Risk Management Hotline

Obtaining Consent on the Day of Surgery
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A s the lead article suggests, helping a patient to understand the risks, benefits, and alternatives of a planned procedure is no easy task. When the consent discussion takes place on the day of surgery, new opportunities for misunderstanding and liability are introduced.

Q I perform refractive surgery at several laser surgery centers. Sometimes, I meet the patient for the first time on the day of surgery. Can the optometrist who performed the preoperative evaluation obtain the informed consent or do I have to?

A First, for elective surgeries, the discussion should take place before the day of the surgery whenever possible. Some patients who have had surgery the same day as the informed consent discussion have later sued for lack of informed consent, arguing that they were coerced into having the procedure and did not have time to weigh the risks and benefits. Second, organizations such as the AAO and ASCRS consider it the responsibility of the surgeon to determine the patient’s candidacy and obtain informed consent. Third, OMIC policyholders who perform refractive surgery must comply with certain underwriting requirements, such as personally obtaining consent, as a condition of coverage. If the patient cannot be seen until the day of surgery (e.g., either the surgeon or the patient lives far away), but the type of surgery is already determined, taking a few extra steps before the day of surgery will facilitate patient understanding and ensure that consent is both informed and voluntary. Obtain information—from the referring physician or directly from the patient per telephone or questionnaire—about the patient’s medical and ocular health in order to rule out contraindications to the procedure and screen for conditions that could affect the safety of the surgery or anesthesia (e.g., significant coronary artery disease, need for anticoagulants, etc.). Next, send the patient a copy of the procedure-specific consent form along with other educational information, and ask the patient to review the materials. At the time of the preoperative visit and consent discussion, address any questions or concerns, and ask the patient to sign the form. Be prepared to postpone the procedure if you are not convinced that the patient fully understands its risks and is committed to proceeding.

Q I perform oculoplastic procedures. Sometimes, on the day of surgery, the patient asks me to perform an additional procedure. Can I safely accommodate the patient’s request?

A This is a risky situation, especially if the procedure is being performed for cosmetic rather than therapeutic reasons. The informed consent discussion should take place when the patient is awake and aware, free from the effects of any medication that could interfere with the patient’s ability to participate in the decision-making process. Therefore, if the patient has already received any sedation, you should either perform only the planned procedure or delay the surgery until the patient can fully participate in the discussion. A change in the requested procedure may well indicate that the patient is having second thoughts about having the surgery or is confused about what he or she really wants. It is usually prudent to postpone the surgery and give the patient time to reconsider. However, if you know the patient well, and you are completely comfortable with proceeding, you should have and document an informed consent discussion, preferably in front of witnesses. Please note that most hospitals and ambulatory surgery centers now have detailed protocols in place to prevent surgical confusion such as wrong patient, site, or procedure. The facility’s policies may prohibit a change in the surgical plan.

Q Isn’t there a clause in hospital consent forms that authorizes me to do additional procedures? When can I rely upon that instead of obtaining informed consent on the day of surgery?

A This type of consent clause is designed to address situations that arise unexpectedly during surgery, such as when you need to perform a vitrectomy after rupture of the posterior capsule. These events call for immediate treatment to minimize harm to the patient. Indeed, failure to provide such treatment could be considered negligent management of a complication. On the other hand, if the patient has a condition that can reasonably be foreseen to require additional surgical procedures, that eventuality should be discussed during the preoperative visit. For example, patients on medications such as Flomax are now known to develop intraoperative floppy iris syndrome or IFIS. Ophthalmologists who operate on these patients must be prepared to adjust their cataract techniques and utilize mechanical expansion devices.\(^1\)

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1. For an update on IFIS, see Chang DA, Managing Intraoperative Floppy Iris Syndrome, available on the AAO web site at http://aaophp.aao.org/current_insight/managing_IFIS?from=0,0.