

Unexpected event during surgery, and informed consent

Introduction

This article considers a recent HDC case relating to decisions made during surgery during which a young woman had both fallopian tubes removed (15HDC01847). A 20-year-old woman had consulted a gynaecologist about her endometriosis. The gynaecologist performed a diagnostic laparoscopy, during which it was found that the woman had stage four endometriosis and a “markedly thickened” left fallopian tube.

Over the six days following surgery the woman became increasingly unwell with abdominal pain, tachycardia and a high temperature. The gynaecologist examined the woman and arranged for further surgery the following day. The woman understood that her left fallopian tube might need to be removed. The consent form that she signed did not specify that both of her fallopian tubes might need to be removed and the possibility of the right fallopian tube needing to be removed was not discussed with her.

During surgery the left fallopian tube was removed and the gynaecologist found that the right fallopian tube was swollen and had free pus coming out the end of it. The gynaecologist told HDC that she did not consider allowing the woman to wake up from the anaesthetic to discuss the findings with her, because she considered it was an “emergency sort of situation” and that if the woman were to have further surgery to remove the tube she would require another anaesthetic.

The gynaecologist was concerned that if she left the right fallopian tube it would be a nidus for ongoing infection and sepsis, and the woman might require further surgery acutely in the following few days. In addition, if she was septic, she might need treatment in an intensive care unit.

However the Commissioner’s independent advisor noted that there were other less invasive options that could reasonably have been taken. He considered that in the circumstances of the particular case, namely of such a young woman who has not yet had children, most gynaecologists would not remove both fallopian tubes.

The Commissioner stated:

“Except for cases of emergency or necessity, all medical treatment should be preceded by the patient’s choice to undergo it. This choice is meaningless unless it is made on the basis of relevant information and advice. A medical practitioner has a duty to warn a patient of a material risk inherent in the proposed treatment. The risk that both fallopian tubes might be removed is clearly material to a 20-year-old making a decision to undergo surgery.”

A medical emergency is an acute injury or illness that poses an immediate risk to a person’s life or long-term health. The Commissioner concluded that it was not apparent that the removal of the right fallopian tube was an emergency and, despite the gynaecologist having made decisions with the best possible intentions, the woman had

not given consent for the removal of her right fallopian tube. The gynaecologist should have undertaken the less invasive treatment option in order to be able to discuss the findings with the woman before taking the action she did. The Commissioner stated: "Once Ms A had recovered from the anaesthetic, the options for further treatment and risks of each option should have been discussed with her. Although the woman may have required further surgery or intensive care treatment in the future, it is plainly unacceptable that the doctor removed the woman's right fallopian tube without her consent. It was her right to decide and she was deprived of that right."

The issue with the right fallopian tube was not an "incidental finding". Snelling et al¹ state that an incidental finding is an unexpected finding that is not related to the surgery for which the patient has consented. The rationale is that if an abnormality was foreseeable by a reasonably competent surgeon in advance, and the patient could have been informed preoperatively of its potential occurrence, it is not an incidental finding.

Conclusions

It is evident that the young woman concerned was very distressed by the loss of her fertility at the age of 20 years. She told HDC that she had subsequently been diagnosed with post traumatic stress disorder. She said she would liked to have been woken up before both her fallopian tubes were removed to have had the opportunity to discuss the matter with her family, and she expressed her distress that she was not involved in the process at all.

It is essential that reasonably foreseeable issues are discussed with the patient prior to surgery. Any intervention performed in the context of an unexpected finding should be accompanied by good clinical reasoning, and be the least invasive option in the circumstances. In the absence of a medical emergency the doctor should discuss the findings and options for treatment and obtain the patient's informed consent prior to undertaking any further treatment.

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NZ Doctor, 23 May 2018

¹ Snelling, Anderson, van Rig "'Incidental findings' during surgery: a surgical dilemma or the price paid for automony?" *Otago Law Review*, January 2013 at 81.