

## **ELECTROCONVULSIVE THERAPY (ECT)**

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Electroconvulsive therapy is a treatment for severe mental illness which involves passage of an electric stimulus across the brain sufficient to induce generalized seizure.

California Welfare and Institutions Code section 5326.85 states that no convulsive treatment shall be performed if the patient, whether admitted to the facility as a voluntary or involuntary patient, is deemed to be able to give informed consent and refuses to do so. Note that the right to refuse convulsive treatment and insulin coma treatment is an undeniable right (Welf. & Inst. Code § 5325(f)).

### **Procedures with Voluntary Patients**

The attending or treating physician enters adequate documentation in the patient's treatment record of the reasons for the procedure, all reasonable treatment modalities have been carefully considered, and 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 responsible relative of the person's choosing and the person's guardian or conservator, if there is one, is given the oral explanation by the attending physician as required by Welfare and Institutions Code section 5326.2. Should the person desire not to inform a relative or should such chosen relative be unavailable, this requirement is dispensed with.

The patient gives written informed consent as defined in Welfare and Institutions Code section 5326.5 to the convulsive treatment. 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.

A board-certified or board-eligible psychiatrist or a board-certified or board-eligible neurologist other than the patient's attending or treating physician has examined the patient and verifies that the patient has the capacity to

give and has given written informed consent. Such verification shall be documented in the patient's treatment record and signed by the treating physician.

If the certification hasn't been obtained, then all the conditions for administration of convulsive treatment to involuntary patients (see below) must be satisfied (Welf. & Inst. Code § 5326.75).

### **Procedures With Involuntary Patients/ Conservatees**

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

a. 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.

b. 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 determination pursuant to subdivision (a). Such agreement shall be documented in the patient's treatment record and signed by both physicians.

c. A responsible relative of the person's choosing and the person's guardian or conservator, if there is one, is given the oral explanation by the attending physician as required by Welfare and Institutions Code section 5326.2. Should the person desire not to inform a relative or should such chosen relative be unavailable, this requirement is dispensed with.

d. The patient gives written informed consent as defined in Welfare and Institutions Code section 5326.5 to the convulsive treatment. 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.

e. 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.

f. 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.

g. 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 as defined in Welfare and Institutions Code sections 5326.2 and 5326.5 from the responsible relative or the guardian or the conservator of the patient.

h. At any time during the course of treatment of a person who has been deemed incompetent, that person shall have the right to claim regained competency. Should he do so, the person's competency must be reevaluated. (Welf. & Inst. Code § 5326.7).

### **Minors**

Convulsive treatment may not be performed on a minor under the age of 12 under any circumstances. Those between 12 and 16 may be treated only if

(a) It is an emergency situation and convulsive treatment is deemed a lifesaving treatment.

(b) This fact and the need for and appropriateness of the treatment are unanimously certified to by a review board of three board-eligible or board-certified child psychiatrists appointed by the local mental health director.

(c) It is otherwise performed in full compliance with regulations promulgated by the Director of Mental Health under Section 5326.95.

(d) It is thoroughly documented and reported immediately to the Director of Mental Health.

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

(Welf. & Inst. Code § 5326.8)

## **PSYCHOSURGERY**

Voluntary and involuntary patients have the undeniable right to refuse psychosurgery. Psychosurgery includes lobotomy, psychiatric surgery, and 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 (Welf. & Inst. Code § 5325(g)). Under no circumstances may psychosurgery be performed on a person under 18 years of age. (9 C.C.R. § 845(a)).

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 defined in Section 5326.4 and has been given by the treating physician the information required in Section 5326.2. Should the person desire not to inform a relative or should such chosen relative be 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. Such

statement in the treatment record shall be signed by the attending and treatment physician or physicians.

- 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 pursuant to subdivision (c) 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.
- Under no circumstances shall psychosurgery be performed on a minor.
- 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. (Cal. Welf. & Inst. Code § 5326.6)

## **THE ROLE OF THE PATIENTS' RIGHTS ADVOCATE**

### **Education**

An important role of the Patients' Rights Advocate is to assist patients in obtaining adequate information regarding a proposed treatment. Advocates should promote and assist patients to ask their doctors or nursing staff questions regarding their condition and any proposed treatment.

Examples of questions patients should ask include:

- What is the diagnosis of my condition? Please explain what that means.
- What kinds of treatment, other than medication, could be used for this condition?
- What kind of medication are you prescribing?

- What other kinds of medication could be prescribed for my condition?
- Why are you prescribing this medication rather than others?
- How much medication are you prescribing?
- Why are you prescribing at this dosage?
- Is this the normal dosage?
- What are the common side effects of this medication? What are other possible side effects?
- What is the likelihood of improvement with the medication?
- What is the likelihood of improvement without the medication?
- What will happen to me if I do not take the medication? What will the symptoms be?

### **Gathering Evidence Of Capacity**

Patients' Rights Advocates have an important role to play in identifying evidence of capacity. Advocates should emphasize that in order to be considered to have capacity, a person need not be "rational" regarding every aspect of life. For instance, someone who "hears voices" may be perfectly capable of making a decision regarding medical or psychiatric treatment. If a person has a number of reasons, some of which are considered "rational", others not considered "rational", the person's decision may still be the product of a competent decision relying on some rational basis for decision-making.

Statements from care givers (doctors, therapists, social service workers, etc) that the individual understands their current circumstances, nature of the decision to be made, and considered various alternatives and their benefits and disadvantages, is persuasive that a decision regarding treatment is valid. Specific examples of behavior indicating that the individual is capable of making rational, reasoned decisions and showing the person's rational reasons for making a particular decision regarding treatment are also valuable.

### **Facility-Monitoring**

Advocates should monitor the facility's compliance with the patients' right to informed consent and the right to refuse medication. Advocates should encourage facilities to make continuing and successive efforts to obtain the informed consent of the patients prior to filing a petition for a capacity hearing. However, although doctors may urge medication, they may not

use any rewards or threats, implied or express, or any other form of coercion. Also, patients who exercise their rights shall not be penalized or retaliated against for exercising those rights.

Advocates should assure that services are not being denied or terminated, privileges are not being revoked, or that legal status is not being changed solely on the basis of a refusal or withdrawal of consent. A patient may not be secluded or restrained for refusing or withdrawing consent.

### **Violations**

All alleged or suspected violations of rights regarding informed consent, psychosurgery or convulsive treatment should be report to the Department of Mental Health for investigation (in addition to the regular patients' rights violation procedure).

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

(1) Assign a specified time period during which the violation shall be corrected.

(2) 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.

(3) Revoke a facility's designation and authorization under Section 5404 to evaluate and treat persons detained involuntarily.

(4) Refer any violation of law to a local district attorney or the Attorney General for prosecution in any court with jurisdiction. (Cal. Welf. & Inst. Code § 5326.9).