

**Unbalanced information to patient
leads to major surgery to remove liver cyst
(01HDC05619, 16 August 2002)**

Surgeon ~ Private hospital ~ Information about condition and treatment options ~ Liver surgery ~ Rights 4(1), 6(1)(a), 6(1)(b)

A 55-year-old woman complained that a hepatobiliary surgeon at a private hospital did not correctly assess and diagnose the nature of a cyst on her liver, and did not offer any satisfactory alternatives to major surgery.

In many areas of medicine there is no consensus, and judgements must be made by balancing various aspects of treatment and associated side effects. An informed decision on the part of the patient requires balanced and fair information reflecting both personal experience and published results. In this patient's case, the vast majority of surgeons would not have contemplated resection (hepatectomy) as the initial treatment for a simple cyst, and the patient was entitled to information that fully reflected not only the individual surgeon's opinion but also the majority opinion within the field.

The Commissioner held that surgeon did not breach Right 4(1) because he appropriately assessed the patient's condition and recognised it as a simple cyst of the liver. However, the surgeon breached Rights 6(1)(a) and 6(1)(b) as he exaggerated the benefits of hepatectomy by raising the cancerous potential of the cyst and overstating the risk of recurrence when all available evidence was to the contrary. He presented the patient with an unbalanced explanation of her condition, which supported his own treatment preference, and failed to provide adequate information about the alternative of treatment in the public system.

The private hospital was not vicariously liable for the surgeon's breach of the Code because it could not reasonably have prevented the omission by the surgeon to provide adequate information in his area of clinical expertise.

The Commissioner referred the matter to the Director of Proceedings, who decided not to issue proceedings.