

The Diagnosis Debate: Its Use in NGI, IST, MDO, and SVP Evaluation (Part 1)

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Track: Legal/Clinical

Level: Intermediate

Room: TBD

CE: CPA/BBS/BRN, MCLE (1.5)

Narrative

Mental disorder is a threshold condition for meeting the statutory elements of incompetency to stand trial (IST) status, not guilty by reason of insanity findings (NGRI), or mentally disordered offender (MDO) and sexually violent predator (SVP) commitment. What constitutes a mental disorder in forensic contexts varies both by the statutory definition and the impact of the disorder on specifically defined functions or capacities. No psychiatric diagnosis alone, no matter its nature, is sufficient for a person to be deemed IST or NGRI or to meet the definitions of severe mental disorder under the mentally disordered offender law or diagnosed mental disorder per the sexually violent predator law. Each of these determinations has its definitions, exclusions and controversies. This presentation will demonstrate the application of legal criteria to determining whether a mental disorder exists as a threshold condition in these forensic evaluations, common in California. The presentation will first explore the relevance of diagnosis, particularly DSM diagnoses, to forensic evaluations in general. It will then define mental disorder and exclusions for each of the four statutory schemes. Arguments for and against use of diagnoses in each scheme will be reviewed. The specific application of statutory and other legal elements for determining the presence or absence of a qualifying mental disorder will be demonstrated with case examples.

BIO

Melinda DiCiro, PsyD, ABPP

Melinda is Board Certified in Forensic Psychology and is a Fellow of the American Academy of Forensic Psychology. She received her doctoral degree in clinical psychology from Spalding University in Louisville, Kentucky. She completed her pre-doctoral internship at Austin State Hospital in Texas and post-doctoral supervision in forensic assessment in Sacramento. She worked as the clinical director of inpatient and crisis assessment units and the behavioral management team in a maximum-security California prison for 10 years. Melinda is currently a Chief Psychologist for the Mentally Disordered Offender (MDO) civil commitment program for the California Department of State Hospitals. She also has a private forensic evaluation practice, Melinda frequently presents on civil commitment-related topics at state and national conferences.

Susan Napolitano, PhD

Susan is a Sexually Violent Predator Evaluator (SVPE) with the Department of State Hospitals (DSH). Specializing in clinical and forensic psychology, Susan has more than 20 years experience as an expert witness in civil, criminal and family and federal court cases. As an expert, Susan has testified on behalf of prosecutors, plaintiffs and defendants in close to 100 cases involving sexual abuse allegations, child custody, violence and sexual violence risk

assessments, malpractice and personal injury. Susan earned her Ph.D. from the California School of Professional Psychology in Fresno, CA in 1991 followed by two years of post-doctoral training in child, adolescent and adult clinical psychology.

Brandon Yakush, PsyD

Brandon graduated from Loma Linda University with his doctorate in 2006. Since then, he has practiced forensic psychology, first for about 11 years at DSH-Atascadero. During that time, he completed forensic evaluations for the courts and Board of Parole Hearings on patients committed to the hospital for trial incompetency, insanity, and as Mentally Disordered Offenders (MDOs). While at DSH-Atascadero, Brandon also organized and led the forensic training of the predoctoral psychology interns. Since July 2017, he has worked for DSH's Forensic Services Division out of Sacramento where he conducts pre-commitment MDO evaluations. Brandon has published in the area of California's definition of wrongfulness in the insanity statute.

Learning Objectives

1. List three arguments against the use of diagnosis in forensic evaluation.
2. List three arguments for the use of diagnosis in forensic evaluation.
3. Define mental disorder as it applies to the relevant California statute: PC1370; PC 1027; PC 2962 and WIC 6600.
4. Identify one argument against the use of personality disorder in the conduct of the each of the 4 evaluation types: PC1370; PC 1027; PC 2962 and WIC 6600.