



Informing Patients About Your Surgical Experience

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More than many specialties, ophthalmology evolves rapidly through the development of new procedures, techniques, and devices. While each innovation holds the promise of improved outcomes for the patient, it also introduces new areas of risk as ophthalmologists and their staff learn to incorporate the changes into their practice. OMIC policyholders often call the Risk Management Department to ask if and how they should talk to their patients about their training and experience.

Q The ambulatory surgery center (ASC) where I perform cataract surgery switched phacoemulsification machines over the objections of many ophthalmologists. While I have completed the training course offered by the manufacturer, I have not yet used the new machine on my own patients. Do I have a legal duty to tell my patients?

A Ophthalmologists are aware of their legal and ethical duty to obtain the patient's informed consent for surgery. The surgeon discharges this duty by personally discussing the indications, risks, benefits, alternatives, and known complications with the patient, who orally agrees to proceed with the planned procedure. The discussion and agreement are then documented by noting the discussion in the medical record and by asking the patient to sign a consent form. As we state in OMIC's new online course, *Informed Consent for Ophthalmologists*, there is a small body of emerging case law governing situations where a surgeon isn't truthful

about his or her training and experience, particularly as it relates to board certification and/or experience performing a particular procedure. If a patient is injured as a result of a surgical procedure, some courts have effectively "thrown out" the consent form if it is later proved that the surgeon, *when asked*, knowingly misstated his or her skill, training, certification, and/or experience. Thus, the ethical considerations of lying to the patient during the consent process could conceivably pose serious legal consequences. There is no clear consensus, from a legal standpoint, about whether or not the physician has a duty to offer this information.

Q What are the consequences of not telling the patient about my experience?

A Learning about a surgeon's limited experience *after* a poor outcome or complication could seriously compromise the physician-patient relationship. The ensuing lack of trust in the physician could also hinder the provision of care needed to treat the complication. Patients may feel betrayed or worry that the physician was experimenting on them. The resultant anger could well prompt a lawsuit for malpractice and lack of informed consent. The patient would likely allege that the surgeon's level of expertise would have made a difference in the decision to undergo surgery, and his or her attorney would argue that a "reasonable person" would have considered this information "a material fact" that should have been disclosed.

Q I believe I have an ethical duty to disclose my training and experience, but I am not sure how to proceed. What do you recommend?

A Simply provide the facts about your training and experience as they relate to the particular procedure. In

the example given here, while explaining the role of the phacoemulsification machine in the lens extraction, inform the patient that the ASC has recently changed machines. Disclose your overall experience with cataract surgery as well as your recent training on this machine. If certain complications are more likely to occur with the new machine or during your learning curve, tell the patient what they are and how you will manage them if they do. If the patient is not comfortable proceeding, help him or her find alternative sources of care. Regardless of how you feel about the ASC's decision, do not share your criticisms with the patient. Instead, address your concerns to the appropriate leader on the medical staff.

Q Should I tell a patient that I am using a newly approved IOL such as the Crystalens?

A It would be prudent to do so. As part of your discussion of the risks, benefits, and alternatives to this IOL, explain why in your professional judgment it is the best one for this particular patient. If you are relatively inexperienced in inserting it, consider explaining that as described above. Patients appreciate knowing the financial implications of your choices, so inform them of any known health insurance or payment issues. As with any new device or procedure, be sure to inform the patient if long-term outcomes are not yet known and explain that there may be unforeseen complications. If you are using the device in an off-label manner, the patient should be so informed.

For more information about informed consent, see OMIC's online course or the following online articles, "Practicing Beyond One's Expertise: The Road to a Lawsuit" and "New Surgical Advances Come with Liability Risks." These can be found at www.omic.com.