

LEGAL EAGLE EYE NEWSLETTER

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Surgical Consent Forms, Informed Consent: Court Finds That Nurse Acted Appropriately.

A facial nerve was damaged during the patient's facelift procedure.

Before the patient's lawsuit went to trial her attorneys had to agree they would not be able to establish negligence as to the way the procedure was performed by the two surgeons.

Patient Sued For

Lack of Informed Consent

The only avenue of attack for the patient's lawyers was that she was not advised of the "normal" risks of her procedure and thus was deprived of her right to give informed consent.

The pre-op surgical consent form became the focus of the lawsuit.

Nurse's Role

Surgical Consent Process

The Court of Appeal of Louisiana pointed out it is not the nurse's role to explain the benefits, risks and alternatives of the procedure. That is strictly the physician's responsibility. In this case it may have been true the nurse did not fully explain the procedure to the patient, but that was irrelevant.

The nurse was in the room as the physician carefully explained the procedure to the patient and went over the expected risks, possible complications, anticipated benefits and alternatives.

The physician's pre-op communication with the patient is the critical element. The nurse may be available



The physician has the legal responsibility to communicate with the patient about the benefits, risks and alternatives of the proposed procedure and to obtain the patient's consent.

The physician may delegate to a nurse the task of properly completing the consent form and obtaining the patient's signature.

COURT OF APPEAL OF LOUISIANA
October 17, 2006

later as a witness to this critical communication process having taken place.

The physician can delegate to the nurse the task of filling out and having the patient sign the surgical consent form. It is not necessary for the nurse again to explain everything. The consent form only serves as a legal memorial to the communication process that has already occurred between physician and patient.

Consent Form's Legal Rationale

State legislatures have wanted to cut back patients' traditional common-law right to sue for lack of informed consent in cases where no medical negligence has occurred.

If the case goes to court, and there is an apparently valid signed consent form in the chart, the patient's caregivers do not have the difficult burden of proof as to the patient's state of mind on the issue of whether the patient gave truly informed consent.

State statutes say that if the consent form was drafted by the lawyers in conformance with state law, properly filled out by a competent caregiver with the pertinent details of the actual procedure to be done, and signed by the patient, the patient has to prove that he or she did not understand and did not consent. Anderson v. Louisiana State University, __ So. 2d __, 2006 WL 2956492 (La. App., October 17, 2006).

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