



## Psychiatry and Behavioral Sciences Section - 2014

### **I36 Dead Man Talking: Forensic Evaluations of People Who Are No Longer Among the Living**

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After attending this presentation, attendees will have a thorough understanding of the types of cases requiring reconstruction of prior mental status based upon records. Attendees will also understand how to approach these cases, how to interpret relevant statutes and case law, how to document their findings clearly and relevantly, and how to support their psychiatric-legal opinions in depositions or court.

This presentation will impact the forensic science community by providing much-needed understanding of these types of cases and their potential legal ramifications, so that families, heirs, survivors, and victims can all be assured of a fair legal assessment of their issues.

Forensic psychiatry is the application of psychiatry to legal matters. This work usually involves a review of records and a clinical interview of a specific person in order to answer a specific psychiatric-legal question. But what happens when that psychiatric-legal question involves the thinking or behavior of an individual who is already dead?

While this premise might seem far-fetched to the uninitiated, in real life it occurs frequently. This presentation will consider various types of cases in which mental status examinations and capacities must be recreated by the forensic psychiatrist. Three real-life cases will be presented together with the clinical and legal stories, the methodology of inferring the person's mental status during life, and the application of these findings to the legal matters at hand. Statutory and case law relevant to each case will be presented.

One common scenario is that of testamentary capacity, an evaluation (possibly posthumously) to determine if someone has (or had) the necessary mental abilities to write a will. Cases of testamentary capacity when the individual is still alive will be mentioned, but not discussed in this presentation. When persons who thought they should (and would) inherit significant amounts of money find that their presumed benefactors in actuality excluded them from the entire estate, they frequently request evaluations of testamentary capacity. Sometimes cases arise when an older, eccentric person leaves his or her wealth to a dog or to a gardener, rather than to the natural objects of his or her bounty. Sometimes people have no genetic heirs, and the survivors — neighbors, friends, and coworkers — make claims for inheritance. Many forensic psychiatrists, as well as other physicians, are likely to encounter these cases at some point in their careers, so a sound understanding of how to approach these cases is a fundamental skill for forensic psychiatrists. A case of testamentary capacity will be presented, including a discussion of the events leading up to the referral for psychiatric evaluation, the discovery materials reviewed, the statute under which the case was evaluated, the findings, and the outcome.

However, in addition to testamentary capacity, other scenarios often arise where someone's behavior or mental state has to be inferred for some legal situation. These cases require a special skill set in order to produce an appropriate and meaningful evaluation that can be effectively utilized in the specific case. One such scenario is that in which a person transfers funds or property to another person while still alive — but the person's competency at the time of the transfer later comes into question after the person is dead (or otherwise permanently incapacitated). These cases can even result in criminal charges for the inheritor, who may be thought to be a criminal or a psychopath. One such case will be presented and analyzed to demonstrate how to approach similar cases. This case utilizes principles considered in the testamentary capacity case, but with additional variables and information, including the criminal charges of the defendant.

Finally, dramatic cases may arise as a result of murder-suicide, for example, when the estate of one victim sues the estate of the other for wrongful death. One such case will be presented and discussed, utilizing the same parameters, including the history of the case, the relevant case law, and the documents and collateral information considered in assessing the case. The case will be discussed using case law from New Jersey, but similar case laws and statutes from other states will be presented. (This case is ultimately related to life insurance, so may be of particular interest to audience members working with insurance claims.)

The presentation will utilize didactic as well as group discussion formats.

#### **Testamentary Capacity, Wrongful Death, Competency**