

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of the Risk Level Determination of Abraham Jones	PROTECTIVE ORDER
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The End of Confinement Review Committee (ECRC) indicated that it does not want to produce raw data relative to the Level of Service Inventory - Revised (LSI-R), the risk assessment tool the ECRC used in this case. So far, it has produced information that the ECRC sex offender treatment professional gave Jones a score of 25 on that instrument. In addition, it has produced summary information on 10 domains addressed by scoring on that tool. The more specific data addressed by the tool that the ECRC considers raw data consists of 54 questions and the scoring procedures and answers the psychologist gave to those questions based on file material and his interview with Jones.

The ECRC provided the Administrative Law Judge (ALJ) with a copy of Minn. Stat. § 148.965 regarding psychologist test security and the Multi-Health Systems (MHS) Test Disclosure Policy (MHS is a company that publishes psychological assessments, including the LSI-R). The test disclosure policy specifically addresses release of test materials in the litigation context. It recognizes that, given the nature of our legal system, compelling reasons for disclosure of secured testing material may arise.

The policy indicates that qualified purchasers should bring to the court's attention concerns regarding test security and to secure a court order or protective agreement to the extent possible and sets forth requirements for such a protective order.

Based upon all the files and proceedings, it is appropriate to issue a Protective Order in the above matter that limits disclosure of certain data classified as private or confidential under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, and Minn. Stat. § 148.965, that closes the hearing in this proceeding, and that seals the review record as necessary to maintain the not public nature of private and confidential data.

This Order is issued pursuant to Minn. Stat. §§ 13.03, subd. 6; 14.60, subd. 2; and 148.965, and Minn. R. 1400.6700, subp. 4. This Protective Order prohibits the disclosure of data classified as "not public" under the Minnesota Data Practices Act, or other applicable law, to persons not bound by this Protective Order, as set forth below.

ORDER

IT IS THEREFORE ORDERED, that:

1. The DOC shall disclose LSI-R questions 1 through 54 and the answer to those questions used for scoring the LSI-R tool. The DOC shall disclose any other raw data related to the scoring of the tool only to someone trained and qualified in scoring the LSI-R.

2. Abraham Jones and his representatives or witnesses may not put in independent psychological evidence regarding improper scoring of the LSI-R and shall be prohibited from inquiry into the LSI-R scoring procedures unless he calls a witness trained and qualified in scoring the LSI-R to testify to that evidence.

3. Disclosure of LSI-R data as indicated above is permitted in the course of this matter, but is limited to parties, counsel of record, employees assisting counsel, and representatives and witnesses of the parties to the extent necessary to prepare and present claims and defenses.

4. Abraham Jones and any of his representatives or witnesses and the ECRC may not copy or disclose any data encompassed by this order to persons other than those mentioned above, and must return all data released pursuant to this order to the ECRC at the conclusion of this matter.

5. The data encompassed by this order may be used only in this proceeding and not for any other purpose, including collateral litigation, unless otherwise ordered by a district court. The LSI-R scoring information, if admitted into evidence at the risk level appeal hearing, shall be filed under seal in the court file.

6. Data subject to this Protective Order includes the LSI-R data and any testimony about the scoring of that instrument at the risk level appeal hearing. This Order also includes data classified as "not public" by the Minnesota Data Practices Act or other applicable law and includes private or confidential data contained in the ECRC's files concerning the risk level determination of Abraham Jones. This Order also includes documents and records which become a part of the record of the hearing, including any written post-hearing submissions allowed by the Administrative Law Judge; the transcript of the hearing (if any is prepared); and the decision of the Administrative Law Judge.

7. The above data shall not become public data by virtue of having been submitted to this proceeding and shall remain not public after the conclusion of this hearing.

8. The hearing in this matter will be closed to the public. If a transcript is ordered, it shall be kept confidential.

9. The files of the Department of Corrections, the State Public Defender, and the Office of Administrative Hearings, containing data covered by this Protective Order

shall be treated as required by Minn. Stat. §§ 13.01 *et seq.* and 138.161 *et seq.* and shall not be subject to the return requirements of this Protective Order.

10. To the extent provided by its terms, this Protective Order imposes continuing obligations on persons subject to its terms and shall be enforceable through the district court in the district in which this Protective Order was issued.

Dated: July 31, 2009

s/Bruce H. Johnson

BRUCE H. JOHNSON
Assistant Chief Administrative Law Judge