

**Informed consent to innovative surgery
(08HDC20258, 11 November 2009)**

Urological surgeon ~ Private hospital ~ Registered nurse ~ Innovative surgery ~ Information disclosure ~ Duration of surgery ~ Risks ~ Previous experience ~ Informed consent ~ Rights 6(1)(b), 6(2), 7(1)

A 69-year-old man complained about the care provided by a urological surgeon at a private hospital. The man developed prostate problems, which initially were successfully treated. A year later, as his PSA levels were rising, he had a biopsy which showed cancer. The surgeon told him the results by telephone while the man was on an overseas holiday, and explained the treatment options. The man agreed to surgery and was booked at a private surgical hospital in two months' time. He arrived back in New Zealand two days before the scheduled surgery, and had a consultation with the surgeon the following day. The man was given details about robotic-assisted laparoscopic prostate surgery and was told that the operation would take five to six hours.

Technical difficulties were encountered and the operation took approximately 11 hours. The man was positioned with his legs raised and supported in stirrups. His legs could not be removed from the stirrups and lowered during the operation because it would have required time-consuming repositioning of the robot. Immediately after the operation, the man experienced severe leg pain, and the day after the surgery an ultrasound scan revealed a deep vein thrombosis (DVT). He underwent 10 further operations on his leg and suffered renal failure, and was left with a significant loss of mobility and ongoing leg pain.

It was held that the surgeon had a duty to inform the patient that he had had limited experience with robotic-assisted laparoscopic surgery. He also had a duty to inform him of the length of time he had previously taken to carry out robotic-assisted laparoscopic surgery, that the risks of complications increased if time taken for the surgery was prolonged, and what those risks were. By failing to do so, he breached Rights 6(1)(b) and 6(2). It follows that the man did not give informed consent to the operation and the surgeon also breached Right 7(1).

The private hospital had taken appropriate steps before the introduction of robotic-assisted laparoscopic surgery, and provided appropriate postoperative management. Accordingly, the hospital did not breach the Code.