

Legal Considerations

Question: *What are the legal considerations for testing?*

Answer: Most legal considerations regarding testing are best left to the attorneys. The test developer, however, can assist in assuring defensibility of an examination by documenting the development process as carefully as possible.

In a 1985 article in the National Clearing House on Examination Information (Vol. 4, No. 1), attorney Thomas Abram wrote that a credentialing examination generally accomplishes two tasks: it measures the skill, knowledge, aptitudes, and abilities required for minimally competent performance on a particular job; and secondly, it differentiates between those candidates who possess the attributes to perform successfully and those who do not. In other words, a credentialing examination has an obligation to demonstrate the basics of validity, reliability, and fairness.

The examination developer can help meet this obligation by demonstrating that the steps taken in developing the exam are as outlined in the latest version of AERA/APA/NCME *Standards* and as implemented by the procedures of recognized accrediting agencies (e.g. NCCA, ANSI). This requires close adherence to the standards and solid documentation.

A certain way to demonstrate this adherence is to show that the process has been accurately accomplished, closely following the accepted standards of the testing industry, documenting each step of the process.

Examination development, like most other activities, consists of content and process; the subject matter of the exam and the steps taken to create the measurement instrument. Any examination development project consists of content, the purview of subject matter experts, and process, the purview of the measurement professional.

The Content-Process Model is quite relevant to the development of a credentialing exam. A court may be hard pressed to determine if the content of the exam is appropriate for determining an individual's competence level but adherence to a set of process steps may be clearly shown.

The content of the exam may be open to argument and interpretation by subject matter experts using their inside knowledge of the profession, but the fidelity to published process steps can be more easily demonstrated.

All components of the exam program (content outline, test items, definition of minimum competency, cut score recommendation) must be shown to have been rationally constructed.

To paraphrase our friends in the real estate business the three most important things are process, process, and process.

While the legal issues in credentialing testing can be complex and sometimes contradictory the short answer for the test developer is to focus on the important process steps and the documentation of those steps in accordance with recognized standards.