

Meeting summary

Informed consent for Resident Medical Officers involved in surgical procedures

Date: 31 January, 2020

Time: 11.00am – 12.00am

Location: 1S.5, 133 Molesworth St and via teleconference

Chair: Andrew Simpson

Attendees: Anthony Hill, Dr Cordelia Thomas, Aleyna Hall, Isobel Freeman, Dr Jonathan Christiansen, Joan Simeon, Phil Knipe

Purpose

The purpose of the meeting was to discuss ways to respond to an issue raised by the New Zealand Nurses Organisation (NZNO) with Waitemata District Health Board (DHB) regarding the consent process when a Registered Medical Officer (RMO) is involved in a surgical procedure.

Background

Background information was provided to attendees by Dr Jonathan Christiansen, Chief Medical Officer, Waitemata DHB.

Approximately seven years ago, concerns were raised by a senior nurse in Child, Women and Family Services regarding consent. This prompted a quality improvement service for consent, which in turn led to changes in consent policy and documentation over the next year. These policies have not been revised since.

In the past 18 months, the focus of consent discussions has shifted from medical students involved in surgical procedures (subject to the 2015 national consensus statement) to RMOs.

RMOs are fully registered and qualified medical practitioners, however they are also progressing in their training under the oversight of educational bodies.

The specific request for changes to Waitemata DHB's consent process was made by the New Zealand Nurses' Organisation (NZNO), who had supported the senior nurse in the incident mentioned above. The NZNO's position is that there needs to be 'explicit consent for any teaching to be occurring', separate from the existing consent process and documentation.

Dr Christiansen noted that this most recent request is led by the NZNO independently of any patient or practitioner complaint, of which none have been received in regard to the incidents in question.

Key discussion points

Waitemata DHB current process

Waitemata DHB's current consent form includes a statement that if there is someone in training in the procedure then they will be appropriately supervised.

Waitemata DHB's view is that there is generally no need for specific informed consent in the involvement of an RMO when providing clinical support in the context of the DHB for which they are employed. However when an RMO is undertaking a procedure that they are not credentialed to do as part of their training programme the patients should be made aware and specific reasons given for the RMO's involvement.

Waitemata DHB's current process allows for the information to be provided at the discretion of the leading clinician, with the expectation that patients are informed if someone in training is participating. It is the responsibility of the clinician to judge whether the RMO is considered, in the specific context, to be in training.

Definition of training

The inseparability of service and training has been identified by Waitemata DHB as a complicating factor to the NZNO's request. Waitemata DHB's approach to consent reflects their acknowledgement of the difficulties associated with separating training and service in the context of consent.

The concerns that have been raised by the NZNO are in regard to when teaching is a component of the clinical care, rather than explicit training contexts such as exams or assessments, and when an RMO and a clinician are performing a procedure together and training is occurring, rather than if the RMO were performing the procedure alone.

Contextual differences

One issue identified in the meeting was the large variety of situations that are included within NZNO's request, and the difficulties associated with creating one rule for all situations.

One example is that some of the concerns raised have conflated credentialed registrars with non-credentialed registrars. Similarly, the level of training the RMO has received in relation to the procedure they will be involved in varies significantly. Waitemata DHB's approach can be seen to allow such differences to be accounted for in the consent process.

Waitemata's view is that NZNO's request that there be separate written consent for participation in teaching is substantially beyond that provided for in the Code of Health and Disability Services Consumers' Rights (the Code) or the MCNZ's statement of informed consent.

The Code states that "Every consumer has the right to honest and accurate answers to questions relating to services, including questions about... the identity and qualifications of the provider", and that "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". It also states that the

information that a reasonable person would expect to receive includes notification of proposed participation in teaching.

Point 23(c) of the MCNZ's statement of informed consent states "Sometimes, it could be practical to delegate a patient's care to another doctor or health practitioner. When deciding whether to delegate, you should consider whether your patient or anyone else involved in the decision to delegate has been given enough information and time to think it over and to express their views."

The absence of an explicit statement in these two documents around informed consent in relation to the presence of trainees has led to disagreement around whether Waitemata DHB's current standards align with legal requirements.

This discussion raises broader questions of consent in regard to training situations outside of RMOs. Examples include credentialed clinicians who have vocationally trained in one area and are then undertaking training in a further specialty area, or if other trainee practitioners are present such as an anaesthetic registrar.

The attendees agreed that the lead clinician is accountable for all aspects the procedure, including being responsible for an RMO who is present and for any potential risks that their presence may bring.

Consistency of processes across New Zealand

The concerns raised by the NZNO are specific to Waitemata DHB. However, the attendees acknowledged that this must also be considered at a national level.

There was general agreement that there is inconsistency across DHBs in regard to consent documentation. It was also recognised that a large component of the consent process is undocumented, which contributes to difficulties in regulating and enforcing processes both across and within DHBS.

Proposed solution

The meeting attendees agreed that patients have the right to be told who is operating on them, and should therefore be informed as part of the consent process whether someone in the room is in training.

Anthony Hill pointed out that the law is clear- Right 6(1)(d) provides that part of the information that a reasonable consumer would expect to receive is notification of any proposed participation in teaching. He said in most cases that would include providing information about the supervision of the trainee. However that does not require a separate written signed consent for the involvement of trainees in the care provided.

In response to the NZNO's request for a separate consent form, the attendees proposed instead that the current consent form be expanded upon to include an acknowledgement that relevant information has been provided to the patient, including whether there will be a trainee assisting in the delivery of care. It would become part of the standard written consent requirements for clinicians, ensuring that the patient is giving their consent on a fully informed basis. Mr Hill said it should be made clear to patients that they have the right to

refuse the involvement of trainees (Right 7(7)) and can express a preference as to who will provide services and have that preference met where practicable (Right 7(8)), but patients cannot demand that a particular clinician treat them.

Next steps

The following next steps were agreed upon:

- The Medical Council of New Zealand will review their statement on informed consent.
- The Medical Council of New Zealand will clarify their view around the key consent issues revealed by this request.
- The Ministry of Health will consider ways to support sector consistency and clarify expectations.
- The issue and proposed solution will be submitted for discussion at the Chief Medical Officers national meeting in March.
- Waitemata DHB will continue to manage their relationship with the NZNO, and manage media enquiries and Official Information Act requests.