

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**BETH A. ROY,** : **No. 03-00243**  
                  **Plaintiff** :  
                                  : **CIVIL ACTION - LAW**  
**vs.** :  
**SABRINA K. DOWD,** :  
                  **Defendant** :

**ORDER**

AND NOW, this 3<sup>rd</sup> day of September 2003, the Court GRANTS Defendant's preliminary objections to Count I of Plaintiff's Amended Complaint, which attempts to set forth an informed consent claim against Dr. Dowd.

Informed consent claims are not available for all forms of medical treatment. Instead, in Pennsylvania, a doctor only needs to give informed consent for the following procedures: performing surgery; administering radiation or chemotherapy; administering a blood transfusion; inserting a surgical device or appliance; and administering an experimental medication, using an experimental device or using an approved medication or device in an experimental manner. 40 P.S. §1301.811-A.

Plaintiff sought treatment from Dr. Dowd for acne and related skin problems. Dr. Dowd recommended Plaintiff undergo an acid peel, which was performed in Dr. Dowd's medical offices on or about March 6, 2001. Amended Complaint, paras. 3-6.

In response to Defendant's preliminary objections, Plaintiff asserted that the acid peel constituted

"chemotherapy" under the statute because chemicals were placed on Plaintiff's face in order to peel her skin as a treatment for her acne. The Court agrees with Defendant that the term "chemotherapy" in the statute refers to a specific type of cancer treatment and not merely the use of chemicals or drugs for the treatment of any disease. Although there is no case law directly on point, the Appellate Courts have interpreted this statute narrowly. See Stalsitz v. Allentown Hosp., 814 A.2d 766, 773 (Pa.Super. 2002) ("The Act has been interpreted narrowly by the Pennsylvania Supreme Court in Morgan [v. McPhail], 550 Pa. 202, 207 n.6, 704 A.2d 617, 620 n.6], which appears to indicate that apart from the statutorily created exceptions, the surgery requirement will remain."). Moreover, Plaintiff's expansive definition of "chemotherapy" would include the intravenous administration of antibiotics, steroids and prescription drugs, to which the Courts have consistently found the doctrine of informed consent inapplicable. See Morgan v. McPhail, 550 Pa. 202, 704 A.2d 617 (1997) (informed consent doctrine does not apply to intercostal nerve block procedure or injection of steroids); Wu v. Spence, 413 Pa.Super. 352, 605 A.2d 395 (1992) (no informed consent needed for intravenous administration of antibiotics); Karibjaninan v. Thomas Jefferson Univ. Hosp., 717 F.Supp. 1081 (E.D.Pa. 1989) (doctrine not applicable to intravenous administration of prescription drugs).

In Plaintiff's brief, she also argues the acid peel constitutes surgery because it is 'invasive' and the acid

removes the layers of skin 'as if by cutting.' Again, the Court cannot agree. First, Plaintiff has not pleaded any such facts in her Amended Complaint. Second, although Plaintiff claims the procedure is invasive, this allegation is a conclusion, which does not have a factual basis. The facts alleged in Plaintiff's Amended Complaint, as well as in her brief, are that an acid solution was placed on Plaintiff's face. See Amended Complaint, para. 7(e); Plaintiff's brief, p.2 ("This is a procedure wherein acid is placed on the face to burn through the skin..."). Since injection of drugs and chemicals does not rise to the same level of bodily invasion as surgery, see Morgan, supra at 207, 704 A.2d at 620, certainly the mere placement of chemicals on the skin also would not be sufficiently invasive to constitute surgery. Furthermore, as noted by the Pennsylvania Supreme Court in Morgan, the underlying rationales for requiring informed consent for a surgical procedure and not requiring it for a non-surgical procedure are: (1) the patient is typically unconscious and unable to object and (2) the invasive nature of the surgical cut and use of surgical instruments. Here, there are no allegations that Plaintiff was unconscious or that there was a surgical cut or the use of surgical instruments. Given Plaintiff's own description of the procedure as the placement of acid on her face, the Court does not believe Plaintiff could amend her complaint to correct these deficiencies. Instead, based on the following discussion, the Court finds as a matter of law that an acid

peel is neither surgery nor chemotherapy for purposes of the informed consent doctrine. Therefore, the Court DISMISSES Count I of Plaintiff's Amended Complaint and STRIKES paragraphs 7-8, and 11-16. Defendant shall file an Answer within twenty (20) days of the date of this Order.

By The Court,

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Kenneth D. Brown, Judge

cc: Denise Dieter, Esquire  
Brian Bluth, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)