

A DOCTOR HAS A DUTY TO DISCLOSE ALL REASONABLE INFORMATION ABOUT A PROPOSED TREATMENT TO HIS PATIENTS.

Fact Pattern:

Plaintiff consulted Defendant, a doctor, after experiencing severe back pain. Defendant had the Plaintiff undergo a myelogram, which revealed that the Plaintiff suffered from a filling defect in the region of his fourth thoracic vertebrae. Defendant told Plaintiff that he needed to undergo a laminectomy to correct what he suspected was a ruptured disc. Defendant did not tell Plaintiff the details of the proposed operation nor did Plaintiff inquire about them. Defendant told Plaintiff's

mom that the operation was a serious one, but not any more serious than any other operation. Defendant performed the operation and discovered Plaintiff's swollen spinal cord to be in very poor condition. Defendant did what he could to relieve the pressure and left Plaintiff in bed to recuperate. Plaintiff was recuperating, when he slipped off the side of the bed and ended up paralyzed below the waist and incontinent.

Question: Does Defendant have a duty to disclose the risk associated with surgery?

Rule

A Physician owes a duty to reasonably disclose all information concerning an operation to a patient which a reasonable physician in the community would disclose based on sound medical considerations.

Discussion

The legal doctrine of informed consent can be traced back to the post-World War II Nuremberg Code, a set of guidelines drafted to ensure that unethical "medical" experiments were no longer carried out in the name of science. The doctrine is founded on the general principle that a person of the age of majority and sound mind has a legal right to determine what may be done to his or her body. Thus, when a patient is subjected to a procedure he or she has not agreed to, the physician performing that procedure is violating the patient's legal rights and may be subject to medical malpractice litigation.



California / Texas / Florida

To avoid legal action, according to the doctrine of informed consent, physicians must disclose enough information for the patient to make an “informed” decision. The key pieces of information that a physician must disclose include:

- (1) condition being treated;
- (2) nature and character of the proposed treatment or surgical procedure;
- (3) anticipated results;
- (4) recognized possible alternative forms of treatment; and
- (5) recognized serious possible risks, complications, and anticipated benefits involved in the treatment or surgical procedure, as well as the recognized possible alternative forms of treatment, including non-treatment

Here, in Fact Pattern, the doctor would bear no liability for ‘failure of informed consent’ because a physician is required to disclose all reasonable information, he or she is not required to disclose a risk that is not inherent in proper performance of the procedure—a risk, in other words, that would result only from the procedure’s being performed incorrectly. The liability, if any, for the paraparesis and neurogenic bladder secondary to the fall will be passed to the entity, the nurses, and the techs with the duty to manage and care for the post-operative patient.