Policy:	00-05
Subject:	Electroconvulsive Therapy (ECT) Consent
Authority:	California W&I Code Sections 5325.1 through 5326.95
Original Policy Date:	June 30,2000
Amended:	January 14, 2015, October 12, 2023
Attachments:	Attachment A: DHCS Electroconvulsive Treatment (ECT), Informed Consent Form English (DHCS 1800 05/19); Spanish (DHCS 1800 SP 05/19) Attachment B: DHCS Quarterly Report for Convulsive Treatments and Psychosurgery Administered. (DHCS 1011 Revised 11/2022)

PURPOSE

- To provide a comprehensive policy for the provision of ECT that supports rapid medical response while protecting the rights of clients for whom ECT is recommended.
- To summarize the legal requirements for the use of ECT for both adult and minor consumers, including both voluntary and involuntary clients, who may or may not be capable of giving informed consent.
- To identify mandatory documentation and reporting requirements concerning provision of ECT.

BACKGROUND

Status as a voluntary or involuntary client does not automatically determine competence to give informed consent for Electroconvulsive Treatment (ECT). A person is considered incapable of giving written informed consent if he/she cannot understand, or knowingly and intelligently act upon, the information provided as specified in Welfare and Institutions Code (WIC) Section 5326.2. A person involuntarily confined shall not be deemed incapable of refusal solely by virtue of being diagnosed as a person with a mental illness.

PROTOCOL

I. Basic Requirements of Informed Consent (WIC 5326.2, 5326.5, 5326.7, and 5326.85)

A. The client must give written informed consent for ECT and must do so knowingly and without coercion. No ECT shall be performed if the client, whether admitted to the facility under voluntary or involuntary status, is deemed capable to give informed consent and refuses to do so. To constitute voluntary informed consent, the treating physician must furnish the client, and with the client's consent, a responsible relative of the client's choosing, 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 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 ECT; 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 divergence of opinion as to the efficacy of the proposed treatment;

6. The reasonable alternative treatments, and why the physician is recommending this particular treatment; and

7. That the client has a right to accept or refuse the proposed treatment, and that if consent is given, has the right to revoke such consent at any time for any reason without prejudice to the client.

B. Withdrawal of consent may be either verbal or written, and shall take effect immediately. If the client subsequently changes his/her decision, a new consent must be secured.

C. The client must sign a written informed consent form before ECT can be administered. At least 24 hours must elapse between the oral advisement by the treating physician and the signing of the consent form by the client.

D. Consent shall be for a specified maximum number of treatments over a specified maximum period of time, not to exceed 30 days. A new consent needs to be secured for treatment extension.

E. The above should be explained so that there is no doubt the client understands the procedure. This may require the presence of an interpreter for the hearing impaired or for clients whose primary language is not English, or special techniques to assist low literacy clients to understand their options.

F. A responsible relative of the client's choosing, or the guardian/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.

G. The fact of the execution of such written consent form and of the oral explanation shall be entered into the patient's treatment record, as shall a copy of the consent form itself.

H. If the client is deemed capable to give informed consent and refuses to do so, the physician shall indicate in the treatment record the treatment was refused despite the physician's advice and explanation to the client of his/her responsibility for any untoward consequences of the refusal.

II. Documentation Requirements for All ECT Clients

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 ECT is definitely indicated and is the best available alternative available at this time.

III. Review Procedure for Involuntary Clients

In addition to the review of the treating psychiatrist, a review of the client's treatment record is to be conducted by a committee of two physicians, at least one of whom shall have personally examined the client.

A. One physician shall be appointed by the facility, and one shall be appointed by the BHRS mental health administrator, or his/her designee.

B. Both shall be either board-certified or board-eligible psychiatrists or neurologists.

C. This review committee must unanimously agree with the treating physician's recommendations, and both physicians shall document such agreement in the client's treatment record.

D. Persons who serve on review committees must not be personally involved in the treatment of the client whose case they are reviewing.

IV. Review Procedure for Voluntary Clients

A. A psychiatrist or neurologist, other than the treating physician, must examine the client and verify that the client has the capacity to give and has given informed consent. This verification must be documented in the chart and signed by the treating physician

B. If there is no verification as required, or the client does not have the capacity to give informed consent, then the procedure for involuntary clients is to be followed.

V. Procedure to Determine Capacity to Give Written Informed Consent

The client's attorney or public defender must agree as to the client's capacity or incapacity to give written informed consent, and that the client who has the capacity to give written informed consent has done so. If either the attending physician or attorney believes that the client 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 judicial days after the petition is filed.

B. The client is to be present and represented by legal counsel. If the court determines that the client lacks the capacity to give written informed con- sent, 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 Sections 5326.2 and 5326.5.

C. A client declared incompetent has the right to regain competency at any time during the course of treatment. If this occurs, the client's competency must be reevaluated.

VI. ECT and Minors

A. Under no circumstances shall ECT be performed on a minor under 12 years of age.

B. Minors who are 16 and 17 years of age shall have all the rights guaranteed voluntary and involuntary clients outlined above.

C. Minors over 12 and under 16 may be administered ECT only if <u>all</u> the provisions for voluntary and involuntary clients are met, and in addition:

1. It is an emergency situation and electroconvulsive treatment is deemed a lifesaving treatment;

2. 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 BHRS mental health administrator, or his/her designee; and

3. The procedure is performed in full compliance with regulations promulgated

by the Director of State Hospitals (under section 5326.95 of the State Welfare and Institutions Code) and is thoroughly documented and reported immediately to the State of California Director of Health Care Services.

VII. Reporting Requirements for All ECT Treatments

A. On a quarterly basis, each physician or facility administering ECT 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 physicians and facilities shall include in their reports the number of persons who received ECT wherever administered in each of the following categories:

1. Involuntary clients who gave informed consent;
2. Involuntary clients who were deemed incapable of giving consent and received ECT against their will;
3. Voluntary clients who gave informed consent; and
4. Voluntary clients deemed incapable of giving informed consent.

C. These physician and facility reports shall be reviewed quarterly by 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*
Dr. Jei Africa, PsyD, MSCP, CATC-V, FACHE
He/His
Director
Behavioral Health and Recovery Services

Approved: *Signature on File*
Tasha Souter, MD
She/Her/Hers
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