

**Insufficient patient information to enable fully informed consent
(03HDC19128, 13 September 2004)**

General surgeon ~ Private hospital ~ Laparoscopic surgery ~ Postoperative complications ~ Standard of care ~ Information about treatment options ~ Information about restrictions on practice ~ Rights 4(1), 6(1)(a), 6(1)(b), 6(1)(c)

A GP diagnosed a 61-year-old woman with gallstones and arranged an ultrasound, which identified a large gallstone. He referred her to a private surgeon, who informed her that there was a possibility that her gallbladder could perforate, and recommended an urgent laparoscopic cholecystectomy. He telephoned the private hospital to make arrangements and found that the operation could not be performed until the following week. He did not consider her condition severe enough for acute admission to the public hospital, so he booked her for private surgery, arranged a blood test, and prescribed antibiotics for the evident infection.

At the time, the surgeon's operating privileges were restricted to the one private hospital, and day surgery only in his public practice, owing to concerns over his competence in colorectal surgery, which was undergoing audit by the Medical Council. The surgeon did not inform the woman of these restrictions, or discuss the option of having the surgery performed by a different surgeon or being referred urgently to the public hospital.

Over the next nine days the woman experienced severe discomfort, including a sharp pain the evening before surgery. She described this to the surgeon at his preoperative visit, and he suggested the possibility of gallbladder perforation. Laparoscopic surgery to remove the gallstone was difficult because the gallbladder had indeed perforated and resealed, and the gallbladder was inflamed and adhering to the abdomen. Postoperatively the surgeon assessed the woman regularly and prescribed a strong antibiotic because of the risk of abscess formation. Three days later the woman showed signs of haemorrhage, and the surgeon arranged urgent transfer to the public hospital for a suspected fluid collection in her abdomen. She underwent surgery to remove blood and a large semi-infected clot resulting from a postoperative bleed. She was discharged a few days later and made a complete recovery.

The woman's husband complained that the surgeon should have informed her of his operating restrictions and referred her to the public hospital on learning of the delay in access to the private hospital. In addition, he should have performed open rather than laparoscopic surgery, and had more discussion with her on her condition and progress postoperatively.

It was held that the surgeon breached Right 6(1) in not informing the woman of alternative treatment options or the restrictions on his practice, thus not enabling her to make an informed choice as to whether to proceed with surgery performed by him. It was noted that a number of treatment options were available, including conservative treatment with antibiotics and being placed on a waiting list for routine surgery once inflammation of the gallbladder had subsided. While an urgent referral to the public hospital was probably not warranted, the woman may have preferred to be treated by a different clinician in light of the surgeon's restrictions.

The surgeon was found not to have breached Right 4(1) in respect of his clinical treatment. The operation, though technically difficult, went as planned and there were

no clinical reasons why laparoscopic surgery should not have been performed; his postoperative management was appropriate and he made a timely referral to the public hospital for further investigation.