Competency to Stand Trial: The Importance of Assessing Feigning

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Introduction

- According to Paradis and colleagues (2013), approximately 60,000 competency to stand trial assessments are conducted every year in the U.S.
- Among those who are assessed, the percentage of individuals who feign impairment ranges from 3.5% to 56% depending on the type of feigning that is measured (Paradis, Solomon, Owen, & Brooker, 2013).
- Pretending not to understand legal proceedings, faking memory loss, claiming to hear voices, or claiming to have some other type of psychotic disorder are a few types of feigning that may occur during competency to stand trial assessments.
- Better housing conditions and medication privileges may compel defendants to be deceitful during testing (Paradis et al., 2013).
- Research shows a lower percentage (17.5) of feigning among patients inside forensic hospitals compared to a higher percentage (64.5) for jailed inmates receiving psychiatric services (McDermott, Duahan, & Scott, 2013).
- These percentages suggest that inmates feign impairment while being assessed in hopes of receiving an incompetent to stand trial ruling and in turn, being transferred to a forensic hospital where living conditions are more desirable.

Assessments

- Several assessment tools are used to assess feigning such as the Rey Fifteen Item Test (Rey-FIT), the Test of Memory Malingering (TOMM), the Structured Interview for Reported Symptoms (SIRS), and the Reliable Digit Span (RDS).
- Some assessment instruments designed to assess competency to stand trial include a measure of feigning (Otto, Musick, & Sherrod, 2011). For example, understanding of court proceedings can be measured using the Inventory of Legal Knowledge Test (ILK; Musick & Otto, 2010), which also assesses signs of feigning.
- It is recommended that several different records be viewed before a competency to stand trial assessment. These documents include psychiatric records, police reports and interviews, and any witness statements that give the interviewer insight into the defendant’s background as well as expose inconsistencies in self-report during the assessment.
- Overall, psychologists conducting competency to stand trial assessments would be wise to use an assortment of response style instruments to ensure a valid outcome (Musick et al., 2011).

Symptoms

- Detecting feigning requires a systematic approach given that the defendant is essentially an actor playing a role, attempting to gain an advantage.
- However, the individual being assessed can only play this role as well as the role is understood.
- An individual who has either suffered from mental illness or closely observed someone who is mentally ill is more likely to successfully malinger in a believable way (Resnick & Soliman, 2010).
- According to Soliman & Resnick (2010), defendants who feign impairment are much more enthusiastic about discussing their symptoms and may offer information before the assessor asks for it.
- In contrast, patients who suffer from schizophrenia often refrain from speaking of their illness and sometimes deny having any illness at all.
- Individuals who feign frequently dominate a conversation and are sometimes uncooperative and difficult to manage.
- Defendants who feign often answer with phrases such as “probably” and “I think” (Soliman & Resnick, 2010).

Theory

- The best known theoretical model of feigning is the adaptational theory which proposes that a defendant is in a disadvantageous situation, panics, and decides that malingering is the only way to escape standing trial and being convicted (McDermott et al., 2013).

Definitions

- Malingering is the falsification of psychiatric symptoms and/or cognitive deficiencies for the purpose of gaining some incentive such as not having to stand trial (Gottfried, Hudson, Vitacco, & Carbonell, 2015).
- The DSM-5 defines malingering as the “intentional production of false or grossly exaggerated physical or psychological problems” (American Psychiatric Association, 2013).

References


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