

**RESPONDENTS'
OPPOSITION EXHIBIT 1**

Behnke, Stephen

From: Behnke, Stephen
Sent: Mon 6/27/2005 3:35 PM (GMT-00:00)
To: Farberman, Rhea K.; Gilfoyle, Nathalie; Newman, Russ
Cc: Breckler, Steven J.
Bcc:
Subject: RE: [APABOD] TF on Psychological Ethics and Nationabl Security (PENS)

Morgan was VERY hopeful he'd been able to share this with the Surgeon General this Wednesday, at a meeting...

-----Original Message-----

From: Farberman, Rhea K.
Sent: Monday, June 27, 2005 11:30 AM
To: Gilfoyle, Nathalie; Newman, Russ; Behnke, Stephen
Cc: Breckler, Steven J.
Subject: RE: [APABOD] TF on Psychological Ethics and Nationabl Security (PENS)

I'm worried that we will really piss off (pardon my language) the ethics committee by making the document public before they reviewed it. Marked draft or not this is extremely hot right now. I will not be able to keep it under wraps with the media.

Can we do the following --

Day 1 -- Report goes to Board with a 24 hour review
Day 2 -- Report goes to Ethics Committee with a 24 - 48 hour review
Day 3 or 4 -- Report approved
Day 4 or 5 -- Report goes to Council, governance divisions list serves DOD, Hill committees
Day 5 or 6 -- Report goes to media

Because of the July 4 holiday weekend we might hold on the media release until July 5.

Rhea

-----Original Message-----

From: Gilfoyle, Nathalie
Sent: Monday, June 27, 2005 11:16 AM
To: Farberman, Rhea K.; Newman, Russ; Behnke, Stephen
Cc: Breckler, Steven J.
Subject: RE: [APABOD] TF on Psychological Ethics and Nationabl Security (PENS)

Another approach that Steve and I just discussed is for the Board to refer it to the Ethics Committee for review (which can be expedited) but possibly to make it public/ post it as a draft report that is under review by the EC who will make a recommendation to the Board . That would allow people (DOD included) to express their views to the EC . That may be more process than you (or the EC) want but on the other

hand it does provide a mechanism to at least identify competing views. If the 12 points are really interpretations, that is well within the EC 's purview and they don't need public comment to interpret the Code. The downside of making the report public before the EC acts, is that if the EC hates the interpretations there is a more public dialogue about that . Given Olivia's stature , that seems unlikely but as we all know, one never knows.

How do you see Council's role in this? Many of the recommendations are about ethics process and future EC work it seems to me . But will Council want to put its fingerprints on this e.g. the repository , more research etc which they would normally do if it is to be APA policy?

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-----Original Message-----

From: Farberman, Rhea K.
Sent: Monday, June 27, 2005 10:11 AM
To: Newman, Russ; Gilfoyle, Nathalie; Behnke, Stephen
Cc: Breckler, Steven J.
Subject: RE: [APABOD] TF on Psychological Ethics and National Security (PENS)

I agree that if this has to go to the ethics committee we can't release it ...not even to friendly DOD sources. The potential for leaks is just too great.

So, I hope we decide that the report is interpretive and that we can proceed quickly.

Rhea

-----Original Message-----

From: Newman, Russ
Sent: Monday, June 27, 2005 8:42 AM
To: Gilfoyle, Nathalie; Behnke, Stephen
Cc: Breckler, Steven J.; Farberman, Rhea K.

Subject: RE: [APABOD] TF on Psychological Ethics and Nationabl Security (PENS)

From my vantage point, I was hoping this would simply be interpretive, not new guidelines. To the extent that is so (or it can be "tweaked" so it is only interpretive), sending to the Ethics Committee is necessary, but I would be reluctant put this out widely for public comment. Russ

-----Original Message-----

From: Gilfoyle, Nathalie
Sent: Monday, June 27, 2005 8:34 AM
To: Behnke, Stephen
Cc: Newman, Russ; Breckler, Steven J.; Farberman, Rhea K.
Subject: RE: [APABOD] TF on Psychological Ethics and Nationabl Security (PENS)

Maybe the board could conditionally approve it subject to Ethics Committee review and comment. If you want to stay clear of public comment , we definitely want to stay away from calling anything the board does guidelines. When I reviewed the dreaft yesterday morning , I read that recommendation to mean developing guidelines in the future not that these 12 principles would be adopted as guidelines. If they are viewed as guidelines we are in a different ballgame and would really have to suspend rules to avoid putting them through the comment process (not true for the other recommendations). I think there is a lot more latitude with an "interpretation of the existing ethics code" (as opposed to imposing new standards which gets back to the rule requiring public comment-- which is what I want to talk through re ## 4,6,and8,) but that job is pretty squarely one for the Ethics Committee so the board has to be careful about usurping that role. I'll look at the relevant rules and bylaws as soon as I am in to see if that approach flies . Somehow I don't have the relevant docs here at home.N

iginal Message-----

From: Behnke, Stephen
Sent: Sunday, June 26, 2005 11:16 PM
To: Gilfoyle, Nathalie
Cc: Newman, Russ; Breckler, Steven J.; Farberman, Rhea K.
Subject: RE: [APABOD] TF on Psychological Ethics and Nationabl Security (PENS)

Now that I think of it, we do need to be careful. Several people want the Report asap (e.g., Morgan for a meeting with the Surgeon General on Wednesday). I think we should be careful about setting up a process whereby the Report would potentially undergo significant changes...certainly we can indicate that the Report is a draft, and perhaps as background that the Board is pleased with the Report (if they are), so that the Report is distributed as a draft, with the understanding that it has not yet been formally accepted by the Board...

-----Original Message-----

From: Gilfoyle, Nathalie
Sent: Sunday, June 26, 2005 11:03 PM
To: Behnke, Stephen
Cc: Newman, Russ; Breckler, Steven J.; Farberman, Rhea K.
Subject: RE: [APABOD] TF on Psychological Ethics and Nationabl Security (PENS)

Sure --I just worried that they would jump to wanting to approve the recommendations as policy and if I tell them of the issue in advance it is better than after they are set on a course.

-----Original Message-----

From: Behnke, Stephen

Sent: Sunday, June 26, 2005 10:36 PM

To: Gilfoyle, Nathalie

Cc: Newman, Russ; Breckler, Steven J.; Farberman, Rhea K.

Subject: RE: [APABOD] TF on Psychological Ethics and National Security (PENS)

I think what we need to do is to make clear the distinction between the Board making the Report public and the Board adopting the Report--that's a critical distinction. I think it probably makes very good sense for the Board to make the Report public asap (Heather and Russ have looked at how APA would distribute, to whom--the military people are asking for the report soon--Morgan has a meeting with the Surgeon General on Wednesday). I think the Board could easily decide to make the report public, could they not? E.g, with a statement, the Board makes available to members and the public the Report of the Task Force on Psychological Ethics and National Security, which the Task Force completed at its June 24-26 meeting and has forwarded to the Board. The Board invites comments on the Report, and will review the Report for the purpose of determining an appropriate official action after a reasonable time to receive feedback.

-----Original Message-----

From: Gilfoyle, Nathalie

Sent: Sunday, June 26, 2005 10:29 PM

To: Behnke, Stephen

Cc: Newman, Russ; Breckler, Steven J.; Farberman, Rhea K.

Subject: FW: [APABOD] TF on Psychological Ethics and National Security (PENS)

I'm a little worried that Barry is a bit ahead of the curve with the following note to the Board . I am worried that we are missing a step in the degree of input needed to interpret the Code --and that Ethics Committee review and some public comment would be needed before the Board adopts an interpretation. Items 4.6. and 8 in particular seem to me to not be totally clear from the standards but EC involvement would rectify any issues on that . I am thinking of sending the following in response to the email you sent to Olivia , Gerry and Barry and staff or perhaps directly to the Board once the report is in hand . Thoughts? Nathalie

There is an important issue to resolve regarding the manner in which the Board might make this final draft public. If the Board is considering adopting the recommendations of the report, the recommendation that the 12 principles be adopted as "guidelines or official statements interpreting the Ethics Code" requires more process than the other recommendations. Whether viewed as guidelines or an interpretation of the Code , it is advisable that at least the Ethics Committee have an opportunity to comment on these proposed interpretations .Some degree of public comment would also be in keeping with the way APA has gone about adopting standards , such as the Code itself , and other regulatory policies in the past . If viewed as guidelines, additional review and comment is required under the association rules. While it is unlikely that the EC would have any issue with these interpretations, the reality would be that the EC would be bound by the Task Force interpretations once the Board adopted them, in processing complaints against members so it is important to have their input and approval.

In this case one approach could be for the Board to post the draft for public comment before acting on it or at least on that part of it that sets standards and interprets the Code. The board could ask the EC to provide comment as soon as possible.

-----Original Message-----

From: American Psychological Association's Board of Directors [mailto:APABOD@LISTS.APA.ORG] On Behalf Of anton

Sent: Sunday, June 26, 2005 9:11 PM

To: APABOD@LISTS.APA.ORG

Subject: [APABOD] TF on Psychological Ethics and National Security (PENS)

Colleagues:

Tomorrow at 1 p.m. EDT, you will get a final draft of the PENS task force report. The Task Force worked extremely well together, with excellent support from Steve Behnke, Heather Kelly, Geoff Mumford, and other staff from the Ethics Office and the Science Directorate. Nathalie Gilfoyle, Russ Newman, Steve Breckler, Susan Brandon, Mel Gravitz, and Rhea Farberman all consulted on the project. I am hopeful that you will have time to review this document quickly, so that the appropriate governmental, media, and APA governance members will be able to receive this document in a timely manner given the attention these issues have generated.

Best,

Barry

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