

# Who can obtain an informed consent from the patient?



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In a recent publicized Pennsylvania case, *Shinal v Toms*, a patient had surgery for recurrence of a nonmalignant brain tumor. After the initial consultation with the surgeon, in which Dr. Toms advised her of risks associated with surgery and reviewed a less aggressive approach and a more aggressive approach, Mrs. Shinal did not reach a decision about which approach she wanted. Her subsequent preoperative interactions were with a Physician Assistant (PA). She had questions which the PA answered by phone. The PA also did the preoperative history and physical, provided pre surgical information, and obtained her signature on the consent form. On appeal from a jury verdict for the doctor, the Pennsylvania Supreme Court ruled that the duty to obtain informed consent belongs solely to the physician and is non-delegable. Such a delegation would deprive the patient of the opportunity to engage in dialogue with the chosen health care provider. The Court and a two-way exchange between cannot be confident that the benefits, likelihood of success and

### Can a physician rely on someone else to disclose vital information and obtain informed consent?

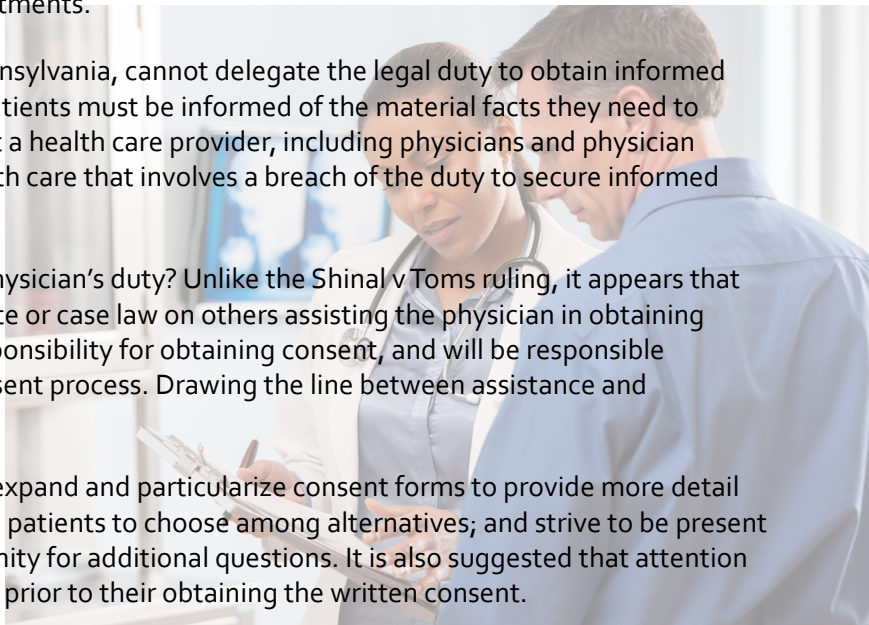
stated that without direct dialogue provider and patient, the physician patient comprehends the risks, alternatives.

What is the law in Washington? Can a physician rely on someone else to disclose vital information and obtain informed consent? The issue includes not only surgical procedures but also other treatments such as colonoscopies and cancer treatments.

It is clear that a physician in Washington State, as in Pennsylvania, cannot delegate the legal duty to obtain informed consent to another. Washington statute requires that patients must be informed of the material facts they need to make decisions about their care. RCW 7.70 provides that a health care provider, including physicians and physician assistants, can be liable for an injury resulting from health care that involves a breach of the duty to secure informed consent.

But can the physician have staff aid in performing the physician's duty? Unlike the *Shinal v Toms* ruling, it appears that there is no such explicit prohibition in Washington statute or case law on others assisting the physician in obtaining informed consent. But the provider has the primary responsibility for obtaining consent, and will be responsible for what ancillary staff do or fail to do as part of the consent process. Drawing the line between assistance and impermissible delegation is the difficult issue.

Several commentators have suggested that physicians expand and particularize consent forms to provide more detail including stating risks and their sequelae clearly; require patients to choose among alternatives; and strive to be present when the patient signs the consent, to give the opportunity for additional questions. It is also suggested that attention be paid to documenting any discussion by assistive staff prior to their obtaining the written consent.



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