



Osburn v. Danek Medical, 530 S.E.2d 54 (N.C. S. Ct. 2000)

Topics Covered: Professional Liability, Informed Consent

Outcome: Very Favorable

Issue

The issue in this case was whether a physician was required to disclose, in addition to the medical risks, that medical devices to be surgically implanted in a patient's spine had not received FDA approval for such use.

AMA Interest

The AMA supports a reasonable interpretation of a physician's obligation to obtain a patient's informed consent.

Case Summary

The patient claimed that, because his surgeon had not explained that the FDA had not granted approval for the surgically implanted device, the surgery was performed without the patient's informed consent. Both the trial court and the North Carolina Court of Appeals held that informed consent only requires disclosure of medical risks: physicians need not discuss the actions or inactions of a government agency or the implications of such actions or inactions.

The case was appealed to the North Carolina Supreme Court, which affirmed.

Litigation Center Involvement

The Litigation Center and the North Carolina Medical Society filed an amicus brief, joined by the American Academy of Orthopedic Surgeons, in support of the physician.