

# Introduction to Forensic Psychiatry

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# Overview

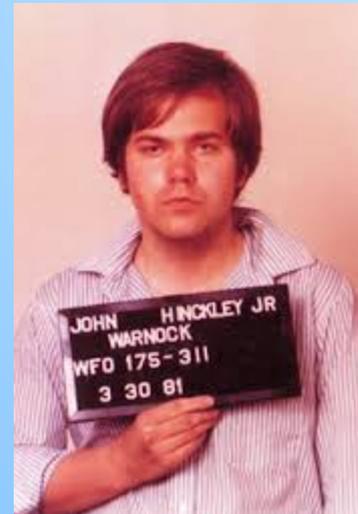
- Facets of the Field
- Medical decision making capacity
- Cases
- Competence to stand trial
- Insanity

# What is Forensic Psychiatry?

- A medical subspecialty that includes research and clinical practice at the interface between psychiatry and the law
- **Two main interactions:**
  - *Psychiatry as applied to the law*, i.e. criminal responsibility, competency to stand trial evaluations, testamentary capacity, malpractice, disability
  - *The law as applied to psychiatry*, i.e. laws that affect psychiatric practice, confidentiality

# Three major subgroupings

- **Criminal** forensic psychiatry: competence to stand trial, assess criminal responsibility (insanity), sentencing considerations/capital mitigation, risk/dangerousness, etc.
- **Civil** forensic psychiatry: contracts, testamentary capacity, negligence & malpractice, disability determination, psychic injury, child abuse & neglect, custody issues, etc.
- **Legal/Regulatory/Admin** forensic psychiatry: Ethics (involuntary treatment), risk assessment, dangerousness, special issues in correctional settings, etc.



# Assessment of Mental Status

- Current Mental Status:  
Decision-making capacity,  
Competency to stand trial
- Past Mental Status:  
Criminal responsibility (insanity)
- “Future” Mental Status:  
Dangerousness

# Competency or Capacity?

- Capacity is a CLINICAL determination that addresses the integrity of mental functions.
- Competency is a LEGAL determination that addresses societal interest in restricting a person's rights.
- Despite the distinction, *many use the terms interchangeably.*
- Clarification of difference and specific details often critical

# Four Components of Capacity to Make Medical Decisions

- **Communicate** a choice—needs to be clear and consistent
- **Understand** relevant information
- **Appreciate** the nature of situation and illness and the consequences, risk/benefits of treatment
- **Reason rationally** – ability to weigh different factors rationally and understand cause/effect of decision

# Case Example #1

A 73-year-old man with terminal lung cancer presents with a GI bleed. His oncologist has told him he will likely die from his cancer within the next two years. With treatment, he has a 95% chance of surviving the bleed. Without treatment, his death is near certain. He declines treatment, stating his quality of life is poor and he does not wish to extend it.

**Is this a competent decision?**

**What questions should we ask?**

**Table 1. Legally Relevant Criteria for Decision-Making Capacity and Approaches to Assessment of the Patient.**

Criterion	Patient's Task	Physician's Assessment Approach	Questions for Clinical Assessment*	Comments
Communicate a choice	Clearly indicate preferred treatment option	Ask patient to indicate a treatment choice	Have you decided whether to follow your doctor's [or my] recommendation for treatment? Can you tell me what that decision is? [If no decision] What is making it hard for you to decide?	Frequent reversals of choice because of psychiatric or neurologic conditions may indicate lack of capacity
Understand the relevant information	Grasp the fundamental meaning of information communicated by physician	Encourage patient to paraphrase disclosed information regarding medical condition and treatment	Please tell me in your own words what your doctor [or I] told you about: The problem with your health now The recommended treatment The possible benefits and risks (or discomforts) of the treatment Any alternative treatments and their risks and benefits The risks and benefits of no treatment	Information to be understood includes nature of patient's condition, nature and purpose of proposed treatment, possible benefits and risks of that treatment, and alternative approaches (including no treatment) and their benefits and risks
Appreciate the situation and its consequences	Acknowledge medical condition and likely consequences of treatment options	Ask patient to describe views of medical condition, proposed treatment, and likely outcomes	What do you believe is wrong with your health now? Do you believe that you need some kind of treatment? What is treatment likely to do for you? What makes you believe it will have that effect? What do you believe will happen if you are not treated? Why do you think your doctor has [or I have] recommended this treatment?	Courts have recognized that patients who do not acknowledge their illnesses (often referred to as "lack of insight") cannot make valid decisions about treatment Delusions or pathologic levels of distortion or denial are the most common causes of impairment
Reason about treatment options	Engage in a rational process of manipulating the relevant information	Ask patient to compare treatment options and consequences and to offer reasons for selection of option	How did you decide to accept or reject the recommended treatment? What makes [chosen option] better than [alternative option]?	This criterion focuses on the process by which a decision is reached, not the outcome of the patient's choice, since patients have the right to make "unreasonable" choices

\* Questions are adapted from Grisso and Appelbaum.<sup>31</sup> Patients' responses to these questions need not be verbal.

# Case Example #2

A 68 year old woman is diagnosed with a cardiac arrhythmia. With treatment, there is a 92% chance of survival. Treatment involves taking a medication with minimal side effects. She is otherwise healthy. She declines treatment, stating that she has lived long enough and does not wish to burden her family with additional expenses.

Is this a competent decision?

What questions should we ask?

# Case Example #3

A 28-year-old man with schizophrenia is admitted for an ortho procedure. While the nurse is getting consent, he mentions that his voices were calling him names. He says he has heard these for years and relates them to a computer chip in his spine. He has agreed to the procedure, but a consult was requested to assess capacity.

What questions would you ask?

What if he refused?

# Case Example #4

- A 42-year-old man with a long history of bipolar disorder has been stabilized on an inpatient psych unit. He says he would like to discontinue his medications. He acknowledges he has bipolar disorder, but prefers treatment with dream analysis, massage therapy, and dietary modifications. He is asymptomatic except for mildly rapid speech. He has gained 45lbs and developed hypothyroidism since starting olanzapine and lithium.

Is this a competent decision?

How would you assess?

# Competence

- ▶ Ask about:
  - Roles of courtroom personnel
  - Awareness of what they are being charged with
  - Meaning of the charges, severity, and penalty if convicted.
  - Potential plea options (inc. plea bargaining) and implications (i.e., plead NG→trial; plead guilty→bypass trial and go to sentencing)
  - Rights waived when pleading guilty
  - Appraise evidence
  - Willingness to work with counsel/trust counsel
  - Pay attention in trial
  - Remember what has occurred
  - Retain and apply new info
  - Ability to use info to make reasonable decisions about defense
  - Ability to communicate details about the alleged offense (to make sure they
    - ▶ can work with counsel).

# MacArthur Competency Assessment Tool- Criminal Adjudication (McCAT-CA)

- Just one of the numerous standardized tools out there.
- Developed by Bonnie, Monahan, and others in 1997 in association with MacArthur Foundation.
- The MacCAT is a standardized instrument in which a hypothetical case is presented to the defendant.
- Competency is rated along three axes: understanding, reasoning and appreciation.
- Has good reliability but some find working with the hypothetical case difficult.

# Insanity Defense

- Protects against conviction and punishment of those individuals who should be excused because they are morally blameless.
- 350 B.C. Aristotle: Confusion over reality may provide a moral excuse for unlawful acts

# Insanity defense, continued

- ▶ Common Law test for criminal responsibility:  
“*actus non facit reum nisi mens sit rea*”  
which means "the act does not make a person guilty unless the mind is also guilty".
- ▶ So, for criminal culpability, there must be an “actus reus” (illegal act) in addition to a “mens rea” (guilty mind).

# Virginia insanity standard

- ▶ Due to a mental disease or defect, a person is:
  - Unable to understand the nature, character or consequences of actions OR
  - Unable to distinguish right from wrong OR
  - Unable to control one's impulse to act
- ▶ **\*\*BUT** the standard varies from state to state.

# Misconceptions about Insanity Defense

- ❑ “It is overused.” This defense is rarely used, and when used is rarely effective. Only raised in 1% of felony cases and successful only 25%.
- ❑ “It is a defense of the rich which relies on legal strategy.” Most cases are court ordered and do not involve large amounts of money.
- ❑ “Acquittees are released quickly.” In fact, many spend more time in a hospital. Studies suggest longer sentences for defendants with Schizophrenia.