

Informed Consent

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Torts

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Informed Consent

- Is it battery?
- Is it negligence?

Requirements for action

- A risk should have been disclosed.
- It wasn't.
- The patient would have made a different decision if the risk had been disclosed.
- The patient was thereby injured.

Whose perspective?

- Physician rule
- Patient rule

Physician rule

- Plaintiff cannot recover absent proof that the customary practice of doctors in the relevant community is to inform of the risk that the defendant did not disclose.

Patient rule

- Physicians have a duty to disclose risks that are likely to affect the patient's decision. (Materiality)
 - Objective view
 - Subjective view

But-for causation

- If the physician had disclosed the risk, the patient would have made a different decision.

Therapeutic privilege

- Recognized in some states
- Emergencies
- Prior request by patient