

Pennsylvania Supreme Court Rules that Only Physicians – Not Their Staff – Can Obtain Informed Consent

Articles June 30, 2017

A recent Pennsylvania Supreme Court decision will have a major impact on how physicians across the Commonwealth obtain informed consent from their patients. In *Shinal v. Toms*, 2017 WL 2655387 (Pa. June 20, 2017), the 4-3 Court ruled that only physicians, not members of their staff, may obtain informed consent from patients before performing medical procedures.

The plaintiff in this case sued her physician for medical malpractice after a brain surgery went wrong resulting in a stroke, brain injury, and partial blindness. Before the procedure, the physician assistant provided the plaintiff with information about the procedure and obtained a signed informed consent form. However, the plaintiff claimed she was never informed of the risks associated with the surgery, and, if she had known, she would have chosen a less-risky approach.

During trial, the judge instructed the members of the jury that, in determining whether the physician obtained the plaintiff's informed consent, it could consider relevant information communicated by the physician assistant to the patient. The jury returned a verdict in favor of the physician, and the plaintiff appealed.

The Pennsylvania Supreme Court reversed and held that the duty to obtain informed consent from a patient belonged solely to a physician who was performing the treatment and was non-delegable. In doing so, the Court explained that “a physician cannot rely upon a subordinate to disclose the information required to obtain informed consent. Without direct dialogue and a two-way exchange between the physician and patient, the physician cannot be confident that the patient comprehends the risks, benefits, likelihood of success, and alternatives.”

The Court's decision is limited to the major medical procedures enumerated in the MCARE Act, which requires physicians to obtain informed consent when performing major medical procedures such as surgery, radiation, a blood transfusion, inserting a surgical device, and administering an experimental medication or device. 40 P.S. § 1303.504. The Court did not extend its ruling to require physicians, and not staff members, to obtain informed consent for routine or nonsurgical treatments.

This decision is now binding law across the Commonwealth, meaning that physicians who rely on their staff to obtain informed consent from patients for major medical procedures will need to change their practice so that patients are consenting to the physician who is performing the surgery.

Critics to this decision claim that this will place an unnecessary burden on already overworked physicians. As the three justices who dissented from the majority noted, this “decision will have a far-reaching, negative impact on the manner in which physicians serve their patients. For fear of legal liability, physicians now must be involved with every aspect of informing their patients' consent, thus delaying seriously ill patients access to physicians and the critical services that they provide.”

For more information, contact Mike Cassidy.