

# O&G's consent discussion found appropriate after patient complains of failure to warn of risk of pregnancy



## Key messages from the case

It is important for doctors to keep careful notes of treatment discussions and advice they provide to patients when obtaining consent to treatment. If something goes wrong and a patient complains, it can be years after the consultation and doctors may have limited independent recollection of the discussion. Courts may be persuaded by evidence of doctors' usual practice, but this will be much more persuasive when supported by contemporaneous notes or copies of materials provided at the time the treatment is discussed.

## Details of the decision

### Consent to procedure

Ms N consulted Dr L about symptoms including severe menorrhagia and stress incontinence. She was 41 at the time and advised Dr L she had "finished having children" and that her husband had had a vasectomy. Dr L discussed several treatment options with Ms N and ultimately she agreed to undergo endometrial ablation.

The procedure itself was carried out successfully. A year later, Ms N became pregnant with her new partner. Her son, S, was born with severe disabilities.

Ms N claimed compensation. She said she had understood that she could no longer conceive after the procedure. She alleged Dr L had failed to warn her she could still become pregnant after endometrial ablation and that she needed to continue contraception as such a pregnancy could be high-risk.

### Medical records

Dr L had no independent recollection of the consultation. He claimed it was his invariable practice to advise patients they could still become pregnant after endometrial ablation and they needed to choose a safe method of contraception.

Dr L denied the assertion that he failed to explain this to Ms N because she informed him of her husband's vasectomy. Dr L said he always gave this advice regardless of a patient's history, because circumstances and relationships could change.

His clinical notes included:

*Plan: 1. Menorrhagia Rx endometrial ablation, vs Mirena IUCD*

Dr L also produced articles that he had authored on hysteroscopic endometrial ablation. These advised doctors to explain to patients that although pregnancy was unlikely after the procedure, it was still possible and that patients should adopt a safe method of contraception.

Dr L stated that it was also his practice to provide patients with a brochure that explained the procedure. He did not have a copy of the version as it was printed at the time. However, he provided a more recent version that warned about the risk of conception.

### Outcome

The court accepted that Dr L did have a duty to warn Ms N of the risk of pregnancy after endometrial ablation, and that failing to do so would have been negligent.

While the court considered Ms N an honest witness, it preferred Dr L's version of events. The Court held that Ms N had failed to prove that Dr L had not given her appropriate advice.

On balance, the court found that Dr L's note referring to endometrial ablation vs IUD suggested he had discussed the relative merits of these two treatment options. The court found it was most likely that Dr L had gone on to discuss the issue of contraception.

While it was necessary to be cautious in accepting Dr L's assertion as to his invariable procedure, the court considered that Dr L's authorship of two articles on this issue supported his claim. Ultimately the court was not satisfied that Ms N had proved that Dr L failed to warn Ms N of the continuing risk of pregnancy following the procedure.

### Key lessons

You have an obligation to provide your patient with enough information about their condition and the treatment options for them to make an informed decision.

This includes discussing treatment options, expected benefits, any uncertainty about the therapeutic outcome, common outcomes, and side-effects and risks involved with the treatments.

As well as the general risks, you need to discuss risks that are material to the particular patient.

Avoid making assumptions about the patient's situation. It is important to talk to the patient about their priorities and what they are expecting from the treatment.

If you have a usual method of undertaking an assessment for a particular procedure, you should follow that method. Your consultation record should have cues which reflect that you have followed your usual procedure so that you can explain this should you later be required to provide information about the consultation.

Document your consent discussion carefully. It is particularly important to keep a record of:

- information provided about the procedure or treatment, including the aims and expected outcomes
- your discussion about specific risks and those material to the patient's circumstances
- any other procedures explored
- any diagrams or printed materials provided (make sure you keep a copy of the actual version you provided), and
- any other issues or questions raised by the patient and your answers.

### References and further reading

Avant factsheet - [Consent: the essentials](#)

Avant eLearning - [Consent: informed consent and more](#)

Avant factsheet - [Medical records: the essentials](#)

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