



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Commissioner finds informed consent breach in ablation treatment 20HDC01421

The Health and Disability Commissioner has found an obstetrician and gynaecologist breached the Code of Health and Disability Services Consumers' Rights for failures in her communication regarding a woman's gynaecological procedure.

Morag McDowell said the specialist (Dr B) had breached Rights 6 and 7 - whakamōhi and whakaritenga mōu ake – the right to be informed, and the right to choice and consent, respectively. She has recommended Dr B apologise to the woman and undertake HDC's online learning modules on informed consent.

The breaches concern the woman's choice to not consent to ablation (cauterisation) as surgical treatment for endometriosis. Prior to her surgery, the woman had met with a consultant obstetrician and gynaecologist (Dr D) to discuss surgical treatment options. Both recalled that excision and ablation were discussed and that the woman had clearly communicated that she did not consent to ablation. Dr D was aware that the woman only wanted excision surgery and advised HDC that he informed the woman of the risks of that option. However, this was not documented.

This laparoscopic surgery was performed at Auckland District Health Board (now Te Whatu Ora Te Toka Tumai Auckland) by Dr B because Dr D was unwell. During the surgery Dr B used ablation to remove a small endometriosis lesion. Excision was used for the rest of the surgery.

Dr B was aided by Dr E who had also completed the consenting process with the woman, including a consent form which mentioned excision and not ablation. Dr B noted that consent had been obtained, and told the Commissioner of being aware that the woman wanted to receive excision surgery not ablation. There was no further discussion about the implications of the woman's choice. As mentioned, ablation was used.

While expressing sympathy for Dr B's predicament of having to step in to undertake the operation at short notice, the Commissioner noted that responsibility for ensuring informed consent and shared decision-making fell to Dr B as the operating surgeon.

Ms McDowell said Dr B had an obligation to ascertain why the woman wanted excision only and..." it was vital to explain to Ms A that in some circumstances ablation may be the safest technique, there was a possibility it might be utilised, and the consequences and/or risks of not using it. Had this conversation occurred, Ms A would have had an opportunity to make an informed choice. This is information that a reasonable person in Ms A's circumstances would expect to receive."

She added that while Te Whatu Ora, and an expert advisor, agreed that the safe way to have removed the lesion was by ablation, which is recognised as safe and effective in treating endometriosis, this perspective does not consider a consumer's right to choose.

Ms McDowell acknowledged that while it is not standard practice to gain express consent for particular surgical techniques, this situation was different. "Ms A had communicated that she did not want ablation used and therefore Dr B had a responsibility to ensure that this concern was addressed adequately in the consenting process."

Adverse comment was made about Dr D for not adequately documenting the woman's decision in the earlier meeting.

Te Whatu Ora has advised HDC that it has updated its informed consent policy and communicated the need for robust conversation and documentation of consent.

Health and disability service users can now access an [animated video](#) to help them understand their health and disability service rights under the Code.

29 April 2024

Editor's notes

Please only use the photo provided with this media release. For any questions about the photo, please contact the communications team.

The full report of this case can be viewed on HDC's website - see HDC's '[Latest Decisions](#)'.

Names have been removed from the report to protect privacy of the individuals involved in this case.

The Commissioner will usually name providers and public hospitals found in breach of the Code unless it would not be in the public interest or would unfairly compromise the privacy interests of an individual provider or a consumer. More information for the media, including HDC's naming policy and why we don't comment on complaints, can be found on our website [here](#).

HDC promotes and protects the rights of people using health and disability services as set out in the [Code of Health and Disability Services Consumers' Rights](#) (the Code).

In 2022/23 HDC made 592 quality improvement recommendations to individual complaints and we have a high compliance rate of around 96%.

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