

# STATE OF NEW YORK

3455

2019-2020 Regular Sessions

## IN ASSEMBLY

January 29, 2019

Introduced by M. of A. ORTIZ, JEAN-PIERRE, MOSLEY -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law, in relation to the use of electroconvulsive therapy

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

Section 1. Title E of the mental hygiene law is amended by adding a new article 85 to read as follows:

### ARTICLE 85

#### ELECTROCONVULSIVE AND OTHER THERAPIES

##### Section 85.01 Application.

##### 85.02 Use of electroconvulsive therapy.

##### 85.03 Consent to therapy.

##### 85.04 Withdrawal of consent.

##### 85.05 Physician requirement.

##### 85.06 Registration of equipment.

##### 85.07 Reports.

##### 85.08 Use of information; report.

##### § 85.01 Application.

This article shall apply to the use of electroconvulsive therapy by any person, including a private physician who uses the therapy on an outpatient basis.

##### § 85.02 Use of electroconvulsive therapy.

(a) Electroconvulsive therapy may not be used on a person who is younger than sixteen years of age.

(b) Unless the person consents to the use of the therapy in accordance with section 85.03 of this article, electroconvulsive therapy may not be used on:

(1) a person who is sixteen years of age or older and who is voluntarily receiving mental health services; or

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

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1     (2) an involuntary patient who is sixteen years of age or older and  
2 who has not been adjudicated by an appropriate court of law as incompe-  
3 tent to manage the patient's personal affairs.

4     (c) Electroconvulsive therapy may not be used on an involuntary  
5 patient who is sixteen years of age or older and who has been adjudi-  
6 cated incompetent to manage the patient's personal affairs unless the  
7 patient's guardian of the person consents to the treatment in accordance  
8 with section 85.03 of this article. The decision of the guardian must be  
9 based on knowledge of what the patient would desire, if known.

10 § 85.03 Consent to therapy.

11     (a) The department by rule shall adopt a standard written consent form  
12 to be used when electroconvulsive therapy is considered. The department  
13 by rule shall also prescribe the information that must be contained in  
14 the written supplement required under subdivision (c) of this section.  
15 In addition to the information required under this section, the form  
16 must include the information required by the mental hygiene medical  
17 review board for electroconvulsive therapy. In developing the form, the  
18 department shall consider recommendations of the medical review board.  
19 Use of the consent form prescribed by the department in the manner  
20 prescribed by this section creates a rebuttable presumption that the  
21 disclosure requirements of this chapter have been met.

22     (b) The written consent form must clearly and explicitly state:

23         (1) the nature and purpose of the procedure;

24         (2) the nature, degree, duration, and probability of the side effects  
25 and significant risks of the treatment commonly known by the medical  
26 profession, especially noting the possible degree and duration of memory  
27 loss, the possibility of permanent irrevocable memory loss, and the  
28 possibility of death;

29         (3) that there is a division of opinion as to the efficacy of the  
30 procedure; and

31         (4) the probable degree and duration of improvement or remission  
32 expected with or without the procedure.

33     (c) Before a patient receives each electroconvulsive treatment, the  
34 hospital, facility or physician administering the therapy shall ensure  
35 that:

36         (1) the patient and the patient's guardian of the person, if any,  
37 receives a written copy of the consent form that is in the person's  
38 primary language, if possible;

39         (2) the patient and the patient's guardian of the person, if any,  
40 receives a written supplement that contains related information that  
41 pertains to the particular patient being treated;

42         (3) the contents of the consent form and the written supplement are  
43 explained to the patient and the patient's guardian of the person, if  
44 any;

45         (A) orally, in simple, nontechnical terms in the person's primary  
46 language, if possible; or

47         (B) through the use of a means reasonably calculated to communicate  
48 with a hearing impaired or visually impaired person, if applicable;

49         (4) the patient or the patient's guardian of the person, as appropri-  
50 ate, signs a copy of the consent form stating that the person has read  
51 the consent form and the written supplement and understands the informa-  
52 tion included in the documents; and

53         (5) the signed copy of the consent form is made a part of the  
54 patient's clinical record.

1 (d) Consent given under this section is not valid unless the person  
2 giving the consent understands the information presented and consents  
3 voluntarily and without coercion or undue influence.

4 (e) For a patient sixty-five years of age or older, before each treat-  
5 ment series begins, the hospital, facility or physician administering  
6 the procedure shall:

7 (1) ensure that two physicians have signed an appropriate form that  
8 states the procedure is medically necessary;

9 (2) make the form described by paragraph one of this subdivision  
10 available to the patient or the patient's guardian of the person; and

11 (3) inform the patient or the patient's guardian of the person of any  
12 known current medical condition that may increase the possibility of  
13 injury or death as a result of the treatment.

14 § 85.04 Withdrawal of consent.

15 (a) A patient or guardian who consents to the administration of elec-  
16 troconvulsive therapy may revoke the consent for any reason and at any  
17 time.

18 (b) Revocation of consent is effective immediately.

19 § 85.05 Physician requirement.

20 (a) Only a physician may administer electroconvulsive therapy.

21 (b) A physician may not delegate the act of administering the therapy.  
22 A nonphysician who administers electroconvulsive therapy is considered  
23 to be practicing medicine in violation of the laws of this state.

24 § 85.06 Registration of equipment.

25 (a) A person may not administer electroconvulsive therapy unless the  
26 equipment used to administer the therapy is registered with the depart-  
27 ment.

28 (b) A mental hospital or facility administering electroconvulsive  
29 therapy or a private physician administering the therapy on an outpa-  
30 tient basis must file an application for registration under this  
31 section. The applicant must submit the application to the department on  
32 a form prescribed by the department.

33 (c) The application must be accompanied by a nonrefundable application  
34 fee. The department shall set the fee in a reasonable amount not to  
35 exceed the cost to the department to administer this section.

36 (d) The application must contain:

37 (1) the model, manufacturer, and age of each piece of equipment used  
38 to administer the therapy; and

39 (2) any other information required by the department.

40 (e) The department may conduct an investigation as considered neces-  
41 sary after receiving the proper application and the required fee.

42 (f) The department by rule may prohibit the registration and use of  
43 equipment of a type, model or age the department determines is danger-  
44 ous.

45 (g) The department may deny, suspend or revoke a registration if the  
46 department determines that the equipment is dangerous. The denial,  
47 suspension or revocation of a registration is considered a contested  
48 case.

49 § 85.07 Reports.

50 (a) A mental hospital or facility administering electroconvulsive  
51 therapy, psychosurgery, pre-frontal sonic sound treatment, or any other  
52 convulsive or coma-producing therapy administered to treat mental  
53 illness or a physician administering the therapy on an outpatient basis  
54 shall submit to the department quarterly reports relating to the admin-  
55 istration of the therapy in the hospital or facility or by the physi-  
56 cian.

1 (b) A report must state for each quarter:

2 (1) the number of patients who received the therapy, including:

3 (A) the number of persons voluntarily receiving mental health services  
4 who consented to the therapy;

5 (B) the number of involuntary patients who consented to the therapy;

6 (C) the number of involuntary patients for whom a guardian consented  
7 to the therapy;

8 (2) the age, sex and race of the persons receiving the therapy;

9 (3) the source of the treatment payment;

10 (4) the average number of nonelectroconvulsive treatments;

11 (5) the average number of nonelectroconvulsive treatments administered  
12 for each complete series of treatments, but not including maintenance  
13 treatments;

14 (6) the average number of maintenance electroconvulsive treatments  
15 administered per month;

16 (7) the number of fractures, reported memory losses, incidents of  
17 apnea, and cardiac arrests without death;

18 (8) autopsy findings if death followed within fourteen days after the  
19 date of the administration of the therapy; and

20 (9) any other information required by the department.

21 § 85.08 Use of information; report.

22 (a) The department shall use the information received under sections  
23 85.06 and 85.07 of this article to analyze, audit and monitor the use of  
24 electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treat-  
25 ment, or any other convulsive or coma-producing therapy administered to  
26 treat mental illness.

27 (b) The department shall file annually with the governor, the tempo-  
28 rary president of the senate and the speaker of the assembly a written  
29 report summarizing by facility the information received pursuant to  
30 sections 85.06 and 85.07 of this article. If the therapy is administered  
31 by a private physician on an outpatient basis, the report must include  
32 that information but may not identify directly or indirectly in a report  
33 issued pursuant to this section a patient who received the therapy.

34 § 2. This act shall take effect on the one hundred twentieth day after  
35 it shall have become a law. Effective immediately the addition, amend-  
36 ment and/or repeal of any rule or regulation necessary for the implemen-  
37 tation of this act on its effective date are authorized to be made and  
38 completed on or before such date.