

LEGAL EAGLE EYE NEWSLETTER

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For the Nursing Profession

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Informed Consent: Patient Said Nurse Gave Her Standard Form To Sign, No Explanation.

The patient underwent a series of major gynecological surgeries that were difficult in their own right, and left her with significant residual complications.

The patient sued her surgeon, alleging malpractice in the manner the surgeries were carried out.

The patient also claimed damages for lack of informed consent, as she allegedly was not informed of the risks, benefits and alternatives each time one of the surgeries was done.

In support of her case the patient pointed to the fact the hospital's standard surgical consent form was simply handed to her by a hospital nurse who did nothing more than tell the patient to sign.

According to the patient, the nurse offered nothing by way of discussion or instruction as to the risks, benefits and potential complications of the surgical procedures themselves.

The hospital nurse simply told the patient to sign the standard consent form on the dotted line.

Court Rejects Case Based Lack of Informed Consent

The Court of Appeal of Louisiana dismissed the patient's allegation of lack of informed consent.

The duty to inform the patient of the risks and benefits rests with the physician, and not the nurse, for the patient's consent to be truly informed consent.



If the consent form was drafted in conformance with state law, and the patient signed it, a legal presumption exists that the patient consented.

To get around a signature on a standard surgical consent form, the patient must convince the court, not that the patient did not consent, but that a reasonable person in the patient's situation would not have consented.

COURT OF APPEAL OF LOUISIANA
December 11, 2024

The evidence was that the surgeon did in fact fully discuss the risks and benefits of all the surgeries with the patient and did in fact obtain her permission and consent.

The Court also ruled that the surgeon was not guilty of medical malpractice for the way the surgeries were carried out.

It was not relevant that the surgeon did not participate in the signing of the surgical consent form.

Getting the form signed is a basic task that can be delegated to a nurse or other caregiver.

Louisiana, like many state jurisdictions, has enacted legislation with a view toward minimizing suits against healthcare providers for lack of informed consent where the facts would not support a case that the provider was negligent.

The state statutes protect health care providers who have obtained a patient's signature on a standard informed consent form that was drafted in conformance with state statutory parameters.

If there is a signed consent form, the patient can win a case based on lack of informed consent only by meeting the burden of proof, not that the patient did not actually consent, but that a reasonable person in the patient's shoes would not have consented. That is a very difficult burden of proof for any patient to meet in court.

***Lachney v. Gates*, __ So. 3d __, 2024 WL 5063345 (La. App., December 11, 2024).**

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