

**Testimony to New York Assembly Hearing on Electroshock
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My name is John Breeding. I am a psychologist from Austin, Texas. I testified in New York at the hearing in May on forced electroshock, and I am grateful to Assemblyman Luster for his enlightened leadership and determination to investigate electroshock practice in New York State. I am also grateful to Assemblyman Ortiz for his resolve and leadership in proposing electroshock legislation, and to all the other committee members for their concern about this issue.

Electroshock is practiced throughout the United States. Texas, where I come from, has perhaps the strongest controls of any state, including a reporting law, an emphatic demand for informed consent, and a ban on the treatment for children under 16. New York is unique, however, in that key research institutes, such as those at Columbia University and the New York Psychiatric Institute are located here, as are the electroshock industry leaders who work at those institutions. So the Assembly's acknowledgment of the need for investigation and consideration of legislative oversight and control of psychiatric electroshock practice is especially important.

As a psychologist, I have worked with a number of victims of electroshock. I have been on the advisory board of the World Association of Electroshock Survivors, an organization consisting of individuals who have undergone electroshock and who are now working to ban this procedure. I implore you to understand the significance of this group and others like it, such as the Committee for Truth in Psychiatry, based in New York City and the larger Support Coalition International. Electroshock Survivors from these groups are actively organizing to outlaw a "treatment" which their doctors declared was necessary and would help them, even—in some cases—to the point of forcing it on them against their will! As I said in my earlier testimony, if thousands of the patients receiving a standard medical procedure for a physical illness had organized themselves to ban that procedure, there would surely be a serious reevaluation of the procedure and probably a complete moratorium until a proper investigation was completed.

Electroshock and Informed Consent

Today, per Assemblyman Luster's request, I will focus on informed consent. A recent article of mine, called, "Electroshock and Informed Consent," is attached to this testimony. The article cites research that substantiates all of its points, including the following:

Electroshock causes death. Psychiatry often says 1 in 10,000. The truth is a much higher death rate; some studies show 1 in 200.

Electroshock always causes brain damage. The question is only how much.

Electroshock always causes memory loss. The question is only how much.

Electroshock does not prevent suicide.

Electroshock has no beneficial effects. (The supposed short-term benefits are in reality the immediate sign of brain damage.)

Electroshock often results in cardiovascular complications or epilepsy.

Electroshock poses extra risks for the elderly, who bear the brunt of the treatments, including higher mortality rates.

Genuine informed consent must include the seven facts cited above, and a good deal more. Regrettably, even the appearance of informed consent does not guarantee its reality. Let me briefly describe four of the many ways in which psychiatry systematically violates informed consent.

First, there is denial and minimization of harmful effects. The American Psychiatric Association 2001 Task Force Report on *The Practice of Electroconvulsive Therapy* states that "in light of the accumulated body of data dealing with structural effects of ECT, brain damage should not be included [in the ECT consent form] as a potential risk of treatment"(p. 102). This same report also states that, "a reasonable current estimate is that the rate of ECT-related mortality is 1 per 10,000 patients" (p. 59). The truth, as I said earlier, is a much higher rate. So the APA recommends that patients be misinformed about two of electroshock's most serious potential risks. This is gross deception. Psychiatry's professional organization gives no credence to the numerous human autopsies, brainwave studies, animal studies, clinical observations, and reports from electroshock subjects clearly demonstrating electroshock's brain-damaging effects. Nor does the APA offer any documentation substantiating its claim that electroshock's mortality rate is "1 per 10,000 patients."

The second way that informed consent exists only in name is that even minimal and inadequate guidelines for the administration of ECT are routinely and systematically violated. For example, a 1995 report by the Wisconsin Coalition for Advocacy thoroughly documents pervasive and systematic violations of that state's informed consent guidelines on ECT. A 1987 study by Benedict and Saks of the regulation of professional behavior regarding ECT in Massachusetts showed that "approximately 90% of ECT patients received treatment inappropriately, suggesting that the regulation of ECT administration is ineffective." Interestingly, the authors also reported that "the more familiar a psychiatrist

was with threatened or instituted lawsuits involving ECT, and the more likely a lawsuit was thought to be, the greater was his or her departure from the guidelines." From this statement alone, I hope you will see why your investigation, control and oversight are so crucial. Psychiatry is incapable of policing itself.

A third rarely mentioned point stems from the fact that the legal obligation under informed consent is to provide the patient with all the information relevant to their decision-making--not just about the treatment in question, but also about their condition. Psychiatric patients are never told that their alleged disease is theoretical or metaphorical. To say or even imply that what the patient has is biologic and a disease when there is no such proof (as in all psychiatric "diseases" for which electroshock is administered) is an egregious deception that makes a mockery of informed consent. That this has become the "standard of practice" in psychiatry does not excuse it.

Fourth, and pragmatically crucial, is that many people become victims of this so-called "treatment" at a time in life when they are extremely vulnerable. At vulnerable times, people desperately need to trust and rely on others for help. Reaching out, they need complete safety and support. Often their only hope in such times is to trust the wisdom and guidance of the professionals to whom they turn for help. Informed consent is a fine principle, but in practice it is not a protection.

Despite my conviction that true informed consent is not tenable given the underpinnings of coercion and misinformation in psychiatry, I have attached to my testimony a model of authentic informed consent. This form is excerpted from my previously mentioned article on the subject, and clearly states the information necessary for legitimate consent. It also, by the way, describes minimum standards for determining mental competence, as prerequisites for informed consent.

Competency/Capacity

Psychiatry argues that labels of "mental illness" or "emotional disability" make legitimate the designation of people as incompetent to exercise their right to informed consent. Psychiatry says this justifies the use of force. In fact, it does not! I urge each of you assembly members to seriously consider this flawed and dangerous assumption. Your own state supreme court, in *Rivers v Katz* regarding forced drugging, makes it clear that the presence of mental illness or emotional disability does not necessarily mean the patient is lacking the capacity to choose treatment. I quote: "It is clear that neither mental illness nor institutionalization per se can stand as a justification for overriding an individual's fundamental right to refuse anti-psychotic medication on either police power or *parens patriae* [incapacity] grounds." The state--according to *Rivers v Katz*-- bears the burden of demonstrating by "clear and convincing evidence the patient's incapacity to make a treatment decision." This fundamental right is based on the "liberty interest" protected by the New York State Constitution.

In *Rivers v Katz*, the Court also carefully observed that lack of capacity may not be inferred even if the patient disagrees with the psychiatrist's clinical judgment. This is very important because a current review of 28 articles comparing patients' and staff members' attitudes towards treatment (Roe et al, 2001) shows clearly that there is a consistent disagreement over time and across studies between staff and patients on treatment issues. The authors of this review concluded that "the disagreement might have more to do with the fundamental difference between being a patient and a staff member rather than a patient's cognitive deficits or psychopathology." Any legislation regarding capacity must honor *Rivers v Katz* and preclude the use of a psychiatric diagnosis as justification of force. The judges in *Rivers v Katz* wrote, "It is well accepted that mental illness often strikes only limited areas of functioning leaving other areas unimpaired, and consequently, many mentally ill persons retain the capacity to function in a competent manner."

Society generally respects the right of citizens to refuse treatment of physical illness, however life-threatening. This, as you all know, is not the case for "mental illness." The cases of Paul Henry Thomas, Adam Szysko, Pam S. and others here in New York have made this fact abundantly clear. As I did in May, I continue to urge you to put a moratorium on forced electroshock.

With all this in mind, I respectfully suggest that the following clauses be added to your Bill number A09081 on electroshock and informed consent:

- a) Informed consent must be given for each individual treatment;
- b) Consent may be given for no more than one treatment at a time;
- c) Patient may refuse treatment at any time;
- d) Patient may withdraw from treatment at any time, including between the time he or she gave consent and administration of the procedure previously consented to;
- e) Competency must be assessed every single time consent is requested; (suggest standard from proposed model)
- f) Every patient has the absolute right to refuse electroshock. If patient refuses to give consent (for whatever reason or for no reason at all), there can be no administration of electroshock;
- g) If patient is judged to lack capacity, there can be no administration of electroshock; (The reason for this is the well-documented fact that electroshock impairs cognitive capacity. If someone lacks capacity, all emphasis should be on returning him or her to capacity by helpful restorative means; therefore, no forced electroshock.)

Re Bill A09083 of temporary advisory council

Consistent with my opinion that without capacity there can be no legally administered electroshock, I recommend striking section 3f of Bill number 9083, on the procedure for surrogate consent. This should be illegal. My one other recommendation for this committee is that it should be more weighted to electroshock survivors, and should include professionals who are critics of electroshock.

RE bill A09082 on reporting law

As I have just stated, court-ordered electroshock should be illegal. Therefore, I recommend striking section A2 that counts the number of patients for whom a court order was sought. There should be none.

Electroshock is unnecessary

It has been said that a bad solution is one that acts destructively on the larger pattern or system in which it is contained. A good solution, then, is one that is good for the whole. What is good for the brain is good for the body. What is good for the body is good for the mind is good for the soul. Granted sometimes a part is sacrificed for the whole. A malignant brain tumor or a gangrenous leg may be removed to save a life. But we know that such remedies are desperate, irreversible, and destructive; it is impossible to improve the body by these actions. Electroshock is like these surgeries in being a desperate, irreversible and destructive act.

Electroshock does not save lives, and is absolutely not necessary. There are many causes for depression. Some are physical and respond well to legitimate medical treatments for conditions such as diabetes, liver or kidney problems, or thyroid malfunction. Some are related to psychological trauma or grief and loss, and respond well to emotional healing techniques. Many are social and respond well to closeness and affection and renewal of community. These are good solutions, for the whole individual, and for the community, including our precious elders whom psychiatrists are most wont to electroshock.

Let me conclude with what I think is an arresting image. In her novel, *Beloved*, Toni Morrison describes the farm where her character grew up as a slave: "It never looked as terrible as it was and it made her wonder if Hell was a pretty place too. Fire and brimstone all right, but hidden in lacy groves. Boys hanging from the most beautiful sycamores in the world."

Boys hanging dead from the most beautiful sycamores in the world.
Unconscious, brain-damaged patients lying on electroshock tables in the most impressive psychiatric institutions doing electroshock research funded by the government of the United States through the most prestigious National Institutes of Mental Health.

Boys hanging, dead.

Victims of forced electroshock, brains damaged, memory lost, potential healing suppressed, sometimes dead.

At the dawn of the 20th century in the United States, a black Southerner died at the hands of a white mob more than once a week. Society accepted the practice; some newspapers not only covered lynchings, but even advertised them. At the dawn of the 21st century, psychiatrists electroshock about 2,000 United States citizens every week. Society accepts the practice; the media not only covers it, but even promotes it.

Just as brave leaders and activists won civil rights legislation that led to a massive decline in the dehumanizing and degrading practice of racism, activists are now challenging the brutal practice of electroshock. Through the good efforts of this committee, New York's legislature now has the opportunity to enact a landmark law regulating and restricting the use of electroshock which hopefully will lead one day to the abolition of this procedure, and thereby the establishment of a more just and humane society. Thank you.

References

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