

## Obtaining Informed Consent

Obtaining informed consent for medical treatment is both an ethical and a legal obligation. The process of informed consent is designed with patient autonomy in mind. To properly make decisions, patients must be adequately informed by their providers about the risks, benefits and alternatives to the proposed medical treatment.

Each state has some form of informed consent law, and the consequences for failing to obtain informed consent can include malpractice liability. Generally, the physician is well-served when information is presented concerning the patient's diagnosis, the nature and purpose of the proposed treatment, the risks and alternatives to the proposed treatment, the expected benefits of the treatment, as well as the risks and potential benefits of alternative treatment or no treatment at all.

Of course, providing every piece of available information about a medical condition or treatment to a patient is not possible. The physician's obligation is usually phrased in terms of doing what a reasonable physician would do, or what a reasonably careful physician would do, under the same or similar circumstances. The exact content of the discussion should be tailored to the patient's situation.

Documentation of the informed consent is the final step in the process. Often a procedure consent form will be pre-printed and the patient will sign and date on such an institutional form. In some cases, these forms are presented by hospital staff instead of the physician. Documenting the informed consent discussion in the medical record in addition to the use of a pre-printed form can be a helpful practice. Some physicians use simple drawings or diagrams to convey relevant choices in shorthand form to their patients. When these drawings are placed in the medical record, they are powerful evidence that a discussion has taken place. Other practitioners note that a discussion has occurred, certain written materials provided, and all questions have been answered. Sometimes, physicians ask a patient to repeat back information during the process and document the patient's ability to do so. These types of documentation help create a clear record of the process.

Physicians can fulfill their ethical and legal duties to obtain informed consent by engaging patients in the process of communication. Discussing the risks, benefits and alternatives to treatment is essential to the process. Equally important is documenting the fact that the informed consent discussion has taken place. Physician documentation of their careful conduct in this regard will help protect them and ensure that patient autonomy is respected.

---

*This publication has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*



**HINSHAW**  
& CULBERTSON LLP