Does Alabama's Common Law Doctrine of Informed Consent Apply to Non-Surgical, Non-Invasive Treatment Like Chiropractic Adjustments?

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In Alabama, informed consent is a common law doctrine that focuses on the reasonableness of a physician's disclosures provided to the patient regarding a procedure, rather than the reasonableness of the physician's performance of the procedure. In other words, informed consent examines what the doctor tells the patient about the procedure, *i.e*. the risks involved, alternatives, and success rate, and not how the doctor performs the procedure.

The elements of informed consent consist of the physician's failure to inform the patient of all material risks associated with the procedure, and a showing that a reasonably prudent patient, with all the plaintiff's characteristics and in the plaintiff's position, would have declined the procedure had the physician properly informed the patient.

Alabama case law on informed consent uniformly references "procedures" when discussing the elements of informed consent; however, that same case law does not expressly define what constitutes a procedure. Other jurisdictions reference "procedures" and "treatment" when discussing the application of informed consent. This raises several questions. Is there a difference between a procedure and treatment? The term "procedure" conjures up images of surgery, cutting, prodding, and other invasive measures, whereas "treatment" sounds gentler, non-invasive, and more like therapy. Does a procedure encompass only surgery and invasive procedures in Alabama or does it also encompass non-invasive treatment such as diagnostic tests, therapy, or imaging? Is there a difference between a procedure and treatment relative to informed consent in Alabama? If there is a difference, does the doctrine of informed consent apply to non-invasive treatment such as chiropractic adjustments, physical therapy, or diagnostic tests?

In an attempt to answer these questions, this paper will begin with a description of chiropractics and the treatment chiropractors provide followed by an examination of the doctrine of informed consent in Alabama and what procedures are predominantly the basis of informed consent lawsuits in Alabama. The article will shift gears and examine cases in states that require chiropractors to obtain informed consent and those that do not. With this groundwork, we will argue Alabama common law does not require chiropractors and other health care providers to obtain informed consent for non-surgical, non-invasive procedures because Alabama courts have applied the doctrine only to surgery and other invasive procedures.

I. What is chiropractic and chiropractic adjustments?

According to the American Chiropractic Association, chiropractic is a health care profession that focuses on disorders of the musculoskeletal system and the nervous system, and the effects of these disorders on general health. *See* American Chiropractic Association: About Chiropractic, www.acatoday.org. Chiropractic care is used most often to treat neuromusculoskeletal complaints, including but not limited to back pain, neck pain, pain in the

joints of the arms or legs, and headaches. *Id*. Chiropractic treatment is not limited to pain complaints, though, as some chiropractic patients claim relief from sinus problems, allergies, chronic fatigue, sleep disorders, and gastrointestinal disorders as well.

Doctors of Chiropractic, referred to as chiropractors, chiropractic physicians, or D.C.s, practice a drug-free, hands-on approach to health care that includes patient examination, diagnosis, and treatment. *Id*. Chiropractic is recognized as one of the safest drug-free, non-invasive therapies available for the treatment of neuromusculoskeletal complaints. *Id*. A chiropractic adjustment, also referred to as chiropractic manipulation or manipulation, is a manual form of treatment where the chiropractor uses his or her hands or an instrument to adjust the joints of the body, particularly the spine, to remove subluxations to restore alignment to improve health. In its simplest form, a subluxation occurs when one or more of the bones of the spine (the vertebrae), move out of position and create pressure on or irritate spinal nerves. *Id*. Chiropractors identify subluxations along the spine (cervical, thoracic, lumbar, and sacral) and use various adjustment techniques to remove the subluxation. *Id*. As mentioned, the adjustment technique may utilize the hands or an instrument, but does not include invasive procedures or surgery. *Id*.

Although chiropractic boasts an excellent safety record, risk is always present and that risk may depend on the patient's health. *Id*. For example, neck pain and some types of headaches are treated through precise cervical manipulations called high velocity cervical adjustments or cervical breaks. *Id*. This type of cervical adjustment works to improve joint mobility in the neck, restoring range of motion, and reducing muscle spasms, which helps relieve pressure and tension. The cervical break is what many people associate with chiropractic. It is the quick, controlled rotation of the head and neck to free up subluxations in the cervical spine. People generally hear a "pop" which is the release of gasses within the joint. *Id*.

Cervical adjustments are statistically a remarkably safe procedure; nevertheless, some reports have associated high-velocity neck adjustments with a certain rare kind of stroke caused by vertebral artery dissection. *Id*. A vertebral artery dissection is a tear of the inner lining of the vertebral artery, which is located in the neck and supplies blood to the brain. *Id*. The tear can be spontaneous, caused by a disease process in the body, or traumatic, caused by an auto accident, fight, or other accident. *Id*.

Evidence suggests that this type of arterial injury often takes place spontaneously in patients who have pre-existing arterial disease. *Id*. These dissections have been associated with everyday activities such as turning the head while driving, swimming, or having a shampoo in a hair salon. *Id*. Patients with this condition may experience neck pain and headaches that lead them to seek professional care, possibly from a chiropractor. *Id*.

Although the incidence of stroke caused by vertebral artery dissection associated with a chiropractic adjustment is statistically the same as the incidence of this type of stroke among the general population, malpractice actions against chiropractors for vertebral artery dissection are on the rise in the United States. *Id*. These cases almost always contain a cause of action for lack of informed consent. The patient claims that had the chiropractor informed her that the high velocity neck adjustment could potentially cause a stroke, she would have declined treatment.

As of date of this article, the author has not seen any cases in Alabama involving stroke caused by a chiropractic adjustment where the plaintiff alleges lack of informed consent[1]. In fact, there are no reported Alabama decisions discussing whether a chiropractor is obligated to obtain informed consent before adjusting a patient. Other states have, unsurprisingly, split on the issue. The split appears to rest on whether the state's common law doctrine of informed consent applies to all medical treatment or only surgical and other invasive procedures.

In Alabama, as discussed below, it is a fair statement to say that all informed consent cases concern surgery or some other invasive procedure. There are no reported decisions where informed consent in connection with a non-invasive treatment such as therapy, diagnostic testing, or routine medical treatment is discussed, much less where the court found the doctrine applicable. This trend also applies to non-medical doctors such as podiatrists and dentists. Based on that alone, there is an argument that informed consent does not apply to chiropractic adjustments or other non-invasive treatment by any health care professional in Alabama.

II. Informed consent in Alabama

The elements of a cause of action against a physician for failure to obtain informed consent are: 1) the physician's failure to inform the plaintiff of all material risks associated with the procedure, and 2) a showing that a reasonably prudent patient, with all the characteristics of the plaintiff and in the position of the plaintiff, would have declined the procedure had the patient been properly informed by the physician. *Phelps v. Dempsey*, 656 So. 2d 377 (Ala. 1995); *see also Fore v. Brown*, 544 So. 2d 955 (Ala. 1989); *Fain v. Smith*, 479 So. 2d 1150 (Ala. 1985). In addition, the plaintiff must present evidence that it was generally known in the medical community that a risk of injury existed of which the plaintiff complains. *Phelps v. Dempsey*, 656 So. 2d at 380.

The physician's duty to obtain the informed consent of his patient is measured by a professional medical standard, meaning it is an objective standard which requires consideration by the fact finder of what a reasonable person with all of the characteristics of the plaintiff, including his idiosyncrasies and religious beliefs, would have done under the same circumstances. *Fain v. Smith*, 479 So. 2d 1150 (Ala. 1985).

This is a traditional view based on ALA. CODE § 6-5-484, which provides: "In performing professional services for a patient, a physician's, surgeon's or dentist's duty to the patient shall be to exercise such reasonable care, diligence and skill as physicians, surgeons, and dentists in the same general neighborhood, in the same general line of practice, ordinarily have and exercise in a like case." *Id.* at 1154–55.

This objective standard is based on what a reasonable person in the patient's position would have done had the information been disclosed by the practitioner. *Id.* at 1155. "A physician is not required to inform the patient of each and every risk in a particular procedure; however, the doctor should inform the patient of the 'significant perils' involved in the procedure. Therefore, the determination of whether informed consent was obtained is a question of fact for the jury." *Id.* (*citing Otwell v. Bryant*, 497 So. 2d 111, 118 (Ala. 1986)).

The objective standard also aims to prevent unfairness to the physician. *Id.* Because injury has materialized, it would be surprising if the patient-plaintiff did not claim that had he been informed of the dangers he would have declined treatment. *Id.* Subjectively, he may believe so based on the privilege of hindsight; however, that would no doubt serve injustice on the physician, placing the physician in jeopardy of the patient's bitterness and disillusionment. *Id.* Thus, an objective test is preferable: *i.e.*, what would a prudent person in the patient's position have decided if adequately informed of all significant perils. *Id.*

The patient-plaintiff's testimony is not irrelevant though. *Id.* The plaintiff is allowed to testify as to what he would have done if full disclosure had been made. *Id.* The plaintiff's testimony, although based on hindsight, is material, relevant, and entitled to consideration by the jury. *Id.* It simply is not conclusive of the causation issue. *Id.*

III. Informed consent is required for surgical and invasive procedures.

As seen above, Alabama case law appears to limit informed consent to the "material risks associated with the procedure." Although Alabama case law does not explicitly define "procedure," a general idea of what constitutes a procedure can be extrapolated from reviewing Alabama informed consent cases. Every reported Alabama case that asserts a claim for lack of informed consent related to medical care pertains to surgery or some other type of invasive procedure, meaning a procedure where the patient's body is intruded by some medical device[2].

Every one of those cases concerns informed consent relative to surgery or some other invasive procedure, such as a pulmonary arteriogram or insertion of a needle into the patient's vein for cosmetic purposes. (There is one deviation from this trend in *Nolan v. Peterson*; 544 So. 2d 863 (Ala. 1989) where a psychiatrist failed to obtain informed consent before administering an anti-psychotic medication to her hospitalized patient. The administration of medicine and advisement of associated risks generally occupies areas of law, usually federal, that go beyond Alabama's common law doctrine of informed consent).

It is a fair assumption and can be argued that based on these cases alone, Alabama defines "procedure" as surgery or some other invasive procedures and limits the requirements of informed consent by that definition. That argument can be carried forward and applied to non-invasive treatment by all health care providers, meaning a cause of action against an Alabama chiropractor for failing to obtain informed consent in performing a neck adjustment is subject to dismissal. A caveat is that the majority of the cases referenced above concern medical doctors. Do Alabama courts apply informed consent differently to non-medical doctors and, if so, has it been applied to non-surgical procedures?

IV. Application of informed consent to non-medical doctors

Non-medical doctors, including chiropractors, are included as health care providers under the Alabama Medical Liability Act. *See Mashner v. Pennington*, 729 So. 2d 262 (Ala. 1998)(stating effective May 17, 1996, the legislature supplemented the Medical Liability Act (§ 6–5–549.1(c)) to include licensed chiropractors as "health care providers," as that term is used in the Act).

No Alabama court has considered whether the doctrine of informed consent applies to chiropractors; however, Alabama courts have applied informed consent to dentists who are included under the Alabama Medical Liability Act and podiatrists, which are not included under the Act. These four cases were referenced above, but will be analyzed further here.

The Alabama Supreme Court has considered whether podiatrists who are not included as a health care provider under the Alabama Medical Liability Act are required to obtain informed consent. In *Bodiford v. Lubitz*, 564 So. 2d 1390 (Ala. 1990), the plaintiff alleged her podiatrist failed to obtain informed consent for a surgical procedure on her foot. She alleged Dr. Lubitz failed to inform her of more conservative, alternative treatments for her problems prior to performing surgery on her, and that he also failed to inform her that he was going to remove a bone from her right foot during surgery and the risks involved. The court applied the doctrine of informed consent and found Dr. Lubitz failed to obtain informed consent for the surgery because he did not disclose the risks involved.

Craig v. Borcicky, 557 So. 2d 1253 (Ala. 1990) also addresses the parameters of informed consent and podiatrists. Plaintiff filed an action against Dr. Borcicky alleging that he negligently performed surgery on her feet and that she was not properly informed about the surgical procedures and thus did not give an informed consent to the surgery. The court, applying the same elements of informed consent addressed in *Fain* and *Phelps* for medical doctors, found the podiatrist failed to obtain informed consent in context of the surgery.

These are the only two reported cases in Alabama addressing the applicability of informed consent to podiatrists, and the trend of its exclusive application to surgery and other invasive procedure continues.

The Alabama Supreme Court has applied the doctrine of informed consent to dentists as well in the context of performing surgery. In *Henriksen v. Roth*, 12 So. 3d 652 (Ala. 2008), Dr. Roth performed a boney trephination, which involves creating an opening by puncturing the soft tissue and the cortical bone overlaying the apex of the root tip of the tooth in order to allow drainage to prevent infection inside the jawbone. Plaintiff testified that Dr. Roth did not tell her that he was going to perform a surgical procedure and that Dr. Roth did not obtain informed consent to do so.

Plaintiff argued at trial that Dr. Roth had breached the standard of care applicable to practitioners of general dentistry under the Alabama Medical Liability Act as he failed to provide her with material information concerning the risks of the surgery, specifically the risk of possible nerve damage. Therefore, he failed to obtain informed consent for the surgery. The court agreed, finding informed consent applies to dentists in a surgical context.

In *Ex parte Mendel*, 942 So. 2d 829 (Ala. 2006), the plaintiff filed a cause of action against her dentist for failure to obtain informed consent for dental implant surgery. The cause of action was premised on liability under the Alabama Medical Liability Act and based on the defendant's failure to obtain informed consent to undergo the surgery.

These cases demonstrate the doctrine of informed consent applies to health care providers

other than medical doctors and to health care providers not included in the reach of the Alabama Medical Liability Act, but again, the application of the doctrine is reserved for procedures encompassing surgery and other invasive procedures. Of note, Alabama courts have not drawn a bright line rule stating a cause of action cannot lie against a health care provider for non-invasive treatment and, admittedly, silence does not a rule make. Nevertheless, the trend is noteworthy. The question remains, though, would an Alabama court apply the doctrine of informed consent to a chiropractor performing a chiropractic adjustment such as a high-velocity upper cervical adjustment if a plaintiff alleged the adjustment caused a stroke by vertebral artery dissection? A review of jurisdictions that have addressed the issue will be helpful in this analysis. As mentioned above, jurisdictions are split, and the split appears to fall on whether the state applies informed consent to non-invasive treatment.

V. States that require informed consent for chiropractors

In *Felton v. Lovett*, 388 S.W.3d 656 (Tex. 2012), the plaintiff received chiropractic treatment for neck pain. He received an undisclosed type of cervical adjustment and, when the adjustment did not provide relief, Dr. Lovett performed a more forceful manipulation of plaintiff's neck. Following the more forceful adjustment, plaintiff immediately began experiencing blurred vision, nausea, and dizziness. Dr. Lovett called an ambulance, which transported plaintiff to the hospital, where medical doctors determined he had suffered a stroke resulting from a vertebral artery dissection.

Plaintiff sued, alleging Dr. Lovett failed to disclose the risks associated with the neck manipulations. The court had to determine whether the doctrine of informed consent as it applies to chiropractors and chiropractic adjustments was statutory or based in common law. The court considered § 74.101 of Texas' Medical Liability Act which specifically address informed consent:

> In a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

Texas' informed consent statute references "medical care" and "surgical procedure." The court determined these words have meaning and found informed consent relative to chiropractors in Texas is not based in statute because the statute speaks to "medical care" and "surgery" and chiropractic treatment is neither. Undeterred, the court reviewed the common law in Texas and held health care must be based on a patient's informed consent and a health care provider may be liable for failing to disclose to a patient the risks inherent in the proposed treatment.

The court found Dr. Lovett was well aware of the risk of stroke from chiropractic neck manipulation. In fact, he had been reading an article on the subject the morning of the alleged injury. Dr. Lovett had also previously had a patient who suffered a vertebral dissection.

The court held Dr. Lovett (1) failed to disclose to plaintiff such risks and hazards inherent in the chiropractic treatment that could have influenced a reasonable person in making a decision to give or withhold consent to such treatment; (2) a reasonable person would have refused such treatment if those risks and hazards had been disclosed; and (3) plaintiff was injured by the occurrence of the risk or hazard of which he was not informed.

Of note, the court did not limit common law informed consent to "medical care" or "surgery" as the statute did; rather, it applied informed consent to treatment in general, which necessarily includes non-invasive procedures like chiropractic adjustments.

The same conclusion was reached in *Hannemann v. Boyson*, 698 N.W.2d 714 (Wis. 2005). The plaintiff brought a negligence action against her chiropractor after suffering a stroke subsequent to a cervical adjustment claiming failure to obtain informed consent.

The court concluded that although the practice of chiropractic and the practice of medicine are distinct health care professions, the obligation of the practitioners of both disciplines to disclose the risks of the treatment and care they provide should be the same. "A patient of chiropractic has the same right as a patient of medical practice to be informed of the material risks of the proposed treatment or procedure so that he may make an informed decision whether to consent to the procedure or treatment." *Id.* (emphasis added). As such, the court held the scope of a chiropractor's duty to obtain informed consent is the same as that of a medical doctor.

In reaching its decision, the court considered the case of *Trogun v. Fruchtman*, 207 N.W.2d 297 (Wis. 1973) which held: "[A] physician has a duty to make a reasonable disclosure to his patient of the significant risks in view of the gravity of the patient's condition, the probabilities of success, and any alternative treatment or procedures if such are reasonably appropriate so that the patient has the information reasonably necessary to form the basis of an intelligent and informed consent to the proposed treatment or procedure. *Id.* (emphasis added).

Dr. Boyson did not warn plaintiff that chiropractic treatment carried a risk of the patient suffering a stroke or other neurovascular injuries. Dr. Boyson explained he did not discuss the alleged risk of stroke because there is no definitive correlation between chiropractic adjustments and stroke and that "the risk . . . wasn't a major factor."

The court concluded even a small risk was a major factor and his duty of informed consent is to "make such disclosures as will enable a reasonable person under the circumstances confronting the patient to exercise the patient's right to consent to, or to refuse the procedure proposed or to request an alternative treatment or method of diagnosis." *Id.* A health care provider must "make such disclosures as appear reasonably necessary under circumstances then existing to enable a reasonable person under the same or similar circumstances confronting the patient at the time of disclosure to intelligently exercise his right to consent or to refuse the treatment or procedure proposed." *Id.* This is broad-sweeping language encompassing treatment, procedures, and diagnostic tests.

Texas and Wisconsin both apply the common law doctrine of informed consent to chiropractic adjustments. It is significant to note that both Texas and Wisconsin's courts, when defining the parameters of informed consent, do so in the context of invasive and non-invasive procedures and treatment alike.

VI. States where chiropractors are not required to obtain informed consent

The decedent in *Bell v. Willis*, 2013 WL 5962874 (Nov. 8, 2013, Pa. Super) suffered a vertebral artery dissection and massive stroke after a cervical adjustment. The stroke resulted in her being in a "locked-in" state, *i.e.*, fully conscious and cognitively aware but unable to move except for her eyes. She died approximately eighteen months later due to a massive infection.

The decedent's estate claimed, among other things, that the chiropractor failed to inform decedent of the dangers and potential side effects of the treatment and risk of stroke and, if he had, she would not have consented to treatment.

The court dismissed the lack of informed consent claim because Pennsylvania common law is clear and explicitly states that a lack of informed consent claim cannot lie against a chiropractor for performing chiropractic manipulations, because they are non-surgical procedures. The *Willis* court referenced its prior opinion in *Matukonis v. Trainer*, 441 Pa.Super. 570, 657 A.2d 1314, 1315 (Pa.Super.1995) which stated:

> [A] cause of action for failure to obtain informed consent has been steadfastly limited to surgical or operative medical procedures. Since chiropractors are statutorily proscribed from performing any surgical procedures, 63 P.S. § 625.102, and appellant does not allege that appellee performed a surgical or operative procedure, a cause of action against a chiropractor for failure to obtain informed consent before performing non-surgical procedures will not lie as a matter of law.

Id. The *Willis* court was not free to expand the application of the doctrine of informed consent beyond the surgical arena when its Supreme Court has declined to do so.

In explanation, the *Willis* court examined the Supreme Court's decision in *Morgan v. MacPhail*, 704 A.2d 617 (Pa. 1997), where the court re-affirmed its holding that informed consent is not required in cases involving non-surgical procedures. In *Morgan*, the plaintiff received an intercostal nerve block procedure (whereby a local anesthetic is injected into the area around the ribs) and steroid injections. The plaintiff claimed injury caused by the nerve block and lack of informed consent. The *Morgan* court refused to expand the doctrine of informed consent to non-surgical procedures:

> It is the invasive nature of the surgical or operative procedure involving a surgical cut and the use of surgical instruments that gives rise to the need to inform the patient of risks prior to surgery. Neither of the procedures performed in the instant appeals were invasive in nature as both involved the injection of medication which does not rise to the same level of bodily invasion as surgery.

The plaintiff in *Willis* urged the court to disregard well established precedent and follow Wisconsin's lead in *Hannemann v. Boyson*, 698 N.W.2d 714 (Wis. 2005) and require chiropractors to obtain a patient's informed consent. As discussed above, the *Boyson* court held the scope of a chiropractor's duty to obtain informed consent is the same as that of a medical doctor. The *Willis* court declined and reiterated it would not require informed consent for non-invasive procedures like chiropractic adjustments because the doctrine of informed consent is reserved for surgical procedures due to those procedures' invasive nature and bodily intrusion.

Georgia also does not apply informed consent to chiropractors, but for a slightly different reason. In *Blotner v. Doreika*, 678 S.E.2d 80 (Ga. 2009), the plaintiff filed a professional negligence action against his chiropractor, asserting the chiropractor failed to inform him about risks of neck adjustments or treatment alternatives for his neck pain before performing a neck adjustment which either caused a herniated disc or aggravated a pre-existing disc condition.

The court reaffirmed that Georgia does not recognize a common law duty to inform patients of the material risks of a proposed treatment or procedure; instead, informed consent is entirely statutory and confined to procedures specifically codified (various types of surgery and acupuncture). *Id. see also Albany Urology Clinic v. Cleveland*, 528 S.E.2d 777 (Ga. 2000). Informed consent is not required for chiropractic treatment because it is not included among the matters for which informed consent is required by OCGA § 31-9-6.1 and because the Georgia Legislature has not otherwise required informed consent for chiropractic treatment as compared to acupuncture and various surgeries. Therefore, there is no statutory or regulatory requirement in Georgia that chiropractors obtain a patient's informed consent.

It is apparent that the Georgia Legislature and courts have limited informed consent to invasive procedures such as surgery and acupuncture as have Pennsylvania courts. This limitation of informed consent to surgical procedures coincides with the obvious limitation found in Alabama decisions.

VI. Conclusion and Application

Based on Alabama's universal reservation of informed consent to surgical and invasive procedures, Alabama courts would likely side with Pennsylvania and Georgia and not require chiropractors to obtain informed consent for adjustments. Pennsylvania, like Alabama, explains informed consent in connection with procedures. A reasonable inference is that a procedure in Alabama and Pennsylvania is defined as surgery.

Moving beyond the semantic difference between "procedure" versus "treatment," the striking distinction relative to informed consent is seemingly "surgical" versus "non-invasive." Granted, Alabama courts outline the application of informed consent in the context of procedures without mention of treatment, and this appears to be an important distinction when compared to Texas and Wisconsin's broad application of informed consent to "procedures and treatment" alike. However, arguments based on semantics alone often carry insignificant weight. Plaintiff's counsel will merely argue a "procedure" encompasses non-invasive treatment like a chiropractic adjustment and what court-given definition will defeat that argument? Plaintiff's counsel may also argue Alabama courts are silent on the issue of whether informed consent applies to non-

invasive procedures and what bright-line rule in Alabama expressly states informed consent is limited to surgical intervention?

The response is Alabama courts' consistency in applying informed consent to surgical and other invasive procedures only. The trend is undeniable and provides precedential support for the argument that an Alabama plaintiff may not maintain a cause of action against a health care provider for failure to obtain informed consent for a non-invasive, non-surgical procedure.

Support for this argument is found in other jurisdictions as well. Alabama courts have never stated why they only apply informed consent to surgical procedures, but Pennsylvania provides a good indication:

> It is the invasive nature of the surgical or operative procedure involving a surgical cut and the use of surgical instruments that gives rise to the need to inform the patient of risks prior to surgery. Neither of the procedures performed in the instant appeals were invasive in nature as both involved the injection of medication which does not rise to the same level of bodily invasion as surgery.

Morgan v. MacPhail, 704 A.2d 617 (Pa. 1997).

Chiropractic adjustments and other non-invasive treatment like physical therapy, diagnostic tests, imaging, and other routine medical care do not invade the sanctity of the human body like surgical procedures do. In the former, the patient is awake, not under general anesthesia (as with everything, there are exceptions such as chiropractic manipulations under anesthesia also known as MUA) and the patient's body is not intruded by any medical device whereas the latter subjects the patient to vulnerability through anesthesia and an invasion of bodily sovereignty.

The definitive answer on whether chiropractors and other health care professionals are obligated to obtain informed consent in Alabama when performing non-surgical, non-invasive treatment is open for debate until an Alabama court rules on the issue. The trend of Alabama courts in reserving the doctrine for surgical procedures and reliance on other jurisdictions that do the same provides Alabama defense attorneys solid ground to argue against the broadened application of the doctrine and the protection of these health care providers.

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[1] **Editor's Note**: This article was submitted for publication in February, 2014.

[2] See, e.g., *McGathey v. Brookwood Health Services, Inc.*, 213 WL 3958299 (Aug. 2, 2013, Ala.)(patient filed a medical malpractice action against hospital physician in connection with burn injuries sustained during arthroscopic shoulder surgery); *Ex parte Stenum Hospital*, 81 So. 3d 314 (Ala. 2011)(plaintiff claimed lack of informed consent to surgery); *Black v. Comer*, 38 So. 3d 16 (Ala. 2009)(patient brought action against surgeon, asserting claims for failure to obtain informed consent and battery resulting from surgeon's removal from patient's abdomen a tissue mass that turned out to be a kidney); *Henriksen v. Roth*, 12 So. 3d 652 (Ala. 2008)(patient claimed failure to obtain informed consent for dental surgery); G*iles v. Brookwood Health Services*, 5 So. 3d 533 (Ala. 2008)(medical malpractice action against gynecologist based on failure to obtain informed consent in connection with surgery to remove cysts on ovary); *Houston County Healthcare Authority v. Williams*, 961 So. 2d 795 (Ala. 2006)(patient claims lack of informed consent related to breast augmentation); *Pryor v. Cancer Surgery of Mobile, P.C.*, 959 So. 2d 1092 (Ala. 2006)(lack of informed consent regarding surgeries performed to treat cancer); *Ex parte Mendel*, 942

So. 2d 829 (Ala. 2006)(lack of informed consent for dental implant surgery); *Cain v. Howorth*, 877 So. 2d 566 (Ala. 2003)(lack of informed consent and hip replacement surgery); *Ronderos v. Lowell*, 868 So. 2d 422 (Ala. 2003)(lack of informed consent related to throacoscopic discectomy, a surgical procedure); *Collins v. Ashurst*, 821 So. 2d 173 (Ala. 2001)(lack of informed consent related to surgical removal of ovary); *Sonnier v. Talley*, 806 So. 2d 381 (Ala. 2001)(informed consent and hysterectomy); *Wells v. Storey*, 792 So. 2d 1034 (Ala. 1999)(informed consent and epidural anesthetic); *Hempfleng v. Smith*, 753 So. 2d 506 (Ala.Civ.App. 1999)(patient claimed lack of informed consent to risks of hernia repair surgery); *Golden v. Autauga Medical Center, Inc.*, 675 So. 2d 418 (Ala. 1996)(patient claimed lack of informed consent to risks associated with unnecessary gynecological laser procedure); *Ex parte N.P.*, 676 So. 2d 928 (Ala. 1996)(patient claimed lack of informed consent to risks associated with lack of informed consent in connection with penis surgery); *Golden v. Stein*, 670 So. 2d 904 (Ala. 1995)(patient claimed lack of informed consent to risks associated with unnecessary laser procedure); *Torsch v. McCloud*, 665 So. 2d 934 (Ala. 1995)(patient claimed no informed consent for eye surgery); *Phelps v. Dempsey*, 656 So. 2d 377 (Ala. 1995)(inadequate informed consent for club foot surgery); *Trull v. Lung*, 621 So. 2d 1278 (Ala. 1993)(informed consent and surgery); *Humana Medical Group Corp. of Alabama v. Traffanstedt*, 597 So. 2d 667 (Ala. 1992)(informed consent and surgery); *Green v. Wedowee Hospital*, 584 So. 2d 1309 (Ala. 1991)(informed consent and experimental cataract surgery); *Bodiford v. Lubbetts*, 564 So 2d 1390 (Ala. 1990)(informed consent and foot surgery performed by podiatrist); *Craig v. Borcicky*, 557 So. 2d 1253 (Ala. 1990)(informed consent and foot surgery performed by podiatrist); *Horton v. Shelby Medical Center*, 562 So. 2d 127 (Ala. 1989)(informed consent and total abdominal hysterectomy); *Fore v. Brown*, 544 So. 2d 955 (Ala. 1989)(patient claimed lack of informed consent to risks associated with esophagogastroduodenscopy, a surgical procedure); *Otwell v. Bryant*, 497 So. 2d 111 (Ala. 1986)(informed consent and bladder surgery); *Fain v. Smith*, 479 So. 2d 1150 (Ala. 1985)(informed consent and pulmonary arteriogram); *Johnson v. McMurray*, 461 So. 2d 775 (Ala. 1984)(informed consent and surgery to remove sponge left in patient during first surgery); *Malone v. Doughtery*, 453 So. 2d 721 (Ala. 1984)(informed consent and laminectomy); *Gaskin v. Boothe*, 437 So. 2d 580 (Ala. Civ. App. 1983)(patient claimed lack of informed consent to risks associated with cosmetic procedure to remove spider veins which involved insertion of fine needle in the veins and injecting a sclerosing agent which dries up the vein); *Tant v. Women's Clinic*, 382 So. 2d 1120 (Ala. 1980)(lack of informed consent to vaginal hysterectomy).