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**INFORMED CONSENT AND PHYSICIAN  
INEXPERIENCE: A PRESCRIPTION FOR LIABILITY?**

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INTRODUCTION

In 1908, Ms. Schloendorff complained of stomach problems to doctors at Society of New York Hospital. After weeks of treatment, a physician at the hospital discovered a lump in Schloendorff's



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Part two of the duty of due care to a patient is informed consent, the receipt of which Justice Cardozo required in . Generally, there are two types of informed consent: patient-driven and doctor-driven.<sup>8</sup> In patient-driven informed consent, the doctor is required to tell the patient what a reasonable patient in that same situation would want to know in order to make the same decision. In doctor-driven informed consent, the doctor only needs to tell the patient what the community of doctors to which he belongs would disclose to a patient in the same situation. States have different informed consent laws, but, in general, the doctor should tell the patient about “(1) the general nature of the contemplated procedure, (2) the risks involved, (3) the prospects of success, and (4) alternative methods of treatment.”<sup>9</sup> This information should be given to the patient before the proposed procedure or prescription of medication. These statements are true for both patient and doctor-driven informed consent.

Despite the name, informed consent is not always totally informed. Important information that a patient would have liked to know is sometimes left out of the informed consent interview. In April 2005, the , t r f ! v □ t v □ published a study called, , t r f ! v □ t v □ C t t v □ t v □ ? The study’s purpose was “to determine

doctor to disclose his or her credentials during the informed consent process.<sup>12</sup> This article will identify the jurisdictional split over informed consent as it relates to experience, explain Oregon's position on informed consent and experience, and, last, explain how recent case law on this subject may affect doctors and the medical field.

#### INFORMED CONSENT REQUIRES DISCLOSURE OF EXPERIENCE<sup>13</sup>

The junction of informed consent and physician experience is a relatively unlitigated concept, although litigation has become more frequent since approximately 1995. This section will show the logical progression from basic informed consent (allowing something to happen only after all the relevant facts are known) to challenging a physician's receipt of informed consent based on the physician's experience or lack thereof.

In 1983, the Supreme Court of Washington decided *Wright v. State of Washington*,<sup>14</sup> confirming that informing patients of a "treatment's attendant risks" was a part of obtaining informed consent.<sup>14</sup> The court continued, saying, "The informed consent doctrine 'does not place upon the physician a duty to elucidate upon all of the possible risks, but only those of a serious nature'"<sup>15</sup> and that "the guide for disclosure is materiality."<sup>16</sup>