# NAVIGATING COMPETENCY

## *THE CLINICAL AND TREATMENT SIDE OF WSS 971.14(2) & 971.14(5)*

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# About Your Presenters

*Adam Oldenburg, BA, is the Statewide Court Liaison, through Wisconsin Community Services (WCS), supporting the Wisconsin Department of Health Services (DHS). Prior to coming to WCS he had the opportunity to work with individuals within the criminal justice system, as well as working with individuals with cognitive and developmental disabilities for over 14 years. Adam has developed collaborative working relationships with the various members of the Wisconsin Judicial system, State Mental Health Institutes, and DHS-contracted service providers. Adam appreciates the opportunity to present to this group, and he hopes that you find the information and resources provided today to be useful in processing these often complex cases.*

*Deborah Collins, Psy.D., ABPP is Director of the Wisconsin Forensic Unit and President of Behavioral Consultants, Inc., private clinics which provide consultation to attorneys and courts regarding a wide range of psycholegal issues. The Wisconsin Forensic Unit is in contract with DHS to provide competency to stand trial evaluations of adult defendants on an outpatient basis throughout the state. She provides consultation to courts and DHS regarding the competency evaluation process. She is a Member of the Board of Directors of American Board of Forensic Psychology. Her professional activities include conducting forensic mental health evaluations and teaching at the Marquette University Law School, Wisconsin School of Professional Psychology and Medical College of Wisconsin. Deborah, like her co-presenters, is pleased for the opportunity to share knowledge and resources with the attorneys in today's presentation and is available for future consultation as well.*

*Erik Knudson, M.D. is the Associate Medical Director at Mendota Mental Health Institute. Dr. Knudson has worked at Mendota since 2003. He is the psychiatrist for the Management Treatment Unit (MTU), Mendota's most secure unit. Dr. Knudson also supervises psychiatrists at Mendota and oversees the competency to stand trial restoration efforts. In addition to employment with the State of Wisconsin, Dr. Knudson provides forensic psychiatry services in private practice and maintains volunteer clinical faculty appointments with the Medical College of Wisconsin and University of Wisconsin. He trains psychiatry residents and fellows in the field of forensic psychiatry. Dr. Knudson earned his medical degree from the Medical College of Wisconsin (1998). He completed a Psychiatry residency program at the University of Wisconsin (1998 - 2002) and a Forensic Psychiatry fellowship at the Medical College of Wisconsin (2002 - 2003). He is Board Certified in Psychiatry and Forensic Psychiatry.*

## *Introductions & Overview of the State DHS Providers*

- Please visit the State DHS website for more information and resources, and also check out the websites of the various contracted providers.
- Please visit the Court Liaison Services website for guides and distribution instructions for all processes under WSS 971…along with ***FAQ's***, editions of the ***DHS Forensic Newsletter*** and much more.

## *Competency Question & Examination Process, Under WSS 971.14(2)*

- Define "competency," and the different opinions rendered
- WFU conducts outpatient (exam process, info gathered, assessment tools, etc.)
- MHI conducts inpatient (exam process, info gathered, assessment tools, etc.)

## *Commitment for Treatment-Incompetency, Under WSS 971.14(5)*

- MHI provides inpatient (curriculum, re-exam process, other services provided, etc.)
- OCRP provides outpatient (assessment for participation in the OCRP, curriculum, re-exam process, other services provided, etc.)

# *Competency Defined*

- *Dusky v. U.S.* (1960)
- " … 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 a factual understanding of the proceedings against him."

# *Competency Defined*

<u>Wisconsin's Standard – WSS 971.13(1)</u>

"No person who lacks substantial mental capacity to understand the proceedings or assist in his or her own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures."

# *Competency Defined*

- Two prongs
  - Understanding of proceedings
  - Ability to assist counsel

- Additional considerations:
  - Present versus past
  - Ability (capacity) vs. willingness
  - Reasonable degree
  - Understanding must be factual & rational

# Clinical Opinions Regarding Competency

- ***Competent to proceed***

  - "Based upon the totality of information available, it is this examiner's opinion to a reasonable degree of professional certainty that Ms. X does not presently lack substantial mental capacity to understand the proceedings or to aid in her defense, and that she is competent to proceed at this time."

# Clinical Opinions Regarding Competency

- ***Not competent***

- Mr. X's deficits are manifested across multiple data sources. He is acutely psychotic and not treated with psychotropic medications at this time. His present capacity to engage in reasonably coherent, reality based conversation about his case or otherwise are correspondingly markedly impaired. Accordingly, it is this examiner's opinion to a reasonable degree of professional certainty that Mr. X lacks substantial mental capacity to understand the proceedings or aid in his defense, and that he is not competent to proceed at this time.

# Clinical Opinions Regarding Competency

- Amenability to treatment considerations

- Sources of functional impairments
  * Nature and extent
- Individual's history of responsiveness to treatment, if known
- Statutory timeframe permitted for restoration efforts
- Availability of treatment options at MHIs and/or in the community (i.e., OCRP)

# The Competency Examination Process

- Procedural considerations

- WFU and MHIs = DHS
- Receipt of completed CR 205 and criminal complaint(s) or revocation paperwork by WFU
  *Critical information to include
- DHS determination of location of the examination (i.e., outpatient versus MHI)
- Assignment of a qualified examiner
- Central processing of reports to the court, tracking of outcome data, demographics, etc.

# The “Outpatient” Competency Examination Process

- Components of the Examination
  - -Clinical interview
    - -Advisement/notice
    - -History
    - -Case inquiry
- Psychological testing
- Record review
- Collateral interviews

# The “Outpatient” Competency Examination Process

-Psychological testing

*Specialized tests (MacCA-CA, --CAST-MR, ECST-R, malingering MI or memory, feigned incompetence, etc.)

*General tests (IQ, personality, etc.)

* Structured or semi-structured interviews

# The “Outpatient” Competency Examination Process

## Collateral Record Review

- Medical/mental health records (jail, WFU, MHIs, SSDI, etc.)
- Criminal complaint
- School records

## Collateral Contacts

-Attorneys, family members, jail staff

# The “Outpatient” Competency Examination Process

DHS determinations of need for inpatient CST examinations may be triggered by WFU or other information received at time of referral or when examination is pending.

# Inpatient vs. Outpatient Examination

- Determination of need made by DHS
- Limited resource
  - Best reserved for treatment
- Cost
- Greater loss of freedom
- Stigma
- Security issues
  - Increase in violence at hospital
  - Threats to others
  - Transport

# Inpatient vs. Outpatient Examination

- More comprehensive assessment
  - Inconclusive evaluation
  - Questions of effort
  - Lack of cooperation
  - Diagnostic uncertainty
  - Medical issues
- High risk

# Inpatient Competency Examination (MHI)

- Men - Mendota Mental Health Institute
- Women - Winnebago Mental Health Institute
- Up to 15 days (from admission)
- Defendant is discharged to jail after examination is complete
- Examination of same criteria as outpatient evaluation

# Inpatient Competency Examination (MHI)

- Malingering
  - Observe function 24 hours/day
  - Hard to act ill or impaired for two weeks
  - Most stop spontaneously
  - Comparisons of interactions with evaluators and other staff
  - Rewards for following directions
    - Phone calls
    - Visits
    - Snacks
    - TV
    - Later bedtime

# Inpatient Competency Examination (MHI)

- Observe Stability
  - Intermittent symptoms
  - Mental fatigue
  - Variety of circumstances to elicit symptoms
  - Sleep/eating/self-care
  - Behavioral observations
  - Interpersonal issues

# Inpatient Competency Examination (MHI)

- Psychological Testing
  - Mental abilities
    - IQ
    - Memory
  - Personality
  - Effort
  - Competency-specific tests

# Inpatient Competency Examination (MHI)

- Voluntary Treatment
  - Medications may be started or modified with a cooperative defendant
  - May render them competent during the assessment or reduce time for treatment to competency if medications are continued in jail
- Involuntary Treatment
  - Medications in emergency (violence or suicidal)
  - Civil commitment for high-risk violent or suicidal defendants

# Inpatient Competency Examination (MHI)

- Medical Assessment
  - Physical illnesses
    - mimic psychiatric illness
    - cause confusion
  - Prescription drug effects
  - Laboratory testing
  - Occasional neuro-imaging
- Sobriety for out of custody defendants

# Treatment to Competency: The Outpatient Competency Restoration Program (OCRP)

- <u>OCRP's Mission</u>:

OCRP strives to provide competency restoration services to adult defendants in the least restrictive setting, assisting each participant in learning, to the best of his/her ability, about the court system, how to help in his/her defense, and to make rational decisions throughout the court process.

# OCRP Referral Process

- WFU examiners' recommendations
- Other examiners' recommendations
- Direct court recommendations/requests
- MHI requests

# OCRP Referral Process

- Defendant placed on “watch list”
- DHS commitment (signed CR 206) with examiner recommendation or referral triggers OCRP assessment to determine eligibility/suitability
- Two-fold assessment process:
  - Environmental assessment
  - Intake assessment
- OCRP Clinical Program Director makes final call

# OCRP Admission Considerations

- Clinical considerations

 - Psychiatric stability/acuity, dangerousness, compliance with treatment, cooperativeness, substance use

- Environmental consideration

 - Stable residence

- Program accessibility

# OCRP Programming

- Case management (i.e., monitoring in the community, coordination of services)
- 1:1 individualized psychoeducational remediation (i.e., assigned Behavioral Specialist) 2x weekly
- Psychiatric treatment

# OCRP: The Re-examination Process

- Re-examinations of competency to proceed occur every three months (or sooner if requested by the treatment team) and within 30 days prior to the commitment expiration date

- Re-examinations coordinated by WFU and address defendant's progress in treatment and issue of competency

# Defendant transfer from OCRP to MHI

In the event a defendant is deemed no longer appropriate for the OCRP, which requires he/she to be admitted to the MHI for continued treatment, then a letter requesting an immediate arrest warrant and order to transport will be sent to the court with notice that services will continue for seven days beyond the date of the letter.

# Treatment to Competency: Inpatient Restoration (MHI)

- Assessment
- Treatment
- Reports
- Oversight
- Aftermath

# Inpatient Restoration: Assessment

- Same as inpatient competency examination process
- Clarify diagnosis and treatment needs
- Evaluate competency
  - Competent – observe stability and then report
  - Not Competent – why not?
    - Individualized treatment plan
    - Educational needs

# Inpatient Restoration: Treatment

- Medications
  - Most have major mental illness that requires medications
  - Out of touch with reality
  - Control over behavior
- Therapy
  - Depression
  - Anxiety
  - Anger
  - Adjustment/Situational
- Education
  - Standardized curriculum
  - Individual adjustments

# Inpatient Restoration: Reports

- Statutory requirement
  - 3 month
  - 6 month
  - 9 month
  - 1 month prior to expiration
- DHS practice
  - 2 weeks prior to above to allow distribution
  - 2 weeks prior to scheduled court dates

# Inpatient Restoration: Oversight

- "Competency Harassment"
  - Weekly inquiry by management into progress of each defendant
  - Attentiveness to medication adjustment
  - Second opinions
  - Psychological testing

# Inpatient Restoration: Oversight

- Timeliness of Reports
  - No delays until deadlines
  - Reassignment of evaluations to manage workload
- Monitoring of statutory deadlines and court dates
  - Examiner
  - Admissions
  - Court Liaison Services

# Inpatient Restoration: Aftermath

- MEDICATIONS!!!!
  - Ongoing treatment need
  - Court order to continue during trial
  - Civil commitment
- Substance use

# Competency Examinations

FISCAL YEAR 2014

- Total Exams= 1.214 people
- Average Time= 29 days for exam
- Total Inp Exams= 79 people
- Average Time= 8 days to admit 13 days for exam

FISCAL YEAR 2015

- Total Exams= 1,029 people
- Average Time= 29 days for exam
- Total Inp Exam= 55 people
- Average Time= 10 days to admit 11 days for exam

*Data is only for nine months this FY, illustrating approx 11% increase in total # of exams*

# Highest # of Exams

FISCAL YEAR 2014

1. Milwaukee Co (average 26 per month)
2. Waukesha Co (average 6 per month)
3. Brown Co (average 5 per month)
4. Dane Co (average 5 per month)
5. Racine Co (average 4 per month)

FISCAL YEAR 2015

1. Milwaukee Co (average 31 per month)
2. Dane Co (average 9 per month)
3. Racine Co (average 7 per month)
4. Waukesha Co (average 6 per month)
5. Brown Co (average 6 per month)

# Treatment to Competency Commitments

FISCAL YEAR 2014

- Average # of Inp cases tracked per month= 127
- Total # of Inp cases d/c'd from MHI's= 302

- Average # of Outp cases tracked per month= 16
- Total # of Outp cases d/c'd from OCRP= 37

FISCAL YEAR 2015

- Average # of Inp cases tracked per month= 128
- Total # of Inp cases d/c'd from MHI's= 217

- Average # of Outp cases tracked per month= 18
- Total # of Outp cases d/c'd from OCRP= 23