

1023.2 PROFESSIONAL NEGLIGENCE: MEDICAL: DUTY OF PHYSICIAN TO INFORM A PATIENT; Wis. Stat. § 448.30 (2013)

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

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

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

You have heard testimony during this trial from doctors who have testified as expert witnesses. This is because information about the availability of reasonable alternate medical modes of treatment and about the risks and benefits of the treatments that a reasonable physician would disclose to a patient in the circumstances of this case is not a matter within the common knowledge of lay persons. The reasonable physician's standard of informing a patient is within the special knowledge of experts in the field of medicine 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 commentary were approved in 2014. See Comment to Wis JI-Civil 1023.1.

This instruction applies to a physician required to inform a patient about modes of treatment on or after December 15, 2013. For informed consent cases based on the failure to properly inform a patient prior to the effective date of Wis. Stat. § 448.30 (2013 Wisconsin Act 111), the following instruction applies:

**1023.2 PROFESSIONAL NEGLIGENCE: MEDICAL: INFORMED
CONSENT**

Question _____ asks:

Did (doctor) fail to disclose information about the (insert treatment or procedure) necessary for (patient) to make an informed decision?

A doctor has the duty to provide (his) (her) patient with information necessary to enable the patient to make an informed decision about a (diagnostic) (treatment) (procedure) and alternative choices of (diagnostic) (treatments) (procedures). If the doctor fails to perform this duty, (he) (she) is negligent.

To meet this duty to inform (his) (her) patient, the doctor must provide (his) (her) patient with the information a reasonable person in the patient's position would regard as significant when deciding to accept or reject (a) (the) medical (diagnostic) (treatment) (procedure). In answering this question, you should determine what a reasonable person in the patient's position would want to know in consenting to or rejecting a medical (diagnostic) (treatment) (procedure).

The doctor must inform the patient whether (a) (the) (diagnostic) (treatment) (procedure) is ordinarily performed in the circumstances confronting the patient, whether alternate (treatments) (procedures) approved by the medical profession are available, what the outlook is for success or failure of each alternate (treatment) (procedure), and the benefits and risks inherent in each alternate (treatment) (procedure).

However, the physician's duty to inform does not require disclosure of:

[X Information beyond what a reasonably, well-qualified physician in a similar medical classification would know;]

[X Detailed technical information that in all probability the patient would not understand;]

[X Risks apparent or known to the patient;]

[X Extremely remote possibilities that might falsely or detrimentally alarm the patient;]

[X Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment;]

[X Information in cases where the patient is incapable of consenting.]

[If (doctor) offers to you an explanation as to why (he) (she) did not provide information to (plaintiff), and if this explanation satisfies you that a reasonable person in (plaintiff)'s position would not have wanted to know that information, then (doctor) was not negligent.]