

Patient informed consent for treatment by trainees

It is important that consultant surgeons of the future are adequately trained, and an essential element of training is the opportunity to develop surgical skills by performing operations. This article discusses a case where I considered what information a trainee surgeon needed to provide to a patient. Right 6(1)(d) of the Code of Health and Disability Services Consumers' Rights (the Code) states that every consumer has the right to the information that a reasonable consumer in that consumer's circumstances would expect to receive, including "notification of any proposed participation in teaching ...". Clause 4 states that teaching "includes training of providers".

Research suggests that patients support the involvement of trainees in surgery, but want to be informed in advance. In 2009 Ritchie and Reynard¹ found 96% of patients thought that patients should be told if a trainee was involved in a procedure. 90% were happy for supervised trainees to operate as a general concept but, when questioned about their specific procedure, only 77% were happy for a supervised trainee to do their operation. 17% felt that any trainee operating, whether supervised or unsupervised, was not appropriate for their operation.

In an HDC case (13HDC01345) a woman consented to undergo an epiretinal peel operation on her eye. HDC's independent expert advisor said this surgery is extremely delicate and precise, being intraocular microsurgery at about the limit of fine manual dexterity. The expert advised that a minor loss of control of an instrument or a misjudgement of depth had the potential to cause permanent harm to the delicate tissues of the central retina. He stated that it is understandable that such an injury is more likely in the hands of a relatively inexperienced surgeon and this therefore represented an increased risk to which the woman was exposed by virtue of having her surgery performed by a surgeon in a training role.

Prior to her surgery, the woman was visited by a senior ophthalmology trainee. The woman and her husband both understood from the information provided by the trainee that the consultant surgeon would perform the procedure and the trainee would observe it. The trainee told HDC that he introduced himself and explained he would be one of the surgeons working with the consultant that day.

The trainee performed the surgery under the supervision of the consultant. During the procedure the trainee inadvertently touched the tano scraper onto the woman's retina. The consultant stated the action took less than a second and occurred too quickly for him to prevent it. The consultant took over and completed the surgery. However, the woman suffered permanent damage to her eye and loss of sight.

I found that in the circumstances of this case, the trainee breached Right 6(1)(b) of the Code in that he did not explain to the woman sufficiently that he would perform the surgery, and did not inform her of any consequent increased risks. It followed that the woman was not in a position to give informed consent and so the trainee also breached Right 7(1)(b) of the Code. I also made adverse comment about the consultant as I considered that it was the consultant's responsibility as the supervising ophthalmologist to ensure that appropriate informed consent is obtained.

¹ Ritchie R and Reynard J "Consent for surgery: Will you be doing my operation, doctor?" 2009 BJU International 104 766-768.

My findings in this case were specific to the particular circumstances. Most institutions will have policies to guide practice in this area. I encourage practitioners to be aware of those policies, their obligations under the Code and to carefully consider how they deploy in a particular context.

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