



# NE NURSING LAW & ETHICS

Volume 2, Number 2  
February 1981

## Informed Consent and the Nurse

by Angela R. Holder, LL.M.  
and John W. Lewis, M.D., F.A.C.S.

Informed consent, as the courts define it, is the patient's right to know, before agreeing to a procedure, what the procedure entails — the hazards, the possible complications, and expected results of the treatment.<sup>1</sup> The patient must understand any reasonable alternatives to the proposed procedure, including, in most cases, the results that can be predicted from non-treatment.<sup>2</sup> The choice among alternative risks involves value judgments falling outside the scope of medical decision-making, including the patient's views on social, economic, and other personal factors of which health professionals cannot possibly be aware.

The negotiations necessary to obtain the patient's informed consent are the responsibility of the person who will perform the procedure. If a physician is in charge, the physician may delegate the discussion to another but retains the legal responsibility to make sure the patient understands. For example, in one case it was held by the appellate court that when a nurse-anesthetist actually gave anesthesia, the anesthesiologist under whose direction she worked was still responsible for obtaining the patient's consent, and thus the anesthesiologist — and not the anesthetist — was liable when an untoward result occurred of which the patient

had not been forewarned.<sup>3</sup> Similarly, if a surgeon delegates to someone else the responsibility for discussing the risks of an operation with a patient, the delegate must know enough about those risks to discuss them adequately.

In procedures which will be performed by a nurse in the course of nursing care, the nurse is the person responsible for explaining the elements of informed consent to the patient. However, if the procedure will be performed by a physician, the nurse is not primarily responsible. Most courts have determined that the patient's right to be informed is not the responsibility of the hospital, but is personal to the physician.<sup>4</sup>

---

**. . . informed consent is quite a different thing from the consent form.**

---

A recent decision of the Missouri Court of Appeals dealt with a patient who had a hysterectomy which was followed by the appearance of a vesicovaginal fistula. Two surgical procedures were required to repair it. She sued the surgeon (who settled the claim against him) and the hospital for failure to obtain her informed consent. The patient claimed it was the duty of the hospital to explain the risks of the hysterectomy to her, since the night before the operation a nurse had brought her the standard hospital consent form. In rejecting this claim, the court held that "the physician alone is equipped to make the delicate judgments called for" and that the hospital was under no

Contents	
Informed Consent and the Nurse by Angela R. Holder and John W. Lewis . . . . .	1
<i>Health Law Notes: Invasion of Privacy in the Hospital</i> by George J. Annas . . . . .	3
<i>Ethical Dilemmas: Hiding Medical Records Behind the Law</i> by Jane L. Greenlaw . . . . .	5
Dear Mary . . . . .	4
Reviews . . . . .	6
Nursing Law & Ethics Reference Shelf . . . . .	7

such duty. Specifically, the court stated that the hospital did not assume a duty to inform the patient by asking her to sign a consent form, and that there was no reason for the hospital to suspect that she had not been appropriately informed by her surgeon.<sup>5</sup> This decision is one of very few dealing with this subject. There have been other cases in which the issue has been peripherally raised, but they have almost all been resolved on the same basis.<sup>6</sup>

Even though it would seem that a nurse is very unlikely to be held responsible for obtaining informed consent for a procedure which will be performed by a physician, the nurse *should not attempt to do so unless she is as familiar with the risks, benefits, and alternatives as the physician, who is legally responsible for doing so.*

(Continued on page 2)

---

Angela R. Holder, author of many nursing and medical articles, is an Associate Clinical Professor of Pediatrics (Law) at Yale University School of Medicine, and Counsel for Medicolegal Affairs, Yale-New Haven Hospital and Yale University School of Medicine. John W. Lewis is a surgeon, currently enrolled at the Yale Law School.