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Special Newsletter for

Personal Injury

Attorneys

This Month's Question:

How Adequate is Surgical Informed Consent?

GO MD Review Answer:

We were recently asked to consult on a case of possible faulty informed consent for a surgical procedure. In today's busy medical world, obtaining a patient's signature on a surgical consent form is often viewed by physicians as an annoying administrative chore.

Surgeons learn how to "consent" patients during their training. In many cases, the process is to hand the patient a one-page consent form and rattle off the risks – "this procedure can result in bleeding, infection, nerve injury, blood clots, allergic reaction, heart attack, pneumonia, and even death….Any questions?" Additionally, it is not uncommon for the provider to have a nurse, resident, intern, or even office staff present the form to the patient for signature, perhaps accompanied by a brief discussion. This interaction typically takes less than a minute, and the same approach is often used throughout their careers—until they, or a colleague, faces their first malpractice suit.

Rather than seeing the "consent" as an administrative form that needs to be quickly dispatched, "consenting" should be viewed as a *process* for educating their patients.

It is simply not enough to say, "You may have bleeding." The patient deserves to know if the risk of bleeding is minimal—or if intra-operative or postoperative hemorrhage might be fatal.

"Infection" can describe a range of problems. Might an infection be a simple, non-serious, superficial wound infection, or overwhelming sepsis resulting in death?

Is the potential for nerve injury one that might cause a tiny area of numbness, or will it cause permanent facial paralysis?

Is the risk of a blood clot more likely to be a superficial hematoma or a deadly pulmonary embolus?

Pneumonia, likewise, comes in many varieties, and this should be made clear as well. Might it be a mild pneumonia following postoperative atelectasis, or deadly bilateral MRSA pneumonia?

The risk of death can never be entirely excluded. However, rather than glossing over the risk of dying as if it genuinely cannot happen, death should be discussed seriously and in relation to the above risks.

The nature and scale of each risk, as well as the likelihood of its occurrence, need to be discussed in detail.

In short, ADEQUATE CONSENT IS LACKING unless there is a well-documented, purposeful discussion of the risks and benefits inherent in the procedure. Adequate time must be allotted so the patient can ask

questions and become truly INFORMED. By itself, a standard one-page consent form does not provide the detail necessary to ensure adequate informed consent.

In the absence of a detailed, multi-page consent form that discusses each risk separately and in-depth, a thorough pre-operative note should exist documenting the discussion between the surgeon and patient.

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Best regards,

Joe Schifilliti MD, MJ

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