ZARELLA, J., with whom McLACHLAN, J., joins, concurring in the judgment. I agree with parts II through V of the majority opinion. I also agree with the majority's conclusion in part I of its opinion that the trial court properly admitted expert testimony and properly instructed the jury in a manner consistent with a claim of traditional medical negligence rather than informed consent. I disagree, however, with the majority's reasoning. Accordingly, I respectfully concur in the judgment.

In my view, the proper analysis consists of three steps: first, an examination of the difference between the two theories of liability; second, a review of the allegations in the complaint to ascertain which theory the plaintiff is advancing; and, third, an analysis of the expert testimony and the jury instructions to determine whether they properly address the theory under which the complaint was brought. See *Sherwood* v. *Danbury Hospital*, 278 Conn. 163, 182 n.4, 896 A.2d 777 (2006) (concluding that negligence claim did not sound in informed consent after examining allegations of plaintiff's complaint).

Beginning with the difference between the two theories, I agree with the majority that the salient distinction between a claim based on informed consent and one based on medical negligence is that the former requires proof, under a lay standard of materiality, that the defendant physician failed to disclose a known, material risk of a proposed procedure to the patient; *Shortell* v. *Cavanagh*, 300 Conn. 383, 388, 15 A.3d 1042 (2011); whereas the latter requires proof that the defendant physician deviated from the prevailing professional standard of care. E.g., *Boone* v. *William W. Backus Hospital*, 272 Conn. 551, 567, 864 A.2d 1 (2005). In addition, adequate disclosure in an informed consent case requires that the patient be advised regarding "(1) the nature of the procedure; (2) the risks and hazards of the procedure; (3) the alternatives to the procedure; and (4) the anticipated benefits of the procedure." (Internal quotation marks omitted.) *Levesque* v. *Bristol Hospital, Inc.*, 286 Conn. 234, 254, 943 A.2d 430 (2008); accord *Sherwood* v. *Danbury Hospital*, supra, 278 Conn. 180; *Logan* v. *Greenwich Hospital Assn.*, 191 Conn. 282, 292, 465 A.2d 294 (1983).

In the present case, the plaintiff, Allison Downs, alleged that (1) she was admitted to the hospital for the purpose of having a partial hysterectomy, which the defendant, Orito Trias, performed, leaving her ovaries in place, (2) the defendant was aware that the plaintiff had a significant genetic history of breast cancer and was concerned about this predisposition, (3) the defendant failed to advise the plaintiff that she had a greatly

increased risk of developing ovarian cancer due to her abnormal family history of breast cancer, (4) although the defendant examined the plaintiff's ovaries before the surgery and found them to be normal, they were cancerous upon their removal one year later, and there was metastasis throughout her pelvis, leading to various injuries, (5) the defendant was required, as a health care provider, to provide the plaintiff with the level of care, skill and treatment recognized as acceptable and appropriate by reasonably prudent, similar health care providers and (6) the plaintiff's injuries were caused by the negligence of the defendant in that he failed, inter alia, to provide her with proper gynecological care, to strongly advise that she have her ovaries removed when she was undergoing her partial hysterectomy, to remove the ovaries during the partial hysterectomy, and to instruct her that her family history of breast cancer greatly increased her risk of developing ovarian cancer.

It is clear from these allegations that the plaintiff's claim is grounded in a theory of medical negligence because it alleges that the defendant deviated from the prevailing standard of medical care when he failed to advise the plaintiff of her risk of developing ovarian cancer due to her genetic history and failed to recommend that her ovaries be removed at the time of the partial hysterectomy. Correspondingly, the complaint does not sound in informed consent because it does not allege that the defendant's disclosure regarding the known, material risks of the proposed procedure was improper. The procedure in question was a partial hysterectomy that had nothing to do with the plaintiff's ovaries, which did not appear to be abnormal at the time and were not allegedly related to the problem that required the partial hysterectomy. Moreover, there are no allegations that the defendant failed to advise the plaintiff as to the nature of the partial hysterectomy, its risks and hazards, alternatives to the partial hysterectomy that might have remedied the condition for which the procedure was recommended, or the anticipated benefits of the procedure. See *Sherwood* v. *Danbury Hospital*, supra, 278 Conn. 182 n.4.

In light of these facts, the trial court properly allowed expert testimony concerning whether the defendant had failed to adhere to the applicable professional standard of care, which purportedly required him to warn the plaintiff of her genetic predisposition to ovarian cancer and to recommend that her ovaries be removed to mitigate this risk. The trial court also properly instructed the jury that the plaintiff had the burden of proving that the defendant's conduct represented a breach of the prevailing professional standard of care.

Accordingly, I respectfully concur in the judgment.