

Informed consent California

In California, the current law on informed consent is derived largely from the case of *Cobbs vs. Grant* (1972) 8 Cal.3d 229 in which it was ruled that a physician is required to disclose “all information relevant to a meaningful decisional process.” (page 242) Other case law that has influenced the current definition of informed consent includes *Mathis v. Morrissey* and *Truman v. Thomas*:

“When a doctor recommends a particular procedure then he or she must disclose to the patient all *material information* necessary to the decision to undergo the procedure, including a reasonable explanation of the procedure, its likelihood of success, the risks involved in accepting or rejecting the proposed procedure, and any other information a skilled practitioner in good standing would disclose to the patient under the same or similar circumstances.” [*Mathis v. Morrissey* (1992) 11 Cal.App.4th 332, 343]

“Material information” was defined by the court in *Truman v. Thomas* as:

“That which the physician knows or should know would be regarded as significant by a reasonable person in the patient’s position when deciding to accept or reject the recommended medical procedure. To be material, a fact must also be one which is not commonly appreciated. If the physician knows or should know of a patient’s unique concerns or lack of familiarity with medical procedures, this may expand the scope of required disclosure.” [*Truman v. Thomas* (1980) 27 Cal.3d 285, 291]

In a case in which the plaintiff alleges that the physician failed to obtain informed consent, Judicial Council of California Civil Jury Instructions (CACI) [formerly BAJI Instructions] 532 and 533 must be read to the jury. CACI 532 defines informed consent (paraphrased):

532. Informed consent – Definition: A patient’s consent to a medical procedure must be ‘informed.’ A patient gives an ‘informed consent’ only after the (specialty-specific) medical practitioner has fully explained the proposed treatment or procedure. A medical practitioner must explain the likelihood of success and the risks of agreeing to a medical procedure in language that the patient can understand. A medical practitioner must give the patient as much information as [he/she] needs to make an informed decision, including any risk that a reasonable person would consider important in deciding to have the proposed treatment or procedure, and any other information skilled practitioners would disclose to the patient under the same or similar circumstances. The patient must be told about any risk of death or serious injury or significant potential complications that may occur if the procedure is performed. A medical practitioner is not required to explain minor risks that are not likely to occur. (New September 2003; Revised December 2005, October 2008, June 2014)