
Practice Guidelines for Forensic Mental Health Court Liaison Nurses in New Zealand

National Document

Endorsed by Directors' of Mental
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Kaua e tapaetia te he ki te rawakore,

Kaua hoki e tautokotia;

Engari whaia ko te maramatanga.

Seek not to blame the wrongdoer

Seek neither to condone;

Seek instead to understand.

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Ehara taku toa i te toa takitahi, engari he toa takitini.

Strength is not that of one person but that of the collective.

In this regard, we need to acknowledge all those in the five regional forensic mental health services and Hauora Waikato, who have made this work happen. This includes the input of those court liaison nurses on the floor, their managers and professional leads of the nursing profession. Their combined efforts are a tribute to what can be achieved.

Canterbury
District Health Board
Te Poari Hauora o Waitaha

Southern District
Health Board
Piki Te Ora



Te-Upoko-me-Te-Karu-o-Te-Ika
Mental Health, Addictions and
Intellectual Disability Service

Waikato
District Health Board



Waitemata
District Health Board
Best Care for Everyone

Introduction

From the late 1980's, Forensic Mental Health Court Liaison Nurses (FCLN) have been established in the District, High and Youth Courts to offer triage, liaison, and advice in relation to people with known or suspected mental health, addiction and intellectual disability (ID) concerns who are involved in the criminal justice system. The impetus for the establishment of these positions arose out of recommendations in the Mason Report (Mason et al, 1988). The Report recognised that early identification of mental illness and interventions were required within the criminal justice system. The FCLN role was developed in each of the regions, in response to this need. Over the last 20 years, there has been local development of the role. However, there is no national consistency around the role and practice of FCLN.

Background

In 2014 and 2015, two national meetings were held and concluded that although there are similarities between the services provided by FCLN's, the day to day functioning and responsibilities vary. As such, the consistency of FCLNs' practice is not standardised nationally. The notion that Clinical Practice Guidelines may offer some consistency has been recognised nationally for the last 5 - 6 years in national and local forums:

- 2013; a formal review of the role was undertaken by the Waitemata District Health Board (Waitemata DHB), in association with the Christie Marceau case. The review highlighted the challenges for FCLNs' when managing their scope of practice as a Registered Nurse in a court setting.
- 2014; representatives from court liaison settings, across the country, attended a national gathering at the Waitemata DHB on March 7th. This forum/hui outlined that there was a general lack of consistent national practices.
- 2015; a National Forensic Mental Health Court Liaison Nurse Symposium was held in Otago (Southern DHB) on 28th – 29th May. This provided a forum for discussion between the FCLN representatives of each DHB. National standards of practice were proposed, however the development of these standards was complicated by national differences in the details of operational aspects of the role.

On 6 March 2018, the Coroner's inquest findings into the death of Christie Marceau (Greig, 2017) were released and highlighted the risk created through gaps in information sharing in the criminal justice system. It was also highlighted that the quality of information that was placed before judges was variable.

At the Operational Deputy Chief Executive Organisational Service Ministry of Justice's meeting on 2 May 2018, it was agreed that the Coroner's recommendations were to be considered at a national level taking a systems/sector approach. As a result, the National Marceau Operational Oversight Group (the National Oversight Group) was set up and includes members from the Ministry of Justice, Department of Corrections, New Zealand Police, Ministry of Health and Waitemata DHB. The National Oversight Group meets monthly to focus on identifying, monitoring and driving progress of the initiatives identified in the work plan. Each recommendation has a lead agency and agencies are asked to provide status reports on progress each month.

The development of National Forensic Mental Health Court Liaison Nurse Practice Guidelines is monitored by the National Marceau operational oversight group. The development of this document was equally supported by the vision outlined in the National Forensic Mental Health Court Liaison Nurse Symposium 2015, which signalled the need to develop consistency of FCLNs' practice across the country.

A working party of Nursing Leads and FCLNs' from the five Regions inclusive of Waitemata, Waikato, Capital Coast, Canterbury and Southern, came together to develop national practice guidelines.

Scope of Practice

Registered Nurses (RNs) are the professional group who have predominantly been appointed to this role. However, the forensic court liaison role can align with the scope of practice of other mental health professional groups. It must be acknowledged that in some regions, other professional groups take on the court liaison role.

For any professional group undertaking the court liaison role, there is an expectation that the registered health professionals come from a background of substantial clinical experience in mental health, addiction and intellectual disability. As registered health professionals, they will belong to a governing professional body which provides foundational practice standards associated to their role. Given the over-representation of Māori in the criminal justice system (Department of Corrections, 2018), it is important that all health professionals practicing in this setting are culturally competent (Nursing Council of New Zealand Te Kaunihera Tapuhi o Aotearoa, 2011).

Registered nurses (RNs) practice under the professional governance of the Nursing Council of New Zealand, Te Kaunihera Tapuhi o Aotearoa. Competencies, Standards and Codes provided by the Nursing Council and other nursing professional bodies are broad and principle-based statements. They are authoritative statements that articulate conduct or performance required of registered nurses. They serve to further define responsibilities set out in legislation and regulations. Nursing standards, competencies, and codes identify the level of performance expected of RNs in their practice. Standards serve as a framework for professional development and continuous quality improvement.

The standards and guidelines that inform Registered Nurses practice include:

- Code of Conduct for Nurses (Nursing Council of New Zealand Te Kaunihera Tapuhi o Aotearoa, 2012).
- Code of Ethics (New Zealand Nurses Organisation, 2010).
- Competencies for registered nurses (Nursing Council of New Zealand Te Kaunihera Tapuhi o Aotearoa, 2012).
- Guidelines for Cultural Safety, the Treaty of Waitangi and Maori Health in Nursing Education and Practice (Nursing Council of New Zealand Te Kaunihera Tapuhi o Aotearoa, 2011).
- Guidelines: Professional Boundaries. A nurse's guide to the importance of appropriate professional boundaries (Nursing Council of New Zealand Te Kaunihera Tapuhi o Aotearoa, 2012).
- Health Information Privacy Code 1994 (Privacy Commissioner Te Mana Matapono Matatapu, 2008).
- Standards of Practice for Mental Health Nursing in Aotearoa New Zealand, (Te Ao Maramatanga New Zealand College of Mental Health Nurses Inc. (3rd Edition), 2012).
- Standards of Professional Nursing Practice (New Zealand Nurses Organisation, 2012).
- The Code of Health and Disability Services Consumers' Rights (New Zealand Nurses Organisation, 2017).

Nurses may choose to belong to other professional bodies, which also have established standards of practice.

All registered nurses working in a FCLN role are employed and accountable to a District Health Board (DHB). The DHB's will have oversight of standards of practice and a code of conduct according to their policies and employment regulations.

The FCLN practice guidelines document is underpinned by the standards, codes, guidelines and competencies developed by the NZ Nursing Council, Te Ao Māramatanga (the New Zealand College of Mental Health Nurses Inc) and NZ Nurses Organisation.

Glossary

Court diversion – involves the transfer of people suffering from mental illness from criminal justice settings (court, remand, prison) to hospital or community settings (McKenna & Seaton, 2007).

Court liaison – includes court diversion as well as interaction with a variety of agencies and services to ensure the mental health needs of people involved in the criminal justice system are attended to (James, 1999, McKenna & Seaton, 2007)

Advocacy - in health care this pertains to FCLN taking action to promote the provision of safe, appropriate and ethical care to people (NZNO, 2012).

Purpose

The purpose of this document is to set out practice guidelines for FCLN's to ensure nationally consistent practice.

Practice locations

District and High courts
Youth and Rangatahi courts

Guidelines

FCLN guidelines will support the practice of;

- Culturally competent practice aligned to Te Tiriti o Waitangi
- Therapeutic engagement
- Inter professional and interagency collaboration
- Assessment and Referral
- Liaison
- Privacy and confidentiality in the criminal justice and health systems
- Ethical practice
- Professional practice and development

The guidelines will be set as a foundation document and signal future work inclusive of:

- National documentation associated to the FCLN role i.e. FCLN reports to the court, informed consent.
- Development of specific knowledge and skills associated to FCLNs
- Orientation package(s)
- Staff development processes
- Specific professional pathways to plan for the future workforce of FCLN
- Collaboration and information sharing between the regional forensic mental health services

Review of guidelines

The national guidelines effectively set out practice expectations that will be subject to changes associated with legislation, health policies and professional guidelines. As such, this requires an authorised period of publication, with a review period of one year.

1 Culturally competent practice aligned to Te Tiriti o Waitangi

Rationale:

Māori are over-represented in the criminal justice system, (Department of Corrections, 2018). The need to be culturally aware, sensitive, reactive and competent is a necessary skill in the day to day work of FCLNs' (Nursing Council of New Zealand Te Kaunihera Tapuhi o Aotearoa, 2011).

- 1.1 The FCLN understands the impact of the criminal justice system on tāngata whenua, and actively work towards reducing health disparities and risks experienced by Māori (New Zealand Nurses Organisation, n.d).
- 1.2 The FCLN will have a basic understanding of correct Maori pronunciation, Maori protocol and Maori values so that they can show respect when interacting with Maori defendants and their whanau, haapu and iwi.
- 1.3 The FCLN will have an understanding of the impact of inter-generational poverty on the behaviour of the person who presents in court with mental health, addiction, and intellectual disability needs.
- 1.4 The FCLN will acknowledge that whanau, haapu and iwi have a rangatira right to be involved in the screening, assessment and referrals of cultural needs influencing the person who presents in court with mental health, addiction, and intellectual disability needs.
- 1.5 The FCLN will reflect and understand the impact their own cultural values, beliefs and attitudes have on interactions with others, who have a culture different to their own.
- 1.6 The FCLN will assess cultural needs influencing the person who presents in court with mental health, addiction, and intellectual disability needs.
- 1.7 The FCLN will access appropriate resources as necessary to support the cultural identity and wellbeing of a person with mental health, addiction and intellectual disability needs. This may include access to Kaupapa Māori services and other culturally specific services.
- 1.8 The FCLN will involve family / whānau and significant others in mental health, addiction and intellectual disability screening, assessment and referrals, where appropriate as outlined by the people who present with mental health, addiction, and intellectual disability needs.
- 1.9 The FCLN will actively work towards equitable outcomes for people who identify as belonging to a minority group culture (inclusive of Pacific people, people with intellectual impairment, and the Lesbian Gay Bisexual Transsexual (LGBT) community), and will actively work towards reducing

health disparities and risks experienced by them and other minority groups as identified in Section 21 Human Rights Act 1993.

2 Therapeutic engagement

Rationale:

The person at the juncture of mental health and criminal justice systems with known or suspected mental health, addiction and ID needs are potentially some of our most highly vulnerable and disadvantaged people (Chaplow, 2007). The FCLN is in a unique position as a health professional in that setting to facilitate timely assessment and intervention for those referred to the service. In order to achieve this, FCLNs will demonstrate attributes of skilled nursing through therapeutic engagement (Te Pou o te Whakaaro Nui & Ministry of Health, 2018).

- 2.1 The FCLN will develop therapeutic rapport, trust and engagement with the person referred to the FCLN, with the understanding that interactions may be very time limited and in settings that are outside of the usual context of a health assessment environment.
- 2.2 The FCLN will engage the person in an informed discussion about the outcome of the assessment and potential options i.e. recommendations to the court and the possible outcomes of the court decision.
- 2.3 The FCLN will demonstrate highly developed communication, de-escalation and negotiation skills. They will be able to tailor the content, structure and pace of an assessment to the person's needs and adjust the assessment as new information emerges.
- 2.4 The FCLN will use expert knowledge and will safely manage complex or unexpected situations, while aiming to maximise opportunities for therapeutic engagement.
- 2.5 The FCLN will establish a pathway of therapeutic engagement that maintains and terminates any relationships, working alongside people involved in the court process.
- 2.6 The intervention of the FCLN will reflect partnership with people who present with mental health, addiction and ID needs and their family / whānau / significant others.
- 2.7 The FCLN will apply the 'therapeutic use of self', engaging ethical and legal frameworks.

3 Inter professional and interagency collaboration

Rationale:

The purpose of the FCLN role is multifaceted. The FCLN provides timely advice and recommendations to the court whilst at the same time facilitate early intervention and the appropriate mental health care and follow up for referred individuals in the court setting. As a representative of their DHB within the court and criminal justice system, the FCLN retains the status and responsibility of a member of the Multi-Disciplinary Team (MDT) within their DHB. In order to function effectively within the court setting and obtain optimum outcomes for those referred to the FCLN, effective and collaborative interagency relationships need to be established across the health and criminal justice settings.

- 3.1 The FCLN will demonstrate an understanding of expectations of their role and the boundaries of it.
- 3.2 The FCLN will understand the functioning of the criminal justice system, the court room etiquette and roles of the relevant stakeholders in order to facilitate effective inter-agency collaboration within the criminal justice setting.
- 3.3 The FCLN will establish effective and collaborative interagency relationships across health and criminal justice settings.
- 3.4 The FCLN will have working relationships with their DHB and work collaboratively with members of multidisciplinary teams to facilitate optimum outcomes for those referred to the FCLN.
- 3.5 The FCLN will develop positive, constructive and collaborative relationships with court officers, stakeholders, services and organisations they encounter within the court setting.
- 3.6 The FCLN will demonstrate an understanding of the relevant legislation required to function competently across criminal justice and mental health settings and will be a resource of this knowledge for the court officers, stakeholders, services and organisations they collaborate with.
- 3.7 To address potential barriers or impediments of inter-professional collaboration across the health and criminal justice settings, the FCLN will assist to facilitate and participate in inter-professional education sessions designed to inform and consolidate knowledge regarding current relevant legislation and processes.
- 3.8 The FCLN will demonstrate an understanding of the importance of privacy and confidentiality boundaries they are constrained by as defined in the Health Information Privacy Code 1994 (Privacy Commissioner Te Mana Matapono Matatapu, 2008), in performing their roles.

4 Assessment and Referral

Rationale:

The FCLN is responsive to the needs of people referred to the service, who may have mental health, addiction and intellectual disability needs/issues within the court environment, through the provision of assessment, liaison, advice and recommendations.

- 4.1 The FCLN has the level of expertise and knowledge required to conduct the relevant assessments and prioritise and manage their workload in the court setting.
- 4.2 The FCLN will practice within the evidence base that supports the screening, and triaging of people who present with mental health, addiction or ID needs.
- 4.3 The FCLN achieves this through working collaboratively with the court, the person referred, their whānau, support persons and where possible, the referrer.
- 4.4 Following receipt of a referral, triage and a screening assessment is undertaken.
- 4.5 The FCLN will clarify the reason for referral in order to determine the type of assessment and relevant information required to conduct an assessment. Certain information is required for the FCLN to conduct the initial Screening assessment and formulate a recommendation or finding. Relevant information will include but not be limited to, the caption summary, summary of facts, criminal and traffic history.
- 4.6 Following clarification of the referral, the FCLN may carry out a screening assessment regarding whether an individual's mental state is affecting their ability to take part in the court process. Depending on the concern, the screening assessment may encompass: fitness to plead and insanity; comprehension of guilty and not guilty; understanding of court process, the alleged offence, roles of the various people involved; and the possible outcomes of entering a plea.
- 4.7 Through the screening assessment, the FCLN will determine whether further assessment or follow up is required. Comprehensive mental state and risk assessments may also be carried out by the FCLN or referral made to the appropriate service to undertake these.
- 4.8 The FCLN will ensure any information taken from the court remains confidential and is only for the purpose of informing the screening assessment.
- 4.9 The FCLN will ensure informed consent, (verbal or written) is obtained from individuals as part of the assessment process.
- 4.10 The FCLN also obtains informed consent from individuals when requests for health information are received from other parties.
- 4.11 The FCLN will consult with members of multidisciplinary teams, relevant stakeholders, community agencies and a range of service providers to obtain

collateral information, where possible, to contribute to the assessment of a person's mental state and other contributing health factors.

- 4.12 At the conclusion of the screening assessment and information gathering, the FCLN may provide clinical advice and recommendations to the referrer, relevant stakeholders, community agencies and family / whānau / significant others as appropriate.
- 4.13 The FCLN may determine further assessment is required either by themselves, or through another agency/service, via the MH(CA&T) Act 1992, or through a formal Court report under the CP (MIP) Act 2003, and therefore initiates appropriate follow up/referral.
- 4.14 Risk assessments undertaken by the FCLN are for the purpose of clinical decision making and recommendations to the court regarding mental health and addiction concerns and not for the purpose of determining or influencing legal proceedings.
- 4.15 Clinical documentation undertaken by the FCLN for the purposes of sharing within the justice system will be nationally consistent.

5 Liaison

Rationale:

The right health pathway for the client will be advocated for following comprehensive assessment. This may include provision of recommendations to the courts and diversion from the courts, where appropriate.

- 5.1 The FCLN will provide an effective interface between the criminal justice staff, wider service providers, family and significant others.
- 5.2 The FCLN will liaise and facilitate mental health care for a client who is in need of a health pathway.
- 5.3 The FCLN will support the engagement of individuals with health services under mental health legislation, either as a Duly Authorised Officer (DAO) or alongside a DAO, when appropriate.
- 5.4 The FCLN will utilise their knowledge of specialist mental health service resources in order to be able to facilitate the right pathway for the client.
- 5.5 The FCLN will liaise with individuals and their families / whānau when possible and obtain contact details to pass onto relevant services.
- 5.6 The FCLN will provide education to other agencies, health care professionals, criminal justice personnel and the wider community where required.
- 5.7 The FCLN will be aware of and demonstrate an understanding of the impact of stigma and discrimination, and how this can pose as a barrier to accessing and engaging in health interventions for people who present with mental health, addictions and ID needs within the court system.
- 5.8 The FCLN will integrate mental health promotion and stigma reduction strategies into everyday practice in the court setting.

6 Privacy and Confidentiality in Criminal justice/ Health system

Rationale:

The person who presents to the FCLN has their health information safely maintained and effectively communicated in line with legislation.

- 6.1 The FCLN will demonstrate a comprehensive knowledge of legislation pertaining to health information and privacy requirements, in order to practice effectively in line with standards, legislation, and policy.
- 6.2 The FCLN practice will align to relevant DHB policies, legislation, ethical standards and Codes of Conduct and Practice associated with their professional body.
- 6.3 The FCLN will be able to identify and manage sensitivity of mental health information within the justice system.
- 6.4 The FCLN will ensure privacy of health information is retained according to legislation.
- 6.5 The FCLN will be able to ensure there is informed consent (verbal or written) prior to disclosure.
- 6.6 The FCLN will be able to inform the person around risk of disclosure of health information in the court setting.
- 6.7 The FCLN will gain informed consent, (verbal or written) from individuals, for requests for health information from other parties.
- 6.8 The FCLN will effectively communicate the maintenance of privacy of health information to other stakeholders in the court.
- 6.9 The FCLN will be able to identify the implications of relevant legislation within the court environment, in respect to client's privacy and confidentiality.
- 6.10 The FCLN is able to identify potential ethical conflict related to privacy and confidentiality, and seek and accept guidance from forensic mental health colleagues.

7 Ethical responsibilities

Rationale:

Consideration and awareness of potential ethical issues are important. The nature of the court environment is described in the literature as potentially coercive in relation to the mental health professional and client relationship (Evans, 2007). The underpinning ideologies of criminal justice and health can be at odds with one another. This may manifest in tension for the nurse as a health professional in relation to promoting therapeutic endeavours in the criminal justice system and when providing advice to the court (Tarrant, 2014).

- 7.1 The FCLN will recognise and manage the conflicting aims and purposes of health services and criminal justice services, remaining committed to the optimal health care outcomes for the client.
- 7.2 The FCLN will acknowledge potential for enculturation to criminal justice values and will maintain professional boundaries and resilience by actively seeking and engaging in a range of professional and organisational strategies (including professional development, consultation, clinical supervision, and reflective nursing practice).
- 7.3 The FCLN will maintain professional and therapeutic nursing values whilst practicing in the court environment.
- 7.4 The FCLNs' practice will reflect relevant and current legislation, policies, ethical standards and codes of conduct as outlined in professional body standards.
- 7.5 The FCLN will apply strategies that specifically address tension inherent in integrating obligations to care with custodial requirements by utilising multidisciplinary team processes, consultation and engaging in reflective practice.
- 7.6 The FCLN will uphold the rights of people with mental health, addiction and intellectual disability issues and their families/whānau and communities.

8 Professional Practice and Development

Rationale:

On-going professional development enables the FCLN to maintain competence, and ensures their nursing practice remains relevant to people who may present to criminal justice settings with mental health, addiction and intellectual disability needs. It ensures that practice is contemporary, safe and of the highest professional standard.

- 8.1 The FCLN will ensure they understand current local and national mental health, addiction and intellectual disability policies and relevant legislation.
- 8.2 The FCLN will understand the roles and responsibilities of the criminal justice staff and professionals to enable effective professional relationships for the benefit of the individual.
- 8.3 The FCLN will be committed to their own professional development as outlined in the Health Practitioners Competence Assurance Act 2003 and their DHB core education requirements.
- 8.4 The FCLN will be working towards or have a current portfolio.
- 8.5 The FCLN will recognise the role of research and evidence based knowledge in informing professional practice and the advancement of nursing knowledge.
- 8.6 The FCLN will utilise opportunities to contribute to reviews of clinical practice and service delivery, including those involving the criminal justice mental health interface.
- 8.7 The FCLN will engage in professional supervision and reflective practice to support and maintain relationships that incorporate safe and effective boundaries.

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