

NOTICE: Pennsylvania Supreme Court Ruling on Informed Consent

The Pennsylvania Supreme Court has interpreted a Pennsylvania statute to mean that a physician's duty to provide information to a patient sufficient to obtain informed consent is non-delegable.

Pennsylvania Statutes Title 40 P.S. Insurance section 1303.504(a) states:

Duty of physicians.--Except in emergencies, a physician owes a duty to a patient to obtain the informed consent of the patient or the patient's authorized representative prior to conducting the following procedures:

- (1) Performing surgery, including the related administration of anesthesia.
- (2) Administering radiation or chemotherapy.
- (3) Administering a blood transfusion.
- (4) Inserting a surgical device or appliance.
- (5) Administering an experimental medication, using an experimental device or using an approved medication or device in an experimental manner.

In the case *Shinal v. Toms* (Ref: *Shinal vs Toms*. # 31. Map 2016, 2017. Lexis 1385. June 20 of 2017), the Court found that “the duty to obtain a patient's informed consent is a non - delegable duty owed by the physician conducting the surgery or treatment.” Therefore, the Court held that “a physician cannot rely upon a subordinate to disclose the information required to obtain informed consent.”

The court further explains,

Under the plain language of this section, the duty to obtain a patient's informed consent for the several enumerated procedures, including surgery, belongs to the physician. Section 504 does not merely require that the patient's consent be informed; it specifically imposes the duty upon physicians to provide to the patient the requisite information and to obtain informed consent. Nothing in the plain language of the Act suggests that conversations between the patient and others can control the informed consent analysis or can satisfy the physician's legal burden.

If you have any questions about the interpretation or application of this Supreme Court decision to the conduct of research, contact local counsel licensed in Pennsylvania. Nothing in this notice is intended to constitute legal advice.