

CHAPTER 17: Electroconvulsive Therapy (ECT) and Psychosurgery

ELECTROCONVULSIVE THERAPY

Electroconvulsive Therapy (ECT) is the planned induction of a seizure through electrical means for therapeutic purposes. (Title 9 California Code of Regulations (CCR) Section 836(a))

ECT, sometimes known as “shock treatment”, has a troubling history and continues to be controversial. Although it can be an effective treatment for some severe mental illnesses, there can be serious side effects to ECT, including memory loss. There remains a division of opinion as to the effectiveness of the treatment and uncertainty as to how this procedure works. Advocates are cautioned to be aware of their own feelings and biases when advocating in this area.

Note that the right to refuse ECT is an undeniable right. ECT cannot be performed if the patient, whether admitted to the facility as a voluntary or involuntary patient, is deemed able to give informed consent and refuses to do so. (Welfare and Institutions Code (WIC) Sections 5325(f), 5326.85)

INFORMED CONSENT

To constitute voluntary informed consent for ECT, the following information needs to be given to the patient in a clear and explicit manner:

- The reason for treatment with ECT. This includes the nature and seriousness of the patient's mental illness.
- The nature of the procedures used in the proposed treatment with ECT, including its probable frequency and duration.
- The probable degree and duration (temporary or permanent) of improvement or remission, expected with or without such treatment.
- The nature, degree, duration, and the probability of the side effects and significant risks, commonly known by the medical profession, of such treatment, including its adjuvants, especially noting the degree and duration of memory loss (including its irreversibility) and how and to what extent they may be controlled, if at all.
- That there exists a division of opinion as to the efficacy of ECT, why and how it works and its commonly known risks and side effects.

- The reasonable alternative treatments, and why the physician is recommending ECT.
- That the patient has the right to accept or refuse the proposed treatment, and that if he or she consents, has the right to revoke his or her consent for any reason, at any time prior to or between treatments.

For purposes of ECT, “written informed consent” means that a person knowingly and intelligently, without duress or coercion, clearly and explicitly manifests consent to the proposed therapy to the treating physician and in writing on the standard consent form prescribed in WIC Section 5326.4. The form Electroconvulsive Treatment (ECT) Informed Consent Form, DHCS 1800/MH 300, may be found here:

https://www.dhcs.ca.gov/services/MH/Documents/DHCS_1800_201905.pdf

PROCEDURES WITH VOLUNTARY PATIENTS

The following must be completed in order to administer ECT to a voluntary recipient of mental health services:

- The attending or treating physician enters adequate documentation in the patient's treatment record of the reasons for the procedure, that all reasonable treatment modalities have been carefully considered, and the treatment is definitely indicated and is the least drastic alternative available for this patient at this time. Such treatment in the treatment record shall be signed by the attending and treating physician or physicians.
- The attending physician gives a responsible relative of the person's choosing and the person's guardian or conservator, if there is one, the oral explanation. If the patient does not want to inform a relative, or if the chosen relative is unavailable, this requirement is dispensed with.
- The patient has been verified by a board-certified or board-eligible psychiatrist or neurologist to have capacity to give written informed consent, and has given written informed consent to ECT.

(WIC Sections 5326.7(a), 5326.75)

PROCEDURES WITH INVOLUNTARY PATIENTS/PERSONS UNDER CONSERVATORSHIP

All of the following criteria must be completed in order to administer ECT to an involuntary patient or someone on a conservatorship:

- The attending or treating physician enters adequate documentation in the patient's treatment record of the reasons for the procedure, that all reasonable treatment modalities have been carefully considered, and that

the treatment is definitely available for this patient at this time. Such treatment in the treatment record shall be signed by the attending and treating physician or physicians.

- A review of the patient's treatment record is conducted by a committee of two physicians, at least one of whom shall have personally examined the patient. One physician shall be appointed by the facility and one shall be appointed by the local mental health director. Both shall be either board-certified or board-eligible psychiatrists or board-certified or board-eligible neurologists. This review committee must unanimously agree with the treatment physician's decision about treatment with ECT. Such agreement shall be documented in the patient's treatment record and signed by both physicians.
- The attending physician gives a responsible relative of the person's choosing and the person's guardian or conservator, if there is one, the oral explanation about treatment with ECT. If the patient does not want to inform a relative, or if the chosen relative is unavailable, this requirement is dispensed with.
- The patient gives written informed consent to ECT. Such consent shall be for a specified maximum period of time not to exceed 30 days, and shall be revocable at any time before or between treatments. Such withdrawal of consent may be either oral or written and shall be given effect immediately. Additional treatments in number or time not to exceed 30 days shall require a renewed written informed consent.
- The patient's attorney, or a public defender appointed by the court, agrees as to the patients' capacity or incapacity to give written informed consent.
- If either the attending physician or the attorney believes that the patient does not have the capacity to give written informed consent, a petition shall be filed in superior court to determine the patient's capacity to give written informed consent. The court shall hold an evidentiary hearing after giving appropriate notice to the patient and within three judicial days after the petition is filed. At such hearing, the patient shall be present and represented by legal counsel. If the court deems the above-mentioned attorney to have a conflict of interest, such attorney shall not represent the patient in this proceeding.
- If the court determines that the patient does not have the capacity to give written consent, then treatment may be performed upon gaining the written informed consent for ECT from the responsible relative or the guardian or the conservator of the patient.

- At any time during the course of treatment of a person who has been deemed incompetent, that person has the right to claim they regained competency. If the person does so, the person's competency must be reevaluated.

(WIC Section 5326.7, Title 9 CCR Section 840(c))

MINORS

Convulsive treatment may not be performed on a minor under the age of 12 under any circumstances. (WIC Section 5326.8)

Minors between the ages of 12 and 16 may only be treated with ECT if, in addition to the same requirements for administering ECT to adult patients;

- It is an emergency and convulsive treatment is deemed a lifesaving treatment.
- A review board of three board-eligible or board-certified child psychiatrists appointed by the local mental health director unanimously certifies to the need for and appropriateness of ECT.
- It is otherwise performed in full compliance with state regulations promulgated under WIC Section 5326.95.
- It is thoroughly documented and reported immediately to the Director of Health Care Services.

Persons 16 and 17 years of age have the same rights as adults regarding convulsive treatment.

(WIC Section 5326.8)

PSYCHOSURGERY

Psychosurgery includes lobotomy, psychiatric surgery, behavioral surgery and all other forms of brain surgery if the surgery is performed for the purpose of modifying or controlling thoughts, feelings, actions or behavior, or certain treatments of abnormal brain function or abnormal brain tissue. Voluntary and involuntary patients have the undeniable right to refuse psychosurgery. (WIC Section 5325(g))

Psychosurgery, wherever administered, may be performed only if:

- The patient gives written informed consent to the psychosurgery.
- A responsible relative of the person's choosing and with the person's consent, and the guardian or conservator if there is one, has read the standard consent form as prescribed in WIC Section 5326.4 and has been

given by the treating physician the information required to give informed consent. If the person does not want to inform a relative, or if the chosen relative is unavailable, this requirement is dispensed with.

- The attending physician gives adequate documentation entered in the patient's treatment record of the reasons for the procedure, that all other appropriate treatment modalities have been exhausted and that this mode of treatment is definitely indicated and is the least drastic alternative available for the treatment of the patient at the time. The attending and treatment physician or physicians shall sign such statement in the treatment record.
- Three physicians, one appointed by the facility and two appointed by the local mental health director, two of whom shall be either board-certified or eligible psychiatrists or board-certified or eligible neurosurgeons, have personally examined the patient and unanimously agree with the attending physicians' determinations about psychosurgery and agree that the patient has the capacity to give informed consent. Such agreement shall be documented in the patient's treatment record and signed by each such physician.

Psychosurgery shall in no case be performed for at least 72 hours following the patient's written consent. Withdrawal of consent may be either oral or written and shall be given effect immediately. Refusal of consent to undergo a psychosurgery shall be entered in the patient's treatment record. (WIC Section 5326.6)

Under no circumstances may psychosurgery be performed on a person under 18 years of age. (Title 9 CCR Section 845(a))

FACILITY REPORTING REQUIREMENTS

A doctor or facility that administers convulsive treatments must report quarterly to the local behavioral health director, who is required to transmit a copy of the report to the California Department of Health Care Services. The form to use for submissions may be found here:

https://www.dhcs.ca.gov/formsandpubs/forms/Forms/Mental_Health/DHCS-1011.pdf

Reports of psychosurgery must be submitted quarterly by the facility to the local behavioral health director. In addition to the information required for ECT reporting, the report shall contain the following information:

- Psychiatric diagnosis;
- Type of psychosurgery performed;

- Date surgery performed;
- Complications that arose during or after completing psychosurgery.

(Title 9 CCR Section 838.1)

VIOLATIONS

All alleged or suspected violations of rights regarding informed consent, psychosurgery or convulsive treatment should be reported to the local director of mental health or his designee as well as the Director of Health Care Services for investigation.

Either the local director of mental health or the Director of Health Care Services may, upon finding a right has been violated, take any or all of the following actions:

- Assign a specified time period during which the violation shall be corrected.
- Referral to the Medical Board of California or other professional licensing agency. Such board shall investigate further, if warranted, and shall subject the individual practitioner to any penalty the board finds necessary and is authorized to impose.
- Revoke a facility's designation and authorization to evaluate and treat persons detained involuntarily.
- Refer any violation of law to a local district attorney or the Attorney General for prosecution in any court with jurisdiction.

(WIC Section 5326.9)

THE ROLE OF THE PATIENTS' RIGHTS ADVOCATE

In addition to protecting the right of mental health patients to refuse ECT and psychosurgery, an equally important role of the Patients' Rights Advocate is to assist patients in obtaining adequate information regarding a proposed treatment.

When given the opportunity, advocates should promote and assist patients to ask their doctors or nursing staff questions regarding their condition and any proposed treatment, including treatment with ECT or psychosurgery. If an attorney has been retained or appointed for the patient, the advocate should assist the patient in contacting and communicating with their attorney for any necessary legal advice or representation in this area.