

Informed Consent: Physician, Not The Hospital Or Its Staff, Must Obtain Patient's Consent For Surgery, Court Determines.

The patient had three breast implant procedures with the same surgeon, at two different hospitals. She sued the physician and both hospitals for lack of informed consent, claiming she had not been warned of the possibility of atypical neurological disease before signing the surgical consent forms. The hospital where the second and third procedures were done asked to be dismissed, and was dismissed from the lawsuit.

A hospital does not have the legal responsibility for obtaining a patient's informed consent, even if a physician gets a staff nurse to have the patient sign a surgical consent form.

Liability for not telling the patient all the risks of the surgery, and for not getting truly informed consent, rests with the physician.

SUPREME COURT OF NEBRASKA, 1997.

The Supreme Court of Nebraska carefully reviewed cases from all around the U. S. bearing on the issue. The court concluded that a hospital and its nursing staff do not have the legal responsibility to inform a patient of the risks of surgery.

That is, if a patient sues a hospital claiming the consent form the patient signed was not truly informed consent because the patient was not informed of all of the possible risks of the procedure, the court, as in this case, must by law dismiss the hospital and its staff from the suit. *Giese vs. Stice*, 567 N.W. 2d 156 (Neb., 1997).

Preparation For Surgery: Doctor's Nurse Can Be Negligent For Faulty Explanation Of Procedure.

The physician has the duty to obtain a patient's informed consent for surgery. This duty does not apply to a hospital, even if the surgeon uses one of the hospital's operating rooms.

A doctor's nurse does not have the legal duty to obtain a patient's informed consent for surgery.

If a nurse assists in a procedure where informed consent has not been given, the physician, but not the nurse, can be found guilty of a civil battery.

A civil battery is intentional unauthorized and injurious touching of another person. Since a nurse has no legal duty to obtain informed consent, a nurse assisting in an unauthorized procedure lacks the legal intent to commit a battery.

However, if a nurse takes on the task of explaining the operation to the patient, and the patient is harmed because the nurse's explanation of the operation falls short of the knowledge a nurse is expected to possess, the patient can sue the nurse for negligence.

UNITED STATES DISTRICT COURT,
PENNSYLVANIA, 1997.

The doctor's nurse conducted a pre-surgical interview with the patient in which the nurse described a video hysteroscopy, dilation and curettage, resectoscopic removal of submucous fibroids, laparoscopy and laser myomectomy.

The physician had diagnosed a fibroid uterus and indicated he would do a dilation and curettage. He suggested a laparoscopy and hysteroscopy to rule out cancer. However, without obtaining the patient's consent prior to surgery or waking the patient from anesthesia during surgery, the physician went ahead with a hysterectomy. The patient sued the physician, the hospital and the physician's nurse.

The hospital and the nurse asked the U.S. District Court for the Eastern District of Pennsylvania for a pre-trial ruling to define their legal responsibilities.

The court ruled the hospital is not the party which has the legal responsibility to obtain a patient's informed consent for a medical procedure, even if the physician is to use the hospital's operating room.

In this case it was a doctor's nurse, not a hospital staff nurse, whose alleged failure to obtain the patient's informed consent came under scrutiny, but that did not change the result. A nurse does not have the legal responsibility to obtain the patient's informed consent, the court said.

The court also ruled that if a surgeon goes ahead with a procedure to which the patient has not consented, a nurse assisting the surgeon is not liable for a civil battery, because it was not the nurse's job in the first place to obtain informed consent.

However, a nurse can be liable for professional negligence if a patient is harmed because a nurse's explanation of a surgical procedure falls short of the knowledge a nurse is expected to have. *Davis vs. Hoffman*, 972 F. Supp. 308 (E.D. Pa., 1997).