Medical-Legal Hot Topics

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• Reptile
• Informed Consent
• Medical Legal Damages Reform, Title 12 Okla. Stat. 3009.1
Introduction to Reptile Theory

Limbic Brain
Feel – Remember
Interact with others

Reptilian Brain
Survive – React – Repeat
Repeat-Repeat

Neocortex
Talk – Think – Move
Create - Learn
Charming the Snake: Defending Reptile Depositions

Don’t get trapped by the Reptile.

• Decide whether to accept or reject the plaintiff’s attorney’s language (Safety Rule Attack).

• Avoid instinctual, spontaneous, survival answers (Emotional Attack)

• Proper preparation requires cognitive and communicative changes.

Charming the Snake: Defending Reptile Depositions

Do not volunteer anything that puts you in a box.

• Make the Plaintiff attorney ask specific questions that take you out of the “general” and “vague” scenario.
Informed Consent

- What is the law of informed consent in Oklahoma?

- Many practicing physicians do not have a good understanding of informed consent.

The Law of Informed Consent

- Established in 1979 by the Oklahoma Supreme Court
  - Scott v. Bradford

- “Consent to medical treatment, to be effective, should stem from an understanding decision based on adequate information about the treatment, the available alternatives, and the collateral risks. This requirement, labeled 'informed consent,' is... as essential as a physician's care and skill in the performance of the therapy. The doctrine imposes a duty on a physician or surgeon to inform a patient of his options and their attendant risks. If a physician breaches this duty, patient's consent is defective, and physician is responsible for the consequences"
Physician’s Duty

- Risks
- Alternatives
- Benefits of Each Alternative

What is “Material”

- Subjective Standard
- Patient Specific
Patient Specific

- "What is reasonable disclosure in one instance may not be reasonable in another."
  We decline to adopt a standard based on the professional standard. We, therefore, hold the scope of a physician's communications must be measured by his patient's need to know enough to enable him to make an intelligent choice. In other words, full disclosure of all material risks incident to treatment must be made. There is no bright line separating the material from the immaterial…. A risk is material if it would be likely to affect patient's decision....” Scott v. Bradford

Exceptions

- There is no need to disclose risks that either ought to be known by everyone or are already known to the patient.

- Where full disclosure would be detrimental to a patient's total care and best interests a physician may withhold such disclosure, for example, where disclosure would alarm an emotionally upset or apprehensive patient.

- Where there is an emergency and the patient is in no condition to determine for himself whether treatment should be administered, the privilege may be invoked
2016 Oklahoma Supreme Court Ruling

- ER physician had a duty to inform patient of treatment alternatives in his judgment were not reasonably indicated.

Informed Consent is...

- A Process
The Process

• Starts with Patient Relationship

The Process

• Risks, Benefits and Alternatives
The Process

• Questions?

The Process Ends with…
Informed Consent is NOT...
Informed Consent is NOT...

- A Signed Piece of Paper!

Medical Liability Damages Reform
Medical Liability Damages Reform

- Title 12 Okla. Stat. 3009.1

Oklahoma Common Law on Collateral Source

- Excludes only “payments” made on behalf of an injured party
Collateral Source Rule

- Excluded From Evidence
Collateral Source is…

- Private Insurance
- Any Other Payment by a *third party* for the injured party’s benefit

12 O.S. 3009.1

- Collateral Source is NOT…
Provider Write Offs

Medicare and Medicaid
Required Write Offs
Case Examples

- $1.3 million billed with $123,000 actually paid
- $427,000 billed with $73,000 paid

Procedural Requirements
Procedural Requirements

- Certification by Provider
- Must be Raised Pretrial

Court Application?
HAS BEEN HIGHLY INCONSISTENT

Status of 3009.1

- Multiple Judges Have Applied the Statute/Common Law
- Declared Unconstitutional by Oklahoma County, Judge Aletia Timmons
Recently Reversed On Appeal

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