

Informed Consent: Nursing Notes Compel Dismissal Of Medical-Battery Lawsuit.

The patient was diagnosed with metastatic squamous cell carcinoma, which explained the neck mass and persistent sore throat that brought him to his physician's attention.

Three weeks after making the diagnosis the physician wrote a detailed note about the office visit in which he explained his plan for a comprehensive neck dissection at the site of the mass, including the goals, rationale, risks and treatment recommendations associated with the procedure. The note ended with the statement that, "We will arrange a date for him."

No Consent Form Was Signed

The patient never signed a surgical consent form at the doctor's office or at the hospital. Some time after the procedure the patient sued the physicians claiming that the absence of his signature anywhere on the dotted line made it an open and shut case of medical battery.

The US District Court for the District of Minnesota ruled that not signing did not necessarily prove he did not consent. As the court read the perioperative nursing records, the patient did, in fact, understand what was to happen and did consent.

Perioperative Nursing Record

A pre-op nursing record dated the day of the surgery included a box checked next to the statement, "Patient verbalizes understanding of perioperative instructions." The same record had a nurse's initials next to the statement, "Planned procedure and physician confirmed with patient."

The circulating nurse in the operating room also wrote a note on the Interoperative Nursing Record stating, "patient could state surg procedure to neck & purpose."

The bottom line, the court ruled, was that the patient was informed and did consent to the operation in the physician's office, whether or not his physician had him sign a consent form as his physician should have.

The nursing documentation was ample corroboration for the fact the patient understood and agreed to undergo the procedure in question. **Studnicka v. Pinheiro, 2008 WL 4717471 (D. Minn., October 24, 2008).**

Battery is an archaic term left over from the old English common law that refers to touching another person without permission. It usually refers to use of force as in an assault and battery. Battery is grounds for a civil lawsuit for damages.

Medical battery is the term used when a physician or other caregiver goes ahead with a medical procedure upon the body of a patient without the patient's consent. Medical battery is likewise grounds for a civil lawsuit for damages.

Informed consent laws spell out the steps physicians and others can take to keep themselves off the hook for medical battery.

The informed consent laws prescribe explicitly the basic language expected to be found in a medical consent document.

More importantly, the informed consent laws go on to state that the patient's signature on a properly drafted informed consent document is prima facie evidence the patient did consent to the procedure and, therefore, prima facie evidence there was no medical battery.

UNITED STATES DISTRICT COURT
MINNESOTA
October 24, 2008
