

Searching of mental health tāngata whaiora in relation to illicit substances / dangerous articles

Procedure Responsibilities and Authorisation

Department Responsible for Procedure	Mental Health and Addictions
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Target Audience	Mental Health and Addictions staff
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Procedure Review History

Version	Updated by	Date Updated	Summary of Changes
06	Rees Tapsell	December 2015	Changes to new DHB controlled document format with addition of roles and responsibilities, and inclusion of statement about maintaining the dignity of the service users when articles of clothing are removed.
07	Kylie Balzer	July 2019	Change from policy format to procedure format
08	Kylie Balzer	October 2023	Change to Te Whatu Ora Waikato procedure template Change in terminology from service user / tāngata whaiora to tāngata whaiora; from the Henry Rongomau Bennett centre to the inpatient mental health service Added in associated Te Whatu Ora Waikato document: Alcohol, Illicit Substances and Drug Abuse – Patients and Visitors Policy (1831)

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1 Overview

1.1 Purpose

This procedure sets out the organisations standard for searching Mental Health tāngata whaiora in inpatient mental health wards in relation to illicit substances and / or dangerous articles.

All mental health and addictions staff are required to follow the requirements of the Te Whatu Ora [Alcohol, Illicit Substances and Drug Abuse – Patients and Visitors](#) policy (1831).

1.2 Staff group

This document is applicable to Te Whatu Ora Waikato mental health inpatient units ONLY.

1.3 Patient / client group

Mental health tāngata whaiora.

1.4 Exceptions / contraindications

Nil exclusions.

1.5 Definitions and acronyms

Illicit substances	Any of these substances or drugs listed as a controlled drug in the Misuse of Drugs Act 1975
Imminent danger	An obvious and impending “likely to occur” risk based on history and current presentation, that is assessed to be of no less than serious physical or psychological harm to themselves or others.
Informed consent	<p>The right to make an informed choice about whether or not to accept treatment. A tāngata whaiora gives informed consent after they have been adequately informed about the risks and benefits involved in any treatment, compared to alternative treatments, or no treatment at all. Practitioners must ensure that tāngata whaiora are given sufficient information to make their own decisions about their treatment.</p> <p>Refer also to consent detailed in the Code of Health and Disability Services Consumers’ Rights (The Code): Right 5 Effective Communication Right 6 The right to be fully informed</p>
Mental health clinician	Means a person who holds a professional qualification relevant to the assessment, treatment, and care of patients and proposed patients with mental disorder (Sec 2 MHA, 1992)
Personal search	When staff are required to physically search a tāngata whaiora which may involve, against their will, the removal of personal clothing by use of force. For <i>illicit substances</i> police are the only authorised agency to carry this out, for <i>articles of potential harm</i> refer to 2.4.5

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Tāngata whaiora	Refers specifically to anyone who is a recipient of services within the inpatient mental health service, for instance, subject to Compulsory Assessment & Treatment under the Mental Health Act 1992, or the Criminal Justice Act 1985 sections 115, 118, or 121, or informal.
Senior nurse	Refers to the nurse in charge of the unit, or the after-hours duty coordinator for the mental health inpatient service

2 Clinical management

2.1 Roles and responsibilities

All Staff

All staff have a role in supporting the maintenance of a safe environment for tāngata whaiora, staff and the public.

Clinicians

Clinicians must make informed decisions based on assessment and respect the rights and dignity of tāngata whaiora. Clinicians must seek support, advice and assistance as required; provide clinical care and oversight and meet the requirements of this procedure based on the context of the situation.

Managers

Managers need to ensure this procedure is included in the service orientation programmes and ongoing education. They must monitor incidents and complaints to ensure this procedure is being complied with, and ensure any necessary improvements are actioned.

2.2 Competency required

Registered nurses and senior mental health clinicians must be made aware of this procedure as part of their orientation to the service.

2.3 Equipment

- Clinical record
- DATIX incident reporting system

2.4 Procedure

2.4.1 Authority to Search

Mental Health staff have no legal authority to enforce personal searches. However, clinical assessment and judgement relating to safety may indicate a personal search is considered necessary.

These situations include circumstances:

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- Where there is a reasonable cause to suspect a tāngata whaiora may have illicit substances and
- Where there is perceived *imminent danger* due to a tāngata whaiora concealing articles of potential harm, e.g. weapons, prescription drugs.

2.4.2 Guiding Principles

- All tāngata whaiora are to be informed of the Mental Health service procedure on illicit drugs and dangerous articles as part of the admission procedure
- All mental health inpatient staff are informed of the Mental Health service procedure on illicit drugs and dangerous articles as part of orientation and ongoing mental health staff education
- Informed consent is considered the most desirable circumstance under which to complete a search
- Where practical, tāngata whaiora should be encouraged to have a support person present during the search process
- The dignity and wellbeing of the tāngata whaiora should be protected during the course of any personal or physical search. This means gender and culturally appropriate staff should be utilised wherever possible.
- The decision to conduct a search should be considered carefully and advisedly and involve consultation with senior members of the health team and service
- It is an offence to restrain without legal excuse, health professionals must be able to justify the use of restraint
- The potential for dangerousness is very real in search situations especially if weapons are involved. If staff need to search a tāngata whaiora, particularly in circumstances against their will, they must do so safely; utilising staff resource, safe environment, psycho-social de-escalation and / or restraint techniques as necessary and appropriate.

2.4.3 Procedure or Process – General

A clinical judgement based on assessment of the situation will determine if a personal search is to be undertaken.

An attempt must first be made to gain consent from the tāngata whaiora first. If informed consent is not gained please refer to 2.4.4. and 2.4.5.

If a search is to proceed it should involve interventions to the minimum degree of invasiveness required to carry out a search safely, i.e.:

- Search takes place in a safe environment that also ensures privacy, e.g. interview room
- Ask the tāngata whaiora to present any articles or substances they may have on their person

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- As necessary, ask the tāngata whaiora to empty their pockets
- As necessary, ask the tāngata whaiora to remove articles of their clothing for checking
- If there are continued concerns that the tāngata whaiora has concealed articles / illicit substances within or on their person then they should be maintained in a safe environment under high levels of observation until further consultation occurs with the clinical team
- A registered nurse and gender appropriate staff must be present taking into account cultural / personal dignity / clinical issues for that person

In all situations involving a search, details of consent, process used and outcomes achieved are fully documented in the individual's clinical file and a DATIX incident notification completed.

2.4.4 Procedure or Process – Illicit substances

Tāngata whaiora under a compulsory legal order i.e. Mental Health (Compulsory Assessment & Treatment) Act 1992, or the Criminal Procedures (Mentally Impaired Persons) Act 2003 who are suspected of illicit drug / substance possession, (i.e., no imminent danger), should be placed under an appropriate level of observation and if necessary isolated into a safe environment away from others to ensure illicit drugs / substances are not taken, passed on or hidden.

In the case of informed consent not gained and a personal (hands on) search for illicit substances is still deemed necessary, police assistance *is required* in relation to their powers under section 18(2)/(3) of the Misuse of Drugs Act, 1975, as they are the only authority allowed to enact a search in these circumstances.

As necessary, tāngata whaiora may be asked to remove articles of their clothing for checking, however, should this be required, the tāngata whaiora dignity should be respected at all times, (where possible avoiding full exposure or prolonged exposure).

A decision to call police must involve two *mental health clinicians* to support this action, i.e. involves the senior nurse on duty and the responsible clinician (or delegate) and a DATIX incident notification completed.

At the time of the police search, the senior mental health clinician / registered nurse present is:

- Responsible to provide clinical care and oversight
- Ensures that gender appropriate staff are present

In situations outside of police searches where staff find a usable amount of illicit drugs or substances a senior nurse on duty will notify the police. It is expected that prior to police contact, consultation will occur with the medical officer or registrar on duty.

When drugs are found, these will be labelled and stored in the nearest locked drug cupboard until the police arrive.

When illicit drugs are to be disposed of, this must be done in the presence of two registered nurses as witnesses.

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2.4.5 Procedure or Process – Articles of potential harm

“Everyone is justified in using such force as may be reasonably necessary in order to prevent the commission of suicide, or of the commission of an offence which would be likely to cause immediate and serious injury to the person or property of any one, or in order to prevent any act being done which s/he believes, on reasonable grounds, would, if committed, amount to suicide or to any such offence.” (Section 41 of the Crimes Act 1961)

In urgent situations where there is reasonable cause to believe that:

- a tāngata whaiora has concealed a dangerous article
- and *imminent danger* is thought likely either to the tāngata whaiora or others
- Informed consent is not obtained

A forcible search carried out in line with this policy by mental health staff acting in good faith using reasonable caution and force can be justified.

A decision involving **two mental health clinicians** must be made that supports this action, e.g. involves the senior nurse on duty and the responsible clinician (or delegate). These discussions are recorded in the individual clinical record.

Also refer to “Matters of justification or excuse” sec 122 Mental Health (Compulsory Assessment and Treatment) Act 1992.

2.4.6 Property

If informed consent is not obtained for a property search, then staff will consider whether or not the property should be stored away in a separate area.

3 Patient information

Mental Health and Addictions service information for tāngata whaiora

4 Audit

4.1 Indicators

Audits of incident reports resulting from staff or police searches indicate that personal searches are carried out safely, legally, in accordance with this procedure and without injury to staff or tāngata whaiora.

Complaints received from tāngata whaiora / whānau / advocate / district inspector in relation to searches are attended to and on investigation staff processes are found to be justified and appropriate.

4.2 Tools

Incident system and complaints processes

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5 Evidence base

5.1 Associated Te Whatu Ora Waikato Documents

- [Alcohol, Illicit Substances and Drug Abuse – Patients and Visitors](#) policy (1831)
- [Clinical Records Management](#) policy (0182)
- [Incident Management](#) policy (0104)
- [Restraint](#) policy (2162)
- Mental Health and Addictions [Puawai Internal Security](#) procedure (2687)

5.2 External Standards

Ngā Paerewa Health and Disability services Standards NZS8134:2021

Legislation:

- Substance Addiction (Compulsory Assessment and Treatment) Act 2017
- Health and Disability Commissioner Act 1994
- Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996
- Crimes Act 1961
- Criminal Justice Act 1985
- Criminal Procedures (Mentally Impaired Persons) Act 2003
- Human Rights Act 1993
- Intellectual Disability Compulsory Care and Rehabilitation Act 2003
- Mental Health (Compulsory Assessment & Treatment) Act 1992 and Amendment Act 2021
- Misuse of Drugs Act 1975
- Privacy Act 2020