

1023.16 PROFESSIONAL NEGLIGENCE: CHIROPRACTOR, DENTIST, OPTOMETRIST, OR PODIATRIST: DUTY TO INFORM A PATIENT

Question _____ asks: On (date), was Dr. _____ negligent in informing (patient) about the availability of reasonable alternate modes of treatment and about the risks and benefits of these treatments? A (chiropractor) (dentist) (optometrist) (podiatrist) has the duty to inform (his) (her) patient about reasonable alternate modes of treatment available to (patient) and about the risks and benefits of the treatments that a reasonable (chiropractor) (dentist) (optometrist) (podiatrist) would know and disclose under the circumstances. If a (chiropractor) (dentist) (optometrist) (podiatrist) fails to perform this duty to inform, (he) (she) is negligent in informing (his) (her) patient.

A (chiropractor) (dentist) (optometrist) (podiatrist)'s duty to inform (his) (her) patient does not require disclosure of (include as applicable):

- Detailed technical information that in all probability a patient would not understand.
- Risks apparent or known to the patient.
- Extremely remote possibilities that might falsely or detrimentally alarm the patient.
- Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.
- Information in cases where the patient is incapable of consenting.
- Information about alternate modes of treatment for any condition the (chiropractor) (dentist) (optometrist) (podiatrist) has not included in his or her

diagnosis at the time the (chiropractor) (dentist) (optometrist) (podiatrist) informs the patient.

You have heard testimony during this trial from (chiropractors) (dentists) (optometrists) (podiatrists) who have testified as expert witnesses. This is because information about the availability of reasonable alternate modes of treatment and about the risks and benefits of the treatments that a reasonable (chiropractor) (dentist) (optometrist) (podiatrist) would disclose to a patient in the circumstances of this case is not a matter within the common knowledge of lay persons. The reasonable (chiropractor) (dentist) (optometrist) (podiatrist)'s standard of informing a patient is within the special knowledge of experts in the field of (chiropractor) (dentistry) (optometry) (podiatry) and can only be established by the testimony of experts. You may not speculate or guess what the standard of informing a patient is in deciding this case, but rather must attempt to determine it from the expert testimony that you have heard during this trial. In determining the weight to be given an opinion, you should consider the qualifications and credibility of the expert and whether reasons for the opinion are based on facts in the case. You are not bound by any expert's opinion.

COMMENT

This instruction and comment were approved in 2015.

The duty of chiropractors, dentists, optometrists, and podiatrists to inform patients about the availability of reasonable alternate modes of treatment and about the risks and benefits of these alternate treatments was codified in 2013 Wisconsin Act 345 (effective April 25, 2014). The act created Wis. Stats § 446.08 (chiropractors); § 447.40 (dentists); § 448.697 (podiatrists); and § 449.25 (optometrists).