



General Assembly

Substitute Bill No. 5298

January Session, 2013



AN ACT CONCERNING ELECTROCONVULSIVE THERAPY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 17a-543 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2013*):

4 (c) (1) No psychosurgery or [shock] electroconvulsive therapy shall
5 be administered to any patient without the patient's written informed
6 consent, except as provided in this subsection. Such consent shall be
7 for a maximum period of thirty days and may be revoked at any time.
8 If it is determined by the head of the hospital and two qualified
9 physicians that the patient has become incapable of giving informed
10 consent, [shock] electroconvulsive therapy may be administered upon
11 order of the Probate Court if, after hearing in accordance with this
12 section, such court finds that the patient is incapable of informed
13 consent and there is no other, less intrusive beneficial treatment. An
14 order of the Probate Court authorizing the administration of [shock]
15 electroconvulsive therapy pursuant to this subsection shall be effective
16 for not more than forty-five days.

17 (2) Upon an application for the administration of electroconvulsive
18 therapy being filed in the Probate Court, such court shall assign a time,
19 not later than ten business days thereafter, and a place for hearing such

20 application, and shall cause reasonable notice thereof to be given to the
21 respondent and to such relative or relatives and other persons as it
22 deems advisable. Such notice shall inform such respondent (A) that he
23 or she has a right to be present at the hearing; (B) that he or she has a
24 right to counsel; (C) that he or she, if indigent, has a right to have
25 counsel appointed to represent him or her; and (D) that he or she has a
26 right to cross-examine witnesses testifying at any hearing upon such
27 application.

28 (3) If the court finds such respondent is indigent or otherwise
29 unable to pay for counsel, the court shall appoint counsel for such
30 respondent, unless such respondent refuses counsel and the court
31 finds that the respondent understands the nature of his or her refusal.
32 The court shall provide such respondent a reasonable opportunity to
33 select his or her own counsel to be appointed by the court. If the
34 respondent does not select counsel or if counsel selected by the
35 respondent refuses to represent such respondent or is not available for
36 such representation, the court shall appoint counsel for the respondent
37 from a panel of attorneys admitted to practice in this state provided by
38 the Probate Court Administrator in accordance with regulations
39 promulgated by the Probate Court Administrator in accordance with
40 section 45a-77. The reasonable compensation of appointed counsel
41 shall be established by, and paid from funds appropriated to, the
42 Judicial Department; however, if funds have not been included in the
43 budget of the Judicial Department for such purposes, such
44 compensation shall be established by the Probate Court Administrator
45 and paid from the Probate Court Administration Fund. Prior to such
46 hearing, such respondent or his or her counsel, in accordance with the
47 provisions of sections 52-146d to 52-146i, inclusive, shall be afforded
48 access to all records including, without limitation, hospital records if
49 such respondent is hospitalized, and shall be entitled to take notes
50 therefrom. If such respondent is hospitalized at the time of the hearing,
51 the hospital shall make available at such hearing for use by such
52 respondent or his or her counsel all records in its possession relating to
53 the condition of the respondent. Notwithstanding the provisions of

54 sections 52-146d to 52-146i, inclusive, all such hospital records directly
55 relating to such respondent shall be admissible at the request of any
56 party or the Court of Probate in any proceeding relating to the
57 administration of electroconvulsive therapy. Nothing in this subsection
58 shall prevent timely objection to the admissibility of evidence in
59 accordance with the rules of civil procedure.

60 (4) The court shall require the certificates, signed under penalty of
61 false statement, of at least two impartial physicians selected by the
62 court, one of whom shall be a practicing psychiatrist, both of whom
63 shall be licensed to practice medicine in the state and shall have been
64 practitioners of medicine at least one year and shall not be connected
65 with the hospital for psychiatric disabilities from which the application
66 is being made, or related by blood or marriage to the applicant, or to
67 the respondent. Such certificates shall indicate that they have
68 personally examined such respondent within ten days before such
69 hearing. The court shall appoint such physicians from a list of
70 physicians and psychiatrists provided by the Commissioner of Mental
71 Health and Addiction Services and such appointments shall be made
72 in accordance with regulations promulgated by the Probate Court
73 Administrator in accordance with section 45a-77. Each such physician
74 shall make a report on a separate form provided for that purpose by
75 the Department of Mental Health and Addiction Services and shall
76 answer such questions as may be set forth on such form as fully and
77 completely as reasonably possible. Such form shall include, but not be
78 limited to, questions relating to the specific psychiatric disabilities
79 alleged, whether or not the respondent is dangerous to himself or
80 herself or others, whether or not such illness has resulted or will result
81 in serious disruption of the respondent's mental and behavioral
82 functioning, whether or not less intrusive treatment is recommended
83 and available and whether or not the respondent is incapable of
84 understanding the need to accept the recommended electroconvulsive
85 therapy on a voluntary basis. Any such physician shall state upon the
86 form the reasons for his or her opinions. Such respondent or his or her
87 counsel shall have the right to present evidence and cross-examine

88 witnesses who testify at any hearing on the application. If such
89 respondent notifies the court not less than three days before the
90 hearing that he or she wishes to cross-examine the examining
91 physicians, the court shall order such physicians to appear. The court
92 shall cause a recording of the testimony of such hearing to be made, to
93 be transcribed only in the event of an appeal from the decree rendered
94 hereunder. A copy of such transcript shall be furnished without charge
95 to any appellant whom the Court of Probate finds unable to pay for the
96 same. The cost of such transcript shall be paid from funds
97 appropriated to the Judicial Department. If, on such hearing, the court
98 finds by clear and convincing evidence that the person complained of
99 is incapable of giving informed consent and there is no other, less
100 intrusive beneficial treatment, it shall make an order for the
101 administration of electroconvulsive therapy. Notice of any action taken
102 by the court shall be given to the respondent and his or her attorney, if
103 any, in such manner as the court concludes would be appropriate
104 under the circumstances.

105 (5) The respondent shall be present at any hearing for the
106 administration of electroconvulsive therapy to him or her under this
107 section. If the respondent is medicated at that time, the court shall be
108 notified by the hospital in writing of such fact and of the common
109 effects of such medication.

110 Sec. 2. Subdivision (11) of section 17a-540 of the general statutes is
111 repealed and the following is substituted in lieu thereof (*Effective July*
112 *1, 2013*):

113 (11) ["Shock therapy"] "Electroconvulsive therapy" means a form of
114 psychiatric treatment in which electric current [, insulin, carbon
115 dioxide or indoklon, or other similar agent,] is administered to the
116 patient and results in a loss of consciousness or a convulsive or
117 comatose reaction;

118 Sec. 3. Section 19a-575a of the general statutes is repealed and the
119 following is substituted in lieu thereof (*Effective July 1, 2013*):

120 (a) Any person eighteen years of age or older may execute a
121 document that contains health care instructions, the appointment of a
122 health care representative, the designation of a conservator of the
123 person for future incapacity and a document of anatomical gift. Any
124 such document shall be signed and dated by the maker with at least
125 two witnesses and may be in the substantially following form:

126 THESE ARE MY HEALTH CARE INSTRUCTIONS.
127 MY APPOINTMENT OF A HEALTH CARE REPRESENTATIVE,
128 THE DESIGNATION OF MY CONSERVATOR OF THE PERSON
129 FOR MY FUTURE INCAPACITY
130 AND
131 MY DOCUMENT OF ANATOMICAL GIFT

132 To any physician who is treating me: These are my health care
133 instructions including those concerning the withholding or withdrawal
134 of life support systems, together with the appointment of my health
135 care representative, the designation of my conservator of the person
136 for future incapacity and my document of anatomical gift. As my
137 physician, you may rely on these health care instructions and any
138 decision made by my health care representative or conservator of my
139 person, if I am incapacitated to the point when I can no longer actively
140 take part in decisions for my own life, and am unable to direct my
141 physician as to my own medical care.

142 I, ..., the author of this document, request that, if my condition is
143 deemed terminal or if I am determined to be permanently
144 unconscious, I be allowed to die and not be kept alive through life
145 support systems. By terminal condition, I mean that I have an
146 incurable or irreversible medical condition which, without the
147 administration of life support systems, will, in the opinion of my
148 attending physician, result in death within a relatively short time. By
149 permanently unconscious I mean that I am in a permanent coma or
150 persistent vegetative state which is an irreversible condition in which I
151 am at no time aware of myself or the environment and show no
152 behavioral response to the environment. The life support systems

153 which I do not want include, but are not limited to: Artificial
154 respiration, cardiopulmonary resuscitation and artificial means of
155 providing nutrition and hydration. I do want sufficient pain
156 medication to maintain my physical comfort. I do not intend any direct
157 taking of my life, but only that my dying not be unreasonably
158 prolonged.

159 I appoint to be my health care representative. If my attending
160 physician determines that I am unable to understand and appreciate
161 the nature and consequences of health care decisions and unable to
162 reach and communicate an informed decision regarding treatment, my
163 health care representative is authorized to make any and all health care
164 decisions for me, including (1) the decision to accept or refuse any
165 treatment, service or procedure used to diagnose or treat my physical
166 or mental condition, except as otherwise provided by law such as for
167 psychosurgery or [shock] electroconvulsive therapy, as defined in
168 section 17a-540, as amended by this act, and (2) the decision to
169 provide, withhold or withdraw life support systems. I direct my health
170 care representative to make decisions on my behalf in accordance with
171 my wishes, as stated in this document or as otherwise known to my
172 health care representative. In the event my wishes are not clear or a
173 situation arises that I did not anticipate, my health care representative
174 may make a decision in my best interests, based upon what is known
175 of my wishes.

176 If is unwilling or unable to serve as my health care
177 representative, I appoint to be my alternative health care
178 representative.

179 If a conservator of my person should need to be appointed, I
180 designate be appointed my conservator. If is unwilling or unable
181 to serve as my conservator, I designate, No bond shall be required
182 of either of them in any jurisdiction.

183 I hereby make this anatomical gift, if medically acceptable, to take
184 effect upon my death.

185 I give: (check one)

T1 (1) any needed organs or parts

T2 (2) only the following organs or parts

186 to be donated for: (check one)

T3 (1) any of the purposes stated in subsection (a) of section 19a-289j

T4 (2) these limited purposes

187 These requests, appointments, and designations are made after
188 careful reflection, while I am of sound mind. Any party receiving a
189 duly executed copy or facsimile of this document may rely upon it
190 unless such party has received actual notice of my revocation of it.

T5 Date, 20..

T6 L.S.

191 This document was signed in our presence by the author of this
192 document, who appeared to be eighteen years of age or older, of sound
193 mind and able to understand the nature and consequences of health
194 care decisions at the time this document was signed. The author
195 appeared to be under no improper influence. We have subscribed this
196 document in the author's presence and at the author's request and in
197 the presence of each other.

T7 (Witness)

T8 (Witness)

T9 (Number and Street)

T10 (Number and Street)

T11 (City, State and Zip Code)

T12 (City, State and Zip Code)

T13 STATE OF CONNECTICUT
T14 }
T15 } ss.

T16 COUNTY OF

198 We, the subscribing witnesses, being duly sworn, say that we
199 witnessed the execution of these health care instructions, the
200 appointments of a health care representative, the designation of a
201 conservator for future incapacity and a document of anatomical gift by
202 the author of this document; that the author subscribed, published and
203 declared the same to be the author's instructions, appointments and
204 designation in our presence; that we thereafter subscribed the
205 document as witnesses in the author's presence, at the author's request,
206 and in the presence of each other; that at the time of the execution of
207 said document the author appeared to us to be eighteen years of age or
208 older, of sound mind, able to understand the nature and consequences
209 of said document, and under no improper influence, and we make this
210 affidavit at the author's request this day of 20...

T17
T18 (Witness) (Witness)

211 Subscribed and sworn to before me this day of 20..

T19
T20 Commissioner of the Superior Court
T21 Notary Public
T22 My commission expires:

212 (Print or type name of all persons signing under all signatures)

213 (b) Except as provided in section 19a-579b, an appointment of health
214 care representative may only be revoked by the declarant, in writing,
215 and the writing shall be signed by the declarant and two witnesses.

216 (c) The attending physician or other health care provider shall make
217 the revocation of an appointment of health care representative a part of
218 the declarant's medical record.

219 (d) In the absence of knowledge of the revocation of an appointment
220 of health care representative, a person who carries out an advance
221 directive pursuant to the provisions of this chapter shall not be subject
222 to civil or criminal liability or discipline for unprofessional conduct for
223 carrying out such advance directive.

224 (e) The revocation of an appointment of health care representative
225 does not, of itself, revoke the living will of the declarant.

226 Sec. 4. Section 19a-577 of the general statutes is repealed and the
227 following is substituted in lieu thereof (*Effective July 1, 2013*):

228 Any person eighteen years of age or older may execute a document
229 that may, but need not be, in substantially the following form:

230 DOCUMENT CONCERNING THE APPOINTMENT
231 OF HEALTH CARE REPRESENTATIVE

232 "I understand that, as a competent adult, I have the right to make
233 decisions about my health care. There may come a time when I am
234 unable, due to incapacity, to make my own health care decisions. In
235 these circumstances, those caring for me will need direction and will
236 turn to someone who knows my values and health care wishes. By
237 signing this appointment of health care representative, I appoint a
238 health care representative with legal authority to make health care
239 decisions on my behalf in such case or at such time.

240 I appoint ... (Name) to be my health care representative. If my
241 attending physician determines that I am unable to understand and
242 appreciate the nature and consequences of health care decisions and to
243 reach and communicate an informed decision regarding treatment, my
244 health care representative is authorized to (1) accept or refuse any
245 treatment, service or procedure used to diagnose or treat my physical
246 or mental condition, except as otherwise provided by law, such as for
247 psychosurgery or [shock] electroconvulsive therapy, as defined in
248 section 17a-540, as amended by this act, and (2) make the decision to
249 provide, withhold or withdraw life support systems. I direct my health

250 care representative to make decisions on my behalf in accordance with
251 my wishes as stated in a living will, or as otherwise known to my
252 health care representative. In the event my wishes are not clear or a
253 situation arises that I did not anticipate, my health care representative
254 may make a decision in my best interests, based upon what is known
255 of my wishes.

256 If this person is unwilling or unable to serve as my health care
257 representative, I appoint (Name) to be my alternative health care
258 representative."

259 "This request is made, after careful reflection, while I am of sound
260 mind."

T23 (Signature)
T24 (Date)

261 This document was signed in our presence, by the above-named ...
262 (Name) who appeared to be eighteen years of age or older, of sound
263 mind and able to understand the nature and consequences of health
264 care decisions at the time the document was signed.

T25 (Witness)
T26 (Address)
T27 (Witness)
T28 (Address)

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2013	17a-543(c)
Sec. 2	July 1, 2013	17a-540(11)
Sec. 3	July 1, 2013	19a-575a
Sec. 4	July 1, 2013	19a-577

Statement of Legislative Commissioners:

In section 1(c)(2), the phrase "Said notice" was changed to "Such notice", for consistency with the drafting conventions of the general statutes; in section 1(c)(3), the phrase "for use by the patient" was changed to "for use by such respondent", the phrase "condition of the respondent" was changed to "condition of such respondent", and the phrase "relating to the patient" was changed to "relating to such respondent", for internal consistency; and in section 1(c)(4), the phrase "whether or not respondent" was changed to "whether or not the respondent", for clarity.

PH

Joint Favorable Subst. C/R

JUD