

● Medico-legal advice

Consent issues in a surgical setting



Aishling Gannon of Beauchamps Solicitors outlines the key issues in terms of getting consent from a patient in advance of a surgical procedure

The right to bodily integrity is enshrined in Article 40.3.1 of the Irish Constitution.

In medically treating a patient every intervention, even touching a patient, is potentially an invasion of their bodily integrity. A general anaesthetic increases the threshold for vigilance. However, a consent validly given by the patient makes this intervention legal. It is important that:

- The consent is voluntarily given;
- The patient has capacity to give it;
- It is based on sufficient relevant information; and
- The patient is fully informed of the risks and benefits, alternatives and potential complications.



Elective procedures

In elective procedures all known risks of grave consequences or severe pain (however remote) should be disclosed to the patient. It is

best practice to advise the patient of all relevant facts well in advance of the procedure. The nature and extent of the discussion regarding consent should be clearly documented

in the patient's chart. The patient's consent should be preferably obtained by the surgeon carrying out the procedure.

If a patient subsequently takes a negligence action

against a surgeon and/or hospital or clinic claiming that he was not informed of the material risks then:

1. A court would initially adopt an objective approach, that is, what would the reasonable patient's response have been, had he been advised of the material risks?
2. The court would then consider the subjective considerations such as the health of the patient, his family and financial circumstances, the surgery involved and the likely impact of these on the decision the patient would have made.

The objective test may yield to the subjective test and factors such as contemporaneous notes, if any, and whether common and usual practice was followed would also be taken into account.

A deliberate and even well thought out decision by a surgeon not to disclose information is not recommended. The courts have moved away from supporting the paternalistic clinician's approach.

If the patient is a ward of court a certificate of consent for the surgery is required from the Wards of Court office.

Exceptions

In emergency situations where it is not possible for the patient to consent a surgeon must act in the best interests of the patient. Even if this re-

quires intervention the surgeon should proceed to treat the patient.

Children cannot consent to treatment. Until the age of 16 the consent of the child's parents or guardians must be obtained for any surgery.

Under the Non Fatal Offences Against the Person Act 1997 minors aged 16 - 18 can consent to any surgical, medical or dental treatment.

However it is worth noting that the Act gives the right of consent only.

There is nothing in the Act stating that 16 and 17 year olds have the right to refuse treatment.

Pre-op consent checklist

As part of the pre-operation check it should be confirmed that:

- The consent form has been completed and is on the chart.
- The consent taken relates to the actual procedure.
- The extent of the consent is understood by all.
- Any specific and relevant clinical history has been considered when noting the extent and detail of the consent.

Aisling Gannon,

Partner,
Beauchamps Solicitors

Email:
a.gannon@beauchamps.ie

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Music heading khgk hgkj hgkhj gkj hjhgkj

The worlds of medicine and music will meet with a performance next month in the National Concert Hall. **Niamh Mullen** reports.

Music inspired by the composer's experiences working in medicine will be performed next month at the National Concert Hall.

The New Sound Worlds series was curated by Irish composer Siobhán Cleary and will be performed in the Kevin Barry Room.

Cleary said the idea for the concert was prompted by consultant geriatrician Professor Des O'Neill, who introduced her to the works of Dr Eli-Paul Cohen, an eminent physician based in the UK. His work draws directly on his experiences as a doctor.

For example, 'Coma' a piece of 'music concrete work', was inspired by the near death experience of one of Dr Cohen's patients. It uses human sounds such as breathing, heartbeats recorded from patients in a coma in intensive care and other sources such as oxygen and scopes in an emergency department.

Another of his compositions entitled 'Antenatal' features foetal sounds recorded through an ultrasound scan, sounds of blood supply, of women whispering or shouting during delivery and newborn babies crying.



The National Concert Hall, Dublin

Dr Cohen is a French and a British citizen. He first studied piano, classical music and jazz and then spent time at the 'Conservatoire National de Musique de Paris' where he studied composition. In the late 1970s he began teaching music and worked in the music industry as a song writer and artistic director at CBS record company.

In the 1980s he gave up music to study medicine in Paris. He

qualified in 1989. Since 2000 he has been based in the UK.

Thirteen years ago he returned to music. Since then he has been involved in song writing projects for Ray Charles and he has composed for the advertising and film industry.

"Historically there have been a few medical composers. Borodin was a doctor. It is not a usual combination though. They are such different disciplines," said Cleary.

Alexander Borodin was a Russian composer, best known for his symphonies, is two string quartets and his opera Prince Igor. He studied medicine and later pursued a career in chemistry.

The concert will also include a work by the retired Irish psychiatrist/composer Dr Derek Ball entitled 'Xolotl'. It features the voice of Gabriel Rosenstock, who will speak the part live on the night.

Dr Ball was born in Letterkenny and studied composition at the Royal Irish Academy of Music in Dublin. He was active as a composer in the 1970s and during that time his music was played by the RTÉ Symphony Orchestra.

He moved to Scotland in 1978. Retirement from medicine has allowed him to return to composing full-time. He was a featured composer in one of the 2009 Horizons series concerts, which took place in the National Concert Hall in February.

Dr Anthony Moffoot, a colleague of Dr Ball, will also perform.

Dubliner Cleary's music has been performed and broadcast all over the world. She studied music at NUI Maynooth, Queen's University in Belfast and Trinity College Dublin.

Her latest work 'Cokaygne', based on the first Irish poem written in English, 'Land of Cokaygne' will also be performed next month in the National Concert Hall.

The New Sound Worlds concert takes place at 8.30pm in the Kevin Barry Room of the National Concert Hall on Tuesday, November 17. Tickets are €10.