

# California Code of Regulations

## Title 9. Rehabilitative and Developmental Services

### Division 1. Department of Mental Health

#### Chapter 4. Community Mental Health Services Under the Lanterman-Petris-Short Act

#### ARTICLE 5. PATIENTS' RIGHTS: CONVULSIVE TREATMENT AND PSYCHOSURGERY

##### § 835. General Provision.

Any person, without regard to where that person is treated, shall have the right to refuse convulsive treatment, insulin coma treatment, prefrontal sonic treatment, and psychosurgery, except as otherwise provided by statute or regulation. In addition, any administration of these treatments or performance of psychosurgery, wherever administered or performed, shall be performed only by a physician licensed to practice in the State of California, and shall be subject to the regulations contained in this Article.

##### § 836. Types of Treatment: Definitions.

(a) "Convulsive treatment" is the planned induction of a seizure through electrical or chemical means for therapeutic purposes. When more than one seizure is induced in a single treatment session, each seizure shall be considered a separate treatment for records-keeping and reporting purposes.

(b) "Insulin Coma Treatment" consists of the production of a coma for therapeutic purposes, with or without convulsions, through the intramuscular administration of insulin.

(c) "Psychosurgery" is defined as any of 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:

(1) Modification, alteration, or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain;

(2) Modification or alteration of normal brain function, brain tissue or brain cells in order to modify, alter, or control thoughts, feelings, actions, or behavior; or

(3) Treatment of abnormal brain function, brain tissue or brain cells in order to modify, alter, or control thoughts, feelings, actions, or behavior when the abnormality is not an established cause for those thoughts, feelings, actions, or behavior.

Psychosurgery shall not include surgery for relief of pain caused by physical disease elsewhere in the body.

(d) "Prefrontal sonic treatment" is the direct stimulation and/or destruction of brain cells or brain tissue by ultrasound for therapeutic purposes, as discussed in Section 837.

**§ 836.1. Voluntary and Involuntary Patients: Definitions.**

(a) "Involuntary patients," for purposes of this Article, include:

(1) Persons involuntarily detained for 72-hour evaluation and treatment under Section 5150 of the Welfare and Institutions Code;

(2) Persons certified for intensive treatment under Section 5250 of the Welfare and Institutions Code;

(3) Persons certified for additional intensive treatment as suicidal under Section 5260 of the Welfare and Institutions Code;

(4) Persons postcertified as a demonstrated danger of substantial physical harm to others under Section 5300 of the Welfare and Institutions Code;

(5) Persons under temporary or permanent conservatorship or guardianship;

(6) Persons who have been judicially committed, as defined under Section 5008.1 of the Welfare and Institutions Code. In the event that this Article conflicts with regulations dealing with the developmentally disabled promulgated under Chapter 1 (commencing with Section 4500) of the Welfare and Institutions Code, the latter statute and regulations shall control.

(b) "Voluntary patients," for the purposes of this Article, include all other patients not included in subdivision (a) above.

**§ 836.2. Facility: Definition.**

"Facility" includes any health facility, including but not limited to, any health facility as defined in Section 1250 of the Health and Safety Code, in which convulsive treatment, insulin coma treatment, prefrontal sonic treatment or psychosurgery is administered or performed.

**§ 837. Procedures for Insulin Coma and Prefrontal Sonic Treatment.**

(a) Unless otherwise indicated, all the requirements set forth in statute or regulation for the administration of convulsive treatment shall be followed when insulin coma treatment is administered, or when prefrontal sonic treatment is administered which involves only direct stimulation of brain cells or brain tissue.

(b) Unless otherwise indicated, all the requirements of statute or regulation described for psychosurgery shall be followed when prefrontal sonic treatment is administered and there exists any possibility there will be destruction of brain cells or brain tissue.

**§ 838. Quarterly Reports on Convulsive, Insulin Coma, and Prefrontal Sonic Treatment - Application and Requirement.**

(a) The reporting requirements of Welfare and Institutions Code Section 5326.15 shall be applicable to all facilities which administer or perform convulsive treatment, insulin coma treatment, or prefrontal sonic treatment involving only direct stimulation of cells or tissue, and to all physicians who provide these treatments outside health facilities.

(b) Quarterly, any such facility which has performed these treatments during the prior quarter, or which considers such treatment methods a part of the facility's program, shall report to the local mental health director. These reports shall be made regardless of whether or not any of these

treatment methods were used during the quarter. Likewise, any physician who considers any of these methods a service that he or she provides, and whose use of the above-mentioned treatment methods is not included in any facility's report, must submit a quarterly report to the local mental health director even if such treatments were not administered during that particular quarter.

(c) Quarterly reports shall be made on a form which shall be issued by the Director of the State Department of Mental Health which shall include all necessary instructions and definitions.

#### **§ 838.1. Quarterly Reports on Psychosurgery.**

Each facility which performs psychosurgery, or prefrontal sonic treatment involving destruction of cells or tissue, or each physician who performs these treatments outside a facility, shall submit to the local mental health director a quarterly report of all such procedures actually performed during the preceding quarter. The report shall contain, in addition to the data listed in Welfare and Institutions Code Section 5326.15, the following information:

- (a) Psychiatric diagnosis;
- (b) Type of psychosurgery performed;
- (c) Date surgery performed;
- (d) Complications that arose during or after completing psychosurgery.

#### **§ 838.2. Failure to Submit Quarterly Reports.**

A facility, clinic, or physician who fails to submit the reports as provided in Section 838 or 838.1, by the 15th of the month following completion of the quarter, shall be notified by the local mental health director of the legal obligation to submit these reports. Failure to comply within 15 days after such notification shall be reported to the Director of the State Department of Mental Health who may take any or all of the actions specified in Section 5326.9 of the Welfare and Institutions Code.

#### **§ 838.3. Quarterly Reports to State.**

The local mental health director shall transmit copies of all quarterly reports received to the Director of the State Department of Mental Health, or to the office designated by the Director, by the last day of the month following the end of the quarter.

#### **§ 839. Informed Consent for Electroconvulsive Treatment.**

(a) For purposes of obtaining written informed consent to electroconvulsive treatment, the treating physician shall use the consent form developed by the department. The form entitled "Informed Consent for Electroconvulsive Treatment (ECT) MH 300 (11/90)" is the standard written consent form prescribed in section 5326.3 of the Welfare and Institutions Code.

(b) The oral explanation required by section 5326.4 of the Welfare and Institutions Code regarding the information contained on the consent form shall be in a language or modality understood by the person giving consent.

#### **§ 840. Capacity to Consent or Refuse Consent to Recommended Treatment or Surgery.**

(a) A person shall be deemed to have the capacity to consent or to refuse to consent if it is determined that such person has actually understood and can knowingly and intelligently act upon the

information specified in Welfare and Institutions Code Section 5326.2. Understanding of the potential benefits and risks of the proposed treatment or surgery is the primary factor in determining such capacity to consent or to refuse consent.

(b) A person shall not be deemed to lack capacity to consent or refuse consent solely by virtue of any psychiatric or medical diagnosis.

(c) When Section 5326.7(e) of the Welfare and Institutions Code requires that a person's attorney make a determination as to the person's capacity or incapacity to give written informed consent, the attorney shall make an independent judgment of capacity.

#### **§ 841. Refusal to Consent to Recommended Treatment or Surgery.**

If a patient is deemed by the physician to have the capacity to give informed consent, but refuses to do so, the physician shall indicate in the clinical record that the treatment was refused despite the physician's advice, and that he or she has explained to the patient the patient's responsibility for any untoward consequence of the refusal. However, such explanation shall in no case be made in a manner so as to constitute duress or coercion. Transfer of the patient to another facility, loss of hospital privileges or placement in a more restrictive setting may subsequently be justified for medical or psychiatric reasons, but shall not be a direct consequence of the patient's refusal to consent to the proposed treatment.

#### **§ 845. Minors.**

(a) Under no circumstances shall psychosurgery or prefrontal sonic treatment be performed on a person under 18 years of age.

(b) The following minors shall be subject to the provisions of Section 5326.7 of the Welfare and Institutions Code: (1) persons aged 16 or 17 who are involuntary patients, or who lack verification of capacity to give written informed consent as required by Section 5326.75 of the Welfare and Institutions Code; and (2) all persons aged 12, 13, 14, or 15.

(c) For persons listed in subdivision (b), except where such persons have been emancipated, the custodial parent or parents, or the individual or agency with legal custody, shall be considered the guardian for purposes of granting or withholding substituted consent.

(d) Persons aged 16 and 17 who are voluntary patients may themselves grant or withhold consent for convulsive treatment to the same extent as adults who are voluntary patients.

#### **§ 847. Post-Treatment Review Committees.**

(a) Any facility in which convulsive treatment is performed, whether on a voluntary or an involuntary patient, shall designate a qualified committee of three psychiatrists and/or neurologists knowledgeable about the treatment and its effect to verify the appropriateness and need for such treatment. This committee shall review all convulsive treatments given in that facility on a quarterly basis. If treatments are initiated in a facility, and then continued outside that facility, the physician who continues treatments shall report the total number to the facility. Any such treatments shall be reviewed by the facility's review committee.

(b) For convulsive treatments and insulin coma treatments not included under Subdivision (a), the local mental health director shall establish the post-treatment review committee. This committee shall consist of three psychiatrists and/or neurologists, and shall meet on a quarterly basis to verify the appropriateness and need for such treatment. Records submitted to these committees shall have data identifying the patient deleted, except where disclosure is otherwise authorized by Welfare and Institutions Code Sections 5328, et seq.

(c) Refusal by any facility or physician to submit convulsive treatment and insulin coma treatment cases for review shall be reported by the review committees to the Director of the State Department of Mental Health who may take any or all of the actions specified in Section 5326.9 of the Welfare and Institutions Code.

**§ 849. Excessive Use of Convulsive Treatment.**

(a) Convulsive treatments shall be considered excessive if more than 15 treatments are given to a patient within a 30-day period, or a total of more than 30 treatments are given to a patient within a one-year period.

(b) If, in the judgment of the attending physician, more than the above limits are indicated, prior approval must first be obtained from the review committee of the facility or county, whichever is appropriate. (Sections 847 and 848.) Requests for approval shall include documentation of the diagnosis, the clinical findings leading to the recommendation for the additional treatments, the consideration of other reasonable treatment modalities and the opinion that additional treatments pose less risk than other potentially effective alternatives available for the particular patient at the present time. A maximum number of additional treatments shall be specified. The review committee shall act upon any such request within seven days of its receipt and shall document the maximum number of additional treatments approved. All applicable informed consent procedures shall also be followed.

Content not updated. Current as of 3/12/12.