

Wisconsin Jury Instruction 1023.2: PROFESSIONAL NEGLIGENCE: MEDICAL: INFORMED CONSENT

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 physicians's duty to inform does not require disclosure of:

- [• Information beyond what a reasonably, well-qualified physician in a similar medical classification would know;]
- [• Detailed technical information that in all probability the 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.]

[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.]