

HOUSE No. 3219

By Mr. Minahan of Wakefield, petition of Alfred A. Minahan, Jr., for legislation to prohibit hospitals from giving shock treatments or psychosurgery without first receiving voluntary consent from patients. Health Care.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-One.

AN ACT CONCERNING INFORMED CONSENT FOR CERTAIN TREATMENTS.

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. Chapter 123 of the General Laws, as most recent-
2 ly amended by Chapter 291 of the Acts of 1974, is hereby amended
3 by adding after Section 23 the following section:

4 *Section 23A.* Informed consent.

5 a. No person receiving treatment at any mental health facility or
6 in any general hospital, whether public or private, or any private
7 office, shall receive shock treatment or psychosurgery without first
8 having given voluntary informed consent.

9 b. To constitute voluntary informed consent, the following in-
10 formation shall be given to the patient in a clear and explicit
11 manner:

12 1. The reason for treatment, that is, the nature and seriousness
13 of the patient's illness, disorder or defect.

14 2. The nature of the procedures to be used in the proposed
15 treatment, including its probable frequency and duration.

16 3. The probable degree and duration (temporary or permanent)
17 of improvement or remission, expected with or without such treat-
18 ment.

19 4. The nature, degree, duration, and the probability of the side
20 effects and significant risks, commonly known by the medical
21 profession, of such treatment, including its adjuvants, especially
22 noting the degree and duration of memory loss (including its
23 irreversibility) and how and to what extent they may be controlled,
24 if at all.

25 5. That there exists a division of opinion as to the efficacy of the
26 proposed treatment, why and how it works and its commonly
27 known risks and side effects.

28 6. The reasonable alternative treatments, and why the physician
29 is recommending this particular treatment.

30 7. That the patient has the right to accept or refuse the proposed
31 treatment, and that if he or she consents, has the right to revoke his
32 or her consent for any reason, at any time prior to or between
33 treatments.

34 c. The department of mental health shall promulgate a standard
35 written consent form, setting forth clearly and in detail the matters
36 listed in paragraph b, and such further information with respect to
37 each item as deemed generally appropriate to all patients. The
38 treating physician shall utilize the standard written consent form
39 and in writing supplement it with those details which pertain to the
40 particular patient being treated.

41 d. The treating physician shall then present to the patient the
42 supplemented form and orally, clearly, and in detail explain all of
43 the above information to the patient. The treating physician shall
44 then administer the execution by the patient of the total supple-
45 mented written consent form, which shall be dated and witnessed.

46 e. The fact of the execution of such written consent form and of
47 the oral explanation shall be entered into the patient's treatment
48 record, as shall be a copy of the consent form itself. Should entry of
49 such latter information into the patient's treatment record be
50 deemed by any court an unlawful invasion of privacy, then such
51 consent form shall be maintained in a confidential manner and
52 place.

53 f. The consent form shall be available to the person, and to his
54 or her attorney, guardian, and conservator and, if the patient
55 consents, to a responsible relative of the patient's choosing.

56 g. For purposes of this chapter, "written informed consent"
57 means that a person knowingly and intelligently, without duress or
58 coercion, clearly and explicitly manifests consent to the proposed
59 therapy to the treating physician and in writing on the standard
60 consent form prescribed in paragraph c of this section.

61 h. The physician may urge the proposed treatment as the best
62 one, but may not use, in an effort to gain consent, any reward or
63 threat, express or implied, nor any other form of inducement or
64 coercion, including, but not limited to, placing the patient in a
65 more restricted setting, transfer of the patient to another facility, or
66 loss of the patient's hospital privileges. Nothing in this paragraph
67 shall be construed as in conflict with paragraph b. No one shall be
68 denied any benefits for refusing treatment.

69 i. Such informed consent, either by the person or his or her
70 guardian, shall be for a specified maximum period of time not to
71 exceed 30 days, and shall be revocable at any time before or
72 between treatments. Such withdrawal of consent may be either oral
73 or written and shall be given effect immediately. Additional treat-
74 ments in number or time, not to exceed 30 days, shall require a
75 renewed written informed consent.

76 j. If a superior court determines, after a hearing, that the patient
77 does not have the capacity to give written informed consent, then
78 treatment may be performed upon gaining the written informed
79 consent as defined in paragraphs (b) and (g) from the responsible
80 guardian of the patient.

