Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056

Complaint

The Commissioner received a complaint from a consumer concerning the care that she received from an anaesthetist at a Hospital and Health Service. The complaint is that:

- *In late April 1998 prior to surgery at a maternity hospital an anaesthetist did not allow the consumer sufficient time to read the consent form.*

- *The anaesthetist administered Midazolam to the consumer without her consent.*

- *The anaesthetist was aggressive and rude in his manner and handling of the consumer. The consumer advised that she wished to hold the oxygen mask to her face. To this the anaesthetist stated that she should "suck on the end of a tube for all I care as long as you get some oxygen".*

Investigation Process

The complaint was forwarded to the Health and Disability Commissioner by the Medical Council of New Zealand. An investigation was commenced on 26 June 1998. Information was obtained from:

Consumer/Complainant
Provider/ Second Anaesthetist
First Anaesthetist/Ethics Adviser for a Hospital and Health Service
Theatre Nurse
Theatre Nurse, patient transfer area
Anaesthetic Technician

The consumer's medical records were obtained and reviewed by the Commissioner. The Commissioner obtained and reviewed the relevant anaesthetic standards from the Australian and New Zealand College of Anaesthetists.

Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Information Gathered During Investigation

In mid-January 1998 the consumer attended a consultation with a gynaecologist who was to undertake a vaginal hysterectomy on the consumer. The gynaecologist documented, *"... needs anaesthetist consult also".*

Pre-assessment Anaesthetic Clinic

The first anaesthetist documented that she undertook a pre-anaesthetic assessment in the outpatients' clinic with the consumer in late March 1998. The first anaesthetist advised the Commissioner that *"only about 30% patients currently attends an anaesthetic pre assessment clinic".*

The Commissioner noted from the first anaesthetist's response, and from the documentation supplied by the Hospital and Health Service titled 'Your Anaesthetic' and 'When Your Child Needs Anaesthesia', that the purpose of the pre-anaesthetic assessment is to answer any questions and discuss any preferences the patient has, explain the risks and benefits of anaesthesia, and decide on the anaesthetic to be used during the operation.

At the pre-assessment clinic the first anaesthetist recorded in the medical notes that the consumer had a past history of drug abuse – *"... Valium, etc,* [benzodiazepine] *Pethidine* [opiate]*",* although IV drugs had not been abused. The consumer advised the first anaesthetist that she was *"... worried about 'heavy drugs'".* This was documented in the medical notes. The 'Anaesthesia Plan' drawn up by the first anaesthetist documented *"... does not like face mask ?prongs in recovery".* The first anaesthetist documented the consumer as having seen the anaesthetic video 'Time Out', and noted that she was worried about the endotracheal tube [a tube to keep the airway open during an operation] being removed after the general anaesthetic [GA] as she had felt this occur after a previous anaesthetic. The first anaesthetist discussed with the consumer what anaesthesia could be given during the operation, and the consumer's preferences were documented as, *"... GA /PCA* [Patient Controlled Anaesthesia] *if TAH* [total abdominal hysterectomy]. *GA – PRN* [as required] *opiate or PCA if vag hyst* [vaginal hysterectomy]*".*

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Information Gathered During Investigation *continued*

The consumer discussed her previous addiction to benzodiazepines (muscle relaxants) with the first anaesthetist, and told the Commissioner that the first anaesthetist advised her she would not be given any drug in the benzodiazepine family. This undertaking by the first anaesthetist was not documented in the consumer's medical records.

The consumer advised the Commissioner that although the first anaesthetist told her that she may need to have Morphine or PCA for pain following surgery, no pre-operative medication would be administered. This undertaking was not documented in the consumer's medical records.

The first anaesthetist advised the Commissioner that there was no formal policy at the Hospital and Health Service (HHS) regarding patients being made aware of there being two consent forms to be signed prior to their operation.

> *"There is no formal policy at this hospital requiring that patients be made aware that there are two consent forms to be signed prior to operation. I imagine that many patients are first made aware of the anaesthetic consent form when asked to sign it."*

The first anaesthetist advised the Commissioner that:

> *"The anesthetist at the operation should satisfy her/himself that the patient has sufficient information to make an informed choice about his/her anaesthetic. It is the job of the preassessment anesthetist to give information about the possible anesthesia alternatives, and the job of the operation anesthetist to come to a decision, with the patient, about the methods of anesthesia and analgesia they will employ. (This is never prescribed beforehand by the preassessment anesthetist, although he or she should document any preferences the patient may express at the time of preassessment)"*

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Information Gathered During Investigation *continued*

Pre-assessment Surgical Clinic

The consumer had a pre-assessment with the gynaecologist in late March 1998 in preparation for surgery and signed the surgical consent form for the treatment of carcinoma of the cervix. The consent form stated "... *vaginal hysterectomy or total abdominal hysterectomy*." During this pre-assessment, the 'clinical notes gynaecology' form was used. This included the consumer's past and present medical history, allergies, diagnosis and investigations, and under the heading 'management plan' it was documented that the consumer "*Wishes to see anaesthetist, low risk of DVT* [deep vein thrombosis] *mobilise early*." The Commissioner noted that this form did not refer to or inform the consumer of the need to sign a separate consent form for the administration of anaesthetic in the operating theatre. The consumer confirmed to the Commissioner that she was not aware there was an anaesthetic consent form to sign before her surgery.

Admission to Hospital

The admission records for late April 1998 document that the consumer arrived at ward 14 of a maternity hospital, as arranged in the early morning for surgery that day. The nursing notes documented that the consumer had an arranged admission and was to be second on the afternoon surgical list. The operative notes documented that the surgery on the consumer commenced mid-afternoon.

In the first anaesthetist's role for the Hospital and Health Service, she advised the Commissioner:

> "*For elective surgery, if the patient is admitted on the day before surgery, he or she will usually be visited at this time by the anaesthetist. If the patient is admitted on the morning of surgery, he or she will normally be seen by the anaesthetist between 0730 and 0800h. When there are a large number of such patients in many different wards on one theatre list, this can be problematic for obvious reasons. ... The first time the patient meets the anaesthetist may be at theatre reception.*"

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Report on Opinion - Case 98HDC15056, continued

Information Gathered During Investigation *continued*

Pre-anaesthetic consultation

The Australian and New Zealand College of Anaesthetists define the pre-anaesthesia consultation as:

> *"... essential for the medical assessment of a patient prior to anaesthesia in order to ensure that the patient is in an optimal state of health, the anaesthesia management can be planned, and the patient can be appropriately informed of the anaesthesia and related procedures."*

The pre-anaesthetic consultation must be undertaken by the anaesthetist who is to administer the anaesthetic in the operating theatre. This anaesthetist may be different from the one the patient originally saw for the pre-anaesthetic assessment in the clinic.

The consumer advised the Commissioner that the second anaesthetist was introduced to her for the first time in the theatre reception area before her surgery commenced mid-afternoon. The first anaesthetist advised the Commissioner that "*... the anaesthetist at pre-assessment is rarely the same as the one for the operation*". The consumer stated that she found the second anaesthetist's attitude aggressive in the way in which he pressured her to sign the anaesthetic consent form quickly and was reluctant to allow her time to read this through. The consumer advised that she was not aware of the existence of an anaesthetic consent form prior to it being presented to her. The consumer said that the second anaesthetist looked at the pre-assessment form that had been filled out by the first anaesthetist. The consumer advised that she talked with the second anaesthetist about benzodiazepines and he had acknowledged her past addictions and that she did not want these types of drugs.

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Information Gathered During Investigation *continued*

The second anaesthetist informed the Commissioner that the consumer mentioned her previous addiction to benzodiazepines ten years ago and her concerns about receiving drugs from the benzodiazepine family. The second anaesthetist explained to the consumer *"... there was absolutely no risk of a relapse with her addiction with the use of a single dose of the very short acting benzodiazepine like Midazolam".* The second anaesthetist stated he could not remember the consumer refusing consent to the administration of Midazolam after his explanation. He stated*, "had she said so or had I heard so, I would never have given her the drug"*. Additionally, he stated *"... at no time I tried to evade the consumer's questions".* The consumer advised the Commissioner she did not know that Midazolam was a relaxant until after the operation was finished.

In response to the provisional opinion, the consumer advised that there was no explanation given: *"I was not even aware that the drug he would use was Midazolam, therefore there was no opportunity to refuse or give consent"*.

The second anaesthetist advised the Commissioner that he met the consumer for the first time in the operating theatre when she was brought into the induction room. He introduced himself to her as the anaesthetist. The second anaesthetist stated that he became aware of the consumer's extreme fear soon after his introduction. He stated she looked frightened and stressed at the prospect of having an operation. The consumer subsequently advised the Commissioner, *"I myself felt that I was anxious in a normal way, as others would be"*. The second anaesthetist stated he checked the consumer's notes, obtained a medical history from her and asked her to sign the anaesthetic consent form. The Commissioner noted the second anaesthetist did not document his pre-anaesthetic consultation with the consumer in her medical records.

The HHS advised the Commissioner that patients are usually required to sign the anaesthetic consent form in the pre-operative ward, although at times it is signed in the operating theatre reception bay.

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Information Gathered During Investigation *continued*

The first anaesthetist advised the Commissioner that:

> *"The anaesthetic request form is signed most commonly in the pre-operative ward, but sometimes it is signed in the theatre reception bay. (Some anaesthetists prefer to give patients an opportunity to think of questions before they sign the anaesthetic request form and thus delay signing until the patient arrives in theatre)"*

Additionally, the first anaesthetist stated:

> "*The information required to be given to the patient pre-operatively by the anaesthetist is assessed on an individual basis. All patients are different and have differing desires and requirements for information. ... When patients indicate that they do not wish to receive information about specific risks, this is respected.*"

An anaesthetic technician who had been working with the second anaesthetist, explained to the Commissioner that anaesthetists had to work faster in the afternoon, as there was less time. He suggested that the second anaesthetist would not have had time to see the patient in the ward prior to their surgery and the anaesthetic consultation between the parties was quick and would include finding out what a patient liked or did not like.

The second anaesthetist read the consumer's medical records and the anaesthetic record and he advised the Commissioner he paid *"... undivided attention to her psychological requirements"*. The consumer subsequently advised the Commissioner:

> *"If this was true, I would have thought that this might include being properly informed and given choice about the drug used. This did not happen. Although it is true that the safety of Midazolam was an issue I addressed with the first anaesthetist, my complaint against the second anaesthetist is not to do with safety but lack of consent."*

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Information Gathered During Investigation *continued*

The second anaesthetist added:

> *"It is indeed uncommon to meet a patient who presents for surgery but is anxious at the prospect of receiving one of the safest available drugs in current practice of anaesthesiology".*

The second anaesthetist advised the Commissioner:

> *"My standard practice is to ask my patient if he or she has any concerns regarding the anaesthetic and what he or she wants to know about the risks. I believe my conduct was professional at all times."*

The second anaesthetist's standard practice was confirmed by the anaesthetic technician who advised the Commissioner that the second anaesthetist went through the pre-operative checklist, usually in the anaesthetic room where he was present. He advised he could not remember whether the second anaesthetist used his standard questions with the consumer, but he would have expected that the second anaesthetist would have written down the answers from the consumer, as was his common practice.

The consumer explained in her response to the provisional opinion the anaesthetic technician *"... cannot remember* [the second anaesthetist's standard questions] *because he was not present in the anaesthetic room. I first met the anaesthetic technician when I was wheeled into theatre."*

The anaesthetic technician advised that he did not find the consumer any more nervous or anxious than any other woman who was having this type of gynaecological operation.

Oxygen

The second anaesthetist advised the Commissioner that after the consumer was connected to the monitoring equipment in the operating theatre they had a discussion concerning the use of oxygen. The consumer subsequently advised that this discussion occurred in the anaesthetic room and she was not sedated at this time, as the Midazolam was administered in theatre.

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Information Gathered During Investigation *continued*

The second anaesthetist advised he informed the consumer she would need oxygen. He referred to the note written by the first anaesthetist, "*... does not like face mask ? prongs in recovery*". The consumer advised the Commissioner that she realised that a mask was necessary so she suggested to the second anaesthetist that she could hold it over her face herself, as she was more comfortable doing this. The consumer stated the second anaesthetist replied *"... you can suck on the end of a tube for all I care as long as you get some oxygen".*

The second anaesthetist acknowledged to the Commissioner the use of the word "suck" and advised he used this word to describe the method of getting a tight seal on the oxygen tube. He stated he did not intend to be offensive with the use of this word to describe the procedure and advised he was speaking *"... light-heartedly, comparing this procedure with scuba diving!"* The second anaesthetist further advised that the consumer was mildly sedated but still distressed. *"The administration of Midazolam may have influenced her comprehension of my explanations."*

The consumer advised the Commissioner in response to the provisional opinion that *"... my experience of the anaesthetist's manner was anything but light hearted".*

The second anaesthetist advised the Commissioner:

> *"I do speak with a distinctive foreign accent and my name has a distinctively odd resonance but I particularly object to the words reported by the consumer 'suck on the end of the tube for all I care as long as you get some oxygen'. I am adamant that I have never said these words because I have not learnt to say this particular phrase, 'for all I care'. This is not part of my English language."*

The second anaesthetist stated that:

> *"some patients find the application of a tight fitting face mask distressing. The consumer was one of these patients. ... The goal is to provide oxygen to the patient by any means. ... The 'gold standard' preoxygenation technique remains the use of an anaesthetic mask held tightly on the patient's face ...".*

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Information Gathered During Investigation *continued*

The second anaesthetist advised the Commissioner that prior to going into the operating theatre, the consumer wanted to hold the oxygen mask and that she was physically unable to use her hands. *"…one arm was restrained by her side with blood pressure cuff attached and the IV cannula was in the other arm, and the oxygen probe attached to one of her fingers.* The second anaesthetist detached the mask from a breathing filter (tube that delivers oxygen to the mask) and invited the consumer to use the open-end as a mouthpiece. He advised she flatly refused to do this.

The consumer subsequently advised that, *"the last memory I have is of the nurse giving me the mask and me holding it over my face".*

Medication

The consumer advised the Commissioner that she was wheeled into theatre and while she was talking with the theatre nurse, she turned her head toward the second anaesthetist and noticed him injecting a drug into her hand. The consumer stated that she asked him what the drug was and advised that he ignored her question. The consumer asked the second anaesthetist again what the drug was and he remained silent, however the theatre nurse informed her that it was a relaxant. The consumer advised the Commissioner that at this point she became distressed and again asked, this time loudly, what the drug was. The second anaesthetist snapped at her "Midazolam". The consumer advised she did not recognise the name and quickly became sedated shortly following this.

The anaesthetic technician advised the Commissioner that in general the pre-medication would be given to a patient while the second anaesthetist was talking to them. He added that it was quite likely that the second anaesthetist did not answer the consumer as in his opinion the second anaesthetist would have had the next step of the anaesthetic on his mind.

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Information Gathered During Investigation *continued*

In his response to the Commissioner, the second anaesthetist denied he gave the consumer Midazolam without her permission. He advised he *"always welcomes the opportunity to answer my patient's questions and I am always attentive to my patient's psychological as well as medical requirements".* He added there *"were many patients on the operating list and I was working within these time constraints but maintained a professional manner at all times. The amount of time I could spend in the preoperative and postoperative period establishing rapport with my patients was therefore severely restricted".*

The second anaesthetist advised that the anaesthetic risk is greater when the patient is extremely anxious. He stated *"knowing there was no medical risk with giving a short acting benzodiazepine to the consumer having explained the absence of risk and since no formal refusal had been voiced, I now made the decision on what was best for my patient".*

The second anaesthetist advised the Commissioner that he took measures to allay the consumer's anxiety and advised her that he was going to give her a small dose of Midazolam that would relax her. He also explained to her that she might not remember anything from that moment. *"This obviously did not really happen because she is describing some (distorted) events regarding the induction phase (preoxygenation)."* The second anaesthetist advised that *"the administration of Midazolam is standard practice to alleviate anxiety of the patient and to facilitate the induction of general anaesthesia ('co-induction')".*

The anaesthetic technician stated that in general, once Midazolam has been given, the patient may say *"stupid things"* and that the second anaesthetist would tend to disregard these comments. The anaesthetic technician explained if a patient was already anxious they would tend to *"... overreact with this medication".*

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Information Gathered During Investigation *continued*

The second anaesthetist advised the Commissioner that Midazolam is the benzodiazepam of choice for the short-term relief of anxiety because of its rapid onset and short duration. *"The effects are usually seen one to two minutes after intra-venous administration and is best given in the induction room to produce the best effect."* The second anaesthetist stated another advantage of Midazolam is it produces *"retrograde amnesia".* He advised that the affect is variable and depends on patients' susceptibility and the drug administered. *"The dose employed was too small to produce amnesia but enough to relax the consumer and distort her recall of the events."*

The consumer was documented as arriving post operatively into the recovery room in the early evening where she was noted to be tearful and very anxious.

Response to Provisional Opinion

The second anaesthetist stated:

> *"I wish to repeat that* [the consumer's] *request was formulated as a need for information and not as formal refusal of a specific drug. It seemed to me that she had accepted my explanations and there was no point writing it in the (already documented) preanaesthetic record.*
>
> *I would suggest that it would have been preferable for the consumer to have her anaesthetic administered by the first anaesthetist who had assessed her at the Preadmission Clinic ….*
>
> *You recommend that I fully document my pre-anaesthetic consultations: I wish to thank you for this advice, but this is already my standard practice. …"*

Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Code of Health and Disability Services Consumers' Rights

The following Rights in the Code of Health and Disability Services Consumers' Rights are applicable to this complaint:

RIGHT 4
Right to Services of an Appropriate Standard

2) Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.

RIGHT 5
Right to Effective Communication

1) Every consumer has the right to effective communication in a form, language, and manner that enables the consumer to understand the information provided. Where necessary and reasonably practicable, this includes the right to a competent interpreter.

RIGHT 6
Right to be Fully Informed

2) Before making a choice or giving consent, every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, needs to make an informed choice or give informed consent.

RIGHT 7
Right to Make an Informed Choice and Give Informed Consent

1) Services may be provided to a consumer only if that consumer makes an informed choice and gives informed consent, except where any enactment, or the common law, or any other provision of this Code provides otherwise.

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Code of Health and Disability Services Consumers' Rights *continued*

Other Relevant Standards

Australian and New Zealand College of Anaesthetists: 'Guidelines on providing information about anaesthesia' (1994)

A person is entitled to know the implications of an anaesthetic before it is administered, and to seek clarification of any issues which may be of concern. The person must be free to accept or reject advice.

2. Presenting information
2.4 *Questions should be encouraged and answered clearly.*

4. Withholding of information
Information should only be withheld on the rare occasion when it is believed the patient's health might be seriously harmed by the information.

7. Records
A summary of the discussion and of the patient's understanding should be recorded in the patient's anaesthetic record or hospital file.

Australian and New Zealand College of Anaesthetists: 'The Pre-Anaesthesia Consultation' (1998)

General Principles
2.2 *A pre-anaesthesia consultation must be performed by the anaesthetist who is to administer the anaesthetic even if an assessment has already been performed by some other person.*

2.5 *The difficulties inherent in adequately assessing patients admitted on the day of surgery must be recognised by hospital staff. Admission times, list planning and session times must accommodate the extra time required for pre-anaesthesia consultations.*

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Code of Health and Disability Services Consumers' Rights *continued*

Guidelines
The pre-anaesthetic consultation should include:

3.4 *A general discussion with patient (or guardian) of those details of the anaesthetic management which are of significance to the patient. This would usually include such matters as discussion of the anaesthetic procedure, potential complications and risks, an opportunity for questions and provision of educational matter. This may be in the form of written pamphlets, video recordings or audiotapes.*

Opinion: Breach – Second Anaesthetist

In my opinion the second anaesthetist breached Right 4(2), Right 5(1), Right 6(2) and Right 7(1) of the Code of Health and Disability Services Consumers' Rights.

Right 4(2)

Information

The HHS's anaesthetists adhere to the standards of the Australian and New Zealand College of Anaesthetists. These standards require anaesthetists to inform their patients and enable them to ask questions of their anaesthetists. In this case, the second anaesthetist failed to comply with the standard set by the Australian and New Zealand College of Anaesthetists, by not giving the consumer the information she requested. In my opinion information was withheld from the consumer. The second anaesthetist did not document why he believed that giving her the information she requested would harm the consumer.

Patients must be allowed to seek clarification of any issues relating to anaesthetic which are of concern to them. The second anaesthetist failed to give the consumer time to get clarification about what Midazolam was before she became sedated. In my opinion, by not adhering to the professional standards required of him, the second anaesthetist breached Right 4(2) of the Code.

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Opinion: Breach – Second Anaesthetist *continued*

Record keeping

The second anaesthetist also failed to document his discussion with the consumer concerning informed consent, her repeated questions concerning Midazolam, and her concerns about the method of oxygen delivery. The standard procedure for an anaesthetist, as confirmed by the College standard for anaesthetic records, is to record a summary of the discussion and of the patient's understanding, and the actions taken, in the patient's anaesthetic record or hospital file.

The second anaesthetist did not make such a record. In my opinion, the failure to make an adequate record is a further breach of Right 4(2).

Informed consent

Gaining informed consent is essential before any health care procedure is performed. Under the Code, informed consent is not a one-off event but a process that requires:

- effective communication between the parties (Right 5);
- provision of all necessary information to the consumer (including information about options, risks and benefits) (Right 6); and
- voluntary consent by a competent consumer (Right 7).

In my opinion, the process by which the second anaesthetist gained consent from the consumer did not meet the standard required under the Code.

Right 5(1)
In my opinion, the second anaesthetist failed to effectively communicate the consumer by not allowing her time to read the consent form and not taking the time to answer her questions.

Patients facing imminent surgical intervention are vulnerable and often fearful, and the health professional involved needs to be aware of this. Doctors who choose to use humour to relieve pressure in the anaesthetic room should be alert to signs that their patient does not appreciate such an approach.

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Opinion: Breach – Second Anaesthetist *continued*

Where communication may be a problem, due to language difficulties or nervousness, additional time needs to be spent with the patient to clarify their concerns. In my opinion there was a communication breakdown between the consumer and the second anaesthetist. Insufficient time was spent attending to the consumer's information needs. The second anaesthetist, as the health professional involved in the consumer's pre-operative care, had a professional obligation to ensure that she was fully informed of her choices in a manner that enabled her to understand the information provided. In my opinion, the second anaesthetist failed to ensure effective communication occurred and therefore breached Right 5(1) of the Code.

Right 6(2)

In my opinion a reasonable consumer in the consumer's circumstances would have expected to receive information regarding Midazolam before it was administered, so that her informed consent could be gained during the pre-anaesthetic consultation with the second anaesthetist.

The consumer's request for the second anaesthetist to advise her of what he was doing was firstly ignored, then at her insistence she was told the name of a medication that she was unfamiliar with. She did not have time to get further information, due to her becoming sedated for the operation. In my opinion, the consumer needed to be given information about this medication so the second anaesthetist could then proceed to administer it. This information should have included the benefits, side effects and risks of Midazolam. This information was relevant to the consumer's anxiety and to the specific concerns she had expressed in her conversation with the second anaesthetist, and had been recorded in the first anesthetist's notes of the pre-anaesthetic assessment.

In my opinion, the second anaesthetist failed to follow the required process to enable the consumer to make an informed choice and therefore breached Right 6(2) of the Code.

Right 7(1)

The consumer had not received the information necessary to enable her to make an informed choice and give informed consent to the administration of the Midazolam. In my opinion, in proceeding to administer Midazolam to the consumer without her informed consent, the second anaesthetist breached 7(1) of the Code.

Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Opinion: Breach – Hospital and Health Service

Vicarious Liability

Employers are vicariously liable under section 72(2) of the Health and Disability Commissioner Act 1994 for ensuring that employees comply with the Code of Health and Disability Services Consumers' Rights. Under section 72(5) it is a defence for an employing authority to prove that it took such steps as were reasonably practicable to prevent the employee from doing or omitting to do the thing which breached the Code.

Right 4(2)

In my opinion the Hospital and Health Service did not allow the second anaesthetist sufficient time to give the consumer a full and adequate pre-anaesthetic consultation. The first anaesthetist, the second anaesthetist and the anaesthetic technician all noted that there were problems surrounding pre-anaesthesia meetings between anaesthetists and patients. I note that the Australian and New Zealand College of Anaesthetists general principle 2.5 of 'The Pre-Anaesthetic Consultation' states that the difficulties inherent in adequately assessing patients admitted on the day of surgery must be recognised by hospital staff and that admission times, list planning and sessions times must accommodate the extra time required for the pre-anaesthetic consultation.

In my opinion the Hospital and Health Service did not provide sufficient time for anaesthetists to comply with the informed consent requirements of the Code. I accept that there is pressure on the hospital to complete procedures in a quick and efficient manner. However, a consumer's right to receive adequate information to make an informed choice and give informed consent must be respected.

I acknowledge that the Hospital and Health Service made the consumer generally aware of what was to be expected when being anaesthetised through the pre-anaesthetic assessment with the first anaesthetist and the supply of written and video information. However, the consumer was not aware of the existence of two consent forms – one for surgery and one for anaesthetic intervention. The first anaesthetist's advice that many patients are first made aware of the anaesthetic consent form when asked to sign it suggests that patients are not fully informed about what is expected of them prior to their anaesthetic.

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Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Opinion: Breach – Hospital and Health Service *continued*

By not allowing sufficient time for anaesthetists to comply with informed consent requirements, the Hospital and Health Service failed to provide services through its employees that complied with the legal requirements for informed consent. In my opinion, the Hospital and Health Service therefore breached Right 4(2) of the Code.

Actions – Second Anaesthetist

I recommend that the second anaesthetist take the following actions:

- Apologises in writing for his breaches of the Code of Rights. The apology is to be sent to my office and I will forward it to the consumer.
- Fully documents his pre-anaesthetic consultations.
- Ensures that he obtains informed consent before administering any anaesthetic.

Actions – Hospital and Health Service

I recommend that the Hospital and Health Service take the following actions:

- Apologises in writing for its breach of the Code of Rights. The apology is to be sent to my office and I will forward it to the consumer.
- Ensures adequate time is allowed for pre-anaesthetic consultations prior to surgery.

Anaesthetist/Hospital and Health Service

Report on Opinion - Case 98HDC15056, continued

Other Actions

A copy of this opinion will be forwarded to the Medical Council of New Zealand and the Australian and New Zealand College of Anaesthetists. A copy of this opinion with all identifying features removed will be forwarded to the chief medical advisors of all public hospitals.

I recommend that informed consent documentation procedures in public hospitals be reviewed to avoid unnecessary duplication of forms for patients undergoing anaesthetic and surgical procedures. There is a need to obtain informed consent both to the administration of general anaesthesia, and to surgical procedures to be performed under such anaesthesia. Right 7(6)(c) also requires informed consent to be *in writing* if "*the consumer will be under general anaesthesia*".

In my opinion it is sound practice to ensure that there is written documentation, signed by the patient, of the consent to general anaesthesia and the consent to the surgical procedure. However, wherever possible the consent should be recorded as part of a single document, in order to simplify the process for patients.