



Facts About Informed Consent

The Issue: During June 2017, the Pennsylvania Supreme Court issued a decision that severely hampers the concept of team-based health care, and takes away a physician’s medical expertise and judgment in determining how best to serve his or her patients. The decision had real-life implications for patients and the way health care is delivered.

In the case of *Shinal v. Toms*, the court ruled that health care facilities and physicians could not use qualified practitioners in the informed consent process. This means that qualified staff can no longer assist with providing information, answering questions, or following up with patients prior to surgical procedures for fear of legal liability. The court ruling is based upon a strict, interpretation of the state’s 2002 Medical Care Availability and Reduction of Error (MCare) Act.

Additionally, communications between a physician’s qualified staff members and patients will no longer be admissible at trials as to the issue of whether the physician obtained informed consent.

The Impact on Providers and Patients

Health care delivery has changed dramatically during the last decade. Health care policies emphasize coordination, efficiency, effectiveness, and value. Practicing health care in isolation is not a best practice in today’s complex health care system.

Team-based health care is when at least two health professionals who work collaboratively with patients and their caregivers promote health services to achieve coordinated, high-quality care and shared goals within and across settings. Team-based care improves patient care flow, expedites services and, in hospitals and communities faced with provider shortages, **team-based care is critical to ensure right place, right time, right care.**

By removing a physician’s ability to entrust qualified staff with informed consent responsibilities, the court decision works against best practices in modern medicine; placing patients at risk and interfering with a physician’s expertise in managing his or her patient’s care plan.

Informed consent:

Agreement or permission accompanied by full notice about the care, treatment, or service that is the subject of the consent. A patient must be apprised of the nature, risks, and alternatives of a medical procedure or treatment before the physician or other health care professional begins any such course. After receiving this information, the patient then either consents to or refuses such a procedure or treatment.¹



The decision fails to consider issues ranging from emergency situations and patient caseload to workforce shortages, especially in small and rural communities.

The Remedy

HAP supports legislation that would address the Supreme Court's strict interpretation of the MCare Act regarding a physician's ability to delegate the duty to obtain the informed consent of a patient prior to specified procedures. The proposal would align provisions of the MCare Act with modern day health care practices, honor current best practices, and protect patients.

The legislation will:

- Clarify that while physicians remain responsible for the overall care of their patients, the task of obtaining a patient's informed consent may be delegated by a physician to qualified practitioners
- Allow health care facilities and physicians to develop policies and procedures regarding informed consent concerning when qualified practitioners other than physicians may obtain informed consent
- Allow physicians and other qualified practitioners to rely on information provided by another qualified practitioner to obtain the informed consent of the patient and allow this information to be used as evidence in a proceeding in which it is alleged that the physician or other qualified practitioner failed to obtain informed consent
- Clarify informed consent requirements in human research conducted pursuant to approval by an institutional review board or similar entity
- Clarify when a physician or qualified staff person is required to obtain a separate or new informed consent from a patient when informed consent was already obtained

The Pennsylvania Medical Society and HAP support the legislation. **Physicians should have the ability to determine when to employ the assistance of other qualified practitioners** while ensuring patients are protected and have access to information they need to make informed decisions about very important health care matters.



References

¹The Joint Commission, 2016. Comprehensive Accreditation Manual glossary