



Shinal v. Toms, 2017 Pa. LEXIS 1385 (Pa. 2017)

Topics Covered: Abusive Litigation Against Physicians, Informed Consent

Outcome: Very Unfavorable

Issue

The issue to be addressed in this case, for the Litigation Center, was whether a patient can give informed consent for surgery based on information provided by a physician assistant – as opposed to information delivered directly by the physician himself.

AMA Interest

The AMA supports the efforts of state medical societies to oppose abusive lawsuits against physicians.

Case Summary

Megan Shinal had a non-malignant brain tumor, located near her pituitary gland. Her physician was Dr. Steven A. Toms, a neurosurgeon.

Dr. Toms felt there were two feasible forms of treatment for Mrs. Shinal's tumor: *viz.*, total resection (removal) or partial resection (which might be followed by radiation treatment). The total resection was more likely to result in a complete cure than the partial resection. However, the total resection would, in the short run, be riskier, as it carried a greater likelihood of causing injury to adjoining body structures, including the carotid artery (against which the tumor was lodged). In the long run, according to Dr. Toms, the partial resection was riskier, as it left part of the tumor in place, which could then regrow. In fact, before she met with Dr. Toms, another surgeon had performed a partial resection surgery on Mrs. Shinal, but her tumor had grown back.

Dr. Toms and his physician assistant (PA) discussed the relative benefits and risks of the two types of surgery with Mrs. Shinal. Based on Mrs. Shinal's medical history and his discussions with her, Dr. Toms recommended the total resection. Mrs. Shinal signed a consent form, which allowed Dr. Toms to resection her tumor, but the consent form did not say whether the resection was to be partial or total.

Dr. Toms then performed a total resection surgery on Mrs. Shinal. During the surgery, he ruptured her carotid artery, which caused her to suffer a stroke, brain injury, and partial blindness.

Mrs. Shinal and her husband sued Dr. Toms, claiming Dr. Toms had performed the surgery without informing her adequately about the relative risks associated with total resection surgery,

as opposed to partial resection surgery. Following conflicting evidence as to what Dr. Toms and his PA had or had not told Mrs. Shinal about these procedures, the court instructed the jury that the information needed for the informed consent could come from Dr. Toms personally or from “any qualified person acting as [his] assistant.” The Shinals objected to this instruction, arguing that Dr. Toms could not delegate the task of obtaining informed consent to his PA.

The jury found for Dr. Toms, judgment was entered on their verdict, and the Shinals appealed to the Pennsylvania Superior Court. The Superior Court affirmed, and the Shinals appealed to the Pennsylvania Supreme Court.

On June 20, 2017, the Supreme Court reversed. It found that Dr. Toms’ duty to secure informed consent from Mrs. Shinal was non-delegable, and it interpreted this to mean that the duty was personal to Dr. Toms.

Litigation Center involvement

The Litigation Center, along with the Pennsylvania Medical Society, filed an *amicus* brief in the Pennsylvania Supreme Court. The brief, which supports Dr. Toms, argues that the jury instruction was proper.

Pennsylvania Supreme Court brief