

# Ethics Committee Core Curriculum

## Informed Consent

**Stephen Wear**

---

The legal doctrine of informed consent has been incorporated into hospital policies and procedures based upon the interpretation of legal standards. In New York, the Medical Society of the State of New York has distributed information prepared by the office of General Counsel which cites the relevant law. They have advised that "Unless medically contraindicated, a physician should explain the medical or surgical procedure to the patient so that the patient may make an informed choice as to whether to consent. Where circumstances permit, the patient should be told (1) the nature of the diagnosis, (2) the general nature of the contemplated procedure, (3) the risks involved, (4) the prospect of success, (5) the prognosis if the procedure is not performed, and (6) alternative methods of treatment if any."

**Public Health Law § 2805-d.** Limitation of medical, dental or podiatric malpractice action based on lack of informed consent.

1. Lack of informed consent means the failure of the person providing the professional treatment or diagnosis to disclose to the patient such alternatives thereto and the reasonably foreseeable risks and benefits involved as a reasonable medical, dental or podiatric practitioner under similar circumstances would have disclosed, in a manner permitting the patient to make a knowledgeable evaluation.
2. The right of action to recover for medical, dental or podiatric malpractice based on a lack of informed consent is limited to those cases involving either (a) non-emergency treatment, procedure or surgery, or (b) a diagnostic procedure which involved invasion or disruption of the integrity of the body.
3. For a cause of action therefor it must also be established that a reasonably prudent person in the patient's position would not have undergone the treatment or diagnosis if he had been fully informed and that the lack of informed consent is a proximate cause of the injury or condition for which recovery is sought.
4. It shall be a defense to any action for medical, dental or podiatric malpractice based upon an alleged failure to obtain such an informed consent that:
  - (a) the risk not disclosed is too commonly known to warrant disclosure; or
  - (b) the patient assured the medical, dental or podiatric practitioner he would undergo the treatment, procedure or diagnosis regardless of the risk

- involved, or the patient assured the medical, dental or podiatric practitioner that he did not want to be informed of the matters to which he would be entitled to be informed; or
- (c) consent by or on behalf of the patient was not reasonably possible; or
  - (d) the medical, dental or podiatric practitioner, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which such alternatives or risks were disclosed to the patient because he reasonably believed that the manner and extent of such disclosure could reasonably be expected to adversely and substantially affect the patient's condition.

### **Other Resources**

- [Patients' Rights in New York State](#) from the New York State [Department of Health](#)