

Court Overturns F.D.A. Ban on School's Electric Shock Devices

The ban sought to stop a school in Massachusetts from using shock therapy to prevent harmful behaviors in students with disabilities.

By Amanda Morris

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A Massachusetts school can continue to use electric shock devices to modify behavior by students with intellectual disabilities, a federal court said this month, overturning an attempt by the government to end the controversial practice, which has been described as “torture” by critics but defended by family members.

In a 2-to-1 decision, the judges ruled that a federal ban interfered with the ability of doctors working with the school, the Judge Rotenberg Educational Center, to practice medicine, which is regulated by the state. The Food and Drug Administration sought to prohibit the devices in March 2020, saying that delivering shocks to students presents “an unreasonable and substantial risk of illness or injury.”

Although the F.D.A.'s ban was national, the school in Canton, Mass., appears to be the only facility in the United States using the shock devices to correct self-harming or aggressive behavior. The center serves and houses students — both children and adults — who have intellectual disabilities or behavioral, emotional or psychiatric problems.

Critics have called the practice dehumanizing and abusive, with the United Nations labeling it “torture” and the F.D.A. saying it can cause long-lasting trauma.

“How would anyone feel if they were being shocked on a daily basis and couldn't get away from it?” said Sam Crane, the legal director of the Autistic Self Advocacy Network. “It's terrifying that this can happen to people.”

But the school, where the practice has been in place for decades, and some parents of students have defended it, saying it stopped the students from hurting themselves or others when nothing else could.

“He was nearly dead when he arrived,” Paul Peterson of Massachusetts said of his son, a 50-year-old who has received the shock treatment at the facility for decades. “He had been inducing vomiting, so he was extremely malnourished and underweight.”

The treatment, in which students wear a special fanny pack with two protruding wires, typically attached to the arm or leg, can deliver quick shocks to the skin when triggered by a staff member with a remote-control device.

Some 300 students live in group homes operated by the school, which was founded in 1971 and provides education and vocational services to residents whose conditions range from autism to psychosis. The shock devices are approved for use on 55 people — all adults currently, although some started the treatment when they were children — whose parents requested and consented to it, said Michael Flammia, a lawyer for the center. The treatment must also be approved for use on specific students by a local judge.

Those people demonstrate extremely dangerous behavior, Mr. Flammia said, such as banging their heads to the point of retinal detachment and blindness, self-biting, breaking their own bones and violently attacking others.

In a statement after the federal court's decision, the school wrote, “With the treatment, these residents can continue to participate in enriching experiences, enjoy visits with their families and, most importantly, live in safety and freedom from self-injurious and aggressive behaviors.”

The F.D.A.'s attempt last year to ban the procedure was the culmination of a decades-long battle by critics — including legislation, lawsuits and petitions — to end the electric shocks, which they argue have been administered excessively and can cause lasting damage.

In one 2002 episode captured on video, Andre McCollins, then an 18-year-old student at the center, did not take off his jacket as instructed and was shocked repeatedly while screaming. His family sued, and the case was settled under confidential terms in 2012.

The F.D.A. said that evidence of the devices' effectiveness was “weak,” with no evidence of long-term behavioral changes in residents, while the risks of their use included depression, anxiety, post-traumatic stress disorder, pain, burns and tissue damage. It recommended alternative treatments instead.

Rico Torres, a former student, wore a shock device for most of a decade, starting at age 8, he told NBC News this year. “What they're doing is just taking people that have issues and just building more,” Mr. Torres said.

Former residents have also complained of burn marks, accidental shocks and other abuses. “It's not safe. It doesn't feel safe,” Jennifer Msumba, a student from 2002 to 2009, said in testimony to the F.D.A. in 2014. “I ended up having nightmares weekly, if not nightly.”

The center said that any abuse of the shock devices or mistreatment of patients “is taken very seriously.” Public records show that in recent years, the center has spent hundreds of thousands of dollars on lobbying in both New York State, where more than half the center's students are from, and Massachusetts. It has also spent more than a quarter-million dollars over the past decade on lobbying federal entities, including the F.D.A., the White House, the Senate and the House of Representatives.

Shain Neumeier, a lawyer who has represented former residents and uses the pronoun “they,” said that many were not able to consent to the treatment themselves, and that parents did not always understand what it entailed. They argue that there is a difference between people shocking themselves to curb habits like smoking, which the F.D.A. permits, and shocking others — who may not be able to articulate their needs — as a behavioral punishment.

“This approach involves a lot of dehumanization, an idea that you’re basically training a dog,” they said. “Or you’re trying to get a person to do what you want, rather than follow their own goals and get their own needs met.”

But Larry Mirro, from Island Park, N.Y., said the treatment was life-changing for his son Billy, 39. Before being enrolled at the center in 2003, his son took many different medications with varying side effects to treat his autism, and repeatedly abused himself, Mr. Mirro said.

Most facilities either could not help or did not accept his son. “He smashed his head all over the place,” Mr. Mirro said.

Before consenting to electric shock therapy for Billy, Mr. Mirro said, he did research and tested the shock on himself — it felt like a bee sting, he said. After his son started on the treatment, he noticed a change within six months.

“His behavior totally changed, where he had a life,” Mr. Mirro said. “He really had a life.”

After about 11 years, though, the family was forced to take Billy out of the facility because New York’s disability services office would no longer pay for the out-of-state facility, Mr. Mirro said. His son has since gone back on medications, he said, and gone blind from self-abuse.