Case Brief Example


Facts:

Plaintiff brought a malpractice suit against the Defendant surgeon for failing to obtain Plaintiff’s informed consent. Plaintiff permitted Defendant to perform a biopsy of Plaintiff’s breast after Defendant expressed his concerns that anomalies on Plaintiff’s mammogram might be cancer. Largey at 206-207. Defendant conducted the biopsy, but also biopsied and excised the Plaintiff’s lymph nodes. Largey at 207. As a result of defendant’s biopsy and excision of plaintiff’s lymph nodes, plaintiff developed lymphdema, a swelling caused by inadequate drainage in the lymphatic system. Largey at 207. Defendant did not advise plaintiff of the risk of lymphdema prior to performing the procedure. Id.

The trial court entered judgment in favor of Defendant after finding that Defendant provided Plaintiff with the same information that another “reasonable physician” in the community would have provided. Largey at 206. Plaintiff appealed and the appellate division affirmed the trial court’s decision. Largey at 205. The New Jersey Supreme granted certification on plaintiff’s petition. Largey at 206.

Rule:

The appropriate standard for informed consent cases is the “prudent patient” standard which requires that a physician disclose to a patient all material facts that a reasonable patient would want to know in order to make an informed decision. As in all medical malpractice cases, proximate causation must be established by proving that a prudent person in the patient’s position would have decided differently if adequately informed.
Issue(s):

1. Should the standard for informed consent be the “reasonable physician” standard, which requires that a physician disclose to a patient that information which a reasonable physician in the community would disclose, or the “prudent patient” or “materiality of risk” standard, which requires a physician to disclose enough information so that a reasonable patient can make an informed decision?

2. Did Defendant’s failure to disclose the risks of lymphdema proximately cause Plaintiff’s injuries?

Holding(s):

1. The appropriate standard for determining whether a physician obtained a patient’s informed consent is the “prudent patient” standard, which requires that a physician disclose all material risks and the choices available with respect to the proposed treatment in order that a patient who is competent might make an informed decision.

2. As in all medical malpractice cases, proximate causation must be established by proof that a prudent person in the patient’s position would have decided differently if adequately informed.

Reasons & Policies:

A patient has a right to self-determination and as such, a patient has the right to decide what treatment is in his/her best interest. A patient of sound mind has the right to refuse treatment, even life-saving treatment, and a physician may not substitute his/her judgment for the patient’s. Largey at 209 and 213. “The existence of a discernable custom reflecting medical consensus is open to serious doubt.” Largey at 212. “The professional standard is totally subject
to the whim of the physicians in the particular community.” Largey at 213. “Under this view a physician is vested with virtually unlimited discretion in establishing the proper scope of disclosure; this is inconsistent with the patient’s right of self-determination.” Largey at 213.

The Court discarded the “reasonable physician” standard, which required a physician to disclose information which a reasonable, similarly-trained physician in the community would customarily make in similar circumstances. Largey at 209. The Court instead adopted the “prudent patient” standard, which requires that a physician disclose all risks which would be material to a patient’s decision and the choices available to the patient with respect to the proposed procedure. Largey at 211. A risk would be “material” when a reasonable patient would attach significance to the risk or cluster of risks in deciding whether to forego the proposed therapy or to submit to it. Largey at 212 citing Canterbury at 787.