

By Mr. Casey of Winchester, petition of Paul C. Casey and Colleen M. Garry relative to consent to blood testing solely for medical purposes. Health Care.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

AN ACT RELATIVE TO CONSENT TO BLOOD TESTING SOLELY FOR MEDICAL PURPOSES.

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

1 Chapter 111 of the General Laws, as appearing in the 2000
2 Official Edition, is hereby amended by striking out section 70F
3 and inserting in place thereof the following section:—

4 Section 70F. (a) As used in this section, the following words
5 shall have the following meanings:—

6 “physical injury” shall mean such injury that involves a rup-
7 ture, laceration or abrasion of the outermost layer of skin or any
8 mucous membrane.

9 “splash exposure” shall mean direct contact of any layer of skin
10 or any mucous membrane with any bodily fluid of another person.

11 “written informed consent” shall mean a written consent form
12 for each requested release of the results of an individual’s HTLV-
13 III antibody or antigen test, or for the release of medical records
14 containing such information. Such written consent form shall state
15 the purpose for which the information is being requested and shall
16 be distinguished from written consent for the release of any other
17 medical information, and for the purpose of this section “HTLV-
18 III test” shall mean a licensed screening antibody test for the
19 human T-cell lymphotropic virus type III.

20 (b) Except as otherwise provided under subsection (c), no
21 health care facility, as defined in section 70E, and no health care
22 provider shall (1) test any person for the presence of the HTLV-III
23 antibody or antigen without first obtaining his written informed

24 consent; (2) disclose the results of such test to any person other
25 than the subject thereof without first obtaining the subject's
26 written informed consent; or (3) identify the subject of such tests
27 to any person without first obtaining the subject's written
28 informed consent.

29 Written informed consent may be given, in accordance with the
30 provisions of chapter 201B, by an attorney in fact acting on behalf
31 of the patient in accordance with a durable power of attorney, as
32 defined under section 1 of chapter 201B, upon a determination by
33 the subject's attending physician that the subject lacks capacity to
34 make health care decisions and that such incapacity is likely to be
35 permanent or in accordance with the provisions of chapter 201D,
36 by a health care agent, as defined under section 1 of chapter 201D,
37 upon a determination, pursuant to the provisions of section 6 of
38 chapter 201D, that the subject lacks capacity to make health care
39 decisions and that such incapacity is likely to be permanent. Spe-
40 cific authority to give such consent shall not be required to be
41 expressed in the durable power of attorney or health care proxy, as
42 defined under section 1 of chapter 201D, executed by the subject
43 for such consent to be valid.

44 No employer shall require HTLV-III antibody or antigen tests
45 as a condition for employment.

46 Whoever violates the provisions of this subsection shall be
47 deemed to have violated section 2 of chapter 93A.

48 (c) Notwithstanding any provision of subsection (b) to the con-
49 trary, whenever EMS personnel, as defined in section 1 of
50 chapter 111 C, or a health care provider suffers an exposure to any
51 bodily fluid of a person receiving medical treatment from such
52 EMS provider or health care provider, or at the health care facility
53 whereat such provider is performing health care services, as a
54 result of a splash exposure or a physical injury resulting from con-
55 tact with an object, including, but not limited to, a hypodermic
56 needle, that had previously come into contact with such bodily
57 fluid, such person's attending physician or primary health care
58 provider shall test, or cause to be so tested, such person for the
59 presence of blood-borne pathogens, including, but not limited to,
60 hepatitis B virus (HBV), hepatitis C virus (HCV) and human
61 immunodeficiency virus (HIV) and shall disclose, or cause to be
62 disclosed, the results of such tests to such exposed provider or to

63 said provider's employee health physician or his designee and to
64 the person so tested, or his attending physician or primary health
65 care provider or his designee. Except as provided herein, said
66 results shall not be disclosed to any person or entity, nor shall they
67 be entered upon the medical record of, or any other permanent
68 document relating to, the person so tested, without the written
69 informed consent of said person.

70 No health care provider or health care facility shall be in viola-
71 tion of subsection (a) for performing, or causing to be performed,
72 such test or disclosure of the results thereof to such exposed
73 health care provider or EMS personnel or to said exposed
74 provider's employee health physician or his designee or to the
75 person so tested or his attending physician or primary health care
76 provider or his designee where such testing or disclosing health
77 care provider or health care facility has received, on a form to be
78 approved by the commissioner, (i) a written request by such
79 exposed provider, or by said exposed provider's employee health
80 physician or his designee acting on said provider's behalf, that
81 such tests be performed and that the results thereof be disclosed to
82 such requesting provider or his employee health physician or his
83 designee and (ii) a written statement, signed under the pains and
84 penalties of perjury, that the requesting health care provider or
85 EMS provider suffered an exposure to a bodily fluid of a person
86 receiving medical treatment from such EMS provider or health
87 care provider, or at the health care facility whereas such provider
88 was performing health care services, as a result of a splash expo-
89 sure or a physical injury that resulted from contact with an object
90 that had previously come into contact with such bodily fluid of the
91 person to be tested and that such person to be tested was, at the
92 time of either of such instances of contact, receiving medical
93 treatment from the requesting health care provider or EMS
94 provider or, to the best of the requesting provider's knowledge,
95 was receiving medical treatment at the health care facility whereat
96 the requesting provider was performing health care services at the
97 time of either of such instances of contact.

