



PHYSICIAN LEGAL CONSULTANTS OF NEBRASKA

Physicians Helping Attorneys Helping People

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NEWSLETTER

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This Month's Question:

[How Adequate is Surgical Informed Consent?](#)

Physician Legal Consultants Response:

Our past two Newsletters have dealt with issues related to personal injury cases. In fact, the majority of our consultations are requested in personal injury cases. However, recently we have been asked to consult in a number of medical malpractice cases and based on recent consultations, we felt it could be very useful to our readers to take a close look at surgical informed consent.

In the hurry up world of today's medical practitioner, doing a good job of ensuring adequate informed consent is very often deficient. For the process to be adequate the health care provider must disclose sufficient information regarding the purpose of the procedure, the probable benefits and risks, alternative treatments, and unusually serious risks, such as permanent nerve damage or death. In addition there should be a discussion of the consequences of refusing the treatment. The patient must be given an opportunity to ask questions and should be given sufficient time to absorb the information.

Most often a standard single page form is used in the consent process. The form includes spaces to enter demographic information such as the patient's name and provider's name, the procedure to be performed, the standard risks, additional risks, and room for signatures of the patient, the provider, and a witness. Of course there is also room for dates and times. A short discussion of the form between the provider and the patient is usual - but it is not unheard of for the provider to have a nurse, a resident or intern, or even office staff present the form to the patient for signing – with at most a cursory discussion and question/answer session.

Surgeons learn to 'consent' patients in their training programs and the training, in most cases, is woefully inadequate. It is usual for interns or residents in training programs (who are always overworked and in a hurry) to approach the patient with their single 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?” If the procedure has risks outside of the standard risks the resident will mention that and add it to the form. The process takes less than a minute. Unfortunately, although a bit more time will be spent, this same process will be used by that surgeon throughout the career, because that is how he or she has been trained. This lack in the surgeon's training will not be apparent until he or she faces their first malpractice suit – or perhaps that of a colleague.

Much has been written about the consent process and a recent paper extols the virtues of the simple one page consent form for a variety of reasons – simplicity being the most relevant. The paper stated that the list of risks (as recited above) was adequate. We do not feel that the one page form by itself is sufficient, so let's examine the issue from a patient's perspective with each item from the list of risks.

These are the questions that should be answered in the mind of a patient prior to signing and affirming that they have been satisfactorily informed. First, will there be a minimal amount of bleeding when an incision is made – or will intra-operative or post-operative bleeding be fatal. It is just not enough to say 'you

may have bleeding'. Infections come in many varieties. Will my infection be a simple, non-serious, superficial wound infection – or overwhelming sepsis causing my death? Will my nerve injury cause a tiny area of numbness, or will it cause permanent paralysis of the right side of my face? Will the blood clot be a superficial hematoma – or a pulmonary embolus resulting in my demise? Will the allergic reaction cause a bit of itching or untreatable anaphylactic shock that will take me to my grave. The heart attack part is maybe the best risk on the list, as it denotes a REALLY bad outcome always, not just an inconvenience. Pneumonia comes in many varieties and this should be made clear as well. Will it be simply treated pneumonia following postoperative atelectasis – or a bilateral MRSA pneumonia that kills the patient? The risk of death is usually mentioned – but should be discussed in much greater detail and in relationship to the above risks. It shouldn't be glossed over as if it really can't happen. The nature and scale of each risk needs to be detailed as does the likelihood of occurrence.

In short, unless there is a detailed, purposeful discussion of the risks and benefits inherent in any procedure – and unless that discussion is well documented - there really is not good informed consent. Adequate time must be allotted so the patient can ask questions and truly understand what they are reading and being told. By themselves the standard one page consent forms being used in Colorado do not provide the detail necessary to justly ensure adequate informed consent. There must be a thorough pre-operative note which details the depth of the discussion between the surgeon and patient – or alternatively a very detailed consent form of multiple pages that discusses each risk separately and in depth.

At MD Consulting Services we are happy to give assistance in determining if your client had adequate informed consent.

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- * Determination of future medical care and costs
- * Independent Medical Exam observation and rebuttal
- * Evaluating/developing medical theories
- * Answer Standard of Care questions
- * Answer specific medical questions
- * Medical research
- * Develop deposition and trial questions for experts
- * Attendance at deposition and trial if needed
- * Finding expert witnesses
- * Attorney liaison to treating physicians and family members
- * **We do not provide expert testimony**
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