

Informed Consent

Statutory citation and excerpts of statutory language

New York - Public Health Law § 2805(d)

Lack of informed consent means the failure of the person providing the professional treatment or diagnosis to disclose to the patient such alternatives thereto and the reasonably foreseeable risks and benefits involved as a reasonable medical, dental or podiatric practitioner under similar circumstances would have disclosed, in a manner permitting the patient to make a knowledgeable evaluation.

Informed consent is required in those cases involving non-emergent treatment or a diagnostic procedure which involves the invasion or disruption of the integrity of the body. For a cause of action, it must also be established that a reasonably prudent person in the patient's position would not have undergone the treatment or diagnosis if he had been fully informed and that the lack of informed consent is a proximate cause of the injury or condition for which recovery is sought.

Florida - Fla. Stat. § 766.103

No recovery shall be allowed against an enumerated health care provider in an action brought for treating, examining, or operating on a patient without his or her informed consent when: (1) the action of the provider in obtaining the consent of the was in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community as that of the provider; and (2) a reasonable individual, from the information provided, under the circumstances, would have a general understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards inherent in the proposed treatment or procedures, which are recognized among other like providers in the same or similar community who perform similar treatments or procedures; or the patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure had he or she been advised by the provider in accordance with the above.

Texas – Texas Civil Practice & Remedies Code, §74.101 – §74.107

In a suit against a health care provider involving a health care liability claim that is based on the failure of the health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

Generally, the health care provider shall disclose to the patient the risks and hazards involved in that kind of care or procedure. However, a failure to disclose may not be result of negligence if there was an emergency or if for some other reason it was not medically feasible to make a disclosure of the kind that would otherwise have been negligence.