

MEMORANDUM

To: House Health Care and Human Services Policy and Oversight Committee
From: Minnesota Disability Law Center, Pamela Hoopes, Legal Director,
phoop@midminlegal.org, (Steve Schmidt and Brittney Crock, Law Clerks)
Date: August 10, 2009
Re: Minnesota Laws Governing Involuntary ECT

Who Is Subject to Involuntary ECT in Minnesota?

- Electroconvulsive Therapy (ECT) is defined as “an intrusive mental health treatment.”¹
- Minnesota statutes do not require that an individual be committed to receive involuntary ECT.
- Minnesota statutes do not limit involuntary ECT treatments to those who are mentally ill.
- Medical providers may only subject a committed patient to involuntary intrusive mental health treatment with a court order.² A state facility’s medical director or the director’s designee must petition the court for an order authorizing treatment.³ If the patient has a guardian or conservator, the medical director must ask the guardian or conservator to petition the court.⁴
- A patient may give prior consent to ECT⁵ but if the patient is considered incompetent court approval of ECT is required.⁶
- A guardian who believes that ECT is necessary for his or her ward must petition the court for an order.⁷

What Procedures Apply to Court Review of Involuntary ECT in Minnesota?

- In *Price v. Sheppard*, the Minnesota Supreme Court established specific procedures for the administration of involuntary ECT based on the state’s constitutional right of privacy.⁸ The *Price* court outlined 3 principle procedures that must be followed in cases involving ECT.⁹ These procedures are:
 - If the patient is incompetent to give consent or the patient or his or her guardian other than the persons responsible for his or her commitment refuse consent, the medical director of the state hospital must petition the court for an order authorizing the ECT.
 - The court shall appoint a guardian ad litem to represent the interests of the patient.
 - In an adversary proceeding, pursuant to the petition, the court shall determine the necessity and reasonableness of the prescribed treatment.
- The *Price* Court also put forth six factors for judges to consider when determining whether ECT is necessary and reasonable.¹⁰ These six factors are:
 - The extent and duration of changes in behavior patterns and mental activity effected by the treatment

¹ MINN. STAT. § 253B.03 subd. 6b (West 2009).

² MINN. STAT. § 253B.03 subd. 6d(d) (West 2009).

³ MINN R. 9515.0700 (West 2009).

⁴ *Id.*

⁵ MINN. STAT. § 253B.03 subd. 6 (West 2009).

⁶ MINN. STAT. § 253B.03 subd. 6(c) (West 2009).

⁷ MINN. STAT. § 524.5-313(c)(4)(ii) (West 2009).

⁸ 239 N.W.2d 905 (Minn. 1976).

⁹ *Id.* at 912-13 codified at MINN R. 9515.0500, 9515.0700 (West 2009).

¹⁰ *Id.* at 913 codified at MINN. R. 9515.0600 (West 2009).

- The risks of adverse side effects
 - The experimental nature of the treatment
 - Its acceptance by the medical community of this state
 - The extent of intrusion into the patient’s body and the pain connected with the treatment
 - The patient’s ability to competently determine for himself whether the treatment is desirable.
- In practice, individuals have the right to ask for a second examination regarding a decision to administer involuntary ECT. This right mirrors the statutorily created right that individuals have for decisions regarding commitment.¹¹
 - The burden of proof that involuntary ECT is necessary and reasonable is clear and convincing evidence.¹²
 - Individuals have the right to appeal a decision that involuntary ECT is necessary.

What Time Limits Apply to Involuntary ECT Orders in Minnesota?

- Minnesota statutes do not set a time limit for the duration of a court order for involuntary ECT. In *In re Alleged Mental Illness of Kinzer*, the Minnesota Court of Appeals established that orders authorizing involuntary ECT must contain “reasonable time limits” and “be presently medically necessary.”¹³ “Reasonable time limits,” however, have not been defined.
- Courts have conflated the standards for involuntary ECT with the standards for the involuntary administration of neuroleptic medications.¹⁴ In practice, courts often apply the time limits for orders authorizing the involuntary administration of neuroleptics to orders authorizing involuntary ECT. These time limits are until the end of a determinate commitment and up to 2 years for an indeterminate commitment.¹⁵ However, no court has explicitly stated that these time limits apply to involuntary ECT.

How Does Minnesota Compare to Other States?

- Minnesota is one of 17 states and the District of Columbia that require a court order for the administration of involuntary ECT.
- 5 states require a court order that is limited to a specific duration. These states are Connecticut (45 days), Virginia (60 days), Florida (90 days), Illinois (90 days) and South Dakota (1 year).
- 10 states allow a guardian or substitute decision maker to consent to ECT.
- 18 states have no statutory or administrative code provisions that govern ECT.
- See the attached color-coded map for more details.

¹¹ See MINN. STAT. § 253B.07 subdiv. 1(c)(1).

¹² MINN. STAT. § 524.5-313(c)(4)(ii) (West 2009).

¹³ 375 N.W.2d at 532.

¹⁴ See, e.g., *In re Lambert*, 437 N.W.2d 106, 108 (Minn. Ct. App. 1989); *In re Witthans*, No. CX-94-1280, 1994 WL 523778, at *3 (Minn. Ct. App., Sept. 27, 1994).

¹⁵ MINN. STAT. § 253B.092 subdiv. 8(g)