiatric symptoms, including depression.

It was not premeditated, but after 30 minutes of reading I find myself spontaneously reaching for the microphone and, pointing a finger at the counsel, I raise my voice, "Listen, I appreciate you reading my book. But obviously you did not read page number one. If you had, you would have read that, 'No part of this work covered by the copyright heron may be reproduced or used in any form or by any means, including photocopying without written permission from the author.'" I noticed that he was working from a large stack of photocopies of pages from my text. I announced with conviction:

"You have violated copyright law. You should have bought my book, not photocopied it. You're a thief!"

I expected to be called out of order, but surprisingly the judge is nodding her head in agreement and seems to take pleasure in this exchange. And the jury seems to have awakened and is looking at the lawyer as if HE was the one being prosecuted. The plaintiff's counsel stares at me with a red flushed face, raises his arms in disgust, and stomps to his seat. "No more questions."

Of course as an expert witness you don't want to get personally wrapped up in a case, but sometimes you can't help it. We should all remember that lawyers win and lose cases, not neuropsychologists, and that our expert testimonies are probably not as influential in

the juries' deliberation as we think they are. Neuropsychologists have become increasingly more involved in forensic neuropsychology. From a 1997 survey of over 2,000 NAN members, I learned that seven percent of all neuropsychological evaluations are forensic in nature (Gordon & Zillmer, 1997). I am proud of the fact that NAN's annual meetings have featured many workshops on forensics and that NAN has embraced many issues neuropsychologists face in the legal arena (e.g., third party observation). Last year, my friend and colleague Jim Hom used his Presidential Address to discuss forensic neuropsychology. Jim asked the audience how many of them have conducted at least one neuropsychological evaluation of a forensic nature in the past year. Over half of the audience raised their hand!

My clinical practice is 100% forensic neuropsychology and I love every minute of it. Why? This may surprise you, but I am mostly interested in the stories. The adolescent who murdered six people. The man who filed off the serial numbers of stolen guns and sold them to criminals not knowing that they can be traced back to him using X-ray technology. Cases of toxicology, electrical accidents, and of course head injury. Each case is different, has a beginning and an end. The hours are good, as is the money. And it seems that in the forensic arena, neuropsychology matters.

What are the principles of forensic neuropsychological assessment? Is forensic neuropsychology art or is it science? The answer of course is: both. First and foremost as forensic neuropsychologists we must be scientists. In the forensic arena, neuropsychologists assist either a legal decision-maker or a litigant in addressing a particular legal issue or legal standard. The evaluation is not necessarily in the best interests of the individual being evaluated and there is a strong notion of situational-based incentives that present themselves in the examinee's response style. And forensic evaluations tend to be very complex. Ultimately, adherence to scientific principles and methodology will best serve the clinical neuropsychologist who is involved in forensic work, because the legal arena typically requires using a higher standard of accuracy in the assessment process.

But, there are additional skills necessary in forensic neuropsychology, skills that have not been taught in graduate school. To be a successful forensic neuropsychologist, I propose that one has to be somewhat of an artist as well. Art is work shaped through creative productivity. And the artist can be defined as someone who has a skill or ability to do something exceedingly well. Forensic neuropsychology is by nature adversarial and requires intuition, a feeling for courtroom drama, great communication skills, and a sensitivity for conflict resolution. Ethics does not have psychometric properties. In addition, most legal disputes involve complex issues about neuropsychological science that are beyond the understanding of a lay jury. It may be an unsettling truth, but juries often rely more on presentation style and sound bites than on substantive scientific argument and scientific data.

It is important to remember that forensic assessment differs in important ways from clinical assessment. As a scientist-practitioner, the forensic expert must keep abreast of new scientific techniques and research in the field of neuropsychology. But credibility is the expert's most important asset in the courtroom and those skills are more "artistic." There are good examples of forensic neuropsychologists who, besides being great scientists, are indeed great artists: the late Ted Blau and my mentor Jeffery Barth come to mind immediately. In forensic neuropsychology, one must balance effectively the artistic delivery with scientific accuracy. It is an art mastered by only a select few.

Dr. Zillmer edited a Special Issue on Psychological Assessment in the Forensic Setting, which will be published in Assessment (Volume 9, Issue 4, 2003), and he is on the editorial board of the Journal of Forensic Neuropsychology.

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Greiffenstein - from page 5

reviews the case of H.M. and provides definitions of procedural, semantic and episodic memory. This chapter lacks more case material or even a brief review of the wealth of studies on organic amnesia. The shortest and weakest chapter is "Conation and Intention" (16 pages). Heilman has published little on frontal system dysfunction, and he cites limited

literature on the topic. He mostly relies on old published work such as Denny-Brown's, Nauta's and Luria's views on frontal system function. The most contemporary information is a brief treatment of Lhermitte's environmental dependency theory, introduced in the mid 1980's. Otherwise, there is no mention of the Damasio group's breakthrough work on gambling strategies in ventro-medial frontal patients. The chapter could benefit from a more contemporary review. The problem of relying on dated material permeates to the book to some degree, as Heilman often mentions the crude nucleotide scans available during his residency, but PET receives only brief mention on one line in the Introduction.

What's in it for the average neuropsychologist? Heilman's book proves the power of the single case study to broadly inform our understanding of brain-behavior relationships. Many scientific advances are based on rare phenomena and neuropsychology is no exception. Heilman's "accidents of nature" are indeed rarities, and the reader is forgiven for encountering few such individuals. How many readers have ever seen a case of pure word deafness? Deep dyslexia? Optic ataxia? Yet, these rare lesions have more to say about brain function than any large *N* study relying on standardized measures. Heilman's contribution, like that of his forebears, is a good eye for the proverbial needle in the haystack. Heilman's gift is the ability to quickly recognize unusual neuropsychological presentations and their implications for brain theories. Heilman definitely deserves a place in the genealogy that runs from Wernicke to Geschwind. *Matter of Mind* is suited for many different audiences. Neuropsychologists who are many years distant from their training milieus could use this book as a refresher in aphasiology. Having trained in the same inspired milieu as Dr. Heilman, I was happy for a volume that neatly summarized classic neurobehavioral training. For neuropsychologists only trained in the application of standardized batteries, *Matter of Mind* reminds you of what you are missing.

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Chapters review the economic burdens associated with different neurological conditions commonly seen by neuropsychologists. They also provide examples of how the services provided by clinical neuropsychologists may reduce “costs” and increase “benefits” for the populations we serve. Suggestions are provided for beginning cost outcome research. Furthermore, the book summarizes the utility of various neuropsychological services that may be helpful to readers concerned with healthcare economies.

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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 3.5 inch diskettes to Dr. D.J. Williamson, 3343 E Lake Shore Lane, Clearwater, FL 33761-1717, email dj.williamson@alumni.duke.edu.

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