

Editorial

A recent week-long course on South African health law has inspired this editorial. Many laws and acts govern the way in which anaesthesia is practised, both in the public and private sectors. These include the Constitution, the National Health Act, the Health Professions Act, the Consumer Protection Act, the Children's Act, the Mental Health Care Act, and for those involved in obstetrics and gynaecology, the Choice on Termination of Pregnancy Act.

The most important message is that we perform anaesthesia on our patients with the knowledge that we have informed consent from either the patient, or the parent, guardian or partner, thus respecting our patients' rights.

A few important issues were raised during the course and are as follows:

- We need to discuss all “material” risks with our patients. These are risks that, should they occur, would be of significance to the patient's life, regardless of how rarely they take place. A good example of this would be paraplegia after a spinal anaesthetic.
- The intentional failure to obtain consent from a patient is tantamount to assault or invasion of privacy. The Health Professions Council of South Africa (HPCSA) advises that written consent is always obtained.
- When obtaining consent from children, the following is recommended. The Children's Act states: “A child may consent to the performance of a surgical operation on him or her, or his or her child, if the child is over the age of 12 years, and the child is of sufficient maturity and has the mental capacity to understand the benefits, risks,

social and other implications of the surgical operation, and the child is duly assisted by his or her parent or guardian”. The onus is on anaesthesiologists to assess whether the child is mature enough to provide consent. If this is indeed the case, then it is recommended that both the child and the parent or guardian who has assisted the child with consenting, sign the consent form. It is incorrect for just the parent or guardian to sign. If the child is over the age of 12 years and deemed not to be mature enough, then it is acceptable for just the parent or guardian to sign the consent form. It is recommended that consent for children is always given in writing, even if it needs to be obtained from the hospital superintendent or manager in the case of an emergency.

- Confidentiality is often taken lightly, and is not always adhered to. The National Health Act dictates that the patient's written permission (or a court order) is needed to divulge any information concerning a patient and his or her stay in a health establishment. This also applies to a child who is mature enough to have given his or her consent.

While many of the laws and acts detail patients' rights, as healthcare workers we also have rights in terms of the Constitution and the National Health Act. The HPCSA ethical rules are also there to protect and guide us.

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