



## Psychiatry & Behavioral Sciences Section – 2011

### I16 Competence to be Executed: An Analysis of Ethical Issues and a Comparison With the Complexities of the Forensic Role

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After attending this presentation, attendees will be aware of the special ethical considerations and care that should be taken in competence to be executed assessments and better aware of the ethical complexities of the forensic psychiatric role.

This presentation will impact the forensic science community by increasing ethical sensitivity and awareness of the special considerations in competence to be executed assessments.

Competence to be executed evaluations present difficult ethical dilemmas. They require forensic psychiatrists to function in a role in which the goals of medicine and law are most disparate and likely to conflict. The death penalty is an example of a conflict in forensic psychiatry, as in general American society, with the additional factor of the forensic psychiatrist being a physician. Evaluators can potentially stop an execution or alternatively effectively remove the last meaningful impediment to proceeding with it. Forensic psychiatrists have primary duties to the legal system and truth and honesty. However, like all other areas of medical practice and consultation they also need to consider and balance conflicting secondary traditional medical ethical duties. The death penalty is so contrary to traditional medical values that participation in a legally authorized execution is ethically prohibited according to both the AMA and APA.

There are several steps in the legal proceedings leading toward the death penalty sentence. These include investigation, determination of competence to stand trial, verdict determination, sentencing, evaluation for competence to be executed, treatment leading to competence to be executed, execution itself, and finally certification of execution death. The ethical dilemma lies in whether a forensic psychiatrist's involvement in any of these stages ultimately leads to his involvement in the death of the prisoner. Both organizations interpret the prohibition of the AMA and APA to include treatment if such treatment is intended to restore competence to be executed. However, even if the primary treatment intent is something otherwise appropriate like relieving suffering or fostering prison safety, if competence to be executed would almost predictably be achieved as a result of the treatment of the prisoner, it should still be unethical.

A claim that it is merely an unintended consequence if such treatment results in competence to be executed is not persuasive and does not abrogate ethical responsibility. If competence to be executed is predictable, at least the willingness to take the strong risk of treatment leading to the execution of the prisoner needs to be considered as intended. In contrast, however, competence to be executed assessments can be ethical and appropriate. Diamond's approach is an option for an ethical approach to such assessments. Although arguably the purest ethically, it is likely to be a challenge to persuade most judges and juries that such honest legitimate assessments are objective if performed only for the defense as Diamond would recommend. As a result, most practitioners likely will be willing to assess and testify as to competence to be executed for either side. That also is ethical, but the ethical hazards of this position necessitate sensitivity to potentially conflicting ethical duties and roles. While ethical guidelines can help clarify what is ethical, in these ambiguous instances, the best guide for ethical conduct must be the integrity of the professional persons themselves, who in forensic psychiatry, face the challenge of confronting and evaluating many conflicting values. This is one of the many complexities that forensic psychiatrists face as we are at the interface of two very different

disciplines with differing goals and ethics, and issues surrounding the death penalty are an area where the differences are most marked.

#### **Execution Competence, Ethics, Role**