



Information, choice of treatment and informed consent

Background

1. Trust is a vital element in the patient-doctor relationship and for trust to exist, patients and doctors must believe that the other party is honest and willing to provide all necessary information that may influence the treatment or advice. The doctor needs to inform the patient about the potential risks and benefits of the options available and support the patient to make an informed choice.
2. Informed consent is an interactive process between a doctor and patient where the patient gains an understanding of his or her condition and receives an explanation of the options available including an assessment of the expected risks, side effects, benefits and costs of each option and thus is able to make an informed choice and give their informed consent.
3. Doctors have a statutory obligation to abide by the Code of Health and Disability Services Consumers' Rights (the Code). Under the Code every patient has the right to make an informed choice and to give informed consent, except in certain circumstances. In addition, several pieces of legislation determine how consent should be handled and these requirements can override the requirements of the Code. This statement has been written to inform doctors of the standards of practice that are expected of them in meeting their legal obligations.
4. This statement may be used by the Health Practitioner's Disciplinary Tribunal, the Council and the Health and Disability Commissioner as a standard by which a doctor's conduct is measured.

Understanding your obligations under the Code of Health and Disability Services Consumers' Rights

5. Under Right 4(5) of the Code of Health and Disability Services Consumers' Rights (the Code) patients have the right to co-operation amongst providers to ensure quality and continuity of services. Good communication between all parties involved in the informed consent process is essential.

The right to be fully informed

6. Under Right 5 of the Code you must convey information to the patient in a form, language and manner that enables the patient understands the treatment or advice. This means you should do your best to help your patient to understand any information you provide to them. Where necessary and reasonably practicable this includes arranging a competent interpreter.¹ You should also ensure that the environment enables you and the patient to communicate '*openly, honestly, and effectively*'.²
7. Right 6 of the Code states that every consumer has '*the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive*'. Specifically, the Code states patients are entitled to:
 - (a) an explanation of his or her condition; and
 - (b) an explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option; and
 - (c) advice of the estimated time within which the services will be provided; and

¹ When an interpreter has been used to assist in obtaining the patient's informed consent you should note this in the records, along with the interpreter's name and status (professional interpreter, family member etc.) and, if possible, a note signed by the interpreter to certify that they believe the patient understands the information provided.

² Right 5(2) of the Code

- (d) notification of any proposed participation in teaching or research, including whether the research requires and has received ethical approval; and
 - (e) any other information required by legal, professional, ethical, and other relevant standards; and
 - (f) the results of tests; and
 - (g) the results of procedures.
8. Before providing information about treatments, you should make sure that you yourself are aware of all the reasonable alternatives.
 9. The Code places emphasis on taking “reasonable actions in the circumstances”³. In some circumstances you may not have all the information readily available and another practitioner will need to share the responsibility.
 10. You must keep clear and accurate patient records that report information given to patients and decisions made⁴. The Medical Council recognises that every aspect of a consultation cannot realistically be noted in the patient’s record. As a result we recommend that you adopt written consultation protocols that specify what information in the form of discussion, publications and questions will be given in a specific type of consultation (e.g. all patients experiencing migraines). You do not need to spend unnecessary time writing extensive notes. Instead, you can note in the patient record that the protocols were fulfilled and only outline any exceptions to the protocol. If the patient is referred or requests a copy of his or her record you should include a copy of the protocols.
 11. You must ensure that a decision not to consent, or to withhold consent is noted in the patient’s health record, with a summary of the information given to the patient.
 12. In most situations treatment should not proceed unless the patient has received all the relevant information and you have determined that he or she has an adequate understanding of that information. In risky or innovative procedures it is recommended that the patient is given time to reflect and consider the options before making a decision on the treatment they wish to pursue.⁵

13. If the patient waives his or her right to be informed then you should write this decision in the patient record and give the patient opportunities to change his or her mind. Information provided in these circumstances should reflect the context in which it is provided and:
 - there are some circumstances where you might decide, in the absence of a refusal by the patient, to delay the provision of information because you believe that providing it at that time may result in harm to the patient;
 - if the patient declines information about invasive procedures, you should consider insisting that the patient listen to sufficient detail, especially where major surgery carrying high risks is proposed⁶;
 - in the case of other treatments, if the risk is high, you may insist on providing information even though the patient does not want it, or may decline to treat the patient unless he or she accepts it;
 - in less risky cases you may be justified in withholding or generalising information if the patient states that he or she does not want to hear it and providing the information may cause him or her emotional harm.

Informed choice and consent

14. If you are the doctor who is providing treatment or advice, then you are responsible for ensuring the patient makes an informed choice and consents before initiating treatment.
15. In a hospital, it is Council’s position that obtaining informed consent is a skill best learned by the house surgeon observing consultants and experienced registrars in the clinical setting. The signing of a consent form is simply an end-point to an ongoing discussion. House surgeons should never be placed in the position of having to manage the entire process and should refuse to take informed consent where they do not feel competent to do so.⁷
16. The patient must have the opportunity to consider and discuss the relevant information with the treating doctor.⁸ You can only proceed after the patient has made an informed choice and given informed consent, with the exceptions in paragraphs 20-23. Under Right 7 of the Code, a patient has the right to refuse services or withdraw consent at any time, reflecting self-determination.

³ Clause 3(1) of the Code.

⁴ Paragraph 4 of *Good medical practice*.

⁵ Refer to HDC opinion 08HDC 20258.

⁶ In a case involving Dr John Edgar Harman (55/Med06/37D), the Health Practitioners’ Disciplinary Tribunal found that “[this case] involved significant procedures, and the patient needed to have a full understanding of what was involved. ...[A] statement by a patient that they do not want to hear the details does not obviate the obligation that the surgeon has to properly inform.”

⁷ Refer to the Council’s resource on *Education and supervision for interns* for advice on the role of interns in the informed consent process.

⁸ *Roger vs Whitaker*. This is an Australian case that has caused some confusion about the level of risk disclosure doctors are expected to discuss with the patient. In this case the patient was already blind in one eye when the decision to operate on the other eye was made. The patient was not informed about the 1:14,000 chance of blindness as a possible result of the operation. The doctor was found to have breached his duty of care for not disclosing a risk of 1:14,000 because the **patient’s circumstances** (already blind in the other eye) gave a greater emphasis to the risk of possible blindness.

17. You should obtain separate written consent for research (see paragraphs 30-31), experimental procedures, general or regional anaesthesia, blood transfusion or any procedure with a significant risk of adverse effects.
18. You should pay careful attention to the process of informed choice and consent when a proposed treatment is expensive or in any way innovative. If a patient is choosing between evidence-based medicine and innovative treatments for which there is no scientific evidence, you should attempt to present to the patient a clear and balanced summary of the scientific information available.⁹
19. While the Code of Rights outlines the general requirements for informed choice and consent, several pieces of legislation determine how consent should be handled in specific circumstances. These pieces of law can override the requirements of the Code and are discussed in the appendix.

When a patient is not competent to give informed consent

20. Under the Code every consumer is presumed competent to make an informed choice and give informed consent. There must be reasonable grounds for believing that the individual consumer is not competent.
21. In some circumstances it may not be possible to obtain the patient's informed consent. For example, the patient may be a young child, be unconscious, suffer dementia or have an intellectual disability. In such cases you should try to contact a legal guardian or an appropriate person who is in the position to grant consent on behalf of the patient. The only individuals who are entitled to grant consent on behalf of a patient are legal guardians (welfare guardians under the Protection of Personal Property Rights Act, or parents/guardians under the Guardianship Act), or someone with enduring powers of attorney. In certain circumstances you may provide a service in the best interests of a patient without receiving consent (refer to paragraphs 22-23).¹⁰
22. Under Right 7 (4) of the Code,
 - if the patient is not competent to make an informed choice and give informed consent; and
 - no person entitled to consent on behalf of the patient is available, a doctor may provide services without obtaining the informed consent of the patient when:
 - (a) it is in the best interests of the patient; and

- (b) reasonable steps have been taken to ascertain the views of the patient; and either
- (c) the provider believes, on reasonable grounds, that the provision of the service is consistent with the informed choice that the patient would have made if he or she were competent; or
- (d) if the patient's views have not been ascertained, the provider takes into account the views of other suitable people who are interested in the welfare of the patient and available to advise the provider.

23. If you have not been able to ascertain the patient's views and no suitable person is available to give advice and the delay will not be harmful, it is wise to seek a second opinion from an experienced colleague before providing care. You should document this colleague's views in the patient record.
24. In the situation where a patient has diminished competence you are required, under Right 7(3) of the Code, to obtain consent from the patient for the aspects of the treatment that the patient understands and to follow the guidance in clauses 20-23 for the rest of the treatment.
25. Patients not competent to give informed consent are still entitled to information about the procedure as outlined in paragraphs 6-13.

Consent of minors

26. The Code of Rights does not specify an age for consent and makes a presumption that every consumer of health services is competent to make an informed choice and give informed consent, unless there are reasonable grounds for believing that the consumer is not competent.
27. Children over the age of 16 are considered legal adults.¹¹ People under 16 years of age are not automatically prohibited from consenting to medical, surgical or dental procedures so judgement of the patient's competence to make an informed choice and give informed consent is needed in each instance.¹² The Act states that a female of any age has the right to consent or refuse to give consent to any medical or surgical procedure for the purpose of terminating her pregnancy.

⁹ See also the Council's *Statement on complementary and alternative medicine*. Specific standards also apply when providing cosmetic treatments. Refer to the Council's *Statement on cosmetic procedures* for more information. Refer also to HDC case 09HDC01870.

¹⁰ Please note that individuals holding enduring powers of attorney or who are welfare guardians do not have the legal ability to refuse consent for lifesaving treatment and cannot make decisions regarding medical experimentation or ECT. Refer to paragraphs 66-67 and the New Zealand Medical Association policies *Advanced Directives* and *Persistent Vegetative State*.

¹¹ s.36 of the Care of Children Act 2004.

¹² The common law approach to judging the competency of the patient is informed by *Gillich v West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER402 (House of Lords).

28. You should assess a child's competency and form an opinion on whether he or she is able to give informed consent. Generally, a competent child is one who is able to understand the nature, purpose and possible consequences of the proposed investigation or treatment, as well as the consequences of non-treatment¹³.

Declaration or order from the Court

29. Occasionally, when people are unable or refuse to consent to treatment and there is not unanimity between the views of the doctor and the patient (or the patient's family), you may need to give patients and their families the time, information and supportive resources needed to work these issues through and seek advice from peer groups, senior medical staff or an ethics committee before proceeding. In rare cases where unanimity cannot be reached and further delay may seriously impair health outcomes, you may need to obtain a legal opinion on whether to seek authority from the High Court. Such cases are:

- (a) a blood transfusion or caesarean section to save life; or
- (b) termination of treatment to allow the patient to die peacefully, for example patients in permanent vegetative states; or
- (c) sterilisation of a patient who is unable to consent but for whom the family and other carers, supported by medical opinion, request the operation to enhance the quality of life of the patient or prevent deterioration in his or her physical or mental health; or
- d) a dispute between parents based on religion or beliefs about the treatment to be provided to a child.

Informed choice and consent in treatment that is part of research

30. All research must be approved by an accredited ethics committee before patients are invited to participate and give consent to involvement in the study. There is special responsibility when a proposal includes investigative research or a trial of treatment. You also have an ethical duty to share knowledge and to teach and learn throughout your career. Nevertheless, under Right 9 of the Code informed consent is necessary whenever a patient participates in research. If any form of the research is changed or amended once informed consent has been obtained you must renew the patient's informed consent.

31. If the treatment is part of research, it is the responsibility of the investigating doctor to take all reasonable steps to enable the patient to understand the full implications of the treatment, especially the uncertainties. Written consent from a patient is required for research.

Informed choice and consent in treatment that is part of education

32. Obtain consent before involving medical students in the care of patients. Inform the patient about the extent of the involvement of the student and the student's experience.

Removal of body parts

33. Under Right 7(9) every patient has the right to make the decision about the return or disposal of any body parts or substances removed or obtained in the course of a health care procedure.

34. Under Right 7(10) no body parts or bodily substances removed or obtained in the course of a health care procedure or after death may be stored, preserved, or utilised except:

- with the informed consent of the consumer; or
- for the purpose of research that has received the approval of an ethics committee; or
- for the purposes of a professionally recognised quality assurance programme; an external audit of services; or an external evaluation of services.

Immunisation and screening for potential disease

35. You have a special duty of care when enrolling an apparently healthy asymptomatic person into immunisation or screening programmes. This includes making him or her aware of the limitations of screening and the uncertainties, in particular the chance of false positive and false negative results. Before obtaining consent you should explain, or give information to the patient that explains:

- the purpose of the screening or immunisation,
- the risks and uncertainties,
- any significant medical, social or financial implications of the condition for which the screening or immunisation is done and,
- follow up plans, including availability of counselling and support services.

¹³ Section 36 of the Care of Children Act 2004 states that children over the age of 16 years can give consent as if they are adults. It is not clear whether parental consent is always necessary for medical treatment or procedures for persons under 16 years. Section 36 does not automatically prohibit persons under 16 years from consenting to medical, surgical or dental procedures. In the absence of clear legislative direction it is likely that the principles set out in **Gillick**, namely that parental consent is not always necessary for medical procedures or treatment for persons under 16 years will be followed by NZ Courts. This is consistent with the approach taken by the Code.

Appendix

Other legislative requirements about patient rights and consent

36. In most circumstances you are required to obtain informed consent as outlined in the Code. However, there are a number of express statutory provisions that allow you to proceed without obtaining informed consent.
37. However, just because a section of law excludes the necessity to obtain informed consent before performing a health care procedure, there is no legislation that removes the patient's right to communication and information. You should always explain the healthcare procedure in enough detail to ensure your patient understands its purpose, proposed benefits and possible risks.

Bill of Rights Act 1990

38. The Bill of Rights outlines general expectations. Where these expectations are in conflict with specific legislation, such as the Code of Rights, that specific law generally has precedence.
39. Under section 8 no person shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice.
40. Section 9 states everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.
41. Under sections 10 and 11 of this Act every person has the right not to be subjected to medical or scientific experimentation without that person's consent; and has the right to refuse to undergo medical treatment.

Health Practitioners Competence Assurance Act 2003

42. Under the Health Practitioners Competence Assurance Act 2003 the Medical Council can require a doctor to submit him or herself for a medical examination if the Council believes the doctor may be unable to perform the functions required to practise medicine because of a physical or mental condition.

Mental Health (Compulsory Assessment and Treatment) Act 1992

43. A person may lose the right to give informed consent and be required to undertake psychiatric assessment and treatment under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

44. Under section 8A any person can apply to the Director of Area Mental Health Services to have another person assessed. That application must be accompanied by a medical certificate from a registered doctor.
45. Compulsory assessment and treatment is only undertaken by an appropriately qualified doctor or psychiatrist who has been approved by the Director of Area Mental Health Services.

Health Act 1956

46. Under section 70(1)(e) a Medical Officer of Health can require a person to report themselves or submit themselves for medical examination at specified times and places for the purpose of preventing the outbreak or spread of any infectious disease.
47. Under section 70(1)(h) a Medical Officer of Health can forbid a person to leave the health district or the place in which he or she is isolated or quarantined until the person has been medically examined and found to be free from infectious disease, and until the person has undergone such preventive treatment as prescribed by the Officer.
48. Under section 74 a doctor who believes a patient is suffering from a notifiable disease or from any sickness of which the symptoms create a reasonable suspicion that it is a notifiable disease must immediately notify :
- the occupier of the premises; and
 - every person nursing or in immediate attendance on the patient; and
 - the Medical Officer of Health; and in some cases;
 - the local authority of the district.
49. Under section 79 a Medical Officer of Health can isolate an individual who is likely to cause the spread of any infectious disease, whether or not the individual is suffering from the disease. Under subsection (4) force may be used to isolate this individual if necessary until the person has been medically examined and found to be free of the infectious disease.
50. Under section 88 any person who is suffering from or believes he or she is suffering from a venereal disease is legally obligated to present themselves to a doctor and submit him or herself for treatment for the disease until cured or free from its communicable form.
51. Under section 125 a person authorised by the Minister of Health may at reasonable times enter a public school or child-care centre and examine the children. Consent from the children or parents may not be necessary.

52. If that authorised person believes there are reasons to be concerned about the welfare of the child, of any condition which in his or her opinion is affecting the health or normal development of the child, or of any disease or defect from which in his or her opinion the child may be suffering, that person has the power to notify the parent or guardian of any such child, whom he or she reasonably believes to be concerned with the welfare of the child. Consent from the child or parent is not necessary.
53. Under section 112L and 112M you must tell a woman about the national cervical screening programme the first time you take a specimen from her for the purpose of a screening test, or perform a colposcopic procedure. You must also tell her about the importance of having regular screening tests; the objectives of the screening programme; who has access to information on the programme's register; and how that information might be used. For colposcopic procedures you must also tell the woman that she will be automatically enrolled on the programme, but may withdraw at any time.
54. Section 112ZB of the Act also states that you must make health information and specimens available to a national cervical screening programme evaluator, but the evaluator is bound by strict confidentiality rules to ensure that the patient's privacy is protected.

Armed Forces Discipline Act 1971

55. If a doctor or a competent advisor believes that a person subject to this Act needs medical treatment of some type because that person may otherwise threaten the health or operational efficiency of others in the Armed Forces that person can be ordered to undergo treatment without the right to provide consent.
56. Under section 72(2) an individual subject to this order has the right to a second opinion before any treatment is undertaken.

Alcoholism and Drug Addiction Act 1966

57. Under section 9 a District Court Judge can order a person believed to be an alcoholic to be examined by two doctors for the purpose of having the alcoholic condition confirmed or denied.

Criminal Investigations (Bodily Samples) Act 1995

58. Under section 5 a constable may request that a bodily sample may be taken without consent from a suspect for the purpose of a criminal investigation into an investigation for an indictable offence if this is in accordance with a suspect compulsion order or a juvenile compulsion order.

59. The Act further outlines specific procedures to be undertaken when obtaining consent for the taking of buccal and bodily samples during a criminal investigation and where a compulsion order has not been issued. These procedures must be undertaken by a Police constable.
60. Under section 39 a constable who is above the level of inspector may also issue a notice requiring a person to give a bodily sample if the person has previously been convicted of a relevant offence

Land Transport Act 1998

61. Section 18 states that if a doctor has attended or is consulted by a person who holds a driver's licence and the doctor considers that the mental or physical condition of the licence holder is such that, in the interests of public safety, the licence holder:
- should not be permitted to drive motor vehicles of a specified class or classes; or
 - should only be permitted to drive motor vehicles subject to such limitations as may be warranted by the mental or physical condition of the licence holder; and
 - considers that the licence holder is likely to drive;
- then the doctor must inform the New Zealand Transport Agency of their opinion and the grounds for it.
62. Sections 72 and 73 set out the circumstances where a person must allow a blood specimen to be taken by a medical practitioner or medical officer. In summary, a blood specimen may be required and the person must permit it to be taken in situations including: failure or refusal to undergo an evidential breath alcohol test; if breath testing equipment is not available or a test cannot be carried out; after an arrest where the Police believe the person has committed a drink or drug driving offence; after unsatisfactory completion of a drug impairment test; or if a person is in a hospital or doctor's surgery in relation to a motor vehicle incident, even if the person is unconscious or unable to consent.

Criminal Procedure (Mentally Impaired Persons) Act 2003

63. Under section 38 a person may be subject to a health assessment without giving consent if ordered by the Court. This applies before or during a trial or while the defendant is awaiting sentencing and when an assessment report would assist the Court in determining:
- whether the person is unfit to stand trial; or
 - whether the person is insane under section 23 of the Crimes Act 1961; or

- the type and length of sentence; or
- the nature of any requirement or condition the Court may impose as part of, or as a condition of, any sentence or order.

Corrections Act 2004

64. Section 75(2) states that the standard of health care that is available to prisoners in a prison must be reasonably equivalent to the standard of health care available to the public.
65. Section 124 states that a prison officer may require a prisoner to submit to any procedure for the purpose of detecting whether or not the prisoner has used drugs, consumed alcohol, or both. However, no procedure may be prescribed that requires a prisoner to supply a sample of his or her blood.

Protection of Personal and Property Rights Act 1988

66. A court can appoint a welfare guardian to make and implement decisions for another person. Under section 18 a welfare guardian's first and paramount consideration when exercising their powers shall be the promotion and protection of the welfare and best interests of the person for whom they are acting. A welfare guardian shall not have power to:
- (a) refuse consent to the administering to that person of any standard medical treatment or procedure intended to save that person's life or to prevent serious damage to that person's health; or
 - (b) consent to the administering to that person of electro-convulsive treatment; or
 - (c) consent to the performance on that person of any surgery or other treatment designed to destroy any part of the brain or any brain function for the purpose of changing that person's behaviour; or
 - (d) consent to that person taking part in any medical experiment other than one to be conducted for the purpose of saving that person's life or of preventing serious damage to that person's health.
67. Under section 98 a person (the donor) may also appoint another person as an attorney under an enduring power, either generally or for specific matters. The attorney can only authorise action in relation to the donor's personal care and welfare if the donor is mentally incapable and is subject to the same restrictions outlined in paragraph 66 of this statement. The court may also make a personal order for specific matters.

Contraception, Sterilisation, Abortion Act 1977¹⁴

68. Section 4 allows a parent, a guardian or a person who has custody or care of a "mentally subnormal" female (as defined by the Act) to administer contraception if it is considered in the female's best interests.
69. Under section 7 no one is given the power to consent to the performance of sterilization on another person just because the person is considered too young to consent on his or her own behalf.

Care of Children Act 2004

70. Section 36 states that children over the age of 16 years can give consent, and refuse to consent, as if they were of full age to any medical, surgical or dental treatment or procedure performed by a professionally qualified person for the child's benefit.
71. Section 36 goes on to say that where consent by another person on behalf of a child is necessary, that consent may be given:
- (a) by a guardian of the child; or
 - (b) if there is no guardian in New Zealand or no guardian of that kind can be found with reasonable diligence or is capable of giving consent, by a person in New Zealand who has been acting in the place of a parent; or
 - (c) if there is no person in New Zealand who has been so acting, or if no person of that kind can be found with reasonable diligence or is capable of giving consent, by a District Court Judge or the chief executive.
72. Section 37 states that except by leave of a High Court judge, no civil, criminal, or disciplinary proceedings may be brought against a person in respect of the administration by a health practitioner of any blood transfusion to a person under the age of 18 years by reason of the lack of consent of a person whose consent is required by law.
73. Section 38 specifies that a female child may consent to any medical or surgical procedure for the purpose of an abortion by a person professionally qualified to carry it out; or refuse her consent to have an abortion, and her consent or refusal to consent shall have the same effect as if she were of full age. This section overrides section 36.

¹⁴ See also Council's *Statement on beliefs and medical practice*.

Children, Young Persons and Families Act 1989

74. Sections 49-52 state that the Court may require a child to attend a medical examination by a registered doctor if there are reasonable grounds for suspecting that a child or young person is suffering ill-treatment, abuse, neglect, deprivation, or serious harm. The Court may restrict the nature of the medical examination that may be carried out and the procedures used to carry out the examination.
75. Section 53(2) states a social worker may, with the consent of any parent or guardian of the child or young person, arrange for any child or young person to whom this section applies to be medically examined by a registered doctor.
76. Under section 53(3) a social worker who has not obtained informed consent from the parents after making reasonable efforts to do so can require the child or young person to be medically examined by a registered doctor.
77. Guardians appointed under sections 139–142 of this Act are given the power to consent on behalf of the child, under section 149.
78. Sections 178 and 333 state that the Court can order a child or young person (respectively) subject to this Act to attend for a medical, psychiatric, or psychological examination for the purpose of its proceedings.
79. Section 196 allows a lawyer acting on behalf of a child subject to this Act to give consent on behalf of the child for the child's doctor to disclose any protected information obtained in the doctor-patient relationship.

March 2011

This statement is scheduled for review by March 2016. Legislative changes may make this statement obsolete before this review date.

Case Law

- Inquiry into the provision of chest physiotherapy treatment provided to pre-term babies at National Women's Hospital between April 1993 and December 1994 (the Cull Report)
- Re Stubbs, Medical Practitioners Disciplinary Tribunal, 99/54/C, March 2000.
- Gillick v West Norfolk and Wisbech Area Health Authority [1985] 3 All ER 402
- Roger vs Whitaker (1992) 175 CLR 479
- Re Harman, Health Practitioners Disciplinary Tribunal, 55/Med06/37D, May 2007
- HDC Case 08/08813: This opinion focuses on Ms A's right to make an informed choice about the surgical services she received, and the adequacy of Dr B's documentation. The Commissioner stated: "Notwithstanding Dr B's assessment of Ms A's best interests, there was no legal justification for her to drill Ms A's ovaries without her informed consent. This was not an emergency situation. The decision whether to proceed with this treatment option was Ms A's alone to make".
- HDC Case 09/00795: The Commissioner stated that although the standard of care was appropriate, a gastrointestinal and hepatobiliary surgeon breached Right (6)(1)(b) because of the failure to discuss the specific risk of device failure and the additional cost in that event, at the time that a repeat of an oncological treatment was discussed. This was information that a reasonable patient in those circumstances would expect to receive.
- HDC Case 08/20258: It was held that a urological surgeon had a duty to inform the patient that he had had limited experience with robotic-assisted laparoscopic surgery. He also had a duty to inform the patient of the length of time he had previously taken to carry out robotic-assisted laparoscopic surgery, that the risks of complications increased if time taken for the surgery was prolonged, and what those risks were.

Other relevant resources

- *Good medical practice*
- *Statement on complementary and alternative medicine*
- *Statement on beliefs and medical practice*
- *Statement on cosmetic procedures*
- Health Information Privacy Code 1994 incorporating amendments and including revised commentary – available from www.privacy.org.nz/health-information-privacy-code/