

# Commentary: Incorporation of Competence Instruments into Clinical Practice

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With much fanfare in the early 1990s, Dan Goldin assumed the role of Administrator of the National Aeronautics and Space Administration (NASA), with the goal of reforming the agency by adopting the mantra that seemed to lead to so much success in the computer industry: “Faster, better, and cheaper.” The Goldin era promised that new technology combined with decisive management would lead to a renewal of the slow-moving, traditional NASA bureaucracy. One may argue that the field of medicine has experienced similar pressures as ever-increasing technological advances intersect with attempts to control ballooning costs. Certainly, one would hope that, as all of medicine has advanced more or less directly with what is learned from the modern research enterprise, forensic psychiatry would not be left behind.

Dr. Akinkunmi’s efforts to standardize one country’s approach to adjudicative competency are noteworthy.<sup>1</sup> Significant changes in the practice of traditional forensic psychiatry have already been forged by the inclusion of psychological instruments into that practice. However, the question remains whether such instruments should be adopted simply because they exist. The potential for misuse by professional and nonprofessional parties alike should also be taken into account. Rather than accept such instruments as *per se* harbingers of progress in the field,

careful consideration should be given to whether they can deliver what they appear to promise.

Ideally, the addition of psychological instruments, such as the one discussed in Dr. Akinkunmi’s article, to the routine practice of forensic psychiatry should be driven by clear clinical and/or economic goals and corresponding results. In this case, the tool should add value to the currently accepted practice of examinations for adjudicative competency by improving the quality and reliability of the process or by making the process more cost effective. As proposed by Dr. Akinkunmi, identification of individuals with questionable competence early in their criminal proceedings may improve the service of forensic psychiatry to the court system and one hopes would even contribute to fairness (or due process). However, there are also potential negatives. These instruments may not be adequately responsive to the complexity of the decisions they are designed to make. In addition, there may be a hidden systems cost, as the primary responsibility for the identification of individuals of questionable competence would be shifted from legal to medical actors.

Previous well-intentioned attempts at the creation of standardized instruments have yielded mixed results. In 1972, the National Institute of Mental Health (NIMH)-funded efforts of A. Louis McGarry and colleagues from the Laboratory of Community Psychiatry at the Harvard Medical School yielded the Competency Screening Test (CST) and the Competency Assessment Instrument (CAI).<sup>2</sup> These instruments, based on the available state of psychiatric knowledge, promised to improve the understanding of adjudicative competency among psychiatrists performing evaluations and to bolster the quality of their

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product and the consistency of their results. These two instruments have not been widely adopted for use for a variety of reasons. Fairly or unfairly, they have even been charged with adding to the degree of evaluator bias that affects competency decisions.<sup>3</sup>

A factor that militates against the adoption of standardized instruments in the practice of forensic psychiatry is the relative unfamiliarity with biostatistics among the majority of general and forensic psychiatrists. Long considered the purview of our colleagues in psychology, the use of standardized testing outside the research environment has been considered by some as tantamount to an abandonment of the clinical foundations on which forensic psychiatry has been established. Even when we determine the instruments to be ready for clinical use, forensic psychiatrists will have to learn new skills and become fluent in the language that accompanies these tools. Terms such as receiver operating characteristics (ROC) and likelihood ratios will have to be incorporated into the forensic psychiatrist's lexicon. Rather than follow the field of psychology with regard to the degree of reliance on standardized instruments, the medically oriented template of evidence-based medicine may serve better in the mastery of these complex concepts.<sup>4</sup> Although advanced statistical concepts are being incorporated into general residency training for future psychiatrists, current practitioners in the field may find themselves increasingly challenged in an era of rapid change. For example, the use of standardized instruments always raises the possibility of discordance between the instrument and clinical interview. Forensic examiners must be ready and willing to address this discordance (under cross-examination, perhaps). An evidence-based medicine approach to standardized instruments would begin with serious consideration of the strengths and limitations of the test before inclusion in appropriate practice environments. Furthermore, practitioners in our field must remain cognizant of the ultimate goal of the adoption of these technologies: to improve our service to the actors in the courtroom for whom the forensic dialogue could quickly spiral into psychological obfuscation or worse—boredom.

Critics of forensic psychiatry have long argued that the field lacks objectivity and scientific rigor, a point bolstered by the common scenario of multiple expert witnesses providing opinions supporting either side of a given legal case. Psychological instruments may improve the reliability of assessments between exam-

iners, affecting the very gold standard against which we measure change. However, the inherent subjectivity of individual clinical opinion may not serve as an optimal comparison against which new tools are benchmarked.

Although an appropriately normed and validated instrument may yield substantial assistance in the development or support of a primarily clinical opinion, the question of the limits of such expectations should be scrutinized. As regards adjudicative competence, for example, with its factual component (knowledge of the actors of the court) and its participatory component (ability to assist counsel in defense), one can imagine that standardized instruments may be more easily adapted to assessing the former than the latter. Multiple-choice or fill-in-the-blank tests that quantify, however clearly, a defendant's appreciation of the roles of judge, jury, and attorneys may not capture the subtleties associated with the functional aspects of competency. The Georgia Court Competency Test (GCCT) exemplifies this point by focusing most of its inquiry in the domain of knowledge of the legal system rather than ability to assist one's attorney.<sup>5</sup> One might wonder if standardized tools would ever enhance, let alone replace, the clinical interview with regard to the functional element of adjudicative competence assessment.

Another issue that complicates the introduction of standardized instruments into clinical practice involves differences between the sample on which the study was tested and the type and quality of subjects seen in clinical practice. While a narrow set of study subjects defined by restrictive exclusion criteria may increase internal validity of the results, the generalizability of the conclusions becomes increasingly limited. As Dr. Akinkunmi dutifully indicated, although internal validity with the MacCAT-FP remained high throughout the study, additional research (with larger sample sizes and multiple investigators) is necessary to realize the goal of an objective measure of competency.

A potential benefit from routine use of psychological instruments is the potential economic savings of such methods. High quality, simple tests theoretically could speed up the process of evaluation and/or allow the use of less expensive testing personnel, saving the limited resources of the adjudicative system. However, faster and cheaper is not always better (Dan Goldin is no longer NASA Administrator). A poorly designed or statistically flawed instrument

could increase the number of individuals who would require in-depth psychiatric evaluations to confirm adjudicative incompetence, thereby raising costs. On the other hand, the more sophistication we expect from our instruments, the more we run the risk of increasing their administrative and interpretive complexity. Currently, the MacCAT-FP and related tests do not contain internal validity scales that seek to identify subjects who malingers. The inclusion of such scales is certainly possible, even in tests designed as self-report measures.<sup>6</sup> The danger is that administration of the instrument may become so cumbersome and complex as to require highly skilled professionals, thereby eliminating any economic advantage. Rushing in where angels fear to tread may ultimately cost the courts more than expected, without proven benefit in results.

In the end, many of the machinations of forensic psychiatrists can be reduced to the basic issues of careful examination and effective report writing followed, where appropriate, by faithful deposition and/or trial testimony. A fundamental problem encountered in forensic psychiatry involves the resolution of complex clinical phenomena into the binary language of the legal system (i.e., fit or unfit, sane or insane). As such, the forensic presentation to judge

and jury requires careful explanation. In the case of the MacCAT-FP and its predecessors, these instruments provide information that does not directly translate into the legal issues of factual and functional adjudicative competence, requiring a certain leap of judgment to appreciate their legal utility. Our professional role must remain, in part, as the gatekeepers and interpreters of this special knowledge for the courts.

## References

1. Akinkunmi AA: The MacArthur Competence Assessment Tool—Fitness to Plead: a preliminary evaluation of a research instrument for assessing fitness to plead in England and Wales. *J Am Acad Psychiatry Law* 30:476–82, 2002
2. Laboratory of Community Psychiatry, Harvard Medical School: Competency to stand trial and mental illness. Washington, DC: U.S. Department of Health, Education, and Welfare, 1973
3. Brakel SJ: Presumption, bias, and incompetency in the criminal process. *Wisconsin L Rev* 1974:1105–30, 1974
4. Sackett DL, Straus SE, Richardson WS, *et al*: Evidence Based Medicine: How to Practice and Teach EBM. Orlando, FL: Harcourt Brace & Co., 2000
5. Rogers R, Grandjean N, Tillbrook CE, *et al*: Recent interview-based measures of competency to stand trial: a critical review augmented with research data. *Behav Sci Law* 19:503–18, 2001
6. Poythress NG, Edens JF, Lilienfeld SO: Criterion-related validity of the psychopathic personality inventory in a prison sample. *Psychol Assess* 10:426–30, 1998