

# Informed Consent: Court Throws Out Lawsuit Filed Against Hospital And Nurse.

Before a patient undergoes a surgical procedure the patient must give informed consent. There are two components to informed consent. The patient must be fully informed, and being fully informed must give voluntary consent.

## **Informed Consent**

A patient must be fully advised beforehand of the benefits and potential risks of the procedure. If the patient consents to the procedure without being fully advised the patient's consent is not informed consent. If there is a problem after the fact the patient can sue for lack of informed consent.

## **Lack of Informed Consent versus**

## **Medical Malpractice**

Lack of informed consent is a separate and distinct legal basis for a lawsuit. Theoretically a patient can sue for lack of informed consent even when there has been no malpractice because the unwanted result is within the realm of possible complications. The patient can claim he or she would not have agreed to the procedure if he or she had known that beforehand.

## **Informed Consent**

### **Is Physician's Responsibility**

In a 1999 decision published in November 2001 the Supreme Court of Alabama ruled that nurses in hospitals where surgery is performed have no legal responsibility to see that a patient's consent is truly informed consent. That is, only the physician can be sued after the fact for lack of informed consent.

According to the court, all of the US states that have ruled on this issue have ruled the same way.

In this case the nurse who admitted the patient, who was not a clinical nurse specialist in labor and delivery, had the patient sign a standard consent form with "Vaginal Delivery / Epidural Anesthesia" stamped on the form as the procedures to be performed.

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***US state courts have uniformly ruled that the legal duty to obtain the patient's informed consent for surgery rests solely with the patient's physician and not with the hospital and the hospital's nurses.***

***It follows from this that a patient has no right to sue the hospital or its nurses if the patient did not give informed consent for surgery.***

SUPREME COURT ALABAMA, 1999.

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The delivery was uncomplicated. Several days after discharge, however, the patient returned to the emergency room with symptoms that progressed to complete paraplegia below the waist. The situation was traced to a lumbar epidural abscess from the epidural.

The patient sued the physicians, the hospital and the nurse. The suit claimed medical malpractice as well as lack of informed consent. That is, the patient's lawsuit claimed if had she had known of this potential risk she would not have consented to the epidural.

The court ruled she had valid grounds for her lawsuit, but those grounds applied only to her physicians.

It was not relevant that a nurse was the one who had her sign the consent form. The nurse and her employer the hospital did not have the legal responsibility to ensure that the patient's consent was truly informed consent. Nor are nurses supposed to intrude upon the physician-patient relationship by attempting to inform the patient of the risks and benefits of the procedure. The court said that is the physician's sole responsibility. ***Wells v. Storey***, 792 So. 2d 1034 (Ala., 1999).

# Involuntary Commitment: Court Disallows Patient's Manipulation Of The Rules.

When a patient has been ordered to be held involuntarily for observation or short-term treatment there is a strict time deadline, in most states fourteen days, for caregivers to go to court for an order permitting a longer term of involuntary commitment.

Since a person's constitutional right to liberty is at issue, the courts generally allow the patient to go free regardless of the need for treatment if the strict time deadline is not observed.

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***The fourteen-day deadline to apply for extended involuntary hospitalization is to be strictly enforced.***

***However, the patient is not allowed to manipulate the system by firing his court-appointed lawyer at the last minute to prevent the hearing from taking place on time.***

***The patient's manipulative conduct does not void the re-commitment order.***

COURT OF APPEALS OF WISCONSIN, 2001.

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However, the Court of Appeals of Wisconsin recently ruled that a patient had no right to manipulate the system by firing his legal counsel at the last moment on Friday so that his Monday fourteen-day hearing would have to be delayed.

Even though it was belated the order for continued treatment was valid under the circumstances. ***Mental Commitment of Edward S.***, 633 N.W. 2d 241 (Wis. App.,