STATE OF NEW YORK

8894

2019-2020 Regular Sessions

IN ASSEMBLY

December 30, 2019

Introduced by M. of A. ORTIZ -- 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:

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

§ 6509-f. Additional definition of professional misconduct; electroconvulsive therapy. 1. For the purposes of this section:

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

b. "Electroconvulsive therapy" means a procedure done in which electrical currents are passed through the brain to intentionally cause a brief seizure.

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

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

§ 6531-b. Additional definition of professional misconduct; electroconvulsive therapy. 1. For the purposes of this section:

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

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

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b. "Electroconvulsive therapy" means a procedure done in which electrical currents are passed through the brain to intentionally cause a brief seizure.

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

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

§ 120.80 Performance of electroconvulsive therapy.

A person is guilty of performance of electroconvulsive therapy when:

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

2. With the intent to perform, attempt to perform, or participate in the performance of electroconvulsive therapy, possesses an electroconvulsive therapy device.

Performance of electroconvulsive therapy is a class D felony.

§ 4. Section 60.27 of the penal law is amended by adding a new subdivision 15 to read as follows:

15. Notwithstanding any other provision of this section to the contrary, when a person is convicted of performance of electroconvulsive therapy as defined in section 120.80 of this chapter, the court, in addition to any other sentence, shall order the payment of restitution to the person the electroconvulsive therapy was performed on.

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

(a) "Major medical treatment" means a medical, surgical or diagnostic intervention or procedures where a general anesthetic is used or which involves any significant risk or any significant invasion of bodily integrity requiring an incision or producing substantial pain, discomfort, debilitation or having a significant recovery period. Such term does not include: any routine diagnosis or treatment such as the administration of medications other than chemotherapy for non-psychiatric conditions or nutrition or the extraction of bodily fluids for analysis; [~~electroconvulsive therapy;~~] dental care performed with a local anesthetic; any procedures which are provided under emergency circumstances, pursuant to section twenty-five hundred four of the public health law; the withdrawal or discontinuance of medical treatment which is sustaining life functions; or sterilization or the termination of a pregnancy.

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

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

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

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

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

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