DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

REX YENTES and ANN YENTES,

Appellants,

v.

XENOFON PAPADOPOULOS, M.D., and
BOND & STEELE CLINIC, P.A., d/b/a BOND CLINIC, P.A.,
a Florida Profit Corporation.

Appellees.

No. 2D21-3277

December 2, 2022

Appeal from the Circuit Court for Polk County; Dana Y. Moore, Judge.

Karl F. Pansler, Chase R. Pansler, and Hyat N. Katramiz of The Pansler Law Firm, P.A., Lakeland, for Appellants.

Joseph S. Justice and Pierre J. Seacord of Buckley, Seacord & Justice, P.A., Orlando, for Appellee Xenofon Papadopoulos, M.D.

Thomas E. Dukes, III, and Wilbert R. Vancol of McEwan, Martinez, Dukes & Hall, P.A., Orlando, for Appellee Bond & Steele Clinic, P.A., d/b/a Bond Clinic, P.A., a Florida Profit Corporation.

SMITH, Judge.

Rex and Ann Yentes appeal a judgment on the pleadings granted in favor of Xenofon Papadopoulos, M.D. and Bond & Steele Clinic, P.A. d/b/a Bond Clinic, P.A. (the Clinic), in this medical malpractice action brought after Mr. Yentes suffered complications from a robotic prostatectomy. Because the trial court erred in granting judgment on the pleadings where factual issues remain unresolved, we reverse the judgment on the pleadings and remand for further proceedings.

By the time Dr. Papadopoulos and the Clinic filed their motion for judgment on the pleadings, the parties had narrowed the Yenteses' claims to one alleging that Dr. Papadopoulos was negligent in obtaining Mr. Yentes' informed consent. With regard to this claim, the Complaint alleges that Dr. Papadopoulos

> failed to use the acceptable and appropriate level of skill, care and treatment, which is recognized by reasonably prudent similar health care providers, as necessary in light of all the relevant surrounding circumstances by doing or failing to do at least one or more of the following:
>
> . . .
>
> b) Failing to obtain an informed consent of Plaintiff, REX YENTES, informing him of all risks involved in this type of operation, particularly informing

> him that Dr. PAPADOPOULOS had never performed this type of operation before, or had performed it on a limited basis and that there would be a proctor attending the surgery as well.

The Yenteses also attached to the Complaint an affidavit from Richard D. Levin, M.D., who is board certified in urologic medicine. Dr. Levin's affidavit provides that in his professional opinion, under the prevailing standard of care Dr. Papadopoulos was required to inform Mr. Yentes of all of the risks involved in this type of operation, "particularly informing [Mr. Yentes] that Dr. Papadopoulos had never performed this type of operation before, or had performed it on a limited basis and that there would be a proctor attending the surgery as well." The affidavit further states that had Dr. Papadopoulos adhered to this standard of care, "to a reasonable degree of medical certainty, [Mr. Yentes] would not have chosen to undergo this type of surgery."

After a hearing on the motion for judgment on the pleadings, the trial court granted the motion, finding:

> [T]here is no explicit duty that a physician must disclose prior experience with a specific procedure under Florida's "informed consent" standard. As an apparent case of first impression, this Court further declines to impose such a duty and expand Florida's "informed consent" standard for this instant action.

We review the trial court's order granting judgment on the pleadings de novo. *U.S. Fire Ins. Co. v. ADT Sec. Servs., Inc.*, 134 So. 3d 477, 479 (Fla. 2d DCA 2013).

> It is well settled that in ruling on a defendant's motion for judgment on the pleadings, all the allegations set forth in the complaint must be taken as true and all the allegations in the answer, which are automatically denied, must be accepted as false. Whether to grant a motion for judgment on the pleadings must be decided wholly on the pleadings, without the aid of outside matters. The trial court may grant a motion on the pleadings only if the moving party is clearly entitled to judgment as a matter of law.

Tanglewood Mobile Sales, Inc. v. Hachem, 805 So. 2d 54, 55 (Fla. 2d DCA 2001) (citations omitted).

"It is well settled that a Rule 1.140(c) motion for a judgment on the pleadings must be decided wholly on the pleadings—which includes considerations of exhibits attached thereto." *Clarke v. Henderson*, 74 So. 3d 112, 114 (Fla. 3d DCA 2011); *see also* Fla. R. Civ. P. 1.130(b) ("Any exhibit attached to a pleading shall be considered a part thereof for all purposes."); *Shay v. First Fed. of Miami, Inc.*, 429 So. 2d 64, 65 (Fla. 3d DCA 1983) (analyzing a Rule 1.140(c) motion for judgment on the pleadings and considering the "facts asserted in appellants' compliant and exhibits thereto.").

However, in considering a motion for judgment on the pleadings, "the trial court is precluded from relying on matters outside the pleadings such as requests for admissions, interrogatories, answers to interrogatories, depositions, affidavits, stipulations, and any other documents permitted to be considered by Florida Rule of Civil Procedure 1.510." *Britt v. State Farm Mut. Auto. Ins. Co.*, 935 So. 2d 97, 98 (Fla. 2d DCA 2006) (citing *Hart v. Hart*, 629 So. 2d 1073, 1074 (Fla. 2d DCA 1994). The trial court cannot grant a motion for judgment on the pleadings where factual questions remain unresolved. *Tanglewood Mobile Sales*, 805 So. 2d at 55.

Florida's Medical Consent Law provides statutory immunity from liability to certain medical professionals for "operating on a patient without his or her informed consent" in certain circumstances, including when the physician obtained the patient's consent "in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community as that of the person . . . operating on the patient" and "[t]he patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure" if the operating physician

had provided the information as testified to by the expert.

§ 766.103(3)(a)1, (b), Fla. Stat. (2014) (emphasis added).

The dissent contends that section 766.103(3)(a)2 provides an "exhaustive list" of the information that a physician is required to relay to the patient in order to obtain informed consent and avoid liability. But the statute simply does not provide an exhaustive list of the information that should be conveyed to a patient prior to a medical procedure or treatment. In fact, this court has expressly acknowledged that "[t]he duty of the physician to inform and the extent of the information which may be required varies in each case depending upon the particular circumstances." *Thomas v. Berrios*, 348 So. 2d 905, 907 (Fla. 2d DCA 1977) (citation omitted). This is because while subsection (a)2 lists three things—the procedure, the alternatives, and the risks inherent in the procedure—that a patient must have a "general understanding" of based on the information provided by the physician, this is not an exhaustive list of <u>information</u> the physician is required to disclose; it is an exhaustive list of what the <u>patient must understand</u> based on the information disclosed to him by the physician. And while the dissent argues that the "risks inherent in the procedure" are the same for every

procedure of the same type, the statute expressly acknowledges that in order for there to have been informed consent on the part of the patient, "a reasonable individual, from the information provided by the physician . . . under the circumstances, would have a general understanding of the procedure, the medically accepted alternative procedures or treatments, and the substantial risks and hazards inherent in the proposed treatment or procedures, which are recognized among other physicians." § 766.103(3)(a)2. The statute's reference to the circumstances surrounding the patient's understanding of the "substantial risks" necessarily acknowledges that the risks will not be the same for every procedure performed.

Furthermore, the statute shields the physician from liability when "[t]he action of the physician . . . in obtaining the consent of the patient . . . was in accordance with an accepted standard of medical practice among members of the medical profession." § 766.103(3)(a)1. This court has held that the plaintiff is required to present expert testimony to establish what information should have been conveyed under the particular circumstances of their case. *Santa Lucia v. LeVine*, 198 So. 3d 803, 809 (Fla. 2d DCA 2016) (quoting *Copenhaver v. Miller*, 537 So. 2d 198, 200 (Fla. 2d

DCA 1989)). The necessity of expert testimony to establish what information is required to have been conveyed, further precludes entry of judgment on the pleadings.

Here, the trial court erred in granting the motion for judgment on the pleadings where a review of those pleadings reveals blatant questions of fact: specifically, whether expert testimony would establish that Dr. Papadopoulos failed to disclose pertinent information when obtaining Mr. Yentes' informed consent and whether a reasonable patient would forego the surgery with Dr. Papadopoulos if he had disclosed that he had never performed this surgery robotically without being supervised.[1] Therefore, the trial court erred in granting judgment on the pleadings in favor of Dr. Papadopoulos and the Clinic. *See Britt*, 935 So. 2d at 98 (holding that the trial court erred in granting motion for judgment on the pleadings where factual questions exited). Accordingly, we reverse the trial court's final judgment on the pleadings and remand for further proceedings. We caution that this opinion should not be

[1] We note that before granting the motion for judgment on the pleadings, the trial court previously denied Dr. Papadopoulos and the Clinic's motion for summary judgment on this same claim.

perceived as a comment on the merits of the Yenteses' claim or Dr. Papadopoulos' defenses. Contrary to the dissent's assertion that we are creating a new duty—our holding should not be construed as requiring a physician to disclose the number of times he has performed a specific procedure in order to obtain a patient's informed consent. We are simply holding that consideration of the allegations contained in the Complaint together with the attached affidavit were sufficient to survive a motion for judgment on the pleadings.

Reversed and remanded.

VILLANTI, J., Concurs.
ATKINSON, J., Dissents.

ATKINSON, Judge, Dissenting.

I respectfully dissent because as a matter of law the plaintiffs could not state a claim of liability for failure to provide informed consent based on a physician's failure to disclose how many times he had performed a proposed procedure. This case is about whether the number of times a particular physician has performed a proposed surgical procedure constitutes a "substantial risk[] [or]

hazard[] *inherent in* the proposed treatment or procedure[]." *See* § 766.103(3)(a)2, Fla. Stat. (2014) (emphasis added).

A patient may not recover in an action brought against a licensed physician

> for treating, examining, or operating on a patient without his or her informed consent when:
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> (a) 1. The action of the physician, osteopathic physician, chiropractic physician, podiatric physician, dentist, advanced practice registered nurse, or physician assistant in obtaining the consent of the patient or another person authorized to give consent for the patient was in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community as that of the person treating, examining, or operating on the patient for whom the consent is obtained; and
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> 2. A reasonable individual, from the information provided by the physician, osteopathic physician, chiropractic physician, podiatric physician, dentist, advanced practice registered nurse, or physician assistant, under the circumstances, would have a general understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards *inherent in* the proposed treatment or procedures, which are recognized among other physicians, osteopathic physicians, chiropractic physicians, podiatric physicians, or dentists in the same or similar community who perform similar treatments or procedures; or
>
> (b) The patient would reasonably, under all the surrounding circumstances, have undergone such

> treatment or procedure had he or she been advised by the physician, osteopathic physician, chiropractic physician, podiatric physician, dentist, advanced practice registered nurse, or physician assistant in accordance with the provisions of paragraph (a).

§ 766.103(3) (emphasis added).

The differences between subsections (a)1 and (a)2 of section 766.103(3) are in instructive. Subsection (a)1 governs the "action" a medical service provider must take "in obtaining the consent," and requires that that action be "in accordance with the accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community as that of the person treating, examining, or operating on the patient for whom the consent is obtained." § 766.103(3)(a)1. Subsection (a)2, on the other hand, governs the "information" that must be provided by the physician, and lists items of which an individual seeking treatment must gain a general understanding based on the information provided. § 766.103(3)(a)2. The required information includes "the *procedure*, the medically acceptable *alternative procedures or treatments*, and the *substantial risks and hazards inherent in the proposed treatment or procedures*," and these enumerated items are modified by the

qualifier, "*which* are recognized among other physicians, osteopathic physicians, chiropractic physicians, podiatric physicians, or dentists in the same or similar community who perform similar treatments or procedures." *Id.* (emphasis added). Unless the information is listed in the statute, it does not matter what or how many practitioners recognize it as pertinent to the informed consent of a patient—the failure to provide it cannot give rise to liability under the statute.

The pertinent allegation in the complaint is that it is an accepted standard medical practice to inform a patient of how many times a doctor has performed the proposed procedure:

> [Dr.] Papadopolous[] failed to use the acceptable and appropriate level of skill, care and treatment, which is recognized by reasonably prudent similar health care providers[] as necessary in light of all the relevant surrounding circumstances by . . . [f]ailing to obtain an informed consent of Plaintiff, Rex Yentes, informing him of all risks involved in this type of operation, particularly informing him that Dr. Papadopoulos had never performed this type of operation before, or had performed it on a limited basis and that there would be a proctor attending the surgery as well.

Even if accepted as true, as it must be for the sake of analyzing a motion for judgment on the pleadings, that allegation is insufficient as a matter of law because the number of procedures a physician

has performed is not a risk inherent *in the procedure*. The word "inherent" indicates something that is an essential quality of a thing; something that is present in every instance of that thing. *See Inherent,* American Heritage Dictionary (5th ed. 2011) ("Existing as an essential constituent or characteristic."). To inhere in something is to be innate to that thing, and not dependent on external variables for its existence and association with that thing. *See Inhere,* American Heritage Dictionary (5th ed. 2011) ("To be inherent or innate."). Inherent risks, therefore, are those that exist every time a particular activity is undertaken. As counsel for the Yenteses dutifully conceded at oral argument, they are what one might "expect in every procedure": "Those are the risks that you're gonna have regardless of who does it." Despite the Yenteses' and the majority's arguments to the contrary, the statute's under-the-circumstances qualifier does not expand on the ordinary meaning or the term *inherent* to encompass things it does not modify in the sentence in which it appears.

The attempt to fit information regarding a particular physician's experience administering a procedure into a statutory requirement to disclose risks *inherent in* that procedure defies

common sense; it is inconsistent with common usage of the word *inherent* and is incompatible with the ordinary meaning of that word in context. *Cf., e.g.*, § 794.005, Fla Stat. (2022) ("[I]t was never intended that the sexual battery offense described in s. 794.011(5) requires any force or violence beyond the force and violence that is *inherent in* the accomplishment of 'penetration' or 'union.' " (emphasis added)); *Conage v. United States*, 346 So. 3d 594, 599 (Fla. 2022) ("[A] purchase under section 893.135(1) is not complete until the defendant has obtained the purchased drugs, and that possession is therefore an *inherent* requirement for trafficking by purchase." (emphasis added)); *Allen v. State*, 324 So. 3d 920, 926 (Fla. 2021) ("If a defendant is found to have committed all the elements of a greater crime, he has *necessarily* committed all the elements of a lesser crime, because 'the latter is an *inherent* component of the former.' " (emphasis added) (quoting *Roberts v. State*, 242 So. 3d 296, 299 (Fla. 2018))); *R.J. Reynolds Tobacco Co. v. Marotta*, 214 So. 3d 590, 601, 603 (Fla. 2017) ("Several aspects of *Engle* . . . indicate that the *inherent* characteristics of all cigarettes did not form the sole basis for liability. Rather, the case was premised on the allegation that the *Engle* defendants intentionally

increased the amount of nicotine in their products to ensure that consumers became addicted. . . . [T]he verdict form clearly indicates that the jury found that the Engle defendants' cigarettes were defective, not that *all* cigarettes are *inherently* defective." (first and third emphasis added; second emphasis in original)); *Ashcroft v. Calder Race Course, Inc.*, 492 So. 2d 1309 (Fla. 1986) ("[E]xpress assumption of risk waives only risks *inherent in* the sport itself. Riding on a track with a negligently placed exit gap is not an *inherent* risk in the sport of horse racing." (emphasis added)); *Sanislo v. Give Kids the World, Inc.*, 157 So. 3d 256, 270 (Fla. 2015) ("[B]ecause although parties may be alerted to dangers *inherent* in dangerous activities, 'it does not follow that [parties are] aware of, much less intended to accept, any *enhanced* exposure to injury occasioned by the carelessness of the very persons on which [the parties] depend[ ] for [his or her] safety.' " (first emphasis added, second emphasis in original) (quoting *Gross v. Sweet*, 400 N.E.2d 306, 310 (N.Y. 1979)); *Sager v. Blanco*, 47 Fla. L. Weekly D2055 (Fla. 3d DCA Oct. 12, 2022) ("[W]eapon-like use with the intent to cause harm constitutes a marked departure from the intended use of a motor vehicle. Under such circumstances, the resultant harm

is not *inherent* to the operation of the vehicle, and imputing liability to the owner fails to withstand intellectual muster."); *Parrish v. State*, 331 So. 3d 161, 164 (Fla. 4th DCA 2021) ("[I]n *Mobley v. State*, 409 So. 2d 1031, 1034 (Fla. 1982) . . . the supreme court addressed its concern that the statute could result in 'any criminal transaction which *inherently* involves the unlawful confinement of another person, such as robbery or sexual battery,' also being a kidnapping in violation of the common law single transaction rule." (emphasis added)), *rev. denied*, SC21-1424, 2021 WL 5834266 (Fla. Dec. 9, 2021); *Gator Coin II, Inc. v. Fla. Dep't of Bus. & Prof'l Regul., Div. of Alcoholic Beverages & Tobacco*, 254 So. 3d 1113, 1117 (Fla. 1st DCA 2018) ("[I]n order for a machine to be an illegal slot machine, the element of chance or unpredictability must be *inherent in* the operation of the machine itself." (emphasis added)); *State v. McIntosh*, 116 So. 3d 582, 584 (Fla. 5th DCA 2013) ("[T]he automobile exception to the warrant requirement, irrespective of an arrest, permits a warrantless search supported by probable cause 'based on the *inherent* mobility of vehicles, as well as the reduced expectation of privacy in a vehicle.' " (emphasis added) (quoting *Harris v. State*, 71 So. 3d 756, 765 (Fla. 2011))).

An inference might reasonably be drawn that a particular risk is more or less likely due to the relative level of experience of one doctor over another, but the particular risk itself is the thing that is inherent in the type of procedure being proposed; and that is all that the statute requires—that the patient be informed of the *type* of risks inherent in the procedure, not the relative riskiness of receiving the treatment from one doctor as opposed to another. That is why the Yenteses' emphasis on the statutory language "under the circumstances" does not help their argument. Under no circumstances can the phrase inherent *in the procedure* mean inherent *in the physician*. Under some circumstances a physician might need to tell the patient about X risk inherent in the procedure, and in other circumstances a physician might need to tell the patient about Y risk inherent in the procedure; but under no circumstances does the physician need to tell the patient about something that is not a risk inherent in the procedure. Even if doctor A, by virtue of his experience, is less likely to cause a risky outcome than doctor B, who, due to his inexperience, is more likely to cause such risky outcome, it is the risky outcome itself that is inherent *in the procedure* and must be included in the information

conveyed to the patient regardless of the doctor's level of experience; the relative riskiness that varies from doctor to doctor by virtue of their levels of experience is something that does not appear in the statute, which includes in the list of information that must be provided to the patient "the procedure," "alternative procedures or treatments," and "substantial risks and hazards *inherent in* the proposed treatment or procedures." *See* § 766.103(3)(a)2 (emphasis added).

Until such time as the legislature adds physician experience to section 766.103(3)(a)2, a plaintiff cannot, as a matter of law, sustain a cause of action for a physician's failure to inform the patient of the number of times he or she has performed the proposed treatment or procedure. *See Fla. Dep't. of Revenue v. Fla. Mun. Power Agency*, 789 So. 2d 320, 324 (Fla. 2001) ("Under fundamental principles of separation of powers, courts cannot judicially alter the wording of statutes where the Legislature clearly has not done so. A court's function is to interpret statutes as they are written and give effect to each word in the statute." (footnote omitted)); *cf. Abram by Abram v. Children's Hosp. of Buffalo*, 542 N.Y.S.2d 418, 419 (N.Y. App. Div. 1989) (explaining that the

statutory definition of informed consent "covers disclosure of alternatives to treatment, and risks and benefits involved in treatment" but that "it cannot reasonably be read to require disclosure of qualifications of personnel providing that treatment").

The majority emphasizes the importance of providing expert testimony to establish what information should have been disclosed to allow the patient to provide the patient with informed consent and draws the erroneous conclusion that whether a risk or hazard is inherent in a procedure must always be a factual question. However, the question of this case—one which the majority circumvents by its conclusory assertion that factual issues remain—is whether the *type* of information on which the Yenteses based their entire cause of action[2] is the type of information the statute requires Mr. Yentes to have been given. The statute does

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[2] The Yenteses originally alleged that Dr. Papadopoulos also "failed to evaluate and properly treat . . . Mr. Yentes" in connection with the prostatectomy. Dr. Richard D. Levin in the affidavit attached to the complaint swore that Dr. Papadopoulos "was negligent in the care, evaluation and treatment of" Mr. Yentes and that "such negligence resulted in permanent injury to" Mr. Yentes. During his deposition, however, Dr. Levin declined to opine on Dr. Papadopoulos's performance of the robotic prostatectomy. The parties subsequently entered into a mutual stipulation under which they agreed to limit the claims to the informed consent issue.

apply a community standard regarding the information that must be provided, but it circumscribes that information by including it in an exhaustive list: "information" from which "[a] reasonable individual" would derive "a general understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial *risks and hazards* inherent in the proposed treatment or procedures, *which* are recognized among other physicians . . . in the same or similar community who perform similar treatments or procedures." *See Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976) ("It is of course, a general principle of statutory construction that the mention of one thing implies the exclusion of another; *expressio unius est exclusio alterius*. Hence, where a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned.").

The relative pronoun "which" modifies the enumerated things about which a patient must have a "general understanding," *which* things must be recognized in the applicable community of practitioners. *See* § 766.103(3)(a)2. Because the number of times a particular practitioner has performed a proposed treatment or

procedure is not among the listed items of information provided by the statute—and does not logically fall within the meaning of a "*general* understanding of the *procedure*, the medically acceptable *alternative procedures or treatments*, and the substantial *risks and hazards inherent in* the proposed treatment or procedures," § 766.103(a)2 (emphasis added)—failure to provide that information *as a matter of law* cannot support a cause of action based on a physician's failure to provide it.

As such, there was no factual issue pertinent to a determination of whether the allegations of the complaint, taken as true for purposes of resolving motion for judgment on the pleadings, could state a claim. It does not matter that the Yenteses' expert opined that the number of times a physician has performed a prostatectomy is recognized in the pertinent community of practitioners as information that should be conveyed to the patient. Because that information does not fall within the meaning of a "risk[]" or a "hazard[]" that is "inherent in the proposed treatment or procedure[]," such expert testimony is irrelevant.

The majority focuses on section 766.103(3)(b) to the exclusion of section 766.103(3)(a)2. Subsection (3)(b) provides an alternative

means of supporting a cause of action by establishment that a patient would not "have undergone such treatment or procedure had he or she been advised by the physician" (and conversely, an alternative means of supporting a defense to a cause of action based on lack of informed consent). *See* § 766.103(3)(b). However, section 766.103(3)(b) incorporates the standard of section 766.103(3)(a)2 by requiring that the advice given to the patient by the physician be "in accordance with the provisions of paragraph (a)." In other words, if the type of information omitted by the physician is not that described in section 766.103(3)(a)2, then a patient cannot sustain a cause of action under section 766.103(3)(b) by claiming he or she would not have undergone the procedure had the physician's advice included such information.

The Yenteses concede that the very complications Mr. Yentes suffered as a result of the prostatectomy, and for which he and his wife sought damages, were the same complications that Dr. Papadopoulos informed him he was at risk of incurring. *See Vazzo v. City of Tampa*, 415 F. Supp. 3d 1087, 1100 (M.D. Fla. 2019) ("This informed consent concept notes that some medical procedures have 'substantial risks and hazards inherent in the

proposed treatment or procedures[.]' . . . [I]f the maladies or risks occur about which informed consent was given, no tort recovery may occur." (citing § 766.103(3)). That is all that is required for a defendant to avoid liability under § 766.103(3), because the number of times a *specific* physician has performed a proposed treatment does not fit within the ordinary meaning a "*general* understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards *inherent in the proposed treatment or procedures*."

The Yenteses now ask this court to read into section 766.103(3) a new duty not included in the statute's text—that a physician inform a patient of how many times the physician has performed the proposed treatment. The trial court was correct to decline the Yenteses' request to add that duty to the informed-consent statute, and its ruling on the motion for judgment on the pleadings against the Yenteses should be affirmed.

Opinion subject to revision prior to official publication.