

Evolution mental health nurses in criminal courts nursing essay

[Health & Medicine](#), [Nursing](#)



An informal court liaison service evolved in 1987 in Auckland (Peters & Wade, 1996). This service commenced on the background of difficulties securing psychiatric admission for patients who presented as high risk. Senior psychiatric nurses initially provided the service to the Otahuhu District Court in South Auckland with Kingseat Hospital (Mason et al, 1988). Mason et al (1988) identified this mental health service was successful and recommended the establishment of Court liaison services attached to the Regional forensic mental health service. Although a formal evaluation was not undertaken the service to the Courts in South Auckland was described as efficient, effective and time saving (Mason et al, 1988). The judges reported that they had implicit faith in the nurse's recommendations (Mason et al, 1988). It was acknowledged Nurses were able to provide a rapid service to the courts through expert nursing assessment (Mason et al, 1988). The court liaison model of service provision implemented in New Zealand followed a model from the UK (McKenna & Seaton, 2007). The aim being to identify individuals in the court system with mental illness who should be followed up within the mental health system (MoH, 2001). Fundamental to this aim was ensuring the health system took responsibility for mentally unwell offenders (Chaplow, 2007). According to the Framework for Forensic Mental Health Services in New Zealand the emphasis for forensic services within the courts is to provide triage and advice (MoH, 2001). There are two key aspects to this service: the Court liaison nursing role which involves assessment, triage and engagement with treatment service, and formal Court reporting from psychiatrists and psychologists (Chaplow, 2007). Forensic mental health clinicians, including CLNs, provide expert assessment and advice to the court

regarding an array of matters such as: illness, disability, triage, and disposition (Chaplow, 2007). A variety of reports are completed for the court (Chaplow, 2007). Clinicians must also be prepared to give expert testimony, and liaise between numerous health and social agencies (Chaplow, 2007). CLNs are the clinicians who provide the 'on the spot' mental health expertise in the court and the link between the many agencies involved in the pathway of the mentally disordered offender.

The court liaison nurse role

Court liaison nurses in New Zealand are employed by Forensic Mental Health Services under the umbrella of District Health Boards (MoH, 2001). The services of the CLNs are available in all courts in a given region including High courts on an oncall basis (McKenna & Seaton, 2007). Court liaison nursing is multifaceted and incorporates distinct key functions such as: conducting screening assessments; and advising the judiciary on diversion; and liaison. The services of the court liaison nurse are available to the court, defence, prosecution, probation service and others to assess persons and assist the court through provision of advice and recommendations (MoH, 2001). A brief description of the key functions of the court liaison nurse role in New Zealand which draws on Seaton's experiences (McKenna & Seaton, 2007) and the researcher's experience follows.

Ask Brian/Kevin if can have permission to insert Figure 17. 2 Auckland court liaison service process of referral and disposition or if i can adapt and make a generic CL flow chart???

At court the nurse is requested to speak with, and assess, people for a variety of reasons. The assessments the nurse may be asked to conduct include: mental state: risk: ability to instruct the lawyer: and ability to understand court proceedings. Preliminary screening assessments for the court regarding the appropriateness of formal court ordered reports under the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPA, 2003) are carried out. The court may request a formal report from a health assessor at any stage of the proceedings under section 38 of the CPA 2003 to determine whether the defendant is unfit to stand trial, whether the defendant is insane within the meaning of s. 23 of the Crimes Act 1961, and whether there are any recommendations that may be made regarding sentencing (CPA, 2003). Referrals to the CLN come from a variety of sources. These must be triaged and collateral information obtained where possible within short time frames. As well the nurse liaises with multiple health providers, family, support persons, and justice personnel. The CLN is responsible for organising appropriate follow up for the person as indicated whether that be for admission to GAMHS, in custody, in the community or in a FMHS inpatient setting. Therefore the court liaison nurse ensures that referral is made to appropriate service for mental health care/follow up wherever the person is directed to by the courts. A common challenge faced by CLNs involves the lack of acute forensic hospital beds (McKenna, 2011) and therefore

negotiation of inpatient follow up. This issue is not unique to New Zealand as noted by (Brett, 2010) in Western Australia. Advice provided to the court by the CLN occurs either verbally or preferably time permitting in a written report. Collating information from an assessment and synthesizing this into a format to provide recommendations to the court require knowledge of: the legal status of the person: understanding of the person's options within the justice process: knowledge of mental health legislation: and people's rights especially relating to consent and information sharing. In particular in-depth working knowledge is required of three pieces of legislation: The Mental Health (Compulsory Assessment and Treatment) Act 1992, The Criminal Procedure (Mentally Impaired Persons) Act 2003, and The Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. From this brief outline of the role it is evident that there are potentially many challenging areas in everyday practice. This alone makes it vital the role is described and understanding gained of how the nursing practice has developed.

Ethical issues

The foundation for potential ethical tensions the court liaison nurse may encounter is introduced in this section. Despite the distinctive practice setting this role cannot and does not exist in isolation. While the court liaison nurse may be isolated from peers their daily practice takes place in a public forum at the forefront of the socio political scene with respect to mental illness and intellectual disability. The court liaison nurse is positioned within the tension and sometimes competing interface of the two powerful institutions – the law and health. The disparate conceptual differences and

intentions of the competing paradigms are briefly outlined to assist with understanding how these influences may shape and impact on the nurse's practice and their decision making processes. Firstly what is meant when referring to 'ethics'? Ethics is defined as ' 1. the philosophical study of the moral value of human conduct and of the rules and principles that ought to govern it. 2. a code of behaviour considered correct, esp. that of a particular group, profession or individual. 3. the moral fitness of a decision, course of action, etc" (Collins, 1993, p. 382). In other words ethics is concerned with moral behaviour, that is, right and wrong conduct, within a specific context (Evans, 2007).

Forensic psychiatric settings as places of special circumstance

It is established ethical issues can be complex and challenging in health care and even more so in forensic psychiatric/mental health care (Taylor & Buchanan, 1998; Applebaum, 1997, Evans, 2007; Rosenman, 2010; Austin, Goble & Kelecevic, 2009; Mason & Mercer, 1999; Mercer & Richman, 2001; Turnbull & Beese, 2000; Bowring-Lossock, 2006; Adshead & Sarkar, 2004). The coining of the phrase " Forensic Psychiatric settings as places of special circumstance" (Austin et al, 2009) accentuates this is a health setting with a difference. So what are the features that make forensic mental health settings different? The very nature of the environments which are not health based in terms of their conceptual or ethical underpinnings for example justice as opposed to welfare engenders potential for ethical conflict and difference (Evans, 2007; Sen, Gordon, Adshead & Irons, 2007; Eastman, 2006; Gadow, 2003). The added dimensions arising from power imbalances,

the health professional - patient relationship, and the uneasy dual responsibility to meeting needs of patient and society permeate every interaction and decision made by the health professional and generate ethical disquiet. In other words the moral climate of "custody" and "care" is pivotal to many of the conflicts that arise for forensic practitioners (Burrows, 1993; Chaloner, 2000; Peternelji-Taylor, 2005; Fisher, 2007; Mason, Mercer & Richman, 2001; Holmes, 2005; Martin, 2001; Austin et al, 2009) and as this thesis examines even more so for the less articulated court liaison nurse role. Similarly Eastman writes that finding "the balance between care for the patient and protection of the public"... "is at the heart of a major ethical debate within forensic psychiatry concerning the proper social boundaries and social roles of the discipline" (2006). This complexity is reflected in the CLN role with the CLNs positioned at the front end of the assessment process for future patients of the Forensic mental health service. In some ways, a collision of values is predictable. Williams poses the fundamental question, "Does the forensic nurse have a greater duty to the wellbeing of the offender/patient or to society under the ethics of care system? In other words where does the greater nursing relational duty exist - with society or with the offender/patient?" (2007, p. 94). Despite this complex practice setting there has been little attention paid to ethical demands forensic health professionals work with on a daily basis (Austin et al, 2009).

Underpinning ideologies

Expanding further in regard to underpinning ideologies of the two institutions law and health. The legal system is based on an adversarial paradigm,

judgemental paradigm and a culture of critique; those who allege something have to establish it by proof (Brookbanks, 2005). The philosophies of both the justice and corrections systems raises the issues of maintenance of a just society, punishment, denunciation, retribution, correction, as well as public safety, reduction of recidivism and protection of the public and safe and humane management of offenders (Department of Corrections, 2009). In contrast Nursing was founded historically on the moral principle of caring and the belief that nurses have an obligation to do good (NZN0, 2010). Although debate exists regarding the place of caring in nursing ideology (Gavin, 1997; Barker, Reynolds & Ward, 1995) it is accepted that Nursing ideology encompasses caring, holism and patient-centred care (Taylor, 1997). Nursing is an interpersonal process that involves interactions and transactions based on a relationship between the nurse and the client (Carper, 1978). Accordingly philosophy of health care involves the detection and understanding of disorder, the alleviation of suffering and the enhancement of autonomy through recovery with a responsibility to improve people's health status and overall wellbeing (Chaplow, 2007; Effective interventions Cabinet Paper 1, 2009). In defining Forensic psychiatry Gunn proposed " the prevention, amelioration and treatment of victimization which is associated with mental disease" (2004, p. S5). This definition reflecting not just the intersection with the law but acknowledges deeper attitudes towards people and their care and treatment. It is evident the court's brief is wider than the health professionals because the court has a duty to balance the individual's rights against that of the wider society (Brookbanks & Simester, 1998). This means health and justice sectors approach service delivery from

perspectives that could be said to be poles apart (Parker, 1996; Effective interventions, Cabinet Paper 1, 2009). This polemic opens scope for miscommunication and misunderstanding due to differences between professions in ways of thinking, epistemology, values, line of reasoning, and methods of practice (Carson, Eastman, Gufjonsson, Gunn, 1993). The resulting potential is for less than therapeutic outcomes for the person experiencing mental dysfunction because the agendas of the various agencies are so diverse inadequate communication and collaboration occurs (Cabinet Paper 1: Effective Interventions, 2009). These concepts are fundamental to understanding that the person with mental disorder who offends sits at the convergence of the mental health service and the criminal justice system; this is the context of the court liaison nurse practice. And yet forensic psychiatry does span the two systems. Forensic psychiatric services have been described as being " one of the points of convergence between an evolving psychiatric service and systems for maintaining law and order" (Brunton, 1996, p. 3). It is not unreasonable to ask whether it is possible for these two professions to operate in accord or with any degree of understanding of one to the other without mutual contamination considering the disparate underpinning ideologies (Eastman, 2006). Eastman argues the tension between systems could be viewed as " natural and sometimes constructive" in that it ensures that each is aware of their own ethical positioning and social role and each working towards differently valued and balanced objectives Eastman, 2006, p. 460). Brookbanks refers to the possibility of there being a philosophy of a ' common good' or the ' responsible society' as a commonality between the intentions of both (2005).

However, Eastman cautions " It is the requirement that some therapeutic benefit is pursued that is of benefit to the patient that protects that social role of mental health services from being that of " gaoler" (2006, p. 460). So in practical terms how can forensic psychiatry straddle the two systems without compromising their role as health professionals? The answer may lie in understanding the ethical challenges for the health professional at the mental health criminal justice juncture (Evans, 2007, Eastman, 2006). It is suggested there is a need for a robust ethical framework to be applied and a requirement for reflection on practice to provide consistent guidance regarding ethical issues in healthcare settings as central to safe practice (Eastman, 2006; Evans, 2007; Austin et al, 2009; Chaloner, 2000). Various frameworks have been suggested. The principle approach focuses on deciding which principle should take precedence in ethical decision making (Beauchamp & Childress, 1994). The principle approach is most consistent with traditional medical ethics (Austin et al, 2009). Evans (2007) used the Principles framework to outline a framework for ethics for forensic psychiatry including the key concepts of: respect for autonomy; beneficence, non-maleficence and justice. Underlying professional ethical values for nurses are based on: autonomy, beneficence, non-maleficence, justice, confidentiality, veracity, fidelity, guardianship of the environment and its resources and being professional (NZNO, 2010). Whatever the framework used or underpinning values ethical analysis is " about being fully aware of the ethical implications of making decisions in one way, as opposed to some other way" (Eastman, 2006, p. 460). As well as application of ethical frameworks, supervisory bodies and codes of practice provide oversight for

ensuring public health and safety through ensuring competence of health professionals. In summary the court setting presents a challenging context in which to carry out mental health assessments, and provide nursing care. The nursing practice is undertaken at the juncture of the disciplines: nursing; justice/corrections; and health. The nursing profession and each individual nurse bring its own value systems, normative practices, ideological framework, and code of conduct to its practice. These factors may create discord if there is conflict between the values of the relevant systems.

Diagram 1: The diagram demonstrates the relevant fields and potentially conflicting ideologies that the court liaison nurse role interacts with. The shaded areas demonstrate the unique dimensions that through their interactions have contributed to the development of the CLN role.

Frameworks for ensuring ethical nursing practice

Regulatory bodies

As with any professional discipline practicing in the health care sector in New Zealand there are requirements relating to oversight and regulation of the discipline. The Nursing Council of New Zealand (the Council) is the regulatory authority responsible for the registration of nurses. Its main function is to protect the health and safety of members of the public by ensuring that nurses are competent and fit to practise. The Council's role and responsibilities are outlined in the Health Practitioners Competence Assurance Act 2003 (HPCA Act). Under the HPCA Act every nurse in New Zealand has a scope of practice. The HPCA Act allows the Nursing Council of New Zealand to include conditions in a nurse's scope of practice describing

the specific area of practice he or she may work in. These conditions may apply to nurse practitioners, registered nurses or enrolled nurses. (NCNZ, home page no date)

Professional guidelines

Nurses must also practice in accordance with: (where did i get this from??) Standards established through legislation and common law Nursing Council standards including; The code of conduct The competencies for the registered nurse scope of practice Guideline: Direction and delegation. Relevant speciality or professional standards that have been developed by, or endorsed by, professional organisations or expert nursing or multidisciplinary groups. Standards developed by health care organisations to enable the safe delivery of health service within a particular context.

Code of Ethics

A Code of Ethics for nurses to reflect on practice issues is provided by The New Zealand Nurses Organisation (a professional organisation for nurses) provides (NZNO, 2010). Other relevant professional bodies contributed to the development of The Code of Ethics and have endorsed it (NZNO, 2010). However this document is standardised for all nurses and it could be asked if this broad non-specific approach is applicable as an ethical framework for nurses who are practicing in an area where the scope of practice and ethical challenges are so intertwined with the criminal justice sector. Similar concerns have been articulated in forensic psychiatry literature as to the applicability of standard codes of ethics to practice in forensic settings

(Austin, et al, 2009: Adshead & Sarkar, 2005). Not sure how to link this section in doc.....

Defining " nurse"

Given the desire expressed for recognition as a specialist role by CLNs both during preliminary discussions prior to commencing the research and during the data collection phase this section of the thesis will reflect on the position of the CLN role within nursing at this time and relevant definitions.

Definition of the Registered nurse

The Nursing Council competencies for Registered Nurses describe the skills and activities of registered nurses. The scope of practice for a Registered Nurse is defined by the Nursing Council of New Zealand;

Definition of mental health nurse

Further classification of the registered nurse scope of practice in mental health nursing occurs through the Te Ao Māramatanga New Zealand College of Mental Health Nursing (The College). The College is the professional body for mental health nurses practicing in New Zealand. The College clearly delineates mental health nursing as a specialised area of nursing requiring specialist tertiary education.

Evolution of and Definition of the Forensic mental health nurse

It is accepted there are two distinct types of forensic nursing; those who work with victims and those who work with perpetrators (Lyons, 2009; Kettles & Wood, 2006). With reference to the integral role forensic nurses

perform providing a conduit between law and medicine the International Association of Forensic Nurses (IAFN) state " Forensic Nursing is the practice of nursing globally when health and legal systems intersect" (IAFN, n. d.-c). The IAFN represents all subspecialty areas of forensic nursing. This thesis examines the roots of forensic nursing role development in the subspecialty forensic court liaison nursing that focuses on the offender or alleged offender. Consideration of the term " forensic" is useful. While " forensic" can have different meanings dependant on context in this circumstance the following meaning applies: The term ' Forensic' is essentially derived from the Latin " forensis" or, " of the forum" derived from the Ancient Roman where people met outside [in forums] in the a common place for public meetings, debates and legal matters were settled (Curran, 1975). Forensic is defined as " used in, or connected with a court of law" and forensic medicine as " the use of medical knowledge to the purposes of law" most commonly known as associated with pathology and determining causes of death (Collins, 1993, p, 438). The association of forensic with mental health nursing began in the 1800s. With evolution of mental health services development of nursing roles has occurred. Notable for forensic nursing was the erection of a building (Broadmoor High Security Hospital) to separately detain criminal lunatics in the United Kingdom in the 1800s (Kettles & Woods, 2006). Through the building of the secure hospital the first official role for nurses working with people with mental disorder who had offended was created. Since that time many subspecialties have developed in forensic nursing where nurses practice at the clinical-legal interface, working with victims and offenders, living and deceased (Kent-Wilkinson, 2010; Lyons, 2009). There

are many definitions of forensic nursing (Kettles & Woods, 2006). The definition of forensic mental health nursing proposed by Peternej-Taylor succinctly captures the essence of nursing in this field" the integration of mental health nursing philosophy and practice within a socio-political context that includes the criminal justice system to provide comprehensive care for individuals, their families and their communities" (1999).

Definition of Court liaison nurse

The CLN is situated within forensic mental health nursing which sits within mental health nursing under the umbrella of the registered nurse scope of practice. When viewed in this manner it becomes apparent there should be identifiable layers of knowledge, expertise and proficiency required to practice in the CLN role. There is no definition or description of court liaison nurses that has been proposed by CLNs or derived from their nursing practice. Turnbull and Beese describe the key function of the role " community mental health nurses working within the criminal justice system undertake an important function with regard to strategic intent that wherever possible, mentally disordered persons should receive care and treatment from health and social services" (2000). Likewise The New Zealand Framework for Forensic Mental Health Services (MoH, 2001) refers to the functions of Forensic court liaison staff in describing the Court liaison service however this is not specific to nursing.

Specialty area of practice, Specialist nurse or Expert?

Nurses can be forgiven for experiencing confusion regarding what constitutes specialist practice or specialty roles and where their role or

practice may fit. According to Holloway et al (2009) the lack of national consistency regarding specialty or specialist coupled with multiple individual frameworks and standards developed within some specialty groups has added to this. What specialist titles and roles that are in existence are not linked to specialist nursing standards (Holloway, Baker & Lumby, 2009). There are a plethora of definitions regarding specialty, specialist, and application of such terms to a variety of nursing contexts and roles in the literature. Similarly multiple versions of Clinical nurse specialist roles and definitions exist but research has shown that there is a lack of consistency in these roles (Holloway et al, 2009) Given CLNs discussions regarding where their nursing role and practice might fit in terms of expertise or specialist, it was deemed prudent to clarify and define the status quo at this time with respect to the relevant concepts of expert, specialist, speciality, and advanced practice roles from the outset.

Speciality area of nursing practice or specialist nurse

Specialty Area of nursing practice" Specialty practice focuses on a particular area of nursing practice. It is directed towards a defined population or a defined area of activity and is reflective of increased depth of knowledge and relevant skills. Specialty practice may occur at any point on the continuum from beginning to advanced practice" (NZNO, 2011). Recognition of specialty practice in New Zealand is able to be progressed through a Specialty Standards Endorsement process which has oversight by a National Nursing Consortium (Feb, 2011). Specialty nursing groups who are seeking wider national recognition of their standards or knowledge and skills frameworks

may apply to the National Nursing Consortium (Feb, 2011). Specialist Nurse' a nurse prepared beyond the level of a generalist nurse and authorised to practice as a specialist with advanced expertise in a branch of nursing field' (Affara, as cited in Holloway, et al, 2009, p. 270). The above internationally accepted definition of specialist nurse equates to an advanced level of practice (Holloway, et al, 2009).

Advanced practice roles

At this time in New Zealand there is provision for the recognition of and development of Advanced Practice roles (Nurse Practitioner) and Expanded Practice for Registered Nurses (NCNZ, 2011). The criteria and process for Nurse Practitioner are well embedded now. The fairly recent Expanded Practice initiative involves a process of collaboration between the employer and the nurse to assess whether the role meets criteria for Expanded practice and compilation of a role description and means to evaluate the role (NCNZ, 2010). Expanded practice is defined as " Expanding the boundaries of nursing practice occurs as a professional strategy in response to changing health care need with increased range of autonomy, accountability and responsibility. There is a formal pathway to role expansion that entails further education and credentialing" (NCNZ, Jan, 2011).

So what does " expert" mean and where do " expert nurses" fit?

Another complicating factor for nurses regarding recognition of their level of practice surrounds the term " expert". " Expert" also refers to a level of nursing practice (Benner, 1984). Benner (1984) refers to the wealth of

untapped expert knowledge embedded in practices and how the know-how of expert nurses remains unrealised until it may be articulated by nurses. The CLN role has not been articulated in depth from a nursing perspective and anecdotally it appears that the role is not well understood by other nurses. Therefore there is a need to illuminate the role. Nurses are able to submit to Professional development recognition programmes (PDRP) which provide the means for assessment of competence on scale ranging from beginner to expert. The NCNZ (2008) provides guidelines regarding PDRP. The aim of the PDRP process is to assess competency and ensure that nurses are competent to practice as per NCNZ and HPCA Act requirements (NCNZ, 2008). Unfortunately national variation exists in the PDRP programmes and they are not accessible for all nurses (Kai Tiaki, 2009). The levels of practice under the PDRP are linked with remuneration. The designation of "Expert" rests with individual employers and nurses and competency assessors through the PDRP process. Whilst this is recognition of an expert level of practice within a defined framework it is not comparable with "specialist" nurse title or Advanced or Expanded practice roles for which another level of expertise and special knowledge is required and processes to go through to be met. Concern had been expressed by CLNs regarding their perception that this process was not nationally consistent and some felt that the scope and function of CLN was not understood through this process. Whether the court liaison nurse role would meet criteria for Expanded practice role as defined by the NCNZ (2011) is unknown at this time. Similarly what "specialist means" for the CLN and whether nursing practice could be considered a specialist level of practice or a specialty area of practice is

unknown. It was envisioned that articulating the CLN role through this research would assist with clarifying and articulating the unique knowledge base and distinct skills required to practise as mental health nurses in the criminal and High courts in New Zealand. Furthermore provide the CLNs with a base on which to further progress role development.

Research aims

The overall aim of the study was to examine, describe, analyse and understand contemporary nursing practice at the criminal justice mental health interface in New Zealand. Progression of the court liaison nurse role required in-depth analysis of its current status and activity. The court liaison nursing is novel with minimal research in this area of nursing practice nationally and internationally. Firstly the research aims were addressed through providing an understanding as to who this group of nurses are, their nursing background, training, education and experience. Secondly, through analysis of what the daily nursing practice and professional relationships entailed the context of their nursing practice emerged. Exploration of tensions and complexities that affected their nursing practice, how the nurses managed these provided in-depth understanding of the challenges and facilitators to CLN practice. Finally, the research illuminated the professional educational and professional support requirements for the CLNS. While mental health nursing was incorporated into comprehensive nursing education in New Zealand with opportunities for "entry to practice" programmes, there was no specific post-graduate education pathway in forensic mental health nursing or the more specific CLN role. Also, there

were no identified specific skills and competencies for practice for forensic mental health nurses or CLNs.