Position statement on the consent process for public patients undergoing surgery at private hospitals

Australian Orthopaedic Association

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From an AOA Code of Conduct perspective, informed consent is an ongoing process rather than a single administrative event. The Code emphasises that patients must be given adequate time, clear information, and a genuine opportunity to ask questions, and that consent should be obtained free of pressure or perceived duress. While the Code does not mandate a specific timeframe, it is implicit that consent should not be reduced to a last-minute formality immediately prior to surgery if this risks undermining voluntariness or understanding.

Of particular relevance in this scenario is that, notwithstanding the public–private brokerage arrangement, the legal and professional responsibility for ensuring valid consent rests with the doctor who has responsibility for the patient's care at the time of the procedure. This responsibility cannot be delegated to hospital policy or administrative convenience. Consent obtained previously in the public system, especially if undertaken by a different surgeon. In addition, cannot automatically be assumed to cover a procedure performed in a private facility, under different governance, documentation, and peri-operative arrangements.

It is important to note that the consent is procedure, practitioner, and context specific. Patients should reasonably understand not only the nature and risks of the operation, but also where it is being performed, under which system, and by whom. The use of private hospital consent documentation on the day of surgery does not, of itself, remedy any deficiencies in that understanding. In addition, consent obtained immediately pre-operatively may be open to challenge if the patient's decision-making capacity could be influenced by anxiety, time pressure, analgesia, or pre-medication.

While it may be administratively attractive to have patients sign private hospital consent forms on the day of surgery, this convenience does not determine the validity of the consent. If the treating surgeon is not satisfied that the patient has had sufficient time and opportunity to consider the information and ask questions, reliance on same-day consent may expose that practitioner to medico-legal risk. Clear documentation of the consent discussion, including timing and content, is therefore critical.

In terms of how colleagues commonly manage similar public–private brokerage arrangements, many surgeons ensure that the private hospital consent is addressed well in advance of the day of surgery. This is often achieved by incorporating discussion of the private setting and documentation into a pre-operative clinic review, a dedicated consent appointment, or a documented follow-up discussion (including via telehealth where appropriate). On the day of surgery, the consent is then typically confirmed rather than initiated, with any new questions addressed and documented. This approach is generally regarded as more consistent with both the AOA Code of Conduct and contemporary medico-legal expectations.

Finally, while hospital executives may express views on what is "acceptable", this does not override the individual surgeon's professional, ethical, and legal obligations. Where there is any doubt that current arrangements meet these standards, surgeons should seek advice from their medical indemnity provider, who are best placed to comment on risk exposure and defensibility of practice.