

Charity (00:01):

Welcome back to INsight. Meet with Dave Farnbauch from Sweeney Law Firm. Today, we're going to talk about informed consent for patients. So what does informed consent mean when patients are going into surgery? Is it that long form that we sign right before, the one that I don't necessarily read everything on that I sign right before we go into surgery?

David Farnbauch (00:19):

Yeah. I would say Charity that the typical patient thinks of informed consent is simply a long form with a lot of medical jargon and legal jargon that is presented to them right before surgery or shortly before they undergo some treatment that they're asked to quickly peruse and sign and people have this misconception that if they sign that form and then they have some of the complications that are on that form that they are precluding themselves from pursuing a legal case because they signed some informed consent form. And that's just not the case.

Charity (01:09):

You do think that, you think 'Oh, I'm out of luck because I signed and I gave up my rights.' So tell me, about some situations where informed consent becomes an issue in legal cases.

David Farnbauch (01:21):

Well, I think the best place to start Charity is just to explain what informed consent is, at least in Indiana, and what the law requires. In a nutshell, what the law requires is that the treating healthcare provider provide you with the important facts that a reasonable patient would want to know before you undergo treatment. I try to boil it down that way; what would a reasonable person want to know before you undergo treatment? So it really goes beyond just presenting you with a form. A doctor has to sit down and explain sort of the pros and cons and the risks to you, to the point where you understand it so that you can make an informed decision about whether you want to go forward with this particular mode of treatment or some other mode of treatment. So that's what informed consent is now where it becomes an issue in legal cases is where

David Farnbauch (02:26):

Dr. King and I see it come up the most is when a patient will undergo some treatment. Mostly the cases that we handle are complications from something that was done and how those complications were managed. And so when you undergo a procedure and things go wrong and then the tasks for the medical providers is to get you back on track health wise and respond to the complication or respond to the emergency. That's where informed consent can really rear its ugly head, because a lot of times doctors get in a position where they should be referring you to another doctor to manage those complications. Or a lot of times the doctor will feel like 'Well, let's just give it more time and see how this plays out'. And oftentimes deciding to ride it out and give it more time ends up being ultimately the wrong decision that you needed some emergency surgery to correct the problem.

David Farnbauch (03:35):

What the law requires is if there is a complication and there is that kind of a situation, the doctor has to sit down and be candid with you. You know, here are options, maybe there's another doctor that's available that should be managing your care and here are your options so that patients can know the important facts and make decisions about how they want their care managed. So informed consent arises much more than people think in medical malpractice cases. And it has nothing to do with those

forms that you sign. I'm not saying those forms that you sign have no significance, but most of the time the focus in a medical malpractice case, if there's a claim for failure of a doctor to provide you with informed consent, those forms that you signed do not provide any sort of a defense for the healthcare provider.

Charity (04:31):

And even though informed consent really is more verbal, it has to be documented right? In my chart as a patient, it has to be documented in my chart.

David Farnbauch (04:41):

Yeah. We see this all the time in medical malpractice cases where there's a claim of informed consent, where the doctor says 'I told the patient this, and I told the patient that' he goes into a lot of detail three years later after the fact about what he told the patient. And the problem we see Charity is a lot is those conversations are not documented in the patient's chart. So a lot of times a doctor or a healthcare provider can provide a lot of cover for informed consent if they just document those conversations that they had with the patient in the chart so that we can see they actually did have those conversations.

Charity (05:26):

Well, if you have questions about an informed consent and in a medical issue you had anything else like that, any questions about medical malpractice, all you have to do is give them a call at Sweeney Law Firm 420-3137. They'll be glad to talk it through with you. We'll be right back.