

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Informed Consent: Nurses Got Go-Ahead But Did Not Explain Risks, Benefits, Alternatives.

Fluid began to accumulate around the patient's lungs several days after open heart surgery.

The pulmonologist ordered a chest tube to drain the fluid and expected the interventional radiologist who was going to put the in tube to take care of obtaining informed consent.

Instead, two nurses phoned the patient's daughter and asked her to give consent for placement of the chest tube.

The patient herself was unable to consent due to advanced dementia and the daughter had earlier been named in the patient's durable power of attorney.

### **Nurses Did Not Explain**

#### **Risks, Benefits, Alternatives**

The nurses did not explain to the patient's daughter any of the risks, benefits or alternatives.

The nurses simply assured the daughter that, "It's no big deal," got the go-ahead from her, filled out a telephonic-consent form and inserted the form into the medical chart.

The next day the interventional radiologist, who was an independent contractor and not a hospital employee, went ahead with the procedure without discussing it with the patient, without checking to see if anyone had discussed it with the family and without attempting to contact the family, saying later on that it was an emergency.



***The nurses phoned the patient's daughter and asked her to consent to the procedure on her mother's behalf.***

***However, the nurses never explained any of the risks, benefits or alternatives.***

***There may be grounds for a lawsuit over a bad outcome if the patient or family member was not given the opportunity for truly informed consent.***

CALIFORNIA COURT OF APPEAL  
January 30, 2013

During the procedure the guide wire punctured the aorta. That did necessitate emergency surgery to repair damage to the aorta, lung tissue and the pulmonary vein.

The patient's condition deteriorated steadily. She passed away eighteen months later after a downward spiral which was started by the physiologic stress from the aortic repair.

### **Hospital Did Not Obtain Informed Consent**

The California Court of Appeal viewed the failure by the hospital's nurses to obtain informed consent as grounds for a lawsuit.

Failure to obtain truly informed consent can be the basis of a lawsuit, if the patient or patient's family can prove that they or a reasonable person in their shoes would have declined to consent to the procedure if they were told the potential risks involved.

The unfortunate outcome that actually came about was one of the salient risks of the procedure that should have been explained to the daughter, but was not, so that she could have made a truly informed decision whether to agree or to decline to consent on her mother's behalf, based on being intelligently informed of what could happen. **Gonsalves v. Sharp, 2013 WL 342668 (Cal. App., January 30, 2013).**

Inside this month's issue...

March 2013

New Subscriptions  
See Page 3

Informed Consent/Risks/Benefits/Alternatives - Fall/Bed Alarm  
Nursing Documentation - Nurse Concealed Facts From Family  
Skilled Nursing Admission/Durable Power Of Attorney  
Nurse/Race Discrimination - Charge Nurse/Disability Discrimination  
EMTALA/Unequal Treatment - E.R./Nurse As Patient Advocate  
Nurse/Disability Discrimination - Nursing License/Standard Of Care  
Nurse/Sexual Harassment By Patient - Narcotics Diversion  
Narcotics Diversion/Murder/Director Of Nursing