

Breach of contract and informed consent

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Breach of contract and informed consent May 9, Breach of contract and informed consent Contract law regulates relationships between parties to agreement through ensuring that the parties obtain their rights and honor their obligations. Agreement between caregivers and patients are examples of contracts that may lead to breach or informed consent concerns. This discussion explores the legal scope of Harvey's case and notes that Harvey should not win a lawsuit in the case.

Harvey should not win the lawsuit because the facts of the case do not identify breach of informed consent and breach of contract under the patient's condition. According to the facts of the case, Harvey suffered from carotid artery blockage and while his doctor recommended a surgical procedure, Harvey signed a consent form that restricted use of blood or blood products on his body. He acknowledged potential health risks to his condition. He confirmed this in another agreement a day before the surgery. The surgery appears successful until a blood clot was realized and he suffered a stroke. His mother, who was also listed as the next of kin, then offered consent for subsequent operations and procedures, some of which involved blood transfusion because Harvey lost lots of blood and was at risk of heart attack and death. Harvey later recovered and sued.

The issue to be determined in the case is whether a breach of contract and breach of the doctrine of informed consent occurred.

One of the principles that guide the case is existence of a contract and its terms, and an agreement between Harvey and the doctor prior to the initial surgery identifies this. Consequently, any surgical procedures ought to have been conducted within the terms of the agreement. The agreement was

further based on the patient's informed consent as he acknowledged possible consequences on his decisions on the surgical procedure. This is because the initial agreement that existed in writing identified " disclosure," " comprehension," " voluntariness," " competence," and " consent" (Kennedy, 2008, p. 83). The informed consent was further consistent with statute law on autonomy and informed consent that grants a patient right to information and allows a patient to refuse treatment (Rutgers, n. d.), and case law as was argued in the case of *Schloendorff v. Society of New York Hospital*, as the patient reserved the right applications in the surgical procedures (Albert, 2000). There are however exceptions to the doctrine of informed consent that are applicable to the case and undermine Harvey's chances of winning. Emergency is an example and defines need for an immediate action with the aim of preserving a patient's life. This means that delays in a surgical action can lead to a patient's death and the case of *Barnett v. Bacharch* illustrates this and the courts waived need for additional consent. Case of unconscious patients also waives the need for informed consent before a surgical procedure and this is further incident to the doctrine of contractual capacity in contracts, a case in which a responsible third party may be required to offer consent on behalf of the privities party (Britt, Trunkey and Feliciano, 2007).

Even though the case identifies breach of informed consent as the doctors performed surgical procedures against Harvey's condition that blood or blood product should not be added to his body, the breach was consistent with legal provisions that waives informed consent. Consequently, Harvey should not win the lawsuit against either the care facility or its personnel

because actions were legal.

References

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