



## PATIENT SAFETY RESOURCES

# MPL DEFENSE VERDICT BOLSTERED BY APPROPRIATE CONSENT PROCESS

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## DESCRIPTION

Discussion with the patient about risks, benefits, and alternatives of a procedure helped in defense of a known surgical complication.

## KEY LESSONS

- Informed consent is a conversation with the patient that covers both what the patient may think is important and what the physician thinks is important
- Documentation in the medical record of discussions with the patient, beyond the informed consent form, will help support care provided in the event of an unexpected outcome
- Managing patient expectations is important to help prevent patient dissatisfaction and potential litigation

## CLINICAL SEQUENCE

A 38-year-old, otherwise healthy, patient underwent open reduction and internal fixation with screw fixation with intraosseous wiring cerclage for treatment of an oblique spiral fracture of the fifth right finger. Prior to the surgery, the hand surgeon discussed with the patient the benefits and risks of the surgery (including that they may not regain full range of motion of their finger) and described alternatives to surgical treatment. A written informed consent was obtained and signed by both the surgeon and patient prior to the procedure.

Post-operatively, the patient's fracture healed but they developed a contracture and required additional surgeries. (The patient's dense scar tissue contributed to the development of the contracture.) Despite aggressive occupational therapy, the patient continued to have problems, which resulted in functional limitations of their fractured finger.

## ALLEGATION

The patient submitted a medical professional liability claim against the hand surgeon, alleging that the surgical approach increased the risk for complications and development of a contracture that left them with a loss of full range of motion.

## DISPOSITION

The case resulted in a defense verdict at trial.

## ANALYSIS

**Clinical Perspective:** This type of fracture can be complex due to finger anatomy and often does not heal well with immobilization. Surgical correction was indicated with the expectation that the patient would not have full range of motion afterward. The surgery was uneventful, however, the patient developed post-op tendon adhesions and joint contractures, known sequelae of this type of fracture. This complication was not related to the procedure, but rather a physiological response to a foreign body during healing.

**Patient Perspective:** The patient acknowledged that the hand surgeon had explained the surgical approach and that there was no guarantee that they would regain full function. However, the patient was unhappy with the surgical outcome and the impact that the decreased range of motion had on their activities. They asserted that a different surgical approach would have resulted in a better outcome.

**Legal Perspective:** Surgical experts concluded that the appropriate and accepted surgical technique was within the standard of care. The development of scar tissue contributing to a contracture was not related to the surgical technique. The jurors agreed that the surgeon met the standard of care and found for the defense.

## ADDITIONAL RESOURCES

- [Informed Consent Guidelines Overview](#) (CRICO)
- [The SHARE Approach: A Model for Shared Decisionmaking](#) (AHRQ)
- [Validation of the Trust in the Surgical Decision Scale](#) (Annals of Surgery)
- [Aligning Family: Clinician Expectations During Pediatric Surgical Informed Consent](#) (JCEHP)
- [Malpractice Risks in Communication Failures](#) (CRICO)
- [Informed consent: More than getting a signature](#) (Joint Commission)
- [Informed consent: It's more than a signature on a piece of paper](#) (Science Direct)
- [Surgery Change Needed Better Consent](#) (CRICO)
- [Defense Verdict After Patient Challenged Surgical Outcome](#) (CRICO)

