

College of Psychiatry of Ireland Statement on ECT & Section 59(1)(b) of Mental Health Act 2001 scheduled for debate in Seanad Éireann on Wednesday 23rd March 2011

The College strongly proposes to the Seanad members that rather than deleting section 59(1)(b) they propose an amendment to this section deleting the words “or unwilling” and that the other aspects of Section 59(1)(b) be retained in the legislation.

Section 59(1) states that a detained person can be given ECT with their written consent or, when “unable or unwilling” to give consent, can be given ECT if their consultant psychiatrist along with another second opinion psychiatrist jointly approves a programme of ECT.

About 40 people each year are treated with ECT under the provisions of Section 59 of the Mental Health Act 2001. These are some of the most severely ill patients in the country and usually, but not invariably, have impaired capacity.

The College of Psychiatry supports the right of any patient to refuse to have ECT if they have the capacity to make such an informed choice.

Background Information

In March 2010 the College of Psychiatry of Ireland in a submission to an All Party Seanad briefing recommended amending the Mental Health Act 2001 to delete “or unwilling” from Section 59(1)(b). It also recommended enhanced oversight of ECT by the Mental Health Commission (MHC) who regulate ECT in Ireland. This included: improving data collection for audit and research; reviewing the second opinion process so that the second opinion psychiatrist be nominated from a MHC panel, i.e. independent of the treating psychiatrist; and including consultation with another member of the multidisciplinary team.

90% of patients who received ECT in 2009 were voluntary and consenting. 35 individuals, in the same year, who were assessed by their Psychiatrist as requiring ECT, were considered to lack capacity or were unable to give consent to it and were treated under Section 59(1)(b) but only with the agreement of both psychiatrists (1). Irish research has shown that 93% of these people benefitted from ECT, and for a number of people the treatment was life-saving.

Treatment under Common Law

The College supports retaining Section 59(1)(b) with deletion of the words “or unwilling” in order to ensure that this small group of patients can continue to receive the treatment with the protection of the Mental Health Act. Without this provision doctors could only treat someone with ECT under “common law”. Under common law a doctor can give treatment without consent in an emergency. Prior to the introduction of the Mental Health Act in 2006 this was the case and patients were therefore afforded no legal protection.

Using common law alone to provide ECT to incapacitated persons is inappropriate and would not provide adequate protection of human rights of individuals who lack capacity. There is an urgent need for capacity legislation in Ireland to address such issues and the College has previously highlighted this. However, in the meantime, no patient should be deprived of an effective treatment, such as ECT, because of the severity of their mental illness and/or deficiencies in the law.

(1) MHC report *-The administration of Electro-convulsive Therapy in Approved Centres: Activity Report 2009*).

Ends

*See College website www.irishpsychiatry.ie/publications/CPsychl_Publications

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