

1 **13-1109A. Failure to obtain consent.**

2 Every adult of sound mind has a right to determine what shall be done with ~~[[his][her]]~~their
3 own body. A doctor who ~~[performs an operation upon]~~ ~~[medically treats]~~ ~~[examines or touches]~~ a
4 patient without the patient~~[']~~'s prior consent commits a legal wrong for which ~~[[he][she]]~~the doctor
5 is liable in damages. ~~[It is also legally wrong to [perform an operation upon] [medically treat]~~
6 ~~[examine or touch] one part of the body when the patient~~[']~~'s consent was limited to another part~~
7 ~~of the body.]~~

8 USE NOTES

9 This instruction states a general rule applicable to claims that the patient did not give
10 consent to what was done, either because the patient gave no consent or because the procedure
11 performed was substantially different from the one authorized. The bracketed final sentence is
12 applicable where it is claimed that the patient gave consent limited to one part of the body and
13 another body part was treated. UJI 13-1109B NMRA should be given with this instruction where
14 the claim is that an unauthorized procedure was performed. UJI 13-1109C NMRA should be given
15 with this instruction where appropriate.

16 [As amended, effective November 1, 1991; August 15, 1997; approved, effective February 24,
17 1998; as amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases
18 pending or filed on or after December 31, 2025.]

19 **Committee commentary.** — The term ~~["]"~~“battery["]" has been eliminated from this instruction.
20 ~~["]"~~“Battery["]" as a term of art is not meaningful to a jury. It is only important for the jury to know
21 that it is legally wrong not to obtain a patient~~[']~~'s consent.

22 In *Gerety v. Demers*, 1978-NMSC-097, 92 N.M. 396, 589 P.2d 180~~[-(1978)]~~, the Supreme Court
23 drew a distinction between cases involving allegations of lack of informed consent and cases where

1 the patient contends that [~~he or she~~]patient did not agree to the particular treatment rendered.
2 Where the only issue is whether the patient consented to what actually was done, expert testimony
3 relating to informed consent is not relevant; the jury is not called upon to evaluate what the doctor
4 should have told the patient but rather what in fact was communicated between the patient and the
5 doctor.

6 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]