NHS Resolution

Did you know?

The benefits of supported decision making (consent)

Advise / Resolve / Learn

Did you know?

1,223* claims for incidents occurring between 2012 and 2017 have cost the NHS £233 million so far

Of these cases:

728 claims are under review due to the complexities around consent

158 patients received damages

337 cases were closed

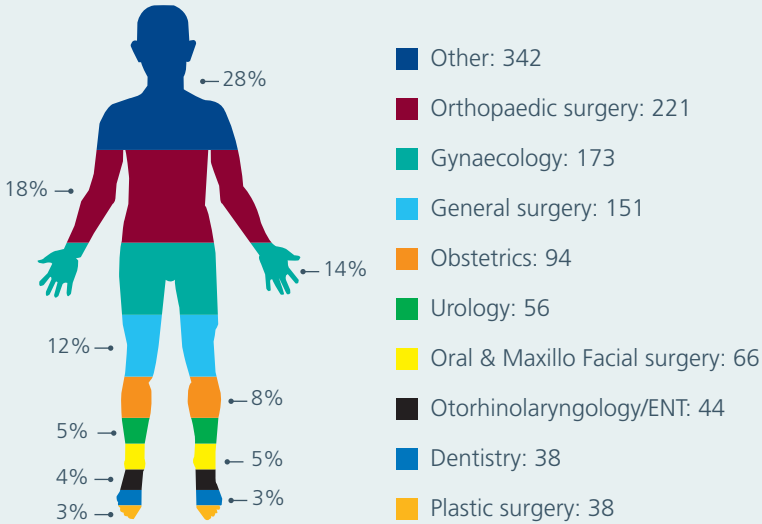
The numbers of this type of claim have been increasing each year, with a 55% rise between 2012 and 2017.

Consent is a common contributing factor in many other claims.

Examples of failure to provide adequate consent with information:

- about a conservative rather than surgical option;
- that loss of vision is a risk of bilateral squint surgery;
- of all the risks associated with spinal surgery;
- about the risk of septal perforation during laser surgery to the nose; and
- with epidural analgesia there is a risk of dural puncture (leakage of spinal fluid) and headache.

1,223 claims associated with 'failure of informed consent' as a primary cause, by speciality



* Within the claims management database, there are 1,223 claims where the cause is recorded as failure to warn or lack of informed consent at level one with an incident date between 1 April 2012 and 31 March 2017.

The importance of the Montgomery ruling

In 2015, the Montgomery ruling emphasised the importance of clinicians discussing with their patients the various treatment options available, including doing nothing. You must be satisfied that you have discussed the material risks of each option with your patient.

"The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it."

What this means:

The discussion has to be tailored to the individual patient. This requires time to get to know the patient well enough to understand their views and values. (Royal College of Surgeons of England [RCS] 2016)

Quoting a percentage risk without putting it into the context of the patient's own views is insufficient.

The clinician should put themself in the position of the patient that they are caring for, to assess what they might consider as 'material', as this may differ between individuals.

The clinician should allow the patient, family and carers time for reflection and feedback following discussions about the treatment options available.

NHS Resolution

What does supported decision making look like?

The consent process should never delay emergency treatment.

- Allow sufficient time to have a detailed conversation of the individual circumstances of the patient
- Where possible involve family and carers in the process
- Consider the concept of 'materiality' in the discussion
- Interpreting, translation, capacity and sensory needs must be taken into account and evidenced in all consent processes
- Consider and discuss any information given to the patient at pre-operative assessment, answer any questions, and provide post-operative instructions
- Make sure that all conversations are recorded in the patient's documentation. These contemporaneous notes are the best record of who said what if they need to be reviewed
- Consider a variety of ways to communicate e.g. leaflets, patient information sheets and videos to help the patient and family understand their treatment options, risks and benefits associated with their decision

References

Consent: Supported decision-making - a guide to good practice (RCS, 2016)
Good Surgical Practice (RCS, 2014)
Consent: Patients and doctors making decisions together (GMC, 2008)
Reference guide to consent for examination or treatment (DH, 2009)
Standards for the dental team (GDC, 2014)
Consent (Dental protection, 2015)

For further information please contact:
safetyandlearningenquiries@resolution.nhs.uk

Published April 2018

www.resolution.nhs.uk