

Obtaining Patient Consent

Prior to performing any operative procedure the surgeon must obtain the patient's consent for treatment. Failure to obtain consent will leave the surgeon open to a claim for negligence and possible criminal prosecution for battery. Consent must be given voluntarily and the patient must be capable of understanding the proposed treatment, have been appropriately informed beforehand and given the opportunity to ask any questions regarding their treatment (5). In some circumstances this may require an interpreter to be present and for multi-lingual information and consent sheets to be available.

It is vital to understand that obtaining consent does not mean simply requesting the patient's verbal permission to submit themselves to treatment. In order for a patient to adequately consent to an operation or treatment he or she must be *fully informed* and be in possession of and understand the likely consequences and any complications of that treatment. Moreover, it is extremely important that the patient is made fully aware of the advantages and disadvantages of any alternative management strategies to the planned treatment. In many cases this may include no treatment at all. The type of anaesthetic to be used and any possible side effects and complications such as drug reactions and phlebitis must also be fully discussed with the patient when obtaining consent.

If a patient suffers a complication of a procedure which he was not warned about preoperatively, without suggesting negligence, the surgeon may be sued for breach of his duty of care to the patient (5).

Much debate has taken place concerning which complications patients should be explicitly warned about. It has been suggested that patients should be specifically warned about any complication that occurs with a minimum frequency between 1% and 10% (6). However, it is currently accepted that patients should receive specific warnings about any

temporary condition that occurs in 5% or more of cases and any permanent condition that occurs in 0.5% of cases (7). This means that all patients should be warned about the risks of postoperative pain, bleeding, bruising, swelling and limitation of function. Patients undergoing lower third molar removal must be warned about the risk of lingual and inferior alveolar nerve anaesthesia, paraesthesia and dysesthesia. It is thus of some concern that a recent study showed that 4% of UK oral & maxillofacial surgeons did not routinely warn their patients about possible nerve damage following lower third molar surgery (8).

Similarly, patients undergoing procedures in the territory of the terminal divisions of the facial nerve such as skin biopsies, botulinum toxin injections for masseteric hypertrophy and arthrocentesis/arthroscopy etc must be warned about the possibility of permanent facial weakness. It is also important to ensure that patients (especially those caring for young children at home) are aware that they may well need to take leave of absence from work and require help and support for several days post-operatively.

Unfortunately, although giving verbal warnings as outlined above will ensure that the surgeon complies with the “letter of the law” they may not be sufficient to ensure that he or she complies with the “spirit of the law”. Almost 50% of patients may fail to recall being verbally warned about at least one complication postoperatively (5). Patient recall of preoperative warnings and by implication the extent to which their consent was fully informed can be increased by the use of written information to supplement the standard verbal warnings (9, 10). Audio and video tapes can also be used during the consultation and while obtaining patient consent. These have the benefit of standardisation and ensuring that all the points deemed to be relevant are covered for every patient.

It is important that consent is obtained from the patient not only preoperatively but also in quiet surroundings, before any drugs have been administered and in an area remote from that where the procedure is to be performed (11). This means that it is unacceptable for a patient to be interviewed and consented by the operating surgeon in the anaesthetic room immediately prior to the operation being performed.

The clinician charged with obtaining the patients' consent must have a clear understanding of the procedure to be performed and the possible complications if he or she is to be able to adequately answer patients' questions and concerns. This task is frequently delegated to the most junior member of the team who is often too inexperienced to obtain fully informed patient consent and has probably never been instructed on the medico-legal requirements of doing so (12). When completing the proposed treatment section of the consent form the clinician must always consult the relevant sections in the patients' case notes and satisfy himself or herself that the patient is being consented for the intended treatment. One must never rely on operating theatre lists or departmental theatre books etc for this information. All too often these records will be incorrect due to typographical or transcription errors. If there is any doubt concerning the exact nature of the treatment proposed the supervising clinician, usually the consultant oral & maxillofacial surgeon should be consulted.

Everyone involved in obtaining patient consent in the UK should read and understand the National Health Service Executive document *A guide to consent for examination and treatment* (13).

Children under the age of 16 years (18 in the US unless the patient is married) may give or withhold their consent for treatment without recourse to their parent or guardian if the clinician believes that they are mentally capable of making an informed decision.

Whenever the clinician is not satisfied that a child is able to fully understand the proposed procedures and their complications, consent must be sought from the child's parent or legal guardian except in emergency situations where there is insufficient time to obtain it (13). In exceptional circumstances, and after full discussion with the child's parents in the presence of a witness, if the clinician believes that a parent's refusal to give consent for treatment is likely to prejudice the continuing health of the child, he or she may seek to have the child made a ward of court and request consent from a judge. If time does not permit this process, then the surgeon in charge of the child's care (normally the consultant oral & maxillofacial surgeon) should seek and obtain a written report from a consultant colleague supporting the view that the child's life would be in danger if treatment were to be withheld. Where adult patients lack the mental capacity to give informed consent no one may give consent on their behalf although the law allows treatment to be performed provided it can be demonstrated to be in the best interests of the patient. Such treatments should be discussed with the patients' next of kin where possible but ultimately the decision to proceed with treatment rests with the clinician in charge of the patients' care.

Provided the surgeon follows the above procedures and is demonstrably acting in the patient's best interests it is unlikely that his or her actions will be criticised by a court or their professional body (13). Indeed, in certain circumstances failing to provide necessary treatment may be construed as negligent. If time permits, the surgeon would be wise to consult his or her medical indemnity association to seek expert legal guidance before commencing any treatment for which the patients' written consent has not been obtained.

Having obtained fully informed consent, all warnings and explanations given should be recorded in the case notes and the patient or parent requested to sign a consent

form stating that they have been informed of, and understand the nature and likely consequences of the procedure. Specimen consent forms which conform to the above standards and guidelines are available for patients being treated within the UK National Health Service (13). A patients' signature on a consent form in the absence of having obtained fully informed consent is no protection in law against a claim for failing in one's duty of care to the patient.

References

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