

Health Law: Quality & Liability

Prof. Thaddeus Pope

Unwanted Medical
Treatment



Patient
did **not**
want it



But **got** it
anyway



3 types
UMT



Type **1**
UMT



Not medically
indicated

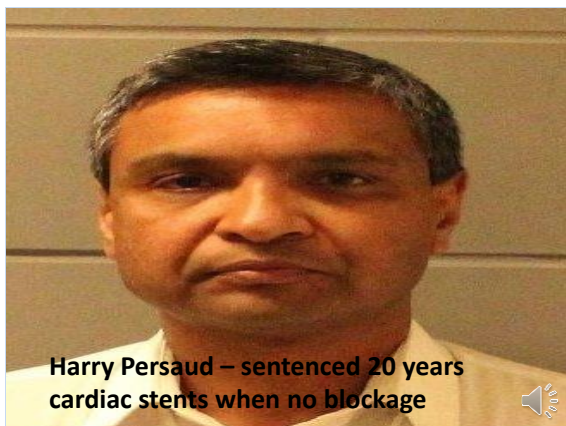




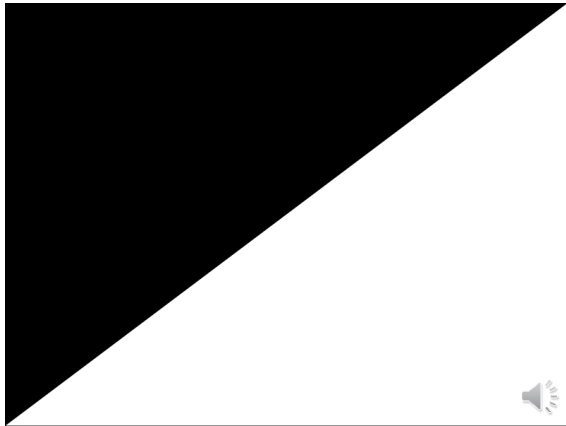
Breast surgeon
Ian Paterson
jailed 15 years for
needless operations



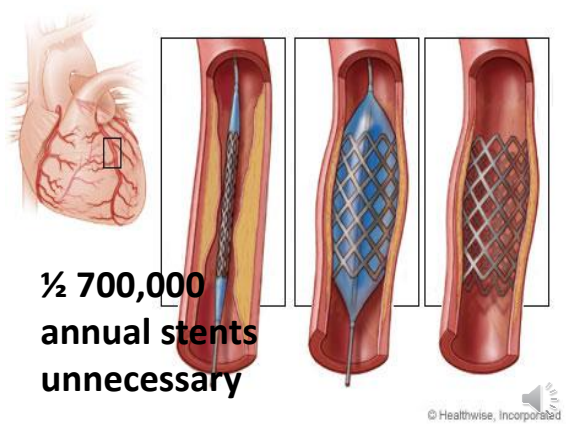
BREAKING NEWS
CANCER DOCTOR FARID FATA SENTENCED
TO 45 YEARS IN PRISON



Harry Persaud – sentenced 20 years
cardiac stents when no blockage

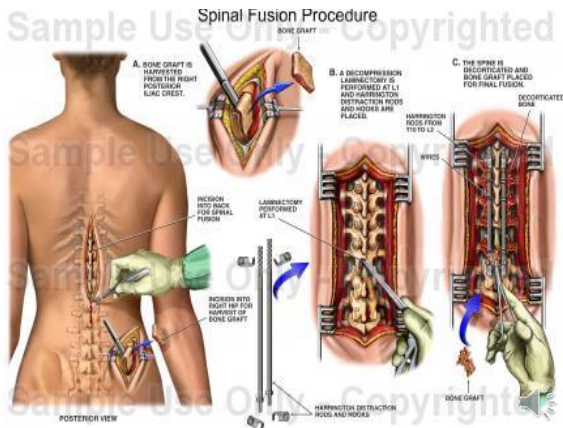






**1/2 700,000
annual stents
unnecessary**

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Tx

Indicated

No patient would want

Claim:
Fraud

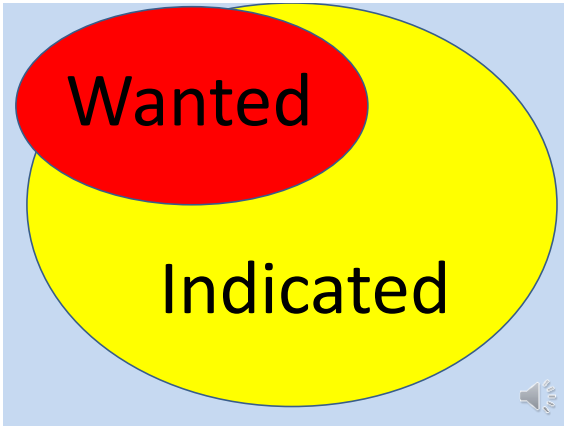


Type **2**
UMT



Tx
Indicated





Clinically
indicated



Not
preference
indicated



Reasonable
patient **might**
want this



But . . .
this patient
does not



3 examples



Example 1: scope of consent

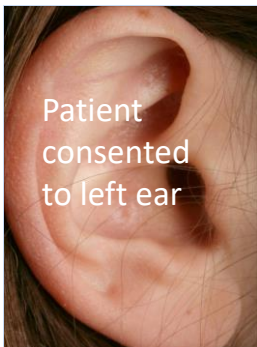


Patient
consented
to biopsy
not removal



Mary Schloendorff





Patient
consented
to left ear



Physician
operated
on right ear

Mohr v. Williams (Minn. 1905)

Example 2: advance directives





Doctors
Hospital
Augusta
v.
Alicea
(Ga. 2016)



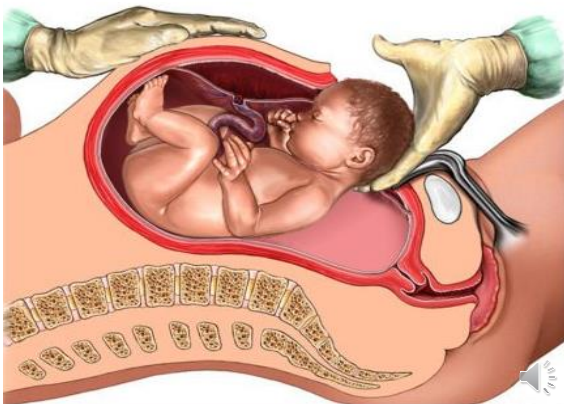
\$1,000,000

(plus appeal to SCOGA)



Example 3: forced cesareans





Crisp, clear,
concrete
UMT



Patient: “No. I do **not** want X.”

Clinician: Does X



Explicit refusals
only small
fraction of UMT



Claim:

Battery



UMT type 1

No medical basis Tx

UMT type 2

Medical basis for Tx
but rejected



Type 3

UMT



Most

common

UMT



No rejection

No refusal



Actual
consent



uninformed





Got what I
asked for

But



Did not know =
75g sugar



I would not have consented, **if** knew risks, benefits, alternatives



Claim:

Informed
consent