



## Ohio Revised Code

### Section 5123.86 Consent for medical treatment.

Effective: September 29, 2013

Legislation: House Bill 59 - 130th General Assembly

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(A) Except as provided in divisions (C), (D), (E), and (F) of this section, the chief medical officer shall provide all information, including expected physical and medical consequences, necessary to enable any resident of an institution for the mentally retarded to give a fully informed, intelligent, and knowing consent if any of the following procedures are proposed:

- (1) Surgery;
- (2) Convulsive therapy;
- (3) Major aversive interventions;
- (4) Sterilization;
- (5) Experimental procedures;
- (6) Any unusual or hazardous treatment procedures.

(B) No resident shall be subjected to any of the procedures listed in division (A)(4), (5), or (6) of this section without the resident's informed consent.

(C) If a resident is physically or mentally unable to receive the information required for surgery under division (A)(1) of this section, or has been adjudicated incompetent, the information may be provided to the resident's natural or court-appointed guardian, including an agency providing guardianship services under contract with the department of developmental disabilities under sections 5123.55 to 5123.59 of the Revised Code, who may give the informed, intelligent, and knowing written consent for surgery. Consent for surgery shall not be provided by a guardian who is an officer or employee of the department of mental health and addiction services or the department of developmental disabilities.



If a resident is physically or mentally unable to receive the information required for surgery under division (A)(1) of this section and has no guardian, then the information, the recommendation of the chief medical officer, and the concurring judgment of a licensed physician who is not a full-time employee of the state may be provided to the court in the county in which the institution is located, which may approve the surgery. Before approving the surgery, the court shall notify the Ohio protection and advocacy system created by section 5123.60 of the Revised Code, and shall notify the resident of the resident's rights to consult with counsel, to have counsel appointed by the court if the resident is indigent, and to contest the recommendation of the chief medical officer.

(D) If, in the judgment of two licensed physicians, delay in obtaining consent for surgery would create a grave danger to the health of a resident, emergency surgery may be performed without the consent of the resident if the necessary information is provided to the resident's guardian, including an agency providing guardianship services under contract with the department of developmental disabilities under sections 5123.55 to 5123.59 of the Revised Code, or to the resident's spouse or next of kin to enable that person or agency to give an informed, intelligent, and knowing written consent.

If the guardian, spouse, or next of kin cannot be contacted through exercise of reasonable diligence, or if the guardian, spouse, or next of kin is contacted, but refuses to consent, then the emergency surgery may be performed upon the written authorization of the chief medical officer and after court approval has been obtained. However, if delay in obtaining court approval would create a grave danger to the life of the resident, the chief medical officer may authorize surgery, in writing, without court approval. If the surgery is authorized without court approval, the chief medical officer who made the authorization and the physician who performed the surgery shall each execute an affidavit describing the circumstances constituting the emergency and warranting the surgery and the circumstances warranting their not obtaining prior court approval. The affidavit shall be filed with the court with which the request for prior approval would have been filed within five court days after the surgery, and a copy of the affidavit shall be placed in the resident's file and shall be given to the guardian, spouse, or next of kin of the resident, to the hospital at which the surgery was performed, and to the Ohio protection and advocacy system created by section 5123.60 of the Revised Code.



(E)(1) If it is the judgment of two licensed physicians, as described in division (E)(2) of this section, that a medical emergency exists and delay in obtaining convulsive therapy creates a grave danger to the life of a resident who is both mentally retarded and mentally ill, convulsive therapy may be administered without the consent of the resident if the resident is physically or mentally unable to receive the information required for convulsive therapy and if the necessary information is provided to the resident's natural or court-appointed guardian, including an agency providing guardianship services under contract with the department of developmental disabilities under sections 5123.55 to 5123.59 of the Revised Code, or to the resident's spouse or next of kin to enable that person or agency to give an informed, intelligent, and knowing written consent. If neither the resident's guardian, spouse, nor next of kin can be contacted through exercise of reasonable diligence, or if the guardian, spouse, or next of kin is contacted, but refuses to consent, then convulsive therapy may be performed upon the written authorization of the chief medical officer and after court approval has been obtained.

(2) The two licensed physicians referred to in division (E)(1) of this section shall not be associated with each other in the practice of medicine or surgery by means of a partnership or corporate arrangement, other business arrangement, or employment. At least one of the physicians shall be a psychiatrist as defined in division (E) of section 5122.01 of the Revised Code.

(F) Major aversive interventions shall not be used unless a resident continues to engage in behavior destructive to self or others after other forms of therapy have been attempted. Major aversive interventions shall not be applied to a voluntary resident without the informed, intelligent, and knowing written consent of the resident or the resident's guardian, including an agency providing guardianship services under contract with the department of developmental disabilities under sections 5123.55 to 5123.59 of the Revised Code.

(G)(1) This chapter does not authorize any form of compulsory medical or psychiatric treatment of any resident who is being treated by spiritual means through prayer alone in accordance with a recognized religious method of healing.

(2) For purposes of this section, "convulsive therapy" does not include defibrillation.