

STATE OF NEW YORK

6587

2019-2020 Regular Sessions

IN ASSEMBLY

March 12, 2019

Introduced by M. of A. DiPIETRO -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, the penal law, the mental hygiene law, and the public health law, in relation to prohibiting health professionals from engaging in electroconvulsive therapy; creates the crime of performance of electroconvulsive therapy

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The education law is amended by adding a new section 6509-f
2 to read as follows:

3 § 6509-f. Additional definition of professional misconduct; electro-
4 convulsive therapy. 1. For the purposes of this section:

5 a. "Health professional" means a person subject to the provisions of
6 article one hundred fifty-three, one hundred fifty-four or one hundred
7 sixty-three of this title; or any other person designated as a health
8 professional pursuant to law, rule or regulation.

9 b. "Electroconvulsive therapy" means a procedure done in which elec-
10 trical currents are passed through the brain to intentionally cause a
11 brief seizure.

12 2. It shall be professional misconduct for a health professional to
13 engage in electroconvulsive therapy, and any health professional found
14 guilty of such misconduct under the procedure prescribed in section
15 sixty-five hundred ten of this subarticle shall be subject to the penal-
16 ties prescribed in section sixty-five hundred eleven of this subarticle.

17 § 2. The education law is amended by adding a new section 6531-b to
18 read as follows:

19 § 6531-b. Additional definition of professional misconduct; electro-
20 convulsive therapy. 1. For the purposes of this section:

21 a. "Health professional" means a person subject to the provisions of
22 article one hundred thirty-one of this title.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD08245-03-9

1 b. "Electroconvulsive therapy" means a procedure done in which elec-
2 trical currents are passed through the brain to intentionally cause a
3 brief seizure.

4 2. It shall be professional misconduct for a health professional to
5 engage in electroconvulsive therapy, and any health professional found
6 guilty of such misconduct under the procedures prescribed in title two-A
7 of article two of the public health law shall be subject to the penal-
8 ties prescribed in section two hundred thirty-a of the public health
9 law, as added by chapter six hundred six of the laws of nineteen hundred
10 ninety-one.

11 § 3. The penal law is amended by adding a new section 120.80 to read
12 as follows:

13 § 120.80 Performance of electroconvulsive therapy.

14 A person is guilty of performance of electroconvulsive therapy when:

15 1. A person performs, attempts to perform, or participates in the
16 performance of electroconvulsive therapy on another person; or

17 2. With the intent to perform, attempt to perform, or participate in
18 the performance of electroconvulsive therapy, possesses an electrocon-
19 vulsive therapy device.

20 Performance of electroconvulsive therapy is a class D felony.

21 § 4. Section 60.27 of the penal law is amended by adding a new subdivi-
22 sion 15 to read as follows:

23 15. Notwithstanding any other provision of this section to the contra-
24 ry, when a person is convicted of performance of electroconvulsive ther-
25 apy as defined in section 120.80 of this chapter, the court, in addition
26 to any other sentence, shall order the payment of restitution to the
27 person the electroconvulsive therapy was performed on.

28 § 5. Subdivision (a) of section 80.03 of the mental hygiene law, as
29 amended by chapter 619 of the laws of 1990, is amended to read as
30 follows:

31 (a) "Major medical treatment" means a medical, surgical or diagnostic
32 intervention or procedures where a general anesthetic is used or which
33 involves any significant risk or any significant invasion of bodily
34 integrity requiring an incision or producing substantial pain, discom-
35 fort, debilitation or having a significant recovery period. Such term
36 does not include: any routine diagnosis or treatment such as the admin-
37 istration of medications other than chemotherapy for non-psychiatric
38 conditions or nutrition or the extraction of bodily fluids for analysis;
39 ~~[electroconvulsive therapy;~~ dental care performed with a local anes-
40 thetic; any procedures which are provided under emergency circumstances,
41 pursuant to section twenty-five hundred four of the public health law;
42 the withdrawal or discontinuance of medical treatment which is sustain-
43 ing life functions; or sterilization or the termination of a pregnancy.

44 § 6. Subdivision (i) of section 81.03 of the mental hygiene law, as
45 added by chapter 698 of the laws of 1992, is amended to read as follows:

46 (i) "major medical or dental treatment" means a medical, surgical or
47 diagnostic intervention or procedure where a general anesthetic is used
48 or which involves any significant risk or any significant invasion of
49 bodily integrity requiring an incision or producing substantial pain,
50 discomfort, debilitation, or having a significant recovery period, or
51 which involves the administration of psychotropic medication ~~[or elec-~~
52 ~~troconvulsive therapy]~~; it does not include any routine diagnosis or
53 treatment such as the administration of medications other than chemoth-
54 erapy for non-psychiatric conditions or nutrition or the extraction of
55 bodily fluids for analysis; dental care performed with a local anesthet-
56 ic; and any procedures which are provided under emergency circumstances,

1 pursuant to section two thousand five hundred four of the public health
2 law.

3 § 7. Subdivision 2 of section 2504 of the public health law, as
4 amended by chapter 119 of the laws of 2005, is amended to read as
5 follows:

6 2. Any person who has been married or who has borne a child may give
7 effective consent for medical, dental, health and hospital services for
8 his or her child. Any person who has been designated pursuant to title
9 fifteen-A of article five of the general obligations law as a person in
10 parental relation to a child may consent to any medical, dental, health
11 and hospital services for such child for which consent is otherwise
12 required which are not: (a) major medical treatment as defined in subdi-
13 vision (a) of section 80.03 of the mental hygiene law; **or** (b) [~~electro-~~
14 ~~convulsive therapy; or (c)~~] the withdrawal or discontinuance of medical
15 treatment which is sustaining life functions.

16 § 8. This act shall take effect immediately; provided, however,
17 sections three and four of this act shall take effect on the first of
18 November next succeeding the date on which it shall have become a law.