BACKGROUND

Despite demonstration of electroconvulsive therapy (ECT) as a highly efficacious treatment, particularly for severe or refractory mental illness, medico-legal challenges related to informed consent for the procedure in patients who may not have capacity to give consent result its underutilization. For a patient that is nonvoluntary, most states require court approval to be obtained, after which a legally appointed guardian may provide consent for treatment. The variability between state regulations is marked with regards to provisions in the setting of an emergency, restrictions for special populations, and whether it is permissible for a patient admitted to the hospital involuntarily. The bulk of the regulatory framework for ECT is without basis in the scientific or medical literature and in many cases is not in alignment with the American Psychiatric Association recommendations. The literature abounds with reports of poor patient outcomes including deaths due to these legal obstacles to ECT.

It is also worth acknowledging that these statutes contribute to discrimination, wherein individuals with limited support structures or from historically medically mistreated populations are far less likely to obtain ECT. Middle and upper socioeconomic groups are disproportionately able to navigate these legal barriers. African American, Latino, Asian, Native American, and Native Hawaiian patients are significantly less likely to receive ECT than Caucasian patients across all spectrums of diagnosis, age, and treatment settings.

Per Lucarelli et al, Caucasian patients are overrepresented among ECT recipients:

CASE #1

- 42-year-old Southeast Asian woman
- Catatonic presentation (Bush-Francis Score 23)
- Elevated creatine kinase, autonomic instability, immobile, poor oral intake
- Refractory to first-line treatment of catatonia including high doses of L-mecainate, Memantine, and Zolpidem
- Developed a malignanant form of catatonia, for which mortality rate is very high
- CL team recommended ECT as standard of care
- Given the patient’s rate of decline, the codified means of acquiring consent for a nonvoluntary patient through Arkansas statute would not result in treatment being received in a necessary time frame
- The team drew upon the Emergency Medical Treatment Act → This allowed for expedited first ECT treatment with the consent of the patient’s husband
- ECT changed the patient’s clinical course and she stabilized to a point of appropriateness for transfer to the inpatient psychiatric unit, and to discharge from the hospital on day 22 with resolution of catatonia
- The only adverse effect incurred by patient was transient difficulty with short-term memory

CASE #2

- 66-year-old Caucasian woman
- Catatonic presentation in the setting of worsening major depressive episode
- Rapid cognitive and physical decline with poor oral intake
- Loss of more than 50 pounds to 72 pounds
- Mirtazapine was initiated given historical positive response
- Benzodiazepine treatment initially impactful though less effective with time and not tolerated to necessary doses
- Patient was evaluated not to have capacity with regards to ECT and sister was identified as her surrogate decision maker
- Drawing upon the above articulated pathway, the Emergency Medical Treatment Act was utilized thus circumventing the court process
- Patient was able to receive ECT on hospital day 3 with approval of her surrogate decision maker
- On hospital day 9, ECT had restored patient’s decision-making capacity; she agreed to continue with ECT

DISCUSSION

It is hoped this above pathway may be replicated by other physicians to avoid delays in access to what could be life-saving and functionality-preserving care to patients. These cases also serve as a means of raising awareness for the unique legal barriers to ECT which stand in stark contrast to other medical treatments with regards to lack of uniformity across states and misalignment between the degree of access restriction and risk-benefit ratio of the treatment.

Per Wilkinson et al, ECT utilization rates have been demonstrated to be directly correlated with stringency of state statutes:

REFERENCES


