



Commissioner initiated investigation into informed consent finds systems weaknesses

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A Commissioner-initiated investigation into patient consent for the involvement of junior medical staff, students and other trainees at North Shore Hospital has found systems weaknesses but no breach of the Code of Health and Disability Services Consumers' Rights (the Code).

The Health and Disability Commissioner, Morag McDowell, initiated the investigation following a complaint from a registered nurse who was concerned that trainee doctors and medical students had provided services and received teaching in obstetric and gynaecology services, without patient consent.

The Commissioner's opinion considers how consent processes apply to teaching and clinical care situations, having regard to the qualifications and experience of the medical staff providing care.

In particular, the Commissioner noted the distinction between medical students (who are not qualified as doctors), and trainees (qualified doctors undertaking specialist training – some of whom may be at the start of their careers and others who are very advanced but not yet qualified as a specialist in their chosen field). A critical issue for the investigation was to consider in what circumstances a patient's participation in teaching needed to be specifically consented to.

In the course of the investigation, it was identified that informed consent practices, policies and procedures were significantly inconsistent across Aotearoa New Zealand. There was also a lack of clarity about the application of the Code, which clearly requires that teaching involving patients must be undertaken only with their knowledge and consent.

"Consumers cannot be involved in teaching without giving informed consent, and providers of health and disability services must ensure they have a robust system and culture for obtaining that consent," said Ms McDowell.

Ms McDowell found weaknesses in Health NZ Waitemata's system - including its consent forms - noting the processes minimised student or trainee clinician's involvement, and didn't prompt introductions for explanations of the role, involvement or degree of supervision of the trainee. Where verbal discussions may have been held about teaching, they were not adequately documented, she said.

In relation to the involvement of medical students, Ms McDowell said "Clinicians must be mindful that informed consent is more than just a tick box exercise, and they must be alive to individual patient circumstances. The wording of Health NZ's 2018 consent form and apparent reliance on it to justify all medical student

involvement beyond observation, was a significant weakness in Health NZ's consent practices."

In relation to trainees, who are qualified doctors, there is more complexity when it comes to consent processes. While all medical student involvement in patient care represents teaching, trainees are not always providing care in situations where teaching is taking place, and therefore specific consent about teaching is not required. Each case will turn on its own facts.

Ms McDowell's adverse comment addressed consent and policy forms, medical students in theatres, trainees who are part of the team, sensitive examinations, and procedures under general anaesthesia.

"Basic courtesy and respect for patients apply and, wherever practicable, consumers should know who is to be providing their care and what they will be doing. This is information that a reasonable consumer can expect to receive," said Ms McDowell. She emphasised the particular importance of sharing this information when consumers are undergoing sensitive or intimate examinations.

Ms McDowell commended the nurse for raising her concerns, first to Health NZ and then to HDC, noting her complaint offered an opportunity to address significant inconsistencies in approaches to informed consent and knowledge of the Code. She also commended Health NZ for its efforts in undertaking a careful, ongoing review and improvement of its informed consent policy and practice.

She made a range of recommendations including that Health NZ Waitematā develop patient information about clinical teaching to ensure it is easy to understand and emphasises patient choice. She has also asked Health NZ to report back on progress on its national policy on informed consent.

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Editor's notes

Please only use the photo provided with this media release. For any questions about the photo, please contact the communications team.

The full report of this case can be viewed on HDC's website - see HDC's '[Latest Decisions](#)'.

Names have been removed from the report to protect privacy of the individuals involved in this case.

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