



**Office of the
Health Complaints Commissioner
2007**

0601025 Public Hospital – adverse outcome of surgery (bunionectomy) and consent

s. 23 (1)(d) whether a health service provider failed to exercise due skill - s.23 (1)(g)(ii) whether the health service user was provided with a reasonable opportunity to make an informed choice of the treatment or services available. Report issued November 2006

A complaint was made against a surgeon and a public hospital following surgery. The complainant maintains that she is unable to walk properly since the left bunionectomy to correct a hallux valgus deformity. She said that had she been made aware that the functionality of her foot would be compromised, then she would not have consented to the operation.

The complainant was discharged after hospitalisation and returned for a follow up check at the Fracture Clinic. The assessment was that there had been a good union of the fracture and healing of the operated side. However, she claimed that the foot was painful, that she did not have sufficient movement of the toe and that she was unable to walk properly. The complainant was referred to a neurologist for nerve conduction studies which excluded any nerve damage associated with the surgery or the site of the injection. Some 5 weeks after the operation on her left great toe, the complainant attended Emergency having sprained the toe. The x-ray report reports that she is now “unable to move that toe”.

At the request of this Office the complainant was examined by an orthopaedic surgeon, who reported on the outcome of the surgery. He reported that x-ray of her left forefoot done prior to surgery showed considerable deformity due to the varus position of the 1st metatarsal bone, but also considerable narrowing of the joint space in the metatarso-phalangeal joint, indicative of early osteoarthritis in the joint.

In summary, the conclusions were that the surgery was performed with due skill and the valgus deformity was corrected with a very good cosmetic result and stability of the metatarsophalangeal joint. The complainant suffered an unfavorable early outcome of her hallux valgus corrective surgery in terms of functionality, which is not uncommon in this condition. The functional result is suboptimal due to the presence of pain and difficulty in loading the left forefoot and she may have some entrapment of the sensory nerve branches in the surgical scar which makes the area sensitive and painful.

However, the orthopaedic surgeon reviewing the matter was of the opinion that the claimed symptoms “are out of proportion to the objective findings and that there is obviously a psychosomatic condition related to the surgery”, and a pre-existing condition in the form of early osteoarthritis in the left metatarso-phalangeal joint

which may have contributed to the early unfavorable outcome of surgery. Some of her symptoms might be attributable to Raynaud's phenomenon. He was of the opinion that she should be referred to a podiatrist for custom made innersoles, which in his opinion should alleviate her symptoms. Further that the function of her left forefoot would increase with the passage of time but a small degree of permanent impairment is likely.

On balance it was concluded that the complainant had given valid consent. She had signed a consent form which referred to risks and outcomes and in providing her initial and altered consent consulted two orthopaedic surgeons. While we have been unable to contact the surgeon in USA, he provided a written report to her medical practitioner regarding the surgery and, on the balance of probabilities, the conclusion is that she was warned of the risks but may not have comprehended these risks. The complainant has not proved, or proved to the requisite degree, that she was not warned by either surgeon of the risks associated with the surgery.