

By Ms. Graham of Cambridge, petition of Saundra Graham and other members of the House for legislation to establish a psychosurgery review board for the purpose of controlling the use of psychosurgery. Health Care.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Seventy-Eight.

AN ACT TO CONTROL THE USE OF PSYCHOSURGERY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 17 of Chapter 6 of the Massachusetts  
2 General Laws shall be amended by inserting in the first paragraph  
3 after the words "Massachusetts Commission for the Blind" the  
4 following:  
5 and the Psychosurgery Review Board

1 SECTION 2. Chapter 6 of the Massachusetts General Laws  
2 shall be amended by adding after section 183 the following section:  
3 *Section 184. Psychosurgery Review Board*

4 (a) There shall be a Psychosurgery Review Board, hereafter  
5 referred to as the Board, the members of which shall be appointed  
6 by the Governor.

7 (b) The term of office of each member shall be four years.

8 (c) No member may serve for more than a total of eight years in  
9 all.

10 (d) The Board shall comprise seven members and shall consist  
11 of:

12 1. a member of the Massachusetts Bar of not less than ten years  
13 standing, who shall be Chairman;

14 2. a neurosurgeon, nominated by the American College of  
15 Surgeons;

16 3. a nuerologist, or neuroscientist, nominated by the  
17 Massachusetts Medical Society;

18 4. a clinical psychologist, nominated by the Massachusetts  
19 Psychological Association;

20 5. a member of the general public, nominated by the Civil  
21 Liberties Union of Massachusetts, or such other body, as the  
22 Governor shall appoint for that purpose.

23 6. a psychiatrist, nominated by the Massachusetts Psychiatric  
24 Association

25 7. a minister of religion

26 (e) Each person or body nominating a prospective member of  
27 the Board shall at the time also nominate an alternate member to  
28 attend any meeting of the Board when the principal nominee shall  
29 be unavailable.

30 (f) A quorum for any such meeting shall be constituted by six  
31 members of the Board.

32 (g) Decisions of the Board shall be made by the majority vote of  
33 not less than five members of the Board.

34 (h) No member of the Board shall be directly engaged in  
35 practicing psychosurgery.

36 (i) Notwithstanding the terms of office specified in paragraph (b)  
37 of this section, at the time of the initial appointment of the Board  
38 three of the members and their alternates shall be appointed for a  
39 period of four years, two members and their alternates for a period  
40 of three years, and the remaining two members and their alternates  
41 for a period of five years.

1 SECTION 3. The General Laws are hereby amended by  
2 inserting after Chapter 123A the following Chapter:

3 *Chapter 123B.*

4 *Section 1. Definitions:*

5 (a) "Psychosurgery" means:

6 1. the creation of one or more lesions, whether made on the same  
7 or separate occasions, in the brain of a person by any surgical  
8 technique or any procedure, when it is done primarily for the  
9 purpose of altering the thoughts, emotions or behavior of that  
10 person, or

11 2. the use for such a purpose of intracerebral electrodes to  
12 produce such a lesion or lesions whether on the same or separate  
13 occasions, or

14 3. the use on one or more occasions of intracerebral electrodes  
15 primarily for the purpose of influencing or altering the thoughts,

16 emotions or behavior of a person by stimulation through the  
17 electrodes without the production of a lesion in the brain of that  
18 person.

19 (b) "Behavior", for the purpose of this section,

20 1. does not include grand mal, petit mal or Jacksonian epilepsy.

21 2. does not include complex apparently automatic behavior  
22 whether presumed to be secondary to cerebral dysrhythmia or not.

23 (c) "Experiment" means: a technique or procedure about which  
24 there is not sufficient data to recommend it as a recognized  
25 treatment or to predict accurately the outcome of its performance,  
26 and "Experimental" has a corresponding meaning.

27 (d) "Patient" means: for the purpose of this section any person  
28 upon whom psychosurgery is intended to be performed.

29 (e) "Mentally ill person" means: a person who owing to mental  
30 illness requires care, treatment or control for his own good or in the  
31 public interest, and is for the time being incapable of managing  
32 himself or his affairs and "mentally ill" has a corresponding  
33 meaning.

34 (f) "Informed consent" means: free and voluntary consent by a  
35 person to the performance upon him of psychosurgery, after:

36 1. a fair explanation has been made to him of the procedures to  
37 be followed, including an identification and explanation of those  
38 which are experimental;

39 2. a full description has been given to him of the attendant  
40 discomforts and risks, if any;

41 3. a full description has been given to him of the benefits, if any,  
42 to be expected;

43 4. a full disclosure has been made to him of appropriate  
44 alternative treatments, if any, that would be advantageous for him;

45 5. an offer has been made to answer any inquiries concerning the  
46 procedures or any part of them;

47 6. notice has been given to him that he is free to refuse or to  
48 withdraw his consent and to discontinue the procedures or any of  
49 them at any time;

50 7. full disclosure has been made to him of any financial  
51 relationship between him and the medical practitioner, institution  
52 or hospital to whom consent is to be given for psychosurgery;

53 8. notice has been given to him that he has the right to legal  
54 advise and representation at any time during considerations  
55 relating to the performance of psychosurgery upon him.

56 *Section 2.* The following classes of persons shall be presumed to  
57 be incapable of giving free and voluntary consent to the  
58 performance upon them of psychosurgery;

59 1. a person under the age of eighteen years;

60 2. a person convicted of any crime and under sentence in respect  
61 thereof, whether in custody or not and whether the sentence has  
62 been suspended or not;

63 3. a person awaiting trial on a criminal charge, whether such  
64 person is in custody or not;

65 4. a person convicted of crime, who is on probation or parole;

66 5. a person convicted of crime who has escaped from lawful  
67 custody;

68 6. any person subject to the Governor's pleasure in respect of his  
69 liberty;

70 7. a person released on recognizance in respect of a criminal  
71 charge, whether or not he has been found guilty in respect of that  
72 charge, during the period of recognizance;

73 8. a person under arrest in respect of a criminal charge;

74 9. any person under involuntary commitment to a mental  
75 institution.

76 *Section 3.*

77 (a) Psychosurgery shall not be performed on any person who:

78 1. refuses to have such psychosurgery performed upon him, or

79 2. is deemed to refuse to have such psychosurgery performed  
80 upon him.

81 (b) a person shall be deemed to refuse to have psychosurgery  
82 performed upon him if he neither consents to nor refuses to have  
83 such psychosurgery performed upon him.

84 *Section 4.* Any person intending to perform or to cause to be  
85 performed psychosurgery on a patient shall:

86 (a) make application in writing to the Psychosurgery Review  
87 Board for its permission for the performance of the said  
88 psychosurgery on the said patient;

89 (b) Provide with such application information in writing as to:

90 1. the exact nature of the psychosurgery proposed to be  
91 performed;

92 2. the clinical indications for such psychosurgery;

93 3. the hospital or institution in which it is proposed that the  
94 psychosurgery be performed;

95 4. whether, in his opinion, the patient is capable of giving  
96 informed consent to the psychosurgery;

97 5. whether, in his opinion, the patient has given informed  
98 consent to the psychosurgery;

99 6. whether he is in doubt as to the giving of informed consent by  
100 the patient.

101 *Section 5.* Within ten days of its receiving the application and  
102 information referred to in Section 4, the Board shall arrange a  
103 meeting for the purpose of hearing and determining the  
104 application. Such meeting and hearing shall take place within a  
105 further twenty-one days.

106 *Section 6.*

107 (a) After such hearing and after the Board has made such  
108 inquiries and examinations as it thinks fit in relation to the said  
109 application and the said patient, the Board shall grant the said  
110 application in accordance with subsection (b) of this Section if it is  
111 satisfied that,

112 1. the patient has the capacity to give informed consent to the  
113 proposed psychosurgery; and

114 2. the patient has in fact given informed consent to the proposed  
115 psychosurgery, and

116 3. the proposed psychosurgery has clinical merit and is appro-  
117 priate for the patient, and

118 4. the person or persons undertaking the performance of the  
119 proposed psychosurgery are properly qualified to do so, and

120 5. the hospital or institution in which it is proposed that the  
121 psychosurgery be performed upon the patient is a proper place in  
122 which to perform it, and

123 6. that all persons reasonably entitled to receive notice of the  
124 hearing have in fact received such notice.

125 (b) the Board shall grant permission in writing to the applicant  
126 for the performance of the proposed psychosurgery, specifying the  
127 name of the medical practitioner or practitioners to perform the  
128 said psychosurgery, the nature of the psychosurgery to be  
129 performed, and the hospital or institution in which it is to be  
130 performed and the period during which it must be completed.

131 (c) Permission granted under subsections (a) and (b) of this  
132 Section shall become null and void at the expiration of the period  
133 specified by the Board unless the Board otherwise determines at a  
134 further hearing held for that purpose.

135 *Section 7.* If the Board after such hearing and after making  
136 such inquiries and examinations as it thinks fit, in relation to the  
137 said application and the said patient, is satisfied that the patient  
138 has not given and still does not give informed consent, the Board  
139 shall refuse the application and state in writing its reasons for so  
140 doing.

141 *Section 8.* If the Board, after such hearing and after making  
142 such inquiries and examinations as it thinks fit, in relation to the  
143 said application and the said patient, is not satisfied as to any or all  
144 of the matters set out in Sections 6 (3), (4), (5), or (6) of this Act, the  
145 Board shall refuse the application and state in writing its reasons  
146 for so doing.

147 *Section 9.* If the Board, after such hearing and after making  
148 such inquiries and examinations as it thinks fit, in relation to the  
149 said application and the said patient, is satisfied that the  
150 requirements of Section 6 (3), (4), (5), (6) and (7) have been made  
151 out, but that:

152 (a) 1. the patient has no capacity to consent to the proposed  
153 psychosurgery by reasons of the application to him of any of the  
154 subsections of Section 1(f) hereof, or

155 2. there is substantial doubt as to the patient having given  
156 informed consent, for any reason,  
157 the Board shall then refer the application to a Justice of the  
158 Superior Court.

159 (b) the Justice to whom the application is so referred shall  
160 conduct a hearing to determine, and shall determine,

161 1. whether the patient has the capacity to give informed consent;  
162 and

163 2. whether the patient has in fact given informed consent;  
164 and

165 3. whether, in circumstances where he finds that the patient has  
166 no capacity for the giving of informed consent, a guardian should  
167 be appointed to consent on the patient's behalf.

168 (c) In determining the questions referred to subsection (b) (3) of  
169 this section, the guardian shall make such inquiries as he thinks fit  
170 and in determining the question as to whether he should consent on  
171 the patient's behalf, the guardian shall not so consent unless he is  
172 satisfied that he has before him all information necessary for the  
173 formation of an informed consent within the meaning of Section 1  
174 (f) of this Act.

175 (d) If the Justice finds that the patient has the capacity to give  
176 informed consent but has not and does not give informed consent,  
177 then the Justice shall forthwith make an order refusing the  
178 application.

179 (e) If the Justice finds that the patient has no capacity to give  
180 informed consent and if the Justice appoints a guardian, who  
181 declines to give consent on the patient's behalf, then the Justice  
182 shall forthwith make an order refusing the application.

183 (f) If the Justice finds that the patient has capacity to give  
184 informed consent, and has given and still gives such informed  
185 consent, then the Justice shall remit the application to the Board  
186 for the purpose of its granting the application.

187 (g) If the Justice finds that the patient has no capacity to give  
188 informed consent, he shall appoint a guardian for the purpose of  
189 giving consent. If the guardian does not give informed consent, the  
190 Justice shall remit the application to the Board for the purpose of it  
191 granting the application.

192 *Section 10.*

193 (a) Before any hearing before the Board or a Justice takes place  
194 under any of the provisions of this Act, the patient, the person  
195 making the application, and the patient's next of kin, if any shall  
196 receive five clear days notice of such a hearing and shall be entitled  
197 to attend and be heard at such hearing.

198 (b) The patient may be represented by counsel at any hearing.

199 *Section 11.* A copy of the order granting or refusing the  
200 application shall be served personally or by registered mail within  
201 seven days of the making of the order on the patient, his legal  
202 representative, if any, and the person making the application.

203 *Section 12.* After completion of psychosurgery, the person  
204 performing the same shall make a written report as to the  
205 operation and its results to the Board.

206 *Section 13.* The Board shall take all reasonable steps to ensure  
207 that appropriate continuing observations are made in respect of  
208 each patient with a view to monitoring the effects of psy-  
209 chosurgery. The Board may make such provisions for the making  
210 of such observations and the recording or otherwise dealing with  
211 such information as the Board shall see fit.

212 *Section 14.* No person shall perform, cause to be performed or  
213 knowingly permit to be performed psychosurgery on any patient  
214 without complying with the requirements of this Act.

215 *Section 15.* The following penalties shall be imposed against  
216 any person performing psychosurgery or causing psychosurgery to  
217 be performed contrary to the requirements of this Act.

218 (a) first violation will result in

219 1. suspension of medical license, or

220 2. fine of not more than \$5,000 or

221 3. up to 1 year in prison, or

222 4. any combination of the above.

223 (b) Second violation will result in

224 1. revocation of medical license, or

225 2. fine of not more than \$15,000 or

226 3. up to 5 years in prison, or

227 4. any combination of the above.