



E2 The Spider's Web Embedded in Competency to Stand Trial: Forced Psychotropic Medication and a Defendant's Right to Due Process to Refuse

Carl N. Edwards, JD, PhD, 4113 Sunflower Ln, Temple, TX 76502; Stephanie Domitrovich, JD, PhD*, Sixth Judicial District of PA, Erie County Court House, 140 W 6th St, Rm 223, Erie, PA 16501; and William Bernet, MD*, 1562 Timber Ridge Dr, Brentwood, TN 37027*

After attending this presentation, attendees will better comprehend the issues surrounding this controversial concept regarding mandated or forced medication and how lawyers, judges, and experts affect a defendant's rights involving due process and loss of liberty concerns.

This presentation will impact the forensic science community by conveying knowledge, competence, and performance about diverse perspectives on these issues that will enable legal practitioners, whether lawyers or judges, to be more competent, aware and knowledgeable in the complexities of this concept for the performance of their duties in and out of the courtroom.

Fascinating legal and medical issues involving a defendant's due process under the Fourteenth Amendment to each person's liberty interest in refusing medication are raised in both criminal and civil contexts. These situations may arise where a court must decide whether a defendant is competent to stand trial and that defendant's refusal of medication asserting loss of liberty. Courts are faced with the delicate balancing which occurs where a defendant's right as a citizen is considered in light of protecting that individual and the community's safety interests. The courts then weigh due process issues while balancing a defendant's right to trial and considering the prosecutor's interests on behalf of the victim in bringing a defendant to trial. After hearing testimony from experts presented by the lawyers or from court-appointed experts, the courts then carry the responsibility to decide whether defendant possesses the capacity to make an intelligent, informed decision about the medication.

Often such competency issues involve having courts decide whether mandated psychotropic medication is necessary. Judges, lawyers, and medical experts struggle with reaching the right or appropriate decision tailored to each defendant's circumstances. Due to the importance of understanding the surrounding medical and scientific concerns, issues involved in the propriety of forced medication can be a nightmare for the judges and lawyers involved in these cases.

Judges and lawyers alike are responsible under the law for knowing what types of resource books to rely upon, selecting an appropriate expert to assist in understanding these technical pharmaceutical and medical issues, and having defendants appropriately evaluated by experts to address the requisite propriety of forced medication. Judges and lawyers in state courts have dealt with these issues in a variety of ways in civil and criminal cases. Judges consider and weigh criteria evaluating risks to determine whether defendant should be committed due to: (1) substantial risk of physical harm to self or others; or, (2) substantial and immediate risk of serious physical impairment or injury to self; or would benefit from treatment in a hospital for mental illnesses manifested by evidence of behavior creating grave and imminent risks to substantial rights of others or self.

Before permitting courts to order forced medication, legislatures in various state and federal jurisdictions have mandated courts to consider weighing a defendant's vital interests under a variety of analyses such as defendant's (or patient's) best interests and whether a less intrusive treatment exists.

With the complexities of treatment for mental illnesses advancing significantly through the past half-century, professionals are confronted with the dilemma of overestimating the effectiveness of various medications while minimizing the extent of side-effects involved in the medications and possible alternative medications being considered. The presentation will analyze these issues as well as addressing special challenges presented to professionals in the court process where children and parental control issues are involved as well as in the circumstances of sex offenders in involuntary commitment situations.

Forced Medication, Due Process, Competency