



**Te Ao Maramatanga**

New Zealand College of Mental Health Nurses Inc  
**Partnership, Voice, Excellence in Mental Health Nursing**

## **Guidelines for nurses practising as Duly Authorised Officers in relation to presenting the Section 9 Notice to Attend an Assessment**

**21 September 2006**

### **Background**

In June and July this year two writs of habeas corpus were granted in relation to use of the Mental Health (Compulsory Assessment and Treatment) Act (1992). Both writs involved nurses practising in the statutory role of Duly Authorised Officer. Both involved interpretation of section 9(2) (d) of the Act. The result of these rulings, and the subsequent difficulty in practising within the interpretations provided has meant that many mental health nurses have felt unsure about the legality of their practice and vulnerable to legal challenge. The intention of this practice guideline is to clarify the difficulties involved in complying with the new interpretation of section 9(2)(d), and to provide guidance to nurses who must make clinical decisions in relation to this area of professional practice.

### **Section 9(2)(d)**

Section 9 (2) (d) states that the DAO is responsible for:

“Ensuring that the purpose of the assessment examination and the requirements of the notice given under paragraph (c) of this subsection are explained to the proposed patient in the presence of a member of the proposed patient's family, or a caregiver in relation to the proposed patient or other person concerned with the welfare of the proposed patient”

Although the two writs involved different situations, the common aspect of both was the interpretation of the phrase: “or other person concerned with the welfare of the proposed patient”. Practice in the past has been that another member of the clinical team, again often a nurse, meets the criteria for this phrase. The first of the two writs ruled that a member of the treatment team does not meet that criteria, and that the third party at the s9 stage should be a suitably qualified volunteer or someone of similar status.

## **Nursing practice as a DAO**

Nurses practising in the role of DAO are, like all professionals, practising within a legal framework which in this case includes the Mental Health Act in addition to the Health Practitioners Competence Assurance Act. There is a clear requirement to practise within the law. Nurses are also responsible to exercise a duty of care to service users, meaning that decisions should not place service users, their families, or members of the community at risk.

Practising within the law is also a professional expectation. The Standards of Practice of Te Ao Maramatanga state the following:

- Standard Two. The mental health nurse is able to plan, establish, maintain and evaluate therapeutic relationships with consumers, family or whanau and others
- Standard Three. The mental health nurse is familiar with principles of crisis intervention and management.
- Standard Four. The mental health nurse understands current legislation, statutory regulations, and policies shaping nursing practice and mental health care.

Practice in relation to these standards requires that the nurse maintain safe, clinically sound practice that is within the law. Practically, this means that in most cases nurses practising as DAOs will seek to involve families in the Section 9 process, or in the absence of families, a caregiver or trusted friend. It is only when there is no family member available, or if would be traumatic for the family members or against the wishes of the consumer, that a clinician might be involved as a third part in the section 9 process. This is how most mental health nurses describe their current practice.

### **Difficulties in complying with the recent rulings.**

Many mental health nurses have identified difficulties in complying with the recent rulings. The Section 9 process of the Mental Health Act frequently takes place under conditions of urgency. Section 9 (1) requires that arrangements for assessment are made “forthwith”, meaning that there should be no unreasonable delay. The very nature of civil commitment means that there are always issues of risk. Family members may be uncontactable, unavailable or unwilling to participate. For similar reasons, friends, associates and caregivers may not be available. By contrast, members of the clinical team may be readily available and may be known to the service user.

### **Guidance from Directors of Area Mental Health Services.**

DAOs work under the direction of DAMHS and so should look in the first instance for local guidance as to how to comply with the requirements of s9 (2) (d). Advice from DAMHS has generally been to involve a family member or caregiver if at all possible, and to proceed with the Section 9 process if there is no-one available, asking a colleague to act as the third party. DAOs have been advised that whatever course of action is followed should be documented, along with the reasons if a clinical team member has been used as third party.

## **Guideline**

1. Establish whether a family member is willing and available to act as witness.
2. Establish if a caregiver is willing and available to act as witness. This could be a staff member at a residential facility.
3. If no family member or caregiver is available consider who, apart from a member of the treatment team, might meet the definition of a person concerned with the welfare of the proposed patient. This could be a consumer advocate or a staff member not directly involved in the clinical care of the proposed patient.
4. If only clinical staff are available, involve the staff member with the least direct involvement in the care of the proposed patient.
5. If a clinical colleague is the only person available and there is an urgent need to proceed with the Section 10 assessment, ask the clinical colleague to act as the person concerned with the welfare of the proposed patient.
6. In every case, document:
  - the decision making process used to determine the third party
  - the name of the person acting as third party, and their relationship to the service user.

This documentation can be made on the Section 9 notice to be handed to the proposed patient, as well as in the clinical record.

In cases where issues of safety lead to conflict with the recent interpretation of Section 9(2)(d) nurses should put the safety of the proposed patient or other affected individual first. This might mean using a clinical colleague as the witness to presentation of the Section 9 notice. Nurses should use clinical assessment and decision making skills to make this decision, conferring with colleagues where possible.

The College does not advocate that non-clinical staff (i.e. administration staff; household staff) are asked to act as third party for Section 9. The College also advises that police should not be asked to act as third party, because police officers were not considered by the Judge in the Wellington case to be appropriate for this role.