



Policy:	13-01
Subject:	Neurosurgery for Psychiatric Disorders (Psychosurgery) Consent
Authority:	California W&I Code Sections 5325 through 5327
Original Policy Date:	January 9, 2013
Amended:	2/6/24
Supersedes:	13-01 Deep Brain Stimulation (DBS)
Attachments:	DHCS Quarterly Report for Convulsive Treatments and Psychosurgery Administered . (DHCS 1011 Revised 11/2022)

PURPOSE

- To provide a comprehensive policy for the provision of Neurosurgery for Psychiatric Disorders (Psychosurgery) which includes Deep Brain Stimulation (DBS) for certain individuals with refractory Obsessive Compulsive Disorder (OCD) and any other use(s) subsequently approved by the Food and Drug Administration (FDA), while protecting a patient’s legislatively established medical/legal rights.
- To summarize the legal requirements for the use of Neurosurgery for Psychiatric Disorders (psychosurgery) for voluntary and involuntary patients who may or may not be capable of giving informed consent.
- To identify mandatory documentation and reporting requirements concerning provision of Neurosurgery for Psychiatric Disorders (psychosurgery) including DBS.

BACKGROUND

Status as a voluntary or involuntary client does not automatically determine competence to give informed consent. A person confined is considered incapable of written informed consent if he/she cannot understand, or knowingly and intelligently act upon, the information provided as specified in California Welfare and Institutions (WIC) Section 5326.5. A person confined shall not be deemed incapable of refusal solely by virtue of being diagnosed as a person with a mental illness.

Psychosurgery (Neurosurgery for Psychiatric Disorders) is defined by the WIC as those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery, and all other forms of brain surgery if the surgery is performed for the purpose of any of the following:

- Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain.
- Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior.



- Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions, or behavior.

Psychosurgery does not include prefrontal sonic treatment wherein there is no destruction of brain tissue.

PROTOCOL

I. Basic Requirements of Informed Consent

The patient must give written informed consent to Neurosurgery for Psychiatric Disorders (Psychosurgery) including Deep Brain Stimulation, and must do so knowingly and without coercion. To constitute voluntary informed consent, the treating physician must furnish the patient and, with the patient's consent, a responsible relative of the patient's choosing (defined, for purposes of this policy, as a spouse, parent, adult child, or adult brother or sister), and conservator or guardian if there is one, with the following information in a clear and explicit manner:

1. The reason for the treatment, specifically the nature and severity of the illness;
2. The procedures to be used in the proposed treatment, including probable frequency and duration;
3. The probable degree and duration (temporary or permanent) of improvement or remission expected with or without the treatment;
4. The nature, degree, duration and probability of side effects and significant risks commonly associated with this treatment; especially noting the degree and duration of memory loss, including its potential irreversibility; and how and to what extent they may be controlled;
5. That there exists a division of opinion as to the efficacy of the proposed treatment, why and how it may work and its commonly known risk and side effects;
6. The reasonable alternative treatments, and why the physician is recommending this particular treatment, and
7. That the patient has the right to accept or refuse the proposed treatment, and that if the patient consents, the right to revoke their consent for any reason, at any time prior to treatment.



- B. The patient has a right to accept or refuse Neurosurgery for Psychiatric Disorders (psychosurgery) and if consent is given, has the right to revoke such consent at any time for any reason without prejudice to the client. Consent shall be for treatment within a specified maximum period of time, not to exceed 30 days. Withdrawal of consent may be either verbal or written, and shall take effect immediately. If the patient subsequently changes his/her decision, a new consent must be secured.
- C. The patient must sign a written informed consent form before Neurosurgery for Psychiatric Disorders (psychosurgery) can be provided. At least 24 hours must elapse between the oral advisement by the treating physician and the signing of the consent form by the patient.
- D. The above should be explained so that there is no doubt the patient understands the procedure. This may require the presence of an interpreter for the hearing impaired or for clients whose primary language is not English.
- E. Neurosurgery for Psychiatric Disorders (psychosurgery) shall in no case be performed for at least 72 hours following the patient's written consent.
- F. Under no circumstances shall psychosurgery be performed on a minor.

II. Documentation Requirements for All Neurosurgery for Psychiatric Disorders (Psychosurgery) Patients

The following information shall be placed in the treatment record by the treating physician:

- A. Reasons for the procedure;
- B. All reasonable alternative treatment modalities considered; and
- C. A statement that Neurosurgery for Psychiatric Disorders (psychosurgery) is definitely indicated, is a recognized FDA approved treatment for an otherwise intractable condition, and is the least drastic alternative available for the treatment of the patient at the time.
- D. Refusal of consent to undergo Neurosurgery for Psychiatric Disorders (psychosurgery) shall be entered into the patient's treatment record.

III. Procedure for Verifying Capacity of Clients

- A. Three physicians, one appointed by the treating agency 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, shall personally examine the patient and unanimously agree with the attending physician's determinations, and agree that the patient has the capacity to give informed consent.

- B. If the client does not have the capacity to give informed consent, then the procedure for involuntary patients is to be followed.
- C. Physicians who serve on review committees must not be personally involved in the treatment of the patient whose case they are reviewing.
- D. A responsible relative of the patient's choosing and the guardian or conservator, if there is one, shall be given the oral explanation by the attending physician as required by Section 5326.2. Should the person choose not to inform a relative or should such chosen relative be unavailable, this requirement is dispensed with.

IV. Procedure for Involuntary Patients

The patient's attorney, public guardian or conservator must agree about the patients' capacity or incapacity to give written informed consent, and that the patient who has the capacity to give written informed consent has done so. If the attending physician, public guardian, conservator or attorney believes that the patient does not have the capacity to give informed consent, the following procedures are to be initiated:

- A. A petition shall be filed in San Mateo County Superior Court to determine the client's capacity to give such consent. The court will hold an evidentiary hearing within three days after the petition is filed.
- B. The patient is to be present and represented by legal counsel. If the court determines that the patient lacks the capacity to give written informed consent, then treatment may be performed upon gaining the written informed consent of a responsible relative or the person's guardian or conservator, as defined in WIC Sections 5326.2 and 5326.5.
- C. A patient declared incompetent has the right to regain competency at any time during the course of treatment. If this occurs, the patient competency must be reevaluated.

V. Reporting Requirements

- A. On no less than a quarterly basis, each physician or facility providing Neurosurgery for Psychiatric Disorders (psychosurgery) shall report such treatments to the Behavioral Health and Recovery Services (BHRS) Director using the [DHCS Quarterly Report for](#)



[Convulsive Treatments and Psychosurgery Administered](#) (DHCS 1011 Revised 11/2022). This report will be submitted by encrypted email to BHRS Director, Dr. Jei Africa jafrica@smcgov.org cc: BHRS Medical Director, Dr. Tasha Souter tsouter@smcgov.org and BHRS QM Manager, Betty Ortiz-Gallardo bortiz-gallardo@smcgov.org.

- B. The individual physician and facilities shall include in their reports the number of persons who received Neurosurgery for Psychiatric Disorders (Psychosurgery) wherever administered in each of the following categories:
1. Involuntary patients who gave informed consent;
 2. Involuntary patients who were deemed incapable of giving consent and received Neurosurgery for Psychiatric Disorders (psychosurgery) against their will;
 3. Voluntary patients who gave informed consent; and
 4. Voluntary patients deemed incapable of giving informed consent.
- C. These physician and facility reports shall be reviewed quarterly to the BHRS Quality Management Office which shall forward a copy of all forms received to the Director of Health Care Services.

Approved: Signature on File
Tasha Souter, MD
BHRS Medical Director

Approved: Signature on File
Dr. Jei Africa, PsyD
BHRS Director