PJI 2:150A Malpractice—Informed Consent

Before obtaining a patient's consent to an operation or invasive diagnostic procedure or the use of medication, a doctor has the duty to provide certain information concerning what the doctor proposes to do, the alternatives to that operation, procedure or medication and the reasonably foreseeable risks of such operation, procedure or medication. It is the doctor's duty to explain, in words that are understandable to the patient, all the facts that would be explained by a reasonable medical practitioner so that when the patient does, in fact, consent, that consent is given with an awareness of (1) the patient's existing physical condition; (2) the purposes and advantages of the operation, procedure or medication; (3) the reasonably foreseeable risks to the patient's health or life which the operation, procedure or medication may impose; (4) the risks involved to the patient if there is no operation, procedure or use of medication; and (5) the available alternatives and the risks and advantages of those alternatives. The first question on this issue that you will be called upon to answer is whether the defendant, before obtaining plaintiff's (decedent's) consent, provided appropriate information.

The question reads as follows:

(1) Did defendant before obtaining plaintiff's (decedent's) consent to the (operation, procedure, use of medication) provide appropriate information?

Plaintiff maintains that the answer to this question is “No,” contending that [set forth the specific risks and/or alternatives that plaintiff claims were not disclosed]. Defendant maintains that the answer to the question is “Yes” and contends that (the information was, in fact, provided, or a reasonable medical practitioner would not provide such information to the patient in a case such as this).

If you answer “No” to the question, the next question you must decide is whether a reasonably prudent person in the plaintiff's (decedent's) position would have decided not to undergo the operation or procedure or take the medication if given appropriate information concerning the risks and alternatives.

The question reads as follows:

(2) Would a reasonably prudent person in plaintiff's (decedent's) position at the time consent was given have decided not to undergo the [state procedure] [state where appropriate: take the medication] if given appropriate information?

Plaintiff maintains that the answer to this question is “Yes,” contending that considering the nature of plaintiff's (decedent's) condition at the time and the risks involved in the (operation, procedure, use of medication) and the available alternatives, a reasonably prudent person would not have consented to the (operation, procedure, use of medication). Defendant maintains that the answer to this question is “No,” contending that considering plaintiff's (decedent's) condition and the need for the (operation, procedure, use of medication) the omitted information would not have caused a reasonably prudent person to refuse to consent to the (operation, procedure, use of medication).