ELSEVIER

The Doctor's Docket

What Needs To Be Said? Informed Consent in the Context of Spinal Anesthesia

Bryan A. Liang, MD, PhD, JD*

Pepperdine University School of Law, Malibu, CA.

Commentary by Robert D. Truog, MD,† and David B. Waisel, MD‡

Facts

Patient JK consulted Dr. N, a surgeon, regarding an "enlarging bulge" in his right groin. On physical examination, Dr. N determined that JK was suffering from a large right inguinal hernia as well as a small left inguinal hernia. Dr. N felt that the most appropriate treatment modality for JK's condition was a bilateral hernioplasty. Dr. N consulted with Dr. M, an anesthesiologist, regarding the most appropriate anesthesia for the hernioplasty and Dr. M determined that JK would be best served by spinal anesthesia. Dr. M did not explain or indicate any risks at all with respect to the spinal anesthetic.

Postoperatively, JK exhibited swelling in his right testicle for three months. Subsequent physical examination revealed that his testicles had decreased in size to 0.2 inches on the right (one-eighth of an adult male's normal size) and 1.0 inch on the left (three-fourths of an adult male's normal size). Before surgery, JK had not exhibited abnormally small testicles. At the time of trial, JK suffered from permanent bilateral testicular atrophy, total sexual impotence, and numbness in the pubic and groin areas.

JK brought suit against both Dr. N and Dr. M for medical malpractice and lack of informed consent. Plaintiff claimed that had he been informed of the possibility of vascular complications or testicular atrophy or apprised of the potential of losing sensation in his sexual organs, he would not have consented to the operation. At trial, plaintiff's expert witnesses testified that the testicular atrophy was most likely caused by the surgical procedure due to vascular damage, while the diminished sensation in the plaintiff's pubic and groin areas implicated the spinal anesthetic as its cause. However, the resulting numbness was conceded by one expert as not indicative of any lack of due care on the part of anesthesiologist Dr. M but rather as an "unpredictable idiosyncratic" patient reaction. Although Dr. M himself testified that there is a known risk that spinal anesthetics may be contaminated and cause neurologic damage, plaintiff's own expert indicated that anesthetic contamination was not a serious problem at that time. The trial court directed the jury to return a verdict in favor of the defendant physicians, and JK appealed the appellate court.

Plaintiff sought damages from Dr. N and Dr. M on the

*Assistant Professor of Law

†Associate Professor of Anaesthesia, Harvard Medical School

‡Attending Anesthesiologist, 59th Medical Wing/PSSA, Lackland AFB, TX

Address correspondence to Dr. Liang at the Pepperdine University School of Law, Malibu, CA 90263, USA.

Received for publication October 10, 1995; revised manuscript accepted for publication January 29, 1996.

Journal of Clinical Anesthesia 8:525–527, 1996
© 1996 by Elsevier Science Inc.
655 Avenue of the Americas, New York, NY 10010

0952-8180/96/$15.00
PII S0952-8180(96)00122-5