

**Written consent to hysterectomy considered conditional on
surgical finding of ovarian cancer not severe endometriosis
(00HDC08358, 9 May 2002)**

Obstetrician and gynaecologist ~ Endometriosis ~ Hysterectomy ~ Standard of care ~ Informed consent ~ Return of body parts ~ Rights 4(1), 7(1), 7(9)

A 40-year-old woman complained about the services she received from an obstetrician and gynaecologist in a private hospital. The woman's working diagnosis was endometriosis, but blood tests had indicated the possibility of ovarian cancer. The woman stated that the consultant informed her that her blood tests indicated invasive cancer, although other tests and scans showed nothing unusual, and surgery later revealed that she did not have cancer.

The Commissioner held that the consultant's advice on the management of ovarian cancer was in direct response to the patient's questions, rather than indicative of a confirmed diagnosis. The consultant did not state that ovarian cancer was anything more than a possibility to be confirmed during surgery.

The patient also complained that the consultant performed a hysterectomy without obtaining her consent. The key issue was whether the patient consented to a hysterectomy in the event that endometriosis, and not cancer, was confirmed during her operation. It was accepted that the consultant made extensive efforts to ensure the patient was adequately informed of her treatment options, and that she had indicated she would consider radical surgery if the endometriosis was severe. Nevertheless, the consultant breached Right 7(1) in failing to clearly obtain informed consent to perform radical surgery (a hysterectomy and a bilateral salpingo-oophorectomy) to treat severe endometriosis alone in the absence of ovarian cancer. Although the patient had signed a written consent for a total abdominal hysterectomy and bilateral salpingo-oophorectomy, a signature on a consent form is not necessarily determinative that valid and effective consent has been given. Nor was the patient's husband legally entitled to provide consent to the radical surgery when telephoned by the consultant during the operation.

The patient also complained that she was not given the option of having her uterus returned after removal. The consultant advised that it was not her routine practice to ask patients whether they wanted tissues returned after removal, and the hospital policy relied on patients to advise their wishes. Patients, irrespective of their ethnic origins, have the right to decide about the return of any body parts or substances removed or obtained in the course of a health care procedure. The consultant and the private hospital breached Right 7(9) in failing to allow the patient to make a decision about the return of her uterus.