

**NYS Office of Mental Health
Guidance on Electroconvulsive Therapy (ECT)
September 22, 2007**

Background: Electroconvulsive Therapy (ECT) is a vital yet controversial treatment, especially when provided by court order and over objection, which has evoked considerable and important discussion among a broad constituency in New York State. In light of the ongoing debate regarding court ordered ECT, OMH offers this document to clarify its clinical and administrative thinking.

Current medical guidance finds ECT to be a relatively safe and effective intervention, especially for treatment of serious mood and psychotic disorders when other treatments have proven ineffective (see accompanying review). Advocates emphasize there are negative side effects of ECT which are common and damaging, including memory loss, and may not be well reported in the research literature. From a consumer perspective, court-ordered ECT may serve to worsen a long standing concern that mental health care is intrusive and paternalistic, and thus is not person centered.

Although the decision to authorize treatment with ECT over objection is that of the court, OMH recognizes the importance of ensuring that the clinical need for ECT exists, that there is a reasonable likelihood of response, and that all reasonable efforts have been pursued to 1) engage the consumer/patient in the process of choice and 2) determine that other clinically appropriate treatments have either been tried or offered.

Pursuant to Rivers v. Katz, (67 N.Y. 2d 485 1986) the patient's right to self-determination is deemed paramount to a physician's obligation to provide medical treatment, as is a competent patient's right of refusal for treatment. Thus, court orders for ECT administration may only be sought when the following conditions are met: The individual for whom an order is sought must be an involuntary patient;

AND

1. The individual must lack the capacity to legally consent to the administration of ECT. (In contrast, individuals who do have capacity already have the right to consent or reject approval of ECT treatments.)

Under the ruling in Rivers v. Katz, the New York Court of Appeals delineated a two-step process to be followed in order to provide psychiatric treatment for a non-consenting incapable patient.

- The proponent of the treatment must first establish by **clear and convincing evidence** that the patient lacks capacity to make treatment decisions.
- The court must **then** determine that clear and convincing evidence establishes that the proposed treatment is narrowly tailored to give substantive effect to the patient's liberty interests, taking into consideration all relevant circumstances, including:
 1. the patient's best interests;
 2. the benefits to be gained from the treatment;
 3. the adverse side effects associated with the treatment; and
 4. any other less intrusive alternative treatment.

OMH has determined that a Review Committee, operating out of the Office of the Medical Director, will be constituted to review all OMH facility proposed court requests for adults (patients 18 and over*) and shall strive to provide its findings within 3 business days to the facility seeking the petition for court-ordered ECT. This review refers only to OMH operated hospitals. This committee will also track and assess the clinical outcomes of court-ordered ECT. The Review Committee will conduct its work under the authority of the OMH Medical Director and will be constituted by the Adult Services Medical Director and the Director of Recipient Affairs, or designees in their absence, and will consult with others as needed on a case by case basis.

** Children and adolescents will require special consultation as proposed by the American Academy of Child and Adolescent Psychiatry*

An OMH facility will need to send a written case report to the Office of the Medical Director, including details of the alternative treatments tried as well the efforts made to inform and engage the consumer/patient and their family (when appropriate) in the process of considering ECT. The Review Committee will consider whether:

- adequate dose and duration of psychopharmaceutical trials, including augmentation, have been administered or are precluded by medication side effects;
- the proposed treatment is in the patient's best interest;
- the patient lacks the capacity to make a reasoned decision concerning treatment;
- there have been adequate clinical trials of other indicated therapies;
- advanced directive, health care proxy, and / or other information exists on instances when the patient has a stated preference;
- there have been attempts to engage the patient in a treatment alliance;
- the family has also been engaged in considering treatment alternatives;
- appropriate attention has been paid to culturally appropriate interventions; and
- there is reason for concern about the potential negative impact of ECT on the consumer's/patient's future recovery, including possible cognitive side effects and, if the person has a history of trauma, potential to exacerbate traumatic symptoms.

The Review Committee shall strive to deliver within 3 business days its comments to the psychiatrist proposing ECT over objection. The goal of the review is to provide a quality review prior to the facility's court request.

In those instances in which the court grants a request for a course of ECT, the facility will submit a brief and concise follow-up clinical report within 20 business days of completion of the court approved course of treatment. In those instances where the course approved exceeds 1 year a report will be filed at 12 months from the time the treatment began. This summary will contain, at a minimum:

- demographics, including age, race, gender, primary language and diagnosis;
- treatment History;
- length of stay;
- details on the course of treatment with ECT and the views of the individual, if known;

- outcomes related to the course of treatment, including any adverse reactions; and
- prognosis for discharge to the community, or to a less restrictive level of care.

In those instances where the court denies the request for a course of ECT, the facility will submit the court decision to the Committee within 20 business days of the decision and the Committee will consult with Counsel, as appropriate, and will review the court's considerations as part of its regular agenda.

All documents created by this process are quality assurance and quality improvement materials, will be retained by the OMH Office of Quality Management, and will be strictly confidential.

As an important additional note, OMH prohibits the use of ECT as an emergency procedure under all circumstances.

This process of review prior to pursuing court ordered ECT aims to ensure that OMH clients have every opportunity to receive needed care in a clinically driven and consumer and family responsive manner. We will examine this review process at 9 and 18 months after it is implemented to assess its findings, value and responsiveness.