

Mental Condition Requirement in Competency to Stand Trial Assessments

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In Ohio, a criminal defendant is incompetent to stand trial only if “a present mental condition” renders him unable to understand the nature and objectives of the proceedings against him or to assist in his defense. Some forensic mental health evaluators have treated the mental-condition requirement as synonymous with, or similar to, the psychiatric condition required in the state’s insanity criteria, which requires a “severe mental disease or defect.” Yet the term mental condition does not appear in other areas of the state’s criminal code or in the state’s definition of a mental illness for purposes of civil commitment. Moreover, Ohio’s adjudicative competency statute does not explain what conditions or symptoms constitute a mental condition sufficient to render a defendant incompetent. This article is a review of the mental condition requirement in competence to stand trial laws, using Ohio as an example, and how this term has been interpreted (or misinterpreted) by mental health evaluators and the legal system. Suggestions for practicing forensic evaluators are offered.

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The legal system in the United States requires that criminal defendants be competent to stand trial. Trial competence protects the defendant’s right to present a defense as guaranteed by the Sixth Amendment and serves to maintain fairness in, and the dignity of, the court.^{1,2} Stone is often quoted as stating that competence to stand trial “. . . is, in fact, the most significant mental health inquiry pursued in the system of criminal law” (Ref. 3, p 200).

When the question of a defendant’s competence to stand trial is raised, he is ordered by the court to undergo examination by a mental health evaluator, typically a forensic psychiatrist or psychologist. The exact legal standard for competence to stand trial varies by jurisdiction. The U.S. Supreme Court held in *Dusky v. United States* that the test for competence is “whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the

proceedings against him” (Ref. 4, p 402). After the *Dusky* decision, states adopted competence standards to meet the requirements set forth by the Supreme Court. The *Dusky* decision, itself, did not specify that the defendant must have a mental illness or an intellectual or cognitive disability as a prerequisite for a finding of incompetence.

In the federal system, the Insanity Defense Reform Act (IDRA) of 1984 states that a defendant is incompetent to stand trial if he “is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.”⁵ Similarly, many state statutes include explicit language that a mental disorder, or some requisite mental condition, must be present for any finding of incompetence.^{1,2}

Ohio’s statute on adjudicative competence states that the trial court should find a defendant incompetent to stand trial if “a preponderance of the evidence shows that, because of the defendant’s present mental condition, the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant’s defense, the court shall find the defendant incompetent to stand trial.”⁶ However, nowhere in the Ohio competence statute is the term mental condi-

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tion further defined. This definition is distinct from the psychiatric condition required in the state's insanity statute. In Ohio, a defendant is not guilty by reason of insanity, relative to a charge of an offense, only if he proves that at the time of the commission of the offense, he did not know, as a result of a "severe mental disease or defect," the wrongfulness of his acts.^{7,8}

Each state has its own statute regarding the criteria for incompetence to stand trial. It is incumbent on the forensic evaluator to know the statute in the state where the evaluation is being conducted, and to state an opinion using correct statutory language. The American Academy of Psychiatry and the Law (AAPL) Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial specifically addresses the need for evaluators to know the competency standard for the jurisdiction in which the evaluation is performed.⁹ In our experience, however, even seasoned examiners sometimes incorrectly equate the mental-condition requirement in competence-to-stand trial assessments with the psychiatric conditions necessary in another medicolegal assessment insanity. In this article, we discuss the potential reasons that this may occur. We also point out what may occur when evaluators drift from the correct legal standard for a given medicolegal assessment. The case of *State of Ohio v. Halder* is illustrative.¹⁰

State of Ohio v. Halder

The case of Biswanath Halder stems from a nationally publicized shooting rampage that occurred in May 2003 at the Weatherhead School of Management on the campus of Case Western Reserve University. Campus video surveillance revealed that Mr. Halder shot and killed the first people he encountered and thereafter fired, indiscriminately, at occupants and police who arrived at the scene. He subsequently held several people hostage for nearly eight hours before surrendering to the Cleveland Strategic Weapons and Tactics (SWAT) team.

In the course of the case, Mr. Halder's defense team challenged his competence to stand trial. On previous occasions, he was given diagnoses of a personality disorder, dysthymia, and depression. At the competence hearing, three expert witnesses testified as to Mr. Halder's competence. Two of the three forensic examiners opined that Mr. Halder was not competent to stand trial. A third examiner who had been retained by the state, whose testimony turned out to be the basis for much of Mr. Halder's postcon-

viction appeal, opined that Mr. Halder was competent to stand trial. The court found Mr. Halder competent, and he was later convicted on multiple counts, including capital murder, aggravated murder (with capital specification), and aggravated burglary. He was sentenced to life imprisonment without parole.¹⁰

In his appeal of the verdict and sentences, Mr. Halder argued, *inter alia*, that the trial court erred in finding him competent to stand trial. The appellate court found no error in the trial court's determination that he was competent to stand trial.¹⁰ Although Mr. Halder had a severe personality disorder that made him unwilling to assist his attorney with his defense, he was competent. Of interest, however, is how the court considered the testimony of the state's forensic expert.

The state's expert's diagnosis of Mr. Halder was "a severe personality disorder." The expert stated that a person could not be found incompetent unless the person first had a diagnosed "mental disease or defect of the mind" (Ref. 10, p 33). The expert opined that a personality disorder "doesn't meet the first prong to be found incompetent" (Ref. 10, p 33), because the condition is not a mental disease or defect. The defense counsel asked the expert, "where [in the Ohio code] does it say mental disease or defect of the mind in regards to competence" is required? (Ref. 10 pp 33–4) In response to this line of questioning, the expert ultimately described personality disorder as a mental condition. In other portions of the testimony, the expert described Mr. Halder's functional abilities in relation to his mental symptoms.

The majority opinion focused on the state expert's credentials and functional assessment, including whether Mr. Halder had the ability to assist in his defense and a rational understanding of the proceedings, in light of his personality disorder. The fact that the court reached the question of rational understanding implies the court's acceptance that a personality disorder could serve as the requisite mental condition under Ohio's law.

The dissenting opinion, however, focused more on the threshold legal standard and somewhat less on the functional assessment:

[D]efense counsel was able to get [the expert] to admit that her "threshold issue," used as the basis of her competency opinion, was actually the legal standard for determining *sanity at the time the act was committed*. . . . Again, the statute for determining competency to stand trial clearly does not require a "mental disease or defect of the mind." Thus, it is my view that [the expert's] opinion was based upon the wrong legal standard . . . (Ref. 10, p 35, emphasis in the original).

Although the dissenting opinion focused largely on the question of psychiatric threshold, it also noted that the state's expert conceded in her testimony that ". . . Mr. Halder's ability to assist his attorneys in a rational manner is impaired by virtue of the characteristics of a severe personality disorder which interfere with his ability to consider alternative viewpoints . . ." (Ref. 10, p. 40). According to the dissent, a severe personality disorder could be a qualifying mental condition for the purposes of competence to stand trial in Ohio.

Discussion

Legal Terms

The "psychiatric" component in competence to stand trial evaluations may vary by jurisdiction, both by legal term used and determination of threshold symptoms or disorders. Among others, examples of terms used in competence to stand trial statutes include mental condition,^{6,11} mental disorder,² mental disease or defect,² mental illness, defect, or disability.¹² There may be no specific mental requirement included in the law, such as in *Dusky*.⁴ As examples, starting with the first three states in alphabetical order, Alabama's adjudicative-competence statute states:

A defendant is mentally incompetent to stand trial or to be sentenced for an offense if that defendant lacks sufficient present ability in his or her defense by consulting with counsel with a reasonable degree of rational understanding of the facts and the legal proceedings against the defendant.¹³

Alabama's criminal code requires that evaluating psychiatrists and psychologists include in their reports information about the "mental condition of the defendant" as it relates to the adjudicative-competence criteria. No specific mental condition requirement, in the form of a psychiatric threshold condition, is mentioned within the text of the competence statute itself. Alaska's adjudicative-competence statute, by contrast, states:

A defendant who, as a result of mental disease or defect, is incompetent because the defendant is unable to understand the proceedings against the defendant or to assist in the defendant's own defense may not be tried, convicted, or sentenced for the commission of a crime so long as the incompetence exists.¹⁴

In Arizona, the adjudicative-competence statute states: "Incompetent to stand trial' means that as a result of a mental illness, defect or disability a defendant is unable to understand the nature and object

of the proceeding or to assist in the defendant's defense."¹²

In many jurisdictions, the psychiatric condition required in the state's competence to stand trial statute is different from the language used in the state's insanity statute, as in Ohio.⁶⁻⁸ In Alabama's adjudicative-competence statute it is stated that if the examiner opines that the defendant is incompetent, the court may require the examiner to give an opinion regarding whether the defendant had a mental disease or defect at the time of the alleged offense,¹³ a clear reference to a potential insanity defense. Alabama, thus, appears to have a psychiatric threshold condition for an insanity defense, but no psychiatric threshold condition with regard to the mental condition as related to adjudicative competence. In law, where the legislature adopts different language or terms, it may be presumed that the legislature intended them to have different meanings. Across states, legislatures adopt laws that may share concepts or language but, ultimately, are interpreted differently. This interpretation may include similarities and differences in the wording and meaning of a given jurisdiction's mental-condition requirement in an adjudicative-competence statute. Grisso wrote:

Virtually every state employs a legal definition of competency to stand trial patterned after the definition given by the U.S. Supreme Court in *Dusky v. United States* (1960) . . . Many states have added to this definition the requirement that deficiencies in the abilities noted in the *Dusky* standard must be due to "mental disorder," "mental disease or defect," or some other wording [Ref. 1, p 5].

In a more recent book, Grisso again noted that some states require that the deficient psycholegal abilities noted in *Dusky* must be the result of certain conditions, such as a mental disorder or mental disease or defect or, in juvenile cases, developmental immaturity.² In Ohio, however, it is an error for an expert to write in a forensic report or to testify in court that a finding of incompetence to stand trial requires a mental disease or defect or a severe mental illness.

Although states may adopt a particular term regarding a psychiatric condition in their insanity statutes,^{7,8,13} some states leave the psychiatric disorder or condition element undefined in their adjudicative-competence statutes.^{6,13} Absent a legislative (or statutory) definition, the court is left to make judicial determinations on a case-by-case basis. In *State v. Klein*, the Washington State Supreme Court discussed this question in the context of a petition for release after a finding of insanity in *State v. Klein*.¹⁵

In Washington, the competence-to-stand-trial and insanity statutes both require the presence of a mental disease or defect.^{16,17} In *Klein*, the defendant petitioned the court to determine whether her polysubstance dependence and personality disorder not otherwise specified legally constituted a mental disease or defect as required by the state's insanity law. The court said:

Although our legislature has not further defined the term "mental disease or defect," other state legislatures have. In doing so, these legislatures have exercised a legislative prerogative to depart from a dictionary definition and have instead made policy choices to exclude specific types of mental conditions from the term. Were we to do so here by court decision, we would unduly encroach upon the legislative function, especially since our legislature has not seen fit to further define the term [Ref. 15, pp 651–2].

Although the *Klein* case interpreted the state's insanity statute, the reasoning applies in the setting of competence to stand trial.

The *Klein* court went on to say that the mental disease or defect is not synonymous with the term "disorder" that is found in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).¹⁸ "Not all disorders defined therein will rise to the status of 'disease or defect' under our statutes" as the court noted that the DSM is an evolving document (Ref. 15, p 653).

The *Klein* court added that mental health professionals may have an inclination to rely on the DSM to define any mental condition or disorder, but cautioned that trial courts should not defer to mental health professionals to define legal terms. It is instructive, too, that the DSM-5 includes a cautionary statement for forensic use: "It is important to note that the definition of mental disorder included in the DSM-5 was developed to meet the needs of clinicians . . . rather than all of the technical needs of the courts and legal professionals" (Ref. 18, p 25). Although some jurisdictions have adopted the DSM for specific legal purposes, such as Louisiana, which specified the use of the DSM for disability assessments,¹⁹ its use should not be automatically presumed by forensic mental health evaluators.

Further, even under the provision of the federal Insanity Defense Reform Act⁵ for competence to stand trial, the circuit courts of appeals may define differently the mental disease or defect requirement of the statute. In fact, the circuits have split on whether a personality disorder may constitute a disease or defect as a threshold for trial incompetence. The Seventh Circuit in *United States v. Rosenheimer*

upheld a lower court's finding of competence for a defendant and stated: "the defendant did not suffer from any mental disease or defect, but rather from a narcissistic personality disorder which is separate and distinct from suffering from a mental disease or defect" (Ref. 20, p 112). In contrast, the Tenth Circuit, in *United States v. DeShazer*, did not preclude a personality disorder as the basis for trial incompetence, but held that the central question is the degree of the defendant's functional impairment.²¹ In *DeShazer*, despite the diagnosis of a personality disorder, the defendant could rationally assist in his defense and cooperate with his lawyer.

Challenges for the Forensic Evaluator

The lack of specificity of mental condition and related terms in competence-to-stand-trial and other statutes may confuse and challenge legal and mental health professionals working at the law–medicine interface. Possible reasons for confusion in the terms' definitions include equating the mental/psychiatric condition requirement of competence to stand trial with that used for insanity in criminal evaluations; failure of the evaluator to appreciate jurisdictional variation in definitions for a specific forensic evaluation; examiner experience and understanding that certain major mental illnesses are more likely than other disorders to form the basis for trial incompetence; and the examiner personally defining the term based on what makes sense to the examiner.

In Ohio, for example, forensic examiners are commonly called on to evaluate simultaneously a person's competence to stand trial and criminal responsibility at the time of the alleged criminal act. It is foreseeable that some forensic evaluators, then, may equate the mental condition requirements in these statutes. As Ohio uses "severe mental disease or defect" in its insanity law, examiners may conflate the terms when performing psycholegal assessments. To make things in Ohio more complicated, the state has the following additional statutory mandates regarding what must be included in a written forensic report in competence-to-stand-trial assessments:

If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, whether the defendant presently is mentally ill or has an intellectual disability and, if the examiner's opinion is that the defendant presently has an intellectual disability, whether the defendant appears to be a person with an intellectual disability subject to institutionalization by court order.¹¹

The statute does not clarify how these additional terms are to be interpreted in light of the general mental-condition element in the competence-to-stand-trial standard. Case law, likewise, has not addressed this specific question.

By not defining what constitutes a mental condition, the Ohio competence to stand trial statute contains an element of ambiguity. The ambiguity in the definition, or lack of definition, with regard to the requisite mental condition, may invite misinterpretation. Evaluators may fill in the areas of ambiguity with what makes sense to them. Conventions among groups of evaluators may evolve, wherein there comes to be a belief that the legal standard specifies a psychiatric threshold condition, when in point of fact, it does not.

One might wonder whether state legislatures should adopt the same term (e.g., mental disorder) in all statutes that concern psychiatric symptoms or conditions. In this way, legal and mental health professionals could rely on the same terms and definitions and more easily apply them in a consistent manner. For instance, Washington uses mental disease or defect in both its competency-to-stand-trial and sanity statutes.^{16,17} However, perhaps rational reasons exist for the use of different terms and definitions. Being competent to stand trial represents a constitutional right, and jurisdictions may define their competency laws broadly in an effort to capture all defendants who may not be fit to proceed with the medicolegal task. Insanity, in contrast, is a plea that typically is voluntarily made by the defense in those jurisdictions that allow an insanity defense, and a state may choose a relatively high bar for being found insane, such as a severe mental disease or defect (in addition to fulfilling the other conditions of the state's insanity criteria). The definitions may reflect different values and policies when it comes to a defendant's triability versus culpability.

There may be a need for some ambiguity in the criteria for psychiatric conditions that could result in trial incompetence, such as in the case of a defendant with a hearing impairment. In *State v. Burnett*, a defendant from Ohio did not use standard sign language and required multiple interpreters.²² Although the court did not explicitly comment on how the defendant's mental condition met the requirement in the state's adjudicative-competence statute, the court found the defendant incompetent to stand trial. The court relied on an expert in sign language,

who opined that the defendant's communication was severely limited, the legal proceedings were too abstract for him, and he would be likely to become confused at trial when he did not understand certain questions, which could lead to errors from the interpreters. These deficits precluded the defendant from meaningfully understanding the proceedings against him and assisting in his defense. The court plainly commented that the defendant's condition was not a mental illness subject to the state's civil commitment scheme. This ruling lends support to the fact that mental illness and mental condition have different meanings in Ohio law.

This ambiguity in terms allows for courts to consider, as a matter of law, whether to narrow or exclude certain conditions as a basis for a particular incompetence or other evaluation. The courts and legislatures are free to define the terms in the context of changes to the DSM and scientific advancement, as well as a changing society and recognition of conditions that may not meet a definition of mental illness but nevertheless may have a mental component (e.g., immaturity as a basis for juvenile adjudicative incompetence).

Diagnostic Findings

Regardless of the definition of the psychiatric condition required in any particular state competency law, research shows that certain psychiatric conditions tend to be associated with trial incompetence. Among the most common conditions are psychotic illnesses and intellectual disability.

The literature indicates that current psychosis is the mental condition most associated with an examiner's opinion that the defendant is incompetent to stand trial.²³⁻²⁶ Nicholson and Kugler noted that ". . . the correlation between psychosis and incompetence was among the highest obtained in the review" (Ref. 23, p 359), and in a meta-analysis covering 50 years of research, Pirelli *et al.* found ". . . that defendants diagnosed with a psychotic disorder were nearly eight times more likely to be found incompetent than those without such a diagnosis (Ref. 24, p 16). In addition to "poor performance on assessments of psycho-legal ability," psychosis and "symptoms reflecting severe psychopathology" were highly associated with findings of incompetence to stand trial (Ref. 25, p 425).

The results of studies of intellectual disability and trial incompetence have been mixed. Nicholson and

Kugler²³ described a small negative correlation, but observed that others have found the results to be just the opposite. A review article noted that the rates for adjudicative incompetence among persons with intellectual disability were at 12.5 to 36 percent.²⁷ The authors noted that individuals with more severe forms of intellectual disability are more likely to be under constant supervision; thus they are less likely to commit a criminal act. In our experience, individuals with milder forms of intellectual disability may be more likely to be evaluated for adjudicative competence. Those at lower levels of intellectual disability who live in institutions may act out, but their misbehavior may be handled within the institution, rather than being dealt with in the legal system. At times, the legal system may choose not to prosecute individuals when incompetence to stand trial is a very strong likelihood and when the persons involved are all being cared for in an institution. This possibility would, in effect, delete from the equation, many individuals in the lower IQ range and, in turn, may affect the correlation between IQ and competence to stand trial.

Although one study found that those with a diagnosis of antisocial personality disorder were associated with a finding of competence to stand trial, another study found that some individuals with personality disorders were recommended as incompetent, although at lower rates than those with serious Axis I diagnoses.²⁵

It appears that the psychiatric disorders associated with expert opinions and adjudications of incompetence to stand trial tend to mirror the disorders often viewed by forensic examiners as qualifying as a severe mental disease in sanity cases. Some of the diagnoses often viewed as severe mental disease in the context of sanity evaluations are schizophrenia, schizoaffective disorder, schizophreniform disorder, psychotic disorder, bipolar disorder, major depression, autism spectrum disorders, and a few others.²⁸ Clinicians may be evaluating the functional conditions that lead to an opinion regarding incompetence, but these same defendants who have severe functional impairments also tend to carry the more severe clinical diagnoses.

Importance of Functional Assessment

The AAPL Practice Guideline for Forensic Psychiatric Evaluation of Competence to Stand Trial⁹ recommends that evaluators provide a diagnosis, because in some jurisdictions, it is necessary to establish a mental disorder, and a diagnosis may also help ex-

plain the functional deficits, as well as provide a rationale for expectations of restorability. It must be noted, however, that, rather than emphasizing a specific diagnosis, the AAPL guideline states that the most important question in competence to stand trial evaluations is the defendant's ability to understand his legal situation and to assist in his defense: the defendant's so called functional or psycholegal abilities. A functional assessment requires that the evaluator assess the defendant's abilities and deficiencies and how these may affect the defendant's ability to participate in and understand the trial. It is useful for the forensic evaluator to comment specifically on how the defendant's deficiencies are linked to his mental condition or disorder. By doing so, it provides evidence for the evaluator's opinion.

It is not uncommon, for example, for forensic evaluators to assess individuals who appear to be opposed to assisting their attorneys. Their behavior may be caused by delusional beliefs about their attorney or their role in the legal system. Alternatively, the defendant may voluntarily choose to avoid assisting his attorney because he believes that a determination of adjudicative incompetence is in his best interest and he is actively trying to be found incompetent or because he does not agree with his attorney's strategy for his defense. Perhaps the most relevant question is whether there is a mental condition present that makes the defendant incapable of making a rational choice and assisting in his defense, versus whether the defendant is essentially choosing not to assist his attorney, even though he is probably capable if he chooses to do so.

Recommendations

The following recommendations for forensic evaluators are illustrated in the case we have described:

It is important to appreciate how the relevant legal language applies to the task at hand, especially when the statutory language may be confusing, or even somewhat conflicting.

When legal standards or terms are not clear, forensic evaluators should consult with an appropriate legal authority or peers experienced with the accepted application of the relevant law in the jurisdiction.

Forensic evaluators should not equate statutory mental health terms with DSM diagnoses unless

such equation has been settled by law in the particular jurisdiction.

The presence of a mental condition or disorder is merely one element in opining on a defendant's adjudicative competence.

Once symptoms are established or a diagnosis is made, the evaluator should focus on the defendant's functional abilities and deficiencies.

It is important for evaluators to be clear about the defendant's psychiatric condition, the causal connection between the condition, and any deficiencies and how the deficiencies may adversely affect the defendant in trial or trial preparation.

Conclusion

Forensic psychiatrists and psychologists deal with the interface between legal language and concepts, and the language and concepts of the mental health professions. We are most helpful to the court when we apply our specialized knowledge of personality, psychopathology, motivation, functional assessment, and other areas of mental health expertise to specific legal requirements. It is essential that mental health professionals know the relevant statutes in the jurisdiction in which the defendant is charged. Psychiatrists and psychologists are particularly well qualified to assess and describe defendants' functional abilities, the crucial link to the specific psycholegal question under consideration.

Although forensic psychiatrists and psychologists are well qualified to provide assistance to the legal system, the task may, at times, be unclear or ambiguous. This ambiguity is brought about, in part, because statutes in different states, and even within the same state, use different terms to specify mental condition elements. Compounding the challenges of the differing legal standards and terms is the fact that definitions of mental disease or disorder, from a psychiatric standpoint, continue to evolve, as evidenced by updates to the DSM. Different editions of the DSM reflect different or evolving views of psychopathology and classification of disorders.²⁹ Changes in diagnostic terminology and thinking over time may have influenced the wording in various relevant statutes, thus contributing to differences in, and confusion regarding, the seemingly divergent statutory mental condition terms.

What is likely to continue, and to take on increasing importance in forensic evaluations, is the need for evaluators to address the evaluatee's functional limitations in the context of his diagnosis and the specific legal question posed. Evaluators would be well served by including not only a clinical diagnosis, but also descriptions of the evaluatee's abilities (and deficits) and the nexus between any deficits due to the mental condition and relevant psycholegal skills.

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