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**Te Ao Māramatanga
New Zealand College of Mental Health Nurses**

Partnership, Voice, Excellence in Mental Health Nursing

www.nzcmhn.org.nz

PO Box 77-080, Mt Albert, Auckland, 1350, New Zealand

Practice note: Nursing practice and section 8b - Mental Health (Compulsory Assessment and Treatment) Act (1992)

Issued October 2018

Members will be aware that certain amendments to the Mental Health (Compulsory Assessment and Treatment) Act (1992) came into effect in January 2018. The changes included an expanded definition of who could complete the section 8B certificate which accompanies the section 8A application to trigger an assessment examination at section 10. Section 8B (1) provides for the section 8B certificate to be completed by a "health practitioner", further defined in section 8B (6)(2) as a nurse practitioner, and in section 8B (6)(3) as "a registered nurse practising in mental health". This practice note provides guidance for registered nurses in completing certificates under section 8B.

Section 8B(6) states that

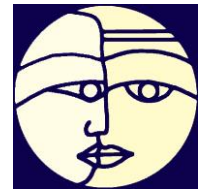
*"a registered nurse practising in mental health means a health practitioner who—
is, or is deemed to be, registered with the Nursing Council of New Zealand continued by [section 114\(1\)\(a\)](#) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing and whose scope of practice includes the assessment of a person's mental capacity..."*

This wording has raised two issues for nurses, especially mental health nurses who might be asked to complete a section 8B certificate. These issues are:

- 1. Whether assessment of capacity is within the nursing scope of practice, and*
- 2. Whether the inclusion of "assessment of a person's mental capacity" implies that the assessment at section 8B is an assessment of mental capacity.*

Advice from the Director of Mental Health has clarified that the nursing scope of practice neither explicitly includes nor excludes "assessment of mental capacity". However, nurses will be aware that the Mental Health (Compulsory Assessment and Treatment) Act (1992) does not contain a test of capacity, but instead refers to "mental disorder" defined in section 2(1) as

mental disorder, in relation to any person, means an abnormal state of mind (whether of a continuous or an intermittent nature), characterised by



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delusions, or by disorders of mood or perception or volition or cognition, of such a degree that it—

(a) poses a serious danger to the health or safety of that person or of others; or

(b) seriously diminishes the capacity of that person to take care of himself or herself; —

Section 8B (4) requires the health practitioner issuing the certificate to:

(a) examine the person; and

(b) if he or she considers that there are reasonable grounds for believing that the person may be suffering from a mental disorder, issue the certificate.

Thus, the focus of the health practitioner is on determining whether there are reasonable grounds for believing the person has a “mental disorder” as defined in section 2. The focus is **not** on assessment of mental capacity.

The section 8B process is unchanged in terms of the criteria of the Act, and the inclusion of capacity in the definition of “registered nurse” is only a guide to the interpretation of “registered nurse”, not a guide to interpretation of the term “mental disorder” which remains unchanged. Nurses acting as health practitioners under section 8B (1) should therefore assess the proposed patient in terms of the section 2 criteria for “mental disorder”.

As health practitioners, nurses are responsible for practising both within their scope of practice as defined by the Nursing Council of New Zealand, and within their level of competence. The College suggests that nurses who may be asked to issue section 8B certificates seek clarification of this function from their Director of Area Mental Health Services.

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