

**Arato vs. Avedon**  
**Supreme Court of California, 1993**  
**5 Cal.rth 1172, 23 Cal.Rptr.2d 131, 858 P.2d 598**

A physician's duty to disclose to a patient information material to the decision whether to undergo treatment is the central constituent of the legal doctrine known as "informed consent". In this case, we review the ruling of a divided Court of Appeal that, in recommending a course of chemotherapy and radiation treatment to a patient suffering a virulent form of cancer, the treating physicians breached their duty to obtain the patient's informed consent by failing to disclose his statistical life expectancy.

Miklos Arato was a successful 42-year-old electrical contractor and part time real estate developer when, early in 1980, his internist diagnosed a failing kidney. On July 21, 1980, in the course of surgery to remove the kidney, the operating surgeon detected a tumor on the "tail" or distal portion of Mr. Arato's pancreas. After Mrs. Arato gave her consent, portions of the pancreas were resected, or removed, along with the spleen and the diseased kidney. A follow-up pathological examination of the resected pancreatic tissue confirmed a malignancy. Concerned that the cancer could recur and might have infiltrated adjacent organs, Mr Arato's surgeon referred him to a group of oncology practitioners for follow-up treatment.

During his initial visit to the oncologists, Mr. Arato filled out a multi-page questionnaire routinely given to new patients. Among the some 150 questions asked was whether patients "wish[ed] to be told the truth about [their] condition" or whether they wanted the physician to "bear the burden" for them. Mr. Arato checked the box indicating that he wished to be told the truth.

The oncologists discussed with Mr. and Mrs. Arato the advisability of a course of chemotherapy known as "F.A.M.", a treatment employing a combination of drugs which, when used in conjunction with radiation therapy, had shown promise in treating pancreatic cancer in experimental trials. By their own admission, neither the operating surgeon nor the treating oncologists specifically disclosed to the patient or his wife the high statistical mortality rate associated with pancreatic cancer.

Mr. Arato's treating physicians justified not disclosing statistical life expectancy data to their patient on disparate grounds. According to the testimony of his surgeon, Mr. Arato had exhibited great anxiety over his condition, so much so that his surgeon determined that it would have been medically inappropriate to disclose specific mortality rates. The patient's oncologist had a somewhat different explanation. As Dr. Melvin Avedon, his chief oncologist, put it, he believed that cancer patients in Mr. Arato's position "wanted to be told the truth, but did not want a cold shower". Dr Avedon testified that in his opinion the direct and specific disclosure of extremely high mortality rates for malignancies such as pancreatic cancer might effectively deprive a patient of any hope of a cure, a medically inadvisable state. Moreover, all of the treating physicians testified that statistical life expectancy data had little predictive value when applied to a particular patient with individualized symptoms, medical history, character traits, and other variables.

Although clinical tests showed Mr. Arato to be free of cancer in the several months following the beginning of the F.A.M treatments, beginning in late March and into April of 1981, the clinical signs took an adverse turn. By late April, the doctors were convinced by the results of additional tests that the cancer had returned and was spreading. They advised the patient of their suspicions and discontinued chemotherapy. On July 25, 1981, a year and four days following surgery, Mr. Arato succumbed to the effects of pancreatic cancer.

Not long after his death, Mr. Arato's wife and two children brought this suit against the physicians who had treated their husband and father in his last days, including the surgeon who performed the pancreas resection and the oncologists who had recommended and administered chemotherapy/radiation treatment. The gist of the lawsuit was the claim that in discussing with their patient the advisability of undergoing a course of chemotherapy and radiation, Mr. Arato's doctors had failed to disclose adequately the shortcomings of the proposed treatment in light of the diagnosis, and thus had failed to obtain the patient's informed consent.

Such mortality information, the complaint alleged, was material to Mr. Arato's decision whether to undergo postoperative treatment; had he known the bleak truth concerning his life expectancy, he would not have undergone the rigors of an unproven therapy, but would have chosen to live out his last days at peace with his wife and children, and arranging his business affairs. Instead, in the false hope that radiation and chemotherapy treatments could effect a cure, Mr. Arato failed to order his affairs in contemplation of his death, an omission that, according to the complaint, led eventually to the failure of his contracting business and to substantial real estate and tax losses after his death.

The judgment of the Court of Appeal is reversed and the cause is remanded with directions to affirm the judgment of the trial court. Although a patient may validly waive the right to be informed, we do not see how a request to be told the "truth" in itself heightens the duty of disclosure imposed on physicians as a matter of law.