

# High Quality Competence Evaluations

Utah State Hospital

Jeffrey Haun, Psy.D. ABPP  
Lindsey North Ph.D.

# Competency Doctrine

- Basic premise:

- Only the act of an autonomous individual is to be recognized by society
- Permeates throughout the law

- Competency to stand trial:

- Rooted in English common law
- U.S. Federal courts recognized constitutional status in late-1800s
- SCOTUS has held trial competence to be “fundamental to the adversary system of justice”

# Competency Doctrine

Preserves dignity and integrity of judicial proceedings

- Fair and reliable proceedings
- Safeguard accuracy

Protect defendant's constitutional rights

- Due process/procedural fairness
- Effective counsel/confront accusers/present evidence

# CST Legal Standards

- *Dusky v. U.S.* (1960; SCOTUS):

“...the test must be whether [the defendant] has sufficient present ability to consult with his[/her] lawyer with a reasonable degree of rational understanding, and have a rational as well as factual understanding of the proceedings against him[/her].”

- *Drope v. Missouri* (1975; SCOTUS)

Defendant must also “be able to assist in preparing his[/her] defense”

# CST Legal Standards

- Most states have adopted the *Dusky* standard verbatim or with minor modifications to wording

## Utah Code § 77-15-2(1):

Competent to stand trial means the defendant has:

- a) A rational and factual understanding of the criminal proceedings against the defendant and of the punishment specified for the offense charged; and
- b) The ability to consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense

# Implications of CST Legal Standards

- Identifies individuals who are unable to function
  - Capacity vs. Willingness vs. Unfamiliarity
  - Does not require unimpaired functioning (“sufficient”)
- Present/immediate future oriented
- Contextually relative (“reasonable”)
- Understanding must go beyond factual/rote understanding

# Utah Code § 77-15-5(5)

- Utah standard for competence is further operationalized in **Utah Code § 77-15-5(5)**
  - Provides a guide for information minimally necessary to consider in competency evaluations
- Defendant's present ability to...

## Utah Code § 77-15-5(5)

- Rationally and factually understand the criminal proceedings against the defendant
  - Understand the charges or allegations against the defendant
  - Understand the range of possible penalties associated with the charges or allegations against the defendant
  - Understand the adversarial nature of the proceedings against the defendant



## Utah Code § 77-15-5(5)

- Consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense
  - Communicate facts, events, and states of mind
  - Engage in reasoned choice of legal strategies and options
  - Manifest behavior sufficient to allow the court to proceed
  - Testify relevantly, if applicable
- The impact of the mental disorder or intellectual disability, if any, on the nature and quality of the defendant's relationship with counsel

# CST is a Functional Assessment

- Cannot be assessed in the abstract
- Degree of congruence between:
  - Defendant's present functional abilities
  - Anticipated demands of legal process
- Cannot reliably assess without case-specific information
  - Charging documents/discovery
  - Consultation with attorney(s)

# CST is a Functional Assessment

- The mere presence of a mental illness or developmental disability is insufficient to establish incompetency
  - Significant variation in manifestations of symptoms/features of mental disorder
  - Conflating psychiatric diagnosis and incompetency is common error
- Should not assume absence of impairment based upon stable behavior alone
- Competency in one area  $\neq$  competency in others

# Evaluation Procedure

## Initial Evaluation Procedure

1. DHS receives the order for evaluation
2. Legal services at Utah State Hospital routes the order to Amanda Alkema
3. Evaluations are assigned based on a variety of agency- and evaluator-relevant criteria and characteristics
4. Evaluators are given 30 days after the day of assignment of the order to submit the evaluation to the court

## Extension Requests

1. According to UCA §77-15-5(7)(b)(ii), the evaluator may have a 15 day extension if necessary
  - a. Typically requested for:
    - i. Inability to contact defendant
    - ii. Defendant does not show up for appointment
    - iii. Defendant does not participate
    - iv. Collateral records/information

## Collateral Records/Information

1. High quality evaluations integrate information from multiple sources
  - a. Defendant, defense lawyer, prosecution, family, treatment providers/records, educational sources, occupational sources
2. Evaluator is a skeptical consumer of all information
3. Records provide context for opinions about diagnosis, competency and restoration/attainment

Forensic Notification: Based on requirements in the statute and established by case law

1. Role of the evaluator
2. Purpose of the evaluation
3. Non-confidential nature
4. Voluntary, but report will still be produced regardless of assent
5. Cannot be used against the defendant to determine guilt, but can be used in other phases
6. Possibility of testimony
7. Other limits on confidentiality



## Forensic Notification: Telehealth specific concerns

1. Not recording
2. Inherent limitations on privacy related to the evaluation being online
3. Establishment of emergency resources available to defendant
4. Location of defendant
5. Determination of others in the room

## Evaluation Interview

1. Setting should be private and quiet
  - a. Consider presence of the public, facility staff, attorney, family
2. Telehealth may be necessary and/or convenient
  - a. Other concerns (online privacy), others in the room, necessity for emergency services

## Cultural Considerations for the Interview

1. Language: need for an interpreter?
2. Privilege differences typical between evaluator and defendant
3. Gender considerations
4. Assumptions about contextual factors (e.g., poverty, education) based on surface demographics

## Thorough clinical interview

1. Collection of **relevant** information
2. Information about past mental health diagnosis, cognitive conditions, head injuries, psychological testing, psychiatric evaluations, inpatient and outpatient treatment of any kind
3. School records, medical records, occupational records
4. Other relevant information determined by specific case concerns

## Other Data Collection

### Information from:

1. ... defense attorney related to petition
2. ... prosecutor related to possible outcomes and observations in court
3. ... from caregivers
4. ...staff members at correctional facility or placement
5. ... previous competence evaluations

## Other Data Collection

### Consideration of Response Style:

Malingering is not a diagnosis, but a clinical condition defined by the *Diagnostic and Statistical Manual of Mental Disorders, 5<sup>th</sup> ed. (DSM-5; American Psychiatric Association, 2013)* as *intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding military duty, avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs.*

Characteristics of malingering may also include a medicolegal context of presentation (i.e., forensic evaluation), a notable discrepancy between the individual's report and objective findings and observations, lack of cooperation, or the presence of antisocial personality disorder.

## The Report

1. National standards for evaluations and reports by various organizations (AAPL, best practices literature by experts in the field, specialty guidelines for forensic psychology by the APA)
2. Locally established standards as delineated in our certification plan with ongoing quality review
3. Regional statutory requirements as defined in UCA §77-15-5(a)(i) through (ix)

## The Report

High quality reports do not have any precise formats but do tend to:

- a. ...be concise
- b. ...be relevant
- c. ...substantiate opinions with data
- d. ...avoid prejudicial or biased language
- e. ...avoid or define clinical jargon
- f. ...provide a clear connection between functional competence deficits and symptoms



## The Report Cont...

- g. ...cites the statute related to the order
- h. ...separate data and conclusions
- i. ...offer alternative explanations
- j. ...specifies limitations of the opinions offered
- k. ...relies on multiple sources of data
- l. ...do not provide extraneous opinions required by statute

## Resources

### 1. Common Errors in Forensic Reports:

[https://www.abpp.org/BlankSite/media/Forensic-Psychology-Documents/Practice-Sample-Guidelines-\(10-15-21\).pdf](https://www.abpp.org/BlankSite/media/Forensic-Psychology-Documents/Practice-Sample-Guidelines-(10-15-21).pdf)

### 1. Forensic Report Checklist:

<https://abpp.org/BlankSite/media/Forensic-Psychology-Documents/ABFP-Forensic-Report-Checklist.pdf>