



OPERATIONAL CIRCULAR

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Subject: **EMERGENCY PSYCHIATRIC TREATMENT AND ISSUES OF CONSENT**
MENTAL HEALTH ACT 1996 (SS 113 –115 AND PART 5, DIV 2)

Authority

The *Mental Health Act 1996* states that:

The Chief Psychiatrist has responsibility for the medical care and welfare of all involuntary patients (section 9 (1))

In respect of other patients, the Chief Psychiatrist is required to monitor the standards of psychiatric care provided throughout the State (section 9 (2))

CONSENT TO TREATMENT (PART 5, DIV 2)

A clinician must seek valid consent from a person before providing psychiatric treatment. Valid consent is consent freely and voluntarily given and a failure to offer resistance to treatment does not of itself constitute consent to treatment.

Before consent is given the patient is to be given a clear explanation of the proposed treatment including sufficient information such as warnings of risks and what is known or not known about the effects of the treatment in order to make a balanced judgement about the treatment. The extent of the information should be sufficient for a reasonable person in the patient's position to regard as significant.

The information should be conveyed in a form that would enable the patient to readily understand the issues, including the use of information in other languages or the use of interpreters and sufficient time should be given to the patient to consider the information provided including whether to seek advice and assistance from other sources.

As a general rule a person can refuse treatment if they are:

- (a) a voluntary patient;
- (b) a person being assessed in the community, including assessment in an Emergency Department, as to whether they should be referred for examination by a psychiatrist;
- (c) a person who has been referred (Form 1) and is waiting to be transported to an authorized hospital;
- (d) a person who has been examined by a psychiatrist in a non-authorized facility and the decision made to continue the referral process on to an authorized hospital (Form 5);
- (e) a person who has been received into an authorized hospital but not as yet examined by a psychiatrist;
- (f) a person who having been examined by a psychiatrist in an authorized hospital has the referral time extended for up to 72 hours from the time of receipt (Form 4).

In certain circumstances, a clinician may be able to treat a person without acquiring consent such as when a clinician is acting out of a perceived duty of care for the person. In these circumstances the clinician is not acting under statutory legislation and may be held liable for their actions. It would therefore be preferable to use statutory legislation such as the *Mental Health Act 1996* (MHA) when a person requires emergency psychiatric treatment (see 4.8).

DEFINITION OF EMERGENCY PSYCHIATRIC TREATMENT (EPT) (S.113)

EPT means *'psychiatric treatment that it is necessary to give to a person to save the person's life, or to prevent the person from behaving in a way that can be expected to result in serious physical harm to the person or any other person'*.

Consent or approval dispensed with (s.114)

EPT may be given without any consent or approval that would be required for a voluntary patient or a referred person. However consent should always be sought and only if consent is not freely given or the patient is not capable of giving informed consent should treatment be given without consent or approval.

Duties of person giving emergency treatment (s115)

A person (usually the medical practitioner or nursing staff) who gives EPT, is to ensure no matter what the setting, a clinic, a GP's surgery, an emergency department, a police lock-up, a person's home or a hospital that a record is made of the treatment including:

- (a) Particulars of the treatment (type, dose and method of administration of the treatment);
- (b) The date and time the treatment was given;
- (c) The place where treatment was given;
- (d) The circumstances which necessitated the use of EPT;
- (e) The names of all the persons involved in the giving of the treatment such as the medical practitioner who prescribed the treatment and the staff involved in administering the treatment.

(A template EPT reporting form is available from the Resources and Publications page of the OCP website: (www.chiefpsychiatrist.health.wa.gov.au).)

Having completed a record of the treatment a copy must be forwarded to the Mental Health Review Board at GPO Box Y3063, East St George's Terrace, PERTH WA 6832 or fax to 9219 3163. The MHRB maintain a database on EPT.

Documentation of the EPT must be placed on the patient's medical record.

Electroconvulsive therapy (ECT)

ECT may be given as EPT if it meets the criteria in section 113.

A person is not to perform ECT on a person who is not an involuntary patient or a mentally impaired defendant who is in an authorized hospital unless the person has given informed consent to the treatment. This applies even though the person may be a child or adolescent or subject to a guardianship order. A parent or guardian cannot give permission on behalf of another person for the administration of ECT.

As ECT is usually a planned treatment the Chief Psychiatrist must be made aware when ECT is being provided as EPT. It would be preferable if the Office of the Chief Psychiatrist (OCP) is informed before the treatment is given. The Chief Psychiatrist will also be provided with a report outlining the circumstances and reasons for the treatment.

Seclusion is not EPT

Seclusion as described by s.116 of the MHA or any other intervention whereby a person is placed in a room from which they cannot leave of their own accord is not EPT.

Psychosurgery is not permissible as an emergency psychiatric treatment.

Duty of care or EPT?

Treatment may be provided to a person as part of the duty of care the health professional has for the person. However, it is the view of the Chief Psychiatrist that EPT, as it is within statutory legislation, is the preferred way of managing the issue of giving medication to behaviourally disturbed mental health patients. It is required by legislation and also results in the use of EPT being tracked/monitored by the MHRB, an independent agency.

Further Details

More detailed information about Emergency Psychiatric Treatment and Issues of Consent can be found in the *Supplement to the Clinicians Guide, Mental Health Act 1996*. The Supplement is available on the Chief Psychiatrist's website: www.chiefpsychiatrist.health.wa.gov.au or a copy may be obtained by contacting the office on 9222 4462.

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