

Pennsylvania Supreme Court Shinal vs Toms

From the Court's Opinion

The doctrine of informed consent developed through the common law under the theory that a surgery conducted without consent was a battery, see *Smith v. Yohe*, 194 A.2d 167, 174 (Pa. 1963), and that, to be effective, a patient's consent must be informed, i.e., based upon adequate information, *Gray v. Grunnagle*, 223 A.2d 663 (Pa. 1966). Without the patient's informed consent, the physician is liable for the procedure, regardless of whether the physician was negligent.

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Our account of the common law is consistent with the MCARE Act's codification of informed consent:

- (a) Duty of physicians.-Except in emergencies, a physician owes a duty to a patient to obtain the informed consent of the patient or the patient's authorized representative prior to conducting the following procedures: (1) Performing surgery, including the related administration of anesthesia. * * *
- (b) Description of procedure.-Consent is informed if the patient has been given a description of a procedure set forth in subsection (a) and the risks and alternatives that a reasonably prudent patient would require to make an informed decision as to that procedure. The physician shall be entitled to present evidence of the description of that procedure and those risks and alternatives that a physician acting in accordance with accepted medical standards of medical practice would provide. 40 Pa.C.S. § 1303.504.

Under the plain language of this section, the duty to obtain a patient's informed consent for the several enumerated procedures, including surgery, belongs to the physician. Section 504 does not merely require that the patient's consent be informed; it specifically imposes the duty upon physicians to provide to the patient the requisite information and to obtain informed consent. Nothing in the plain language of the Act suggests that conversations between the patient and others can control the informed consent analysis or can satisfy the physician's legal burden. Indeed, Subsection 504(b) permits a physician to defend against an alleged failure to obtain informed consent by presenting evidence of the information that a physician acting in accord with established medical standards would provide. Again, the focus is upon the physician's provision of [J-106-2016] - 39 information directly to the patient, not merely upon the patient's receipt of such information from various sources.28

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Thus, we hold that a physician may not delegate to others his or her obligation to provide sufficient information in order to obtain a patient's informed consent. Informed consent requires direct communication between physician and patient, and contemplates a back -and -forth, face-to-face exchange, which might include questions that the patient feels the physician must answer personally before the patient feels informed and becomes willing to consent. The duty to obtain the patient's informed consent belongs solely to the physician. (Emphasis Added)