

ACT 284

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S.B. NO. 236

A Bill for an Act Relating to Informed Consent.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 671-3, Hawaii Revised Statutes, is amended to read as follows:¹

[(a) In any action for medical tort based on an incident that occurred after January 1, 1977, based on the rendering of professional service without informed consent, evidence may be introduced that the health care provider complied with standards established by the board of medical examiners governing the information required to be given by or at the direction of the health care provider to a patient, or the patient's guardian in the case of a patient who is not competent to give informed consent.

(b) The board of medical examiners shall, insofar as practicable, establish reasonable standards of medical practice, applicable to specific treatment and surgical procedures, for the substantive content of the information required to be given and the manner in which it is given and in which consent is received in order to constitute informed consent from a patient or a patient's guardian. The standards shall include, but not be limited to, provisions which are designed to reasonably inform and to be understandable by a patient or a patient's guardian of:

- (1) The condition being treated;
- (2) The nature and character of the proposed treatment or surgical procedure;
- (3) The anticipated results;
- (4) The recognized possible alternative forms of treatment; and
- (5) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment or surgical procedure, and in the recognized possible alternative forms of treatment, including non-treatment.

The standards established by the board shall be prima facie evidence of the standards of care required but may be rebutted by either party.]

(a) The board of medical examiners, insofar as practicable, shall establish standards for health care providers to follow in giving information to a patient, or to a patient's guardian if the patient is not competent to give an informed consent, to insure that the patient's consent to treatment is an informed consent. The standards may include the substantive content of the information to be given, the manner in which the information is to be given by the health care provider and the manner in which consent is to be given by the patient or the patient's guardian.

(b) If the standards established by the board of medical examiners include provisions which are designed to reasonably inform a patient, or a patient's guardian, of:

- (1) The condition being treated;
- (2) The nature and character of the proposed treatment or surgical procedure;
- (3) The anticipated results;
- (4) The recognized possible alternative forms of treatment; and
- (5) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment or surgical procedure, and in the recognized possible alternative forms of treatment, including non-treatment,

then the standards shall be admissible as evidence of the standard of care required of the health care providers.

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(c) On or before January 1, 1984, the board of medical examiners shall establish standards for health care providers to follow in giving information to a patient or a patient's guardian, to ensure that the patient's consent to the performance of a mastectomy is an informed consent. The standards shall include the substantive content of the information to be given, the manner in which the information is to be given by the health care provider and the manner in which consent is to be given by the patient or the patient's guardian. The substantive content of the information to be given shall include information on the recognized alternative forms of treatment.

[(c)] (d) Nothing in this section shall require informed consent from a patient or a patient's guardian when emergency treatment or emergency surgical procedure is rendered by a health care provider and the obtaining of consent is not reasonably feasible under the circumstances without adversely affecting the condition of the patient's health."

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 14, 1983.)

Note

1. Section number and heading missing.