

Unfit to Attend Court – Health Related Reasons

Policy Number 1.423

Policy Function Continuum of Care

Issue Date 6 April 2016

Summary The Federal and NSW Court systems require that persons charged with offences must attend Court unless the Court has given special approval for non-attendance. Justice Health & Forensic Mental Health Network (JH&FMHN) may assess a patient as unfit to attend court for health reasons and is responsible for notifying the Court.

This policy provides guidelines for health staff to advise the Court of a patients' condition that makes the patient unfit to attend Court or fit to attend Court providing that appropriate Additional Precautions are implemented, as specified by the Service Director Population Health (SDPH) or Clinical Nurse Consultant (CNC) Infection Prevention.

- Applicable Sites**
- Administration Centres
 - Community Sites (e.g. Court Liaison Service, Community Integration Team, etc.)
 - Health Centres (Adult Correctional Centres or Police Cells)
 - Health Centres (Juvenile Justice Centres)
 - Long Bay Hospital
 - Forensic Hospital

Responsible Officer Executive Director Clinical Operations (Custodial Health)

Previous Issue(s) Policy 1.423 (December 2012, May 2009)

- Change Summary**
- Policy content section has been included
 - Medical Certificate updated

TRIM Reference POLJH/1423

Authorised by Chief Executive, Justice Health & Forensic Mental Health Network

1. Preface

The Federal and NSW Court system require that persons charged with offences must attend Court unless the Court has given special approval for non-attendance. Justice Health & Forensic Mental Health Network (JH&FMHN) may assess a patient as unfit to attend court for health reasons.

JH&FMHN must advise the General Manager (GM) or Manager of Security (MOS) or Centre Manager (CM) immediately if a patient is unable to attend Court, to enable the Courts to be informed. The GM/MOS/CM must be informed if the patient has any special requirements, as this may have an impact on transport arrangements and will need to be communicated to the Court.

This policy provides guidelines for health staff to advise the Courts of a patient's condition that makes them unfit to attend Court or fit to attend Court providing that appropriate additional precautions are implemented, as specified by the Service Director Population Health (SDPH) or Clinical Nurse Consultant (CNC) Infection Prevention.

2. Policy Content

JH&FMHN staff will exercise clinical judgement to appropriately defer patients from attending Court when they are unwell, suspected or confirmed diagnosed with or have signs and symptoms of a communicable disease. To certify non-attendance at Court on medical grounds, there must be substantial reason(s) and a specific medical certificate must be completed advising the Court that the patient is unfit. A sample copy of the certificate appears at the end of this policy.

2.1 Mandatory Requirements

The patient must have a genuine clinical indication not to attend Court. The Procedure Content below outlines which staff members may complete a *Medical Certificate Non-Attendance at Court or Additional Precautions Required* in [Appendix 1](#).

2.2 Implementation - Roles & Responsibilities

The Nursing Unit Manager (NUM) or Nurse in Charge (NIC)

- Is responsible for providing a Medical Certificate for non-attendance at Court when a medical practitioner who is familiar with the patient or the Remote Offsite After Hours Medical Services (ROAMS) Officer is unavailable, and record on the certificate the advice given.
- The NUM or NIC of a shift must consult with the SDPH or CNC Infection Prevention regarding the management of patients with suspected or confirmed communicable disease.
- For adolescent patients, the NUM or NIC must consult with the Staff Specialist, Medical Officer, General Practitioner or ROAMS Officer and then seek approval from the Service Director Adolescent Health and Diversion Programs.

Medical Practitioner

- Is responsible for providing a medical certificate for non-attendance at Court for general medical conditions and for specific drug and alcohol related issues. This is also the role of the Addiction Medicine Specialist/D&A Nurse Practitioner if available.

Psychiatrist and/or Psychiatry Registrar

- Is responsible for providing a medical certificate for non-attendance at Court if the condition is mental health related.

3. Procedure Content

When a patient is deemed to be unfit to attend Court due to health concerns, a medical certificate must be completed by the staff member who is responsible for the presenting health. See Policy Content section.

Staff need to ensure the patient gives consent for JH&FMHN to advise the Court that they are unfit to attend if they have capacity to consent. Staff should refer to NSW Ministry of Health [PD2005 406 – Consent to Medical Treatment Patient Information](#).

The appropriate supportive entries must be made in the patient's health record and a copy of the certificate included in the record. The likely duration of being unfit for court must be stated so that an alternative time can be arranged and the type of additional precautions to be implemented.

3.1 Issue of Certificate

A *Medical Certificate Non-Attendance at Court or Additional Precautions Required* in [Appendix 1](#) may be completed for a number of reasons including:

- acute mental health condition where the patient is visibly agitated or aggressive or likely to become aggressive, except where the attendance is likely to result in a diversion to a local public hospital. A Psychiatrist must be consulted in all cases;
- medical illness where the patient is too acutely ill to attend Court;
- communicable disease, as agreed with the SDPH or CNC Infection Prevention;
- in cases where the patient has a communicable disease but would be fit for Court if appropriate additional precautions, as specified by the SDPH or CNC Infection Prevention, are implemented;
- if the patient has an urgent medical appointment;
- if the patient is currently admitted to a local public hospital.

Each case must be considered on clinical merits. Relevant factors include:

- the degree of unacceptable health risk to the patient or others;
- the distance of the journey to Court;
- effect on patient of transport to Court;
- likely time away from the medical or psychiatric care.

To certify attendance at Court but with the proviso that specific appropriate Additional Precautions are implemented, the *Medical Certificate Non-Attendance at Court or Additional Precautions Required* in [Appendix 1](#) must be completed advising the Court.

3.2 Procedure for Advising the Court

The medical certificate should be delivered directly to the GM/MOS/CM or delegate. As the organisation of Court matters and transport to Court can be complex, and a patient being unfit to attend Court may occur abruptly, it is essential that the GM/MOS/CM or delegate is advised without delay. The procedures for approval of leave and transport for the patients in the Forensic Hospital must be followed.

The patient may not be fit to attend Court in person but may be fit to attend via Audio-Visual Link (AVL). This should be noted on the Medical Certificate. A copy of the certificate must be emailed to the Court Registrar by CSNSW who would inform the presiding Magistrate. The NUM must ensure that a follow up telephone call to the Court occurs to confirm the certificate has been received.

The medical certificate should contain sufficient personal identification and medical information necessary to justify the non-attendance, without breaching patient confidentiality.

To certify attendance at Court but with the proviso that specific additional precautions are implemented, the medical certificate must be completed advising the Court of the specific additional precautions to be used. The diagnosis or communicable disease must not be written on the certificate, however 'respiratory-type illnesses' or a similar phrase should be used.

If the SDPH or CNC Infection Prevention advise "Fit For Court if appropriate additional precautions are implemented," the type of additional precautions (i.e. airborne, droplet or contact) and the type of personal protective equipment (PPE) to be worn by staff and/or patient must also be documented on the certificate. In these cases and if the patient cannot attend Court via audio visual link (AVL), JH&FMHN must provide sufficient PPE including masks, gloves, gowns and eye wear to CSNSW and the Court staff.

3.3 Other Considerations

It is relevant to consider that a delay in attendance at Court might increase the time an unsentenced patient is incarcerated/detained or in a correctional/detention centre.

It is also relevant to note that diversion from Court to a psychiatric facility in a community hospital can occur at any time up until a person is sentenced. If a medical practitioner makes the clinical decision not to send the person to court then the person may miss the opportunity to be diverted from the judicial system into the community.

There are times when a mentally or physically ill patient may be well enough to attend Court. If such a patient is released directly from Court, it will be necessary to ensure that follow up arrangements are made for them with the appropriate community health service provider(s).

4. Definitions

Must

Indicates a mandatory action or requirement.

Should

Indicates a recommended action that needs to be followed unless there are sound reasons for taking a different course of action.

5. Related Documents

Ministry of Health [PD2005 406](#) *Consent to Medical Treatment Patient Information*

Justice Health and Forensic Mental Health Network [Justice Health Infection Control Manual - Management of an Outbreak of a Helthcare Associated Infection](#)

[Population Health - Infection Control Manual](#)

Appendix 1

Medical Certificate Non-Attendance at Court or Additional Precautions Required

I have examined: _____ MIN/CIM: _____
who is currently at _____ facility.

I certify that his/her medical condition is such that he/she is unable to attend court or requires the special precautions listed below on _____ at _____

However, the patient is suitable to attend court if via Video Link today? Yes No

I am of this opinion because

Describe in lay terms (without disclosing the diagnosis) the clinical reasons why attendance is immediately contraindicated. Specify if the patient is in hospital.

Additional precautions and the type of personal protective equipment that are to be used are listed below. JH&FMHN staff to contact CNC Infection Prevention to assist in completing this section.

The following additional precautions are required to be worn by the patient:

Further medical details or reports are attached are not attached

I have discussed this certificate with the patient and advise that he/she:

agrees with the necessity of this certificate;

has expressed disagreement with the issue of this certificate on the following grounds:

I have refused his/her wishes not to write this certificate as:

He/she should be fit to attend court after _____

Signed: _____ Name: _____

Position: _____ Date: _____

For further information, please contact the signatory or the local NUM

Telephone: _____ Fax: _____