Future of Informed Consent Law

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Thaddeus Mason Pope, J.D., Ph.D.
Hamline University Health Law Institute

EOL medicine

Advance directives
Surrogates / Agents
POLST
Aid in dying
VSED

Patients get the treatment they want

Informed consent

Too much
Too fast
Too complex
“lengthy polysyllabic discourse”

Cobbs v. Grant (Cal. 1972)

Roadmap

Past
Present
Future

50 year cycle

Quality of consent

1865 1915 1965 2015

1865 1915 1965 2015

1865 1915 1965 2015
Do NOT consider patient’s “own crude opinions”

Mohr v. Williams (Minn. 1905)
“Every human being of adult years and sound mind has a right to determine what shall be done with his own body . . . .”

Consent

But not “informed”

1965

Salgo v. Leland Stanford (Cal.)

Natanson v. Kline (Kan.)

Present

Structural Outcomes
Duty
Breach
Causation
Damages

Prudent physician state

Custom to not disclose → No duty

Material risk state

Odd → No duty

Breach
Focus on disclosure NOT understanding

Causation
PTF would have chosen differently

RPP would have chosen differently

Damages

$250,000

Outcomes

Only 31% with advanced cancer had EOL discussions

Only 12% clinicians discuss with heart failure

Mandated Disclosures

Health Care Costs in the Last Week of Life

Associations With End-of-Life Conversations


Mandated Disclosures

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3 / 100

Cardial Artery Silent Insertion

Among the 31% of patients with advanced cancer who had EOL discussions, only 12% of clinicians discussed heart failure.
Breast cancer (1979-1986)

Breast reconstruction coverage

Breast density

Minn. (2015)

VISIT TRISOMY18.ORG

EOL options

Statement of Principles on the Role of Governments in Regulating the Patient-Physician Relationship

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Still focused on disclosure

Still focused on what physician conveys not how

Future PtDA

Robust evidence shows PtDAs are highly effective
BUT

Hardly any clinical usage

Use law to incent PtDA use

ACA 3506

Safe harbor for using “certified” PtDA

Thaddeus Mason Pope
Director, Health Law Institute
Hamline University School of Law
1536 Hewitt Avenue
Saint Paul, Minnesota 55104
T 651-523-2519
F 901-202-7549
E Tpope01@hamline.edu
W www.thaddeuspope.com
B medicalfutility.blogspot.com

Selected References


