

Informed Consent: Court Allows Nurses To Get Patient To Sign, After Physician Has Explained Procedure.

A pediatric patient suffered avascular necrosis in the femoral head after an intramedullary nailing procedure to repair a sports-injury fracture.

One of the allegations in the parents' medical malpractice lawsuit was lack of informed consent. That is, they claimed that if they had fully understood the possibility of this serious complication they would not have consented to go ahead with the procedure, and the complications, therefore, would not have happened.

The jury found that the boy's mother gave her informed consent for the IM nailing procedure.

The jury's ruling is supported by the evidence.

COURT OF APPEALS OF KANSAS
UNPUBLISHED DISPOSITION
January 7, 2005

The Court of Appeals of Kansas, in an unpublished opinion, upheld the jury's finding of no fault by the treating orthopedic surgeon as to the procedure itself and on the informed-consent issue.

The physician's standard practice is to discuss the procedure with the patient and/or the patient's parent or guardian and to make sure he has answered all their questions. Then the nurses fill out the surgical consent form and have the patient or parent or guardian sign.

The nurses double-check for a signature on the consent form in the pre-op waiting area and again as the patient actually enters the operating room. ***Green v. Teter***, 2005 WL 43425 (Kan. App., January 7, 2005).

Informed Consent: Court Accepts Nurse's Testimony That Patient Consented.

A written consent to surgery signed by the patient is the accepted practice, but it is not absolutely required.

When there is written consent to a medical or surgical procedure signed by the patient, the signed consent form creates a legal presumption that the patient actually consented to the surgery.

The patient has the difficult burden of proof to convince the jury that the patient, although he or she signed the form, did not actually understand the procedure or actually consent.

When there is no written consent signed by the patient, the medical caregivers have the burden of proof to convince the judge or jury that the patient was fully informed of the nature and purpose of the procedure, allowed to ask questions, had questions answered and fully understood the benefits and risks of the procedure.

The nurse testified the doctor did explain the procedure in detail and the patient did not indicate she did not consent.

COURT OF APPEAL OF LOUISIANA
January 11, 2005

The Court of Appeal of Louisiana upheld the jury's finding of no liability by the hospital where the patient had her surgery or by the physician who performed the surgery.

Patient Did Give Informed Consent

One of the legal complications in the case was that the patient did not sign the surgical consent form prior to the procedure. One of the allegations in the patient's lawsuit was that she did not understand the possible complications and did not agree to go forward with procedure with fully informed acceptance of the fact certain complications were possible.

The practice at the hospital was for the physician to explain the procedure, risks, benefits and possible complications, allow the patient to ask questions and then leave the form for the patient to sign in the nurse's presence.

The form was not signed and the nurse could not explain why.

However, the judge permitted the nurse to testify she did hear the physician give a full explanation and allow the patient to ask questions and the patient did not communicate any disagreement with going forward.

Signed Consent Form Puts Burden of Proof on the Patient Lack of Informed Consent

A signed consent form, although by far the preferred course, is not absolutely required.

To limit patients' lawsuits claiming lack of informed consent most states have enacted statutes stating that a signed consent form, if it itemizes all the required disclaimers and is signed by the patient, creates a legal presumption that the patient did in fact give informed consent.

A signed consent form makes it a difficult uphill battle for the patient to prove the patient did not consent, rather than the caregivers having to prove the patient did consent, as in this case. ***Siliezar v. East Jefferson General Hosp.***, ___ So. 2d ___, 2005 WL 57300 (La. App., January 11, 2005).