

§2905. Informed consent to health care treatment

1. Disallowance of recovery on grounds of lack of informed consent. Recovery is not allowed against any physician, physician assistant, podiatrist, dentist or health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or the patient's spouse, parent, guardian, nearest relative or other person authorized to give consent for the patient when:

A. The action of the physician, physician assistant, podiatrist or dentist in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; [PL 2013, c. 355, §4 (AMD).]

B. A reasonable person, from the information provided by the physician, physician assistant, podiatrist or dentist under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments that are recognized and followed by other physicians, physician assistants, podiatrists or dentists engaged in the same field of practice in the same or similar communities; or [PL 2013, c. 355, §4 (AMD).]

C. A reasonable person, under all surrounding circumstances, would have undergone such treatment or procedure had that person been advised by the physician, physician assistant, podiatrist or dentist in accordance with paragraphs A and B or this paragraph. [PL 2013, c. 355, §4 (AMD).]

For purposes of this subsection, the physician, physician assistant, podiatrist, dentist or health care provider may rely upon a reasonable representation that the person giving consent for the patient is authorized to give consent unless the physician, physician assistant, podiatrist, dentist or health care provider has notice to the contrary. [PL 2013, c. 355, §4 (AMD).]

2. Presumption of validity of written consent; rebuttal. A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained through fraud, deception or misrepresentation of material fact. [PL 1977, c. 492, §3 (NEW).]

3. Mental and physical competency. A valid consent is one which is given by a person who, under all the surrounding circumstances, is mentally and physically competent to give consent. [PL 1977, c. 492, §3 (NEW).]

SECTION HISTORY

PL 1977, c. 492, §3 (NEW). PL 1989, c. 74, §2 (AMD). PL 1991, c. 217 (AMD). PL 2013, c. 355, §4 (AMD).

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