

**Doctors in the dock – When is consent truly
informed?**

**An examination of *R v Reeves*
and cases where doctors have faced criminal charges and
civil and disciplinary proceedings.**

A presentation by Peter Hamill Sc to 'Learned Friends' Conference
at the Taj Hotel, Boston Ma. on Wednesday 11 September 2013

Cases referred to or relevant to the topics covered in the
presentation

Informed consent

R v Reeves [2013] NSWCCA 34

Reeves v The Queen [2013] HCTrans 143 (7 June 2013)

Rogers v Whittaker (1992) 175 CLR 475

Reibl v Hughes [1980] 2 SCR 880

Chatterton v Gerson [1981] 1 QB 432

F v R (1983) 33 S.A.S.R 189

Marshall v Curry [1933] 3 DLR 260

US Authorities

Dries v Gregor 72 A.D. 2d 231 (1980)

Schloendorff v Society of New York Hosp., 105 NE 92 (NY 1914)
(Justice Cardozo referred to the right of an adult to determine what is done with their body and said that a surgeon who performs an operation without consent “commits an assault for which he is liable for damages”)

Salgo v Leland Stanford University Board of Trustees
(Possibly coined the phrase “informed consent” with reference to a physician at duty to disclose risks)

Natanson v Kline 350 P. 2d 1093 (Kan. 1960)

Pratt v Davis, 79 NE 562 (Ill. 1906)
(Consent to operation on womb; ovaries and uterus removed)

Mohr v Williams, 104 NW 12 (Minn. 1905)
(Consent to operate on right ear, operation performed on the left)

Rolater v Strain 137 P. 96 (Okla 1913)
(Bone removed from patient’s foot after surgeon promised he would not do so)

Gouse v Cassel, 615 A 2D 331 (Pa 1992)
(The law requires disclosure only of material, not trivial, risks that are reasonably foreseeable)

Gaskin v Goldwasser, 520 NE2d 1085 (Ill App Ct 1988)

Canterbury v Spence 464 F2d 772, 781 (DC Cir) cert denied, 409 US 1064 (1972)

Kowk Tung Tom v Lenox Hill Hosp 165 Misc. 2d 313, 627 NYS 2d 874,

Oates v New York Hosp, 131 AD2d 368, 369 [1st Dept 1987]).

Cathemer v Hunter, 27 Ariz. App 780, 558 P.2d 975, 978(1976)
(“the essence (of the) question in a battery case involving a physician to have done, and was the ultimate contact by the physician within the scope of the patients consent”)

Cobbs v Grant 8 Cal. 3d 229, 502 P2d 1, 104 Cal. Rptr. 505 (1972)
(The performance of a “*substantially different procedure*” is considered a battery.

Articles

Informed Consent About Medical Procedures, 1989 Australian Law Reform Commission Report 50

Informed consent: what does it mean? (Journal of medical ethics, 1983, vol 9, 69-75) by Justice Michael Kirby

The Parameters of Informed Consent (Trans American Ophthalmological Society Journal, Vol 102/2004) by E. Raab MD JD

Consent to violent sexual practices

R v Brown [1993] 2 WLR 556

R v Wilson [1996] 3 WLR 125

R v Emmett, unreported (UK Court of Appeal) 18/6/1999

R v Welch (1996) 101 CCC (3d) 216.

Boughey v The Queen (1986) 161 CLR 10.

Consent to fighting and horseplay

Lergesner v Carroll (1989) 49 A Crim R 51

R v Aitken [1992] 1 WLR 1006

Mutual drug use

Burns v The Queen [2012] HCA 35

Burns v R [2011] NSWCCA 56

R v Tak Tak (1988) 14 NSWLR 226

R v Wilhelm [2010] NSWSC 378 (Diana Brimble case)

Nair v The Queen [2013] NSWCCA 79

R v Kennedy [1999] Crim LR 65; [2007] 4 All ER 1083

R v Dias [2002] 2 Cr App R 96

R v Rogers [2003] 1 WLR 1374

Dalby (1981) 74 Cr App R

Assisted suicide

Justins v R (2010) 79 NSWLR 544

Cases before the NSW Medical Tribunal

Barratt v Medical Board of Australia [2012] NSWMT 22

Health Care Complaints Commission v Dr Victor King [2011] NSWMT 5 (5 May 2011)

Litchfield v Medical Council of New South Wales [2012] NSWMT 8 (3 May 2012)

Craddock, Dr Mark Christopher [2012] NSWMPSC 8 (23 August 2012)

Health Care Complaints Commission v Hasil [2012] NSWMT 1 (15 February 2012)