

COURT OF APPEALS OVERTURNS DEFENSE VERDICT IN MEDICAL MALPRACTICE CONDITIONAL CONSENT CASE

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Carter v. The Pain Center of Arizona

Arizona Court of Appeals, Division One, February 2, 2016

After a fall, Carter met with Dr. Towns, who recommended a sacrococcygeal ligament injection for her pain. When Carter expressed anxiety about the injection, Towns offered to sedate her for the procedure. When Carter returned for the injection, she signed a consent form indicating the procedure was to be done with sedation. Ultimately, the procedure was done without sedation. Carter sued for battery and false imprisonment.

At trial, Carter offered a "conditional consent" instruction. The instruction required plaintiff to prove that (a) Carter's consent to the sacrococcygeal ligament injection was conditioned upon receipt of IV sedation; and (b) Dr. Towns performed the injection "in willful disregard of Carter's conditional consent." Instead, the court gave the normal RAJI Battery instruction, which required Carter to prove that Dr. Towns "intended to cause harm or offensive contact" with Carter. The jury rendered a defense verdict.

The court of appeals reversed for a new trial, holding that using the RAJI Battery instruction was not appropriate for a conditional consent case. The issue was whether the defendant willfully performed an unconsented-to procedure, i.e., whether he "willfully disregarded the scope of the patient's consent." The issue was not whether Dr. Towns intended to cause harm or offensive contact with Carter. The court also seemed to state, in dicta, that the regular RAJI battery instruction would not be appropriate for a "lack of consent" case – i.e., one where the plaintiff argues she did not consent to the procedure at all. In such cases, the jury should be instructed that the plaintiff must prove only that "she was damaged when the physician willfully performed a procedure to which she did not consent."

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