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Citation: 4 J. Empirical Legal Stud. 103 2007

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Wed Sep 11 06:34:52 2013

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Geographic Variation in Informed Consent Law: Two Standards for Disclosure of Treatment Risks

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We analyzed 714 jury verdicts in informed consent cases tried in 25 states in 1985–2002 to determine whether the applicable standard of care (“patient” vs. “professional” standard) affected the outcome. Verdicts for plaintiffs were significantly more frequent in states with a patient standard than in states with a professional standard (27 percent vs. 17 percent, $P = 0.02$). This difference in outcomes did not hold for other types of medical malpractice litigation (36 percent vs. 37 percent, $P = 0.8$). The multivariate odds of a plaintiff’s verdict were more than twice as high in states with a patient standard than in states with a professional standard (odds ratio = 2.15, 95% confidence interval = 1.32–3.50). The law’s expectations of clinicians with respect to risk disclosure appear to vary geographically.

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This work was supported by general institutional funds; Studdert was also supported in part by Grant KO2HS11285 from the Agency for Healthcare Research and Quality. The authors thank Carly Kelly and Tony Yang for legal research assistance, and David Mooney, Amanda Cavicchio, and Doug Smink for assistance with the verdict reviews. Atul Gawande and Alan Meisel provided helpful comments on an earlier draft of the article.