

**Westlaw Delivery Summary Report for BLINE,AMY W**

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Supreme Court of New Hampshire.  
 Patricia FOLGER  
 v.  
 Vincent Peter CORBETT, M. D.  
**No. 78-151.**

Oct. 30, 1978.

Patient, whose lingual nerve was damaged during oral surgeon's removal of patient's wisdom teeth, brought action to recover against surgeon. The Superior Court, Rockingham County, Cann, J., granted surgeon's motion for nonsuit at close of patient's case, and transferred exceptions. The Supreme Court, Douglas, J., held that: (1) patient was required to produce expert testimony in order to establish that surgeon had duty to inform patient of any risk of damage to lingual nerve, and (2) refusal to admit medical journal article, which pertained to lingual anesthesia and which was hearsay, for any purpose other than testing credibility of expert witness was not error.

Exceptions overruled.

West Headnotes

**[1] Health 198H  906**

198H Health

198HVI Consent of Patient and Substituted Judgment

198Hk904 Consent of Patient

198Hk906 k. Informed Consent in General; Duty to Disclose. **Most Cited Cases**

(Formerly 299k15(8) Physicians and Surgeons)

**Health 198H  908**

198H Health

198HVI Consent of Patient and Substituted Judgment

198Hk904 Consent of Patient

198Hk908 k. Surgical Procedures. **Most Cited Cases**

(Formerly 299k15(8) Physicians and Surgeons)  
 Generally, doctor has duty to inform patient of reasonable risks involved in an operation or treatment.

**[2] Health 198H  821(2)**

198H Health

198HV Malpractice, Negligence, or Breach of Duty

198HV(G) Actions and Proceedings

198Hk815 Evidence

198Hk821 Necessity of Expert Testimony

198Hk821(2) k. Standard of Practice and Departure Therefrom. **Most Cited Cases**

(Formerly 299k18.80(6.1), 299k18.80(6) Physicians and Surgeons)

Generally, doctor's failure to use ordinary care can only be established by expert testimony. **RSA 507-C:1**, subd. 3, **507-C:2**.

**[3] Health 198H  926**

198H Health

198HVI Consent of Patient and Substituted Judgment

198Hk922 Proceedings and Actions

198Hk926 k. Weight and Sufficiency of Evidence. **Most Cited Cases**

(Formerly 299k18.80(7) Physicians and Surgeons)

In action by patient, whose lingual nerve was damaged during oral surgeon's removal of patient's wisdom teeth, to recover against surgeon, patient was required to produce expert testimony in order to establish that surgeon had duty to inform patient of any risk of damage to the nerve. **RSA 507-C:1**, subd. 3, **507-C:2**.

**[4] Evidence 157  318(6)**

157 Evidence

157IX Hearsay

157k315 Statements by Persons Other Than Parties or Witnesses

157k318 Writings

157k318(6) k. Books. Most Cited Cases

In action by patient, whose lingual nerve was damaged during oral surgeon's removal of patient's wisdom teeth, to recover against surgeon, refusal to permit admission of medical journal article, which pertained to lingual anesthesia and which was hearsay, for any purpose other than testing credibility of an expert witness was not error.

\*\*63 \*737 Perkins, Holland, Donovan & Beckett, Exeter (Robert B. Donovan, Exeter, orally), for plaintiff.

Sulloway, Hollis, Godfrey & Soden, Concord (Michael P. Lehman, Concord, orally), for defendant.

DOUGLAS, Justice.

The principal issue in this case is whether it is necessary for the plaintiff to produce expert testimony on the issue of informed consent. The defendant's motion for a nonsuit was granted at the close of plaintiff's case. Plaintiff's exceptions to the granting of the motion and an evidentiary ruling were reserved and transferred by the Trial Court (Cann, J.).

\*738 The defendant oral surgeon had removed the plaintiff's four wisdom teeth without complication in January 1972. Afterwards plaintiff felt a numbness on the right side of her tongue as a result of damage to her lingual nerve. At trial she called no expert witnesses, except the defendant.

[1] Generally a doctor has a duty to inform his patient of the reasonable risks involved in an operation or treatment so that the patient can make an effective choice. See *Guarracino v. Beaudry*, 118 N.H. 435, 387 A.2d 1163 (1978). The defendant in this case did not inform the patient of any risk of damage to the lingual nerve. See generally J. Waltz

and T. Scheuneman, *Informed Consent to Therapy*, 64 Nw.U.L.Rev. 628 (1970). In this State, we have long held that issues such as this are generally not within the competence of the average juror. "The problem still remains one of proper dental practice under the circumstances, and the correct solution of that problem depends upon the testimony of those who have technical knowledge on \*\*64 the subject." *April v. Peront*, 88 N.H. 309, 311-12, 188 A. 457, 459 (1936).

[2][3] We see no reason to disturb the rule that whether a doctor uses ordinary care generally must depend on expert testimony. See *RSA 507-C:1 III, :2* (Supp.1977). But see *Mehigan v. Sheehan*, 94 N.H. 274, 51 A.2d 632 (1947). The motion for a nonsuit was properly granted.

[4] Plaintiff also asserts error in the refusal of the trial court to admit into evidence a three-page medical journal article about lingual anesthesia during her examination of the defendant. The article was hearsay, but was properly admitted by the trial court for the limited purpose of testing the credibility of an expert witness. *Ordway v. Haynes*, 50 N.H. 159, 165 (1870); *Laird v. Boston & Maine R.R.*, 80 N.H. 377, 117 A. 591 (1922). We find no error.

Exceptions overruled.

All concurred.  
N.H., 1978.  
*Folger v. Corbett*  
118 N.H. 737, 394 A.2d 63

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