

REGISTER
OF
ELECTRO CONVULSIVE THERAPY

(Mental Health Act Regulation 2013 – Form 6)

ELECTRO CONVULSIVE THERAPY

Division 3 of Part 2, Chapter 4 of the Mental Health Act 2007, prescribes the circumstances under which electro convulsive therapy (ECT) may be administered. Persons undertaking the administration of ECT should be familiar with the provision of that Division, particularly those sections dealing with the prerequisites to giving of, and determination of validity of, informed consent.

Division 3 is produced below –

87 Definitions

In this Division:

"ECT administration inquiry" --see section 96 (2).

"ECT consent inquiry" --see section 96 (1).

"ECT determination" --see section 96 (3).

"ECT inquiry" means an ECT administration inquiry or an ECT consent inquiry.

88 Offences relating to administration of electro convulsive treatment (cf 1990 Act, ss 180-182)

(1) A person who is not a medical practitioner must not administer electro convulsive therapy to another person.

(2) A medical practitioner must not administer electro convulsive therapy to a person:

(a) otherwise than in accordance with this Division, or

(b) at a place other than a mental health facility or other place approved by the Secretary.

(3) A medical practitioner must not administer electro convulsive therapy to a person unless there are present during the administration of the electro convulsive therapy not less than 2 medical practitioners (of whom the medical practitioner administering the electro convulsive therapy may be one):

(a) one of whom is experienced in the administration of electro convulsive therapy, and

(b) another of whom is experienced in the administration of anaesthesia.

Maximum penalty: 50 penalty units.

89 When electro convulsive therapy may be administered

Electro convulsive therapy may be administered only in the following circumstances:

(a) to a person other than an involuntary patient or a person who is under the age of 16 years, if the person meets the requirements for informed consent to the treatment and medical certification set out in this Division,

(b) to an involuntary patient or a person who is under the age of 16 years, after an ECT determination by the Tribunal at an ECT inquiry. In this Part, "**involuntary patient**" includes a forensic patient, correctional patient and a person detained in a mental health facility (see section 82)

90 Refusal of treatment by medical superintendent

The medical superintendent of a mental health facility may refuse to allow electro convulsive therapy to be administered to a patient or person detained in the facility, even though the Tribunal has made a determination under this Division that enables the treatment to be given.

91 Informed consent requirements (cf 1990 Act, s 183)

(1) A person is taken to have given informed consent to the administration of electro convulsive therapy if the person gives a free, voluntary and written consent after this section is complied with.

(2) The following steps must be taken before consent is obtained:

- (a) a fair explanation must be made to the person of the techniques or procedures to be followed, including an identification and explanation of any technique or procedure about which there is not sufficient data to recommend it as recognised treatment or to reliably predict the outcome of its performance,
- (b) a full description must be given, without exaggeration or concealment, to the person of any possible discomforts and risks of the treatment (including possible loss of memory),
- (c) a full description must be given to the person of any expected benefits of the treatment,
- (d) a full disclosure must be made, without exaggeration or concealment, to the person of any appropriate alternative treatments that would be advantageous to the person,
- (e) an offer must be made to the person to answer any inquiries concerning the procedures or any part of them,
- (f) the person must be given notice that the person is free to refuse or to withdraw consent and to discontinue the procedures or any part of them at any time,
- (g) a full disclosure must be made to the person of any financial relationship between the person proposing the administration of the treatment or the administering medical practitioner, or both, and the facility in which it is proposed to administer the treatment,
- (h) the person must be given notice of their right to obtain legal and medical advice and to be represented before giving consent,
- (i) any question relating to the techniques or procedures to be followed that is asked by the person must have been answered and the answers must appear to have been understood by the person,
- (j) a form setting out the steps in this subsection is to be given to the person and an oral explanation of the matters dealt with in the form is to be given to the person in a language with which the person is familiar.

(3) The regulations are to prescribe forms setting out the steps to be taken before obtaining informed consent to electro convulsive therapy.

92 Person impaired by medication incapable of giving informed consent (cf 1990 Act, s 184)

A person is presumed to be incapable of giving informed consent to the administration of electro convulsive therapy if, when consent is sought, the person is affected by medication that impairs the person's ability to give that consent.

93 When electro convulsive therapy may be administered to persons other than involuntary patients or persons under 16 (cf 1990 Act, s 185)

(1) Electro convulsive therapy may be administered to a person (other than an involuntary patient or a person who is under the age of 16 years) if:

- (a) the person is capable of giving informed consent to the treatment and has given informed consent to the treatment, including a written consent in the form prescribed by the regulations, and
- (b) a certificate is given under this section by at least 2 medical practitioners, at least one of whom is a psychiatrist.

(2) A certificate under this section is a certificate in writing that, after considering the clinical condition and history of treatment of, and any appropriate alternative treatments for, the person, the medical practitioners are of the opinion that electro convulsive therapy is:

- (a) a reasonable and proper treatment to be administered to the person, and
- (b) necessary or desirable for the safety or welfare of the person.

(3) An authorised medical officer who is unsure whether a person is capable of giving informed consent may apply to the Tribunal for an ECT consent inquiry to determine whether the person is capable of giving informed consent and has given that consent.

94 When electro convulsive therapy may be administered to involuntary patients or persons under 16

- (1) Electro convulsive therapy may be administered to an involuntary patient or a person who is under the age of 16 years in accordance with an ECT determination made by the Tribunal at an ECT administration inquiry.
- (2) An authorised medical officer may apply to the Tribunal for an ECT administration inquiry about an involuntary patient (other than a patient who is under the age of 16 years) if a certificate is given under this section by at least 2 medical practitioners, at least one of whom is a psychiatrist.
- (2A) An authorised medical officer may apply to the Tribunal for an ECT administration inquiry about a person who is under the age of 16 years (including an involuntary patient) if a certificate is given under this section by at least 2 medical practitioners, at least one of whom is a psychiatrist with expertise in the treatment of children or adolescents.
- (3) A certificate under this section is a certificate in writing that, after considering the clinical condition and history of treatment of, and any appropriate alternative treatments for, the patient, the medical practitioners are of the opinion that electro convulsive therapy is:
 - (a) a reasonable and proper treatment to be administered to the patient, and
 - (b) necessary or desirable for the safety or welfare of the patient.

95 Tribunal to hold inquiries promptly

The Tribunal must hold an ECT inquiry about a person as soon as practicable after an application is made to it under this Division.

96 Purpose and findings of ECT inquiries

- (1) ECT consent inquiries about voluntary patients The Tribunal is, on an ECT consent inquiry, to determine whether or not the person is capable of giving informed consent to the administration of electro convulsive therapy and has given that consent.
 - (2) ECT administration inquiries about involuntary patients or persons under 16 The Tribunal is, on an ECT administration inquiry, to determine whether or not an ECT determination should be made in relation to the patient or person under the age of 16 years about whom the inquiry is held.
 - (3) ECT determinations that enable treatment of involuntary patients (other than persons under 16) An ECT determination for an involuntary patient (other than a person under the age of 16 years) is a determination:
 - (a) that the patient is capable of giving informed consent to the electro convulsive therapy and has given that consent, or
 - (b) that:
 - (i) the patient is incapable of giving informed consent or is capable of giving informed consent to the electro convulsive therapy but has refused, or has neither consented nor refused, to have the treatment administered, and
 - (ii) after considering the medical opinions and other information placed before it, the Tribunal is satisfied the electro convulsive therapy is a reasonable and proper treatment and is necessary or desirable for the safety or welfare of the patient.
- (3A) ECT determinations that enable treatment of persons under 16 An ECT determination for a person under the age of 16 years (including an involuntary patient) is a determination:
 - (a) in the case of an involuntary patient or other person, that:
 - (i) the person is capable of giving informed consent to the electro convulsive therapy and has given that consent, and
 - (ii) after considering the medical opinions and other information placed before it, the Tribunal is satisfied that the electro convulsive therapy is a reasonable and proper treatment and is necessary or desirable for the safety or welfare of the person, or
 - (b) in the case of an involuntary patient, that:
 - (i) the patient is incapable of giving informed consent or is capable of giving informed consent to the electro convulsive therapy but has refused, or has neither consented nor refused, to have the treatment administered, and

(ii) after considering the medical opinions and other information placed before it, the Tribunal is satisfied that the electro convulsive therapy is a reasonable and proper treatment and is necessary or desirable for the safety or welfare of the person.

(4) Maximum number of treatments for involuntary patients or persons under 16 In any ECT determination, the Tribunal must also specify the number of treatments that are approved (not exceeding 12).

(5) Increase in maximum number of treatments for involuntary patients or persons under 16 Despite subsection (4), the Tribunal may specify more than 12 treatments if the Tribunal is satisfied that, having regard to the special circumstances of the case (including the success of any previous electro convulsive therapy), the higher number of treatments is justified.

(6) Procedures applying to ECT inquiries For the purposes of an ECT inquiry, the Tribunal is to do the following:

(a) in the case of an ECT administration inquiry, find out from the patient about whom the inquiry is being held whether or not the patient was aware of the authorised medical officer's obligation to give notice of the inquiry and whether notice of the inquiry was given in accordance with this Act,

(b) inform the patient or person about whom the inquiry is being held of the nature and possible results of the inquiry, if the patient or person has not or appears not to have been informed of them,

(c) inquire about the administration of any medication to the patient or person about whom the inquiry is being held and take account of its effect on the patient's or person's ability to communicate,

(d) consider the views of the patient or person about whom the inquiry is being held about the treatment,

(d1) in the case of an ECT administration inquiry for a person who is under the age of 16 years, consider the views (if known) of any designated carer, principal care provider of the person or parent (if not a designated carer or the principal care provider),

(e) consider any information before it.

(7) Duration of ECT determination An ECT determination has effect for 6 months from the date the determination is made unless a shorter period is specified in the determination.

97 Electro convulsive therapy register

(1) A register containing information relating to the administration of electro convulsive therapy is to be kept in relation to each mental health facility or other place at which the treatment is administered.

(2) The medical superintendent of the facility or the person approved by the Secretary for any other place is to keep the register or cause it to be kept.

(3) The register is to be in the form prescribed by the regulations.

(4) Particulars of a proposed administration of electro convulsive therapy are to be entered in the register before the therapy is administered, and any differences in the particulars of treatment actually administered are to be subsequently noted and explained in the register.

(5) The register may be inspected at any time by the Tribunal, the President, the Principal official visitor, an official visitor or the Secretary.

Relevant Clauses from the Mental Health Regulation (2013)

11 Procedure before consent to electro convulsive therapy

For the purposes of section 91 (3) of the Act, the prescribed form is Part 1 of Form 5.

12 Consent to electro convulsive therapy

(1) For the purposes of section 93 (1) (a) of the Act, the prescribed form is Part 2 of Form 5.

(2) For the purposes of section 96 (3) (a) of the Act, consent to the administration of electro convulsive therapy may be given in the form set out in Part 3 of Form 5.

13 Register of information relating to electro convulsive therapy

The register to be kept under section 97 of the Act in relation to treatments by electro convulsive therapy is to be a book in which pages containing the information required or permitted to be set out by Form 6 are completed in relation to each patient or other person undergoing the treatment.

