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# Doctrine of informed consent in Cyprus



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## Litigation, Cyprus

Medical negligence is a relatively new area in Cyprus and domestic case law is still developing. In the absence of local precedent, common law rulings (including those of the English courts) which were decided up to and including August 15 1960 are binding on Cyprus courts to the same extent as decisions of the Supreme Court of Cyprus. **(1)** Common law decisions after that date are not binding, but have great persuasive authority.

Recent District Court and Supreme Court case law has adopted the principle, as established in the English case *Chester v Affshar*, **(2)** that in modern law medical paternalism no longer rules and a patient has a *prima facie* right to be informed by a surgeon of a small but well established risk of serious injury as a result of surgery.

Doctors must inform patients of the inherent risks in the operation to which they are to be subjected and should they fail to do so, this a breach of the duty that they owe to their patients, even if they were not negligent in performing the operation.

As explained by Lord Hope in *Chester*:

*"To leave the patient who would find the decision difficult without a remedy, as the normal approach to causation would indicate, would render the duty useless in the cases there it may be needed most. This would discriminate against those who cannot honestly say that they would have declined the operation once and for all if they had been warned. I would find that result unacceptable. The function of the law is to enable rights to be vindicated and to provide remedies when duties have been breached. Unless this is done the duty is a hollow one, stripped of all practical force and devoid of all content. It will have lost its ability to protect the patient and thus to fulfil the only purpose which brought it into existence. On policy grounds therefore I would hold that the test of causation is satisfied in this case. The injury was intimately involved with the duty to warn. The duty was owed by the doctor who performed the surgery that Miss Chester consented to. It was the product of the very risk that she should have been warned about when she gave her consent. So I would hold that it can be regarded as having been caused, in the legal sense, by the breach of that duty."*

This judgment reflects the principle set out in Article 5 of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, namely that:

*"An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks. The person concerned may freely withdraw consent at any time."*

This principle was incorporated into Cyprus law, **(3)** and the courts have consistently reaffirmed it. **(4)**

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### Endnotes

- (1) Courts of Justice Law 14 of 1960, Article 29(e).
- (2) [2004] 4 All ER 587
- (3) Law 31(III) of 2001 and Article 11(1) of the Law on Safeguarding and Protection of Patients' Rights, Law 1(I) of 2005.
- (4) Action 7502/2008, Action 6185/2001, 2010 ISCC 1541.

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