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If doctor doesn't tell you about all risks of surgery, can you sue?

You suffer a terrible complication during the course of surgery, and you want to know, can you bring a lawsuit against the doctor for not telling you about the chances of getting this particular complication as a result of the surgery. You want to know the answer? Come join me for a moment as I share with you some great information.

Hi, I'm Gerry Oginski, I'm a New York medical malpractice and personal injury attorney practicing law here in the state of New York. The answer is, maybe yes, and maybe no. Let me explain what I mean. Before you have surgery, a doctor is obligated to speak to you about the risks, the benefits, and the alternatives to undergoing this particular surgery. He's supposed to give you enough information so that you, the patient, can make an educated decision about whether or not to go forward with this particular surgery. What happens if the doctor doesn't give you sufficient information, and based upon that insufficient information, you choose to go ahead and have the surgery? During the surgery, a complication develops, and now you need a lot of treatment to fix that problem. Can you bring a lawsuit against the doctor for not telling you about this complication because, had you known that this was a risk of the surgery, you never, ever would have had this surgery? Again, the answer is maybe yes, maybe no.

We call these type of claims lack of informed consent claims. Many times, the doctor will say, "Of course I told the patient about all the major risks!" Ah, that's the key word. All the "major" risks. What about some of the minor risks? Some of those minor risks might be very substantial. They may cause significant injury and harm. The doctor will always argue that the chances of experiencing that type of minor risk are very small and very rare. That may be true, but shouldn't the patient be the one to make the decision about whether or not they'll go forward with a procedure, even if a certain type of

risk is rare or doesn't happen that often? The patient should be the one to make that decision, together with the doctor's recommendation.

By the way, you should know, that if that's the only claim that you're bringing, not that the doctor violated the basic standards of medical care, or that he did something improperly during the course of surgery, you will find that most really good, really experienced trial attorneys are going to shy away from taking on a case that only involves a lack of informed consent. You want to know why? It's because it turns into a he said, she said scenario. At trial, what do you think happens? The patient says, "The doctor didn't tell me about this risk." Then the doctor gets on the witness stand and says, "Of course I told the patient all these risks!" Now, it's a he said, she said scenario. The jury has to try to figure out who they believe. It comes down to credibility. In those instances, more likely than not, the jury tends to side with the doctors and the hospital staff.

Why do I share this great information with you? I share it with you just to give you an insight and an understanding into how these medical malpractice cases work in the state of New York. I realize you're likely watching this video because you have questions or concerns about your own particular matter. Well, if your matter did happen here in New York and you're thinking about bringing a lawsuit but you have questions that need to be answered, what I invite you to do is pick up the phone and call me. I can answer your legal questions. This is something I do every single day, and I would love to chat with you. You can reach me at 516-487-8207, or by e-mail at gerry@oginski-law.com. That's it for today's video. I'm Gerry Oginski. Have a wonderful day.