

determined by a jury after consideration of all of the evidence. _____ has failed to his/her burden of proving that there is no genuine issue of material fact and that he/she is entitled to a judgment as a matter of law.

III. INFORMED CONSENT

Mississippi has adopted the so-called "prudent patient" standard for informed consent cases. *Reikes V. Martin*, 471 So.2d 385, 392 (Miss. 1985); *Phillins V. Hull*, 516 So 2d 488, 493

(Miss. 1987). Under this standard, the physician must disclose those known risks which would be material to a prudent patient in determining whether or not to undergo the suggested treatment."

471 So. 2d at 392. The factors to be considered, include the following:

- (1) diagnosis (i.e., the patient's condition or problem)
- (2) nature and purpose of the proposed treatment
- (3) risks and consequences of the proposed treatment
- (4) probability that the proposed treatment will be successful
- (5) feasible treatment alternatives
- (6) prognosis if the proposed treatment is not given

493 So. 2d at 493.

According to the testimony of Mr./Mrs. _____, _____ assured him/her that there was a _____ % chance that the surgery would correct the problem with his/her hand. (_____ p. _____) Further, _____ did not advise Mr./Mrs. _____ of any risks associated with the procedure, anesthesia or otherwise. (_____ p. _____) _____ did not provide Mr./Mrs. _____ with any treatment alternatives, nor did he/she provide Mr./Mrs. _____ with a prognosis if he/she did not undergo the recommended surgical procedure. This evidence clearly establishes that _____ did not obtain the informed consent of Mr./Mrs. _____ .

The memorandum brief refers to the consent form signed by Mr./Mrs. _____. This type of consent form has been criticized by the Mississippi Supreme Court. *Barner V Gorman*, 605 So.2d 805, 808 (Miss. 1992). The consent form is insufficient as a matter of law.

IV. ITEMS RELIED UPON BY

In addition to those matters relied upon by Dr. _____, Mr./Mrs. _____ relies upon the following:

1. Deposition excerpts from _____ as Exhibit " _____ ";
2. Deposition excerpts from _____ as Exhibit " _____ ";

3. Deposition excerpts from _____ as Exhibit " _____ "; and
4. Deposition excerpts from _____ as Exhibit " _____ ".

WHEREFORE, PREMISES CONSIDERED, Plaintiff, _____, respectfully submits that the Court should deny the Motion for Summary Judgment filed herein by Defendant, _____, M.D.

Respectfully submitted,

Attorney for

Of Counsel:

Telephone:
MSB #
Attorney for

CERTIFICATE OF SERVICE

I, _____, hereby certify that I have this day sent via facsimile and United States mail, postage fully prepaid, a true and correct copy of the above and foregoing Response to Motion for Summary Judgment to:

This the _____ day of _____, 20____.
