

1995—No. 485

GUARDIANSHIP ACT 1987—REGULATION

(Guardianship Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Guardianship Act 1987, has been pleased to make the Regulation set forth hereunder.

RONALD DAVID DYER, M.L.C.,
Minister for Disability Services.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Guardianship Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. (1) In this Regulation:

“**drug of addiction**” means a substance that is specified in Schedule 8 to the Poisons List (proclaimed under the Poisons Act 1966) as in force for the time being;

“**restricted substance**” means a substance that is specified in Schedule 4 to the Poisons List (proclaimed under the Poisons Act 1966) as in force for the time being;

“**simple sedation**” means a technique in which the use of a drug or drugs produces a state of depression of the central nervous system enabling treatment to be carried out, and in which:

- (a) verbal contact with the patient is maintained throughout the period of sedation; and
- (b) the drugs and techniques used have a margin of safety wide enough to render unintended loss of consciousness unlikely;

“the Act” means the Guardianship Act 1987.

(2) Notes included in this Regulation are explanatory notes and do not form part of this Regulation.

Repeal and savings

4. (1) The Guardianship Regulation 1989 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Guardianship Regulation 1989 had effect under that Regulation, continues to have effect under this Regulation.

PART 2—MEDICAL AND DENTAL TREATMENT

Special medical treatment

5. The following medical treatment is declared to be special treatment for the purposes of Part 5 of the Act:

Any treatment that involves the administration of a drug of addiction (other than in association with the treatment of cancer or palliative care of a terminally ill patient) over a period or periods totalling more than 10 days in any period of 30 days.

Any treatment that is carried out for the purpose of terminating pregnancy.

Any treatment in the nature of a vasectomy or tubal occlusion.

Any treatment that involves the use of an aversive stimulus, whether mechanical, chemical, physical or otherwise.

Experimental special medical treatment to which Board may consent

6. The following medical treatment is prescribed special treatment for the purposes of section 45 (3) (b) of the Act:

Any special treatment that involves the administration to a patient of one or more restricted substances for the purpose of affecting the central nervous system of the patient, but only if the dosage levels, combinations or the numbers of restricted substances used or the duration of the treatment are outside the accepted mode of treatment for such a patient.

Any special treatment that involves the use of androgen reducing medication for the purpose of behavioural control.

Major medical treatment

7. The following medical treatment (not including any special treatment) is declared to be major treatment for the purposes of Part 5 of the Act:

Any treatment that involves the administration of a long-acting injectable hormonal substance for the purpose of contraception or menstrual regulation.

Note: An example of such a substance is medroxyprogesterone acetate, in suspension, commonly known as Depo-Provera.

Any treatment that involves the administration of a drug of addiction.

Any treatment that involves the administration of a general anaesthetic or other sedation, but not treatment involving:

- (a) sedation used to facilitate the management of fractured or dislocated limbs; or
- (b) sedation used to facilitate the insertion of an endoscope into a patient's body for diagnostic purposes unless the endoscope is inserted through a breach or incision in the skin or a mucous membrane.

Any treatment used for the purpose of eliminating menstruation.

Any treatment that involves the administration of a restricted substance for the purpose of affecting the central nervous system, but not a treatment:

- (a) involving a substance that is intended to be used for analgesic, antipyretic, antiparkinsonian, anticonvulsant, antiemetic, antinauseant or antihistaminic purposes; or
- (b) that is to be given only once; or
- (c) that is a PRN treatment (that is, given when required, according to the patient's needs) that may be given not more than 3 times a month; or
- (d) given for sedation in minor medical procedures.

Any treatment that involves a substantial risk to the patient (that is, a risk that amounts to more than a mere possibility) of:

- (a) death; or
- (b) brain damage; or
- (c) paralysis; or

- (d) permanent loss of function of any organ or limb; or
- (e) permanent and disfiguring scarring; or
- (f) exacerbation of the condition being treated; or
- (g) an unusually prolonged period of recovery; or
- (h) a detrimental change of personality; or
- (i) a high level of pain or stress.

Any treatment involving testing for the human immuno-deficient virus (HIV).

Major dental treatment

8. The following dental treatment is declared to be major treatment for the purposes of Part 5 of the Act:

Any treatment involving the administration of a general anaesthetic or simple sedation.

Any treatment intended, or likely, to result in the removal of all teeth.

Any treatment likely to result in the patient's ability to chew food being significantly impaired for an indefinite or prolonged period.

Requests for consent to the carrying out of medical or dental treatment

9. (1) A request under section 40 of the Act for consent to the carrying out of minor medical treatment or dental treatment is to be made in writing. However, the request may be made orally if:

- (a) it is not practicable to make the request in writing; or
- (b) the person whose consent is sought does not require it to be made in writing.

(2) A request under section 40 of the Act for consent to the carrying out of major medical treatment is to be made in writing. However, the request may be made orally if it is not practicable to make the request in writing because of the need to provide the treatment quickly.

(3) A person who requests a consent referred to in this clause must give written confirmation of the request to the person whose consent is sought if the request was made orally and:

- (a) sought consent to major treatment; or
- (b) the person whose consent is sought requires the written confirmation.

Consents to the carrying out of medical or dental treatment

10 (1) A consent under section 40 of the Act to the carrying out of minor medical treatment or dental treatment is to be given in writing. However, the consent may be made orally if:

- (a) it is not practicable to give the consent in writing; or
- (b) the person by whom the treatment is to be carried out does not require it to be given in writing.

(2) A consent under section 40 of the Act to the carrying out of major medical treatment is to be given in writing. However, the consent may be given orally if it is not practicable to do so in writing because of the need to provide the treatment quickly.

(3) A person who gives a consent referred to in this clause must give written confirmation of the consent to the person whose consent is sought if the consent was given orally and:

- (a) consented to major treatment; or
- (b) the person who requested consent requires the written confirmation.

Clinical records

11. (1) A person by whom medical or dental treatment is carried out pursuant to a consent given under Part 5 of the Act is to keep a written record of:

- (a) the name and address of the person by whom the consent was given; and
- (b) the date on which the consent was given; and
- (c) the conditions (if any) on which the consent was given; and
- (d) the nature of the treatment carried out,

and if the consent was given in writing, is to keep a copy of the consent together with the written record.

(2) A person by whom such a record is kept must allow the record, and any copy of consent kept with the record, to be inspected at any reasonable time by an authorised officer.

(3) Nothing in this clause requires a person to retain a record of any medical or dental treatment carried out by the person for a period of more than 7 years after the date on which the treatment is carried out.

PART 3—MISCELLANEOUS

Service of notices and other instruments

12. (1) For the purposes of section 98 (1) (c) of the Act, a notice or other instrument may be published in a daily newspaper circulating generally throughout the Sydney Metropolitan Area.

(2) For the purposes of section 98 (2) (b) of the Act, a notice or other instrument published in accordance with this clause is to be taken to have been served at the end of 7 days after it was published.

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PART 3—MISCELLANEOUS

12. Service of notices and other instruments

EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, without any changes in substance, the provisions of the Guardianship Regulation 1989.

The Regulation makes provision for general matters under the Guardianship Act 1987. In particular, it:

- declares certain treatment to be medical treatment, and certain other treatment to be dental treatment, for the purposes of Part 5 of the Act

- declares certain medical treatment to be special medical treatment, and certain other medical treatment to be major medical treatment, for the purposes of Part 5 of the Act
- provides for the keeping of clinical records in relation to the carrying out of such treatment.

The Regulation is made under the Guardianship Act 1987, in particular sections 33 (1), 40 (4), 45 (3), 98 (1) (c), 98 (2) (b) and 108 (1) (h) and (i).

The Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
