Medical Negligence

Will an unauthorized and unlawful medical procedure performed on me give rise to a medical negligence claim?

You consulted your doctor or specialist, who told you that you would have to undergo a certain medical procedure. The nature, scope and risks associated with the envisaged operation were duly explained to you and you consented to the procedure based on the advice received.

However, what if the operation is performed in accordance with your consent, but a further **unauthorized** medical procedure is done, without your knowledge or consent and to which you would not have agreed to, if the procedure had been explained to you?

This is the question that the KZN High Court, Durban still must decide upon, after a gynaecologist removed one of the patient's ovaries without her prior approval, during a surgical procedure. The patient instituted action against the gynaecologist based at the Life Mount Edgecombe Hospital, for R4.5 million in damages, claiming that one of her ovaries was removed in 2014, when the gynaecologist performed a caesarean and a tubal ligation sterilization procedure on her.

The patient, who was pregnant at the time, obtained professional advice from her gynaecologist regarding a caesarean, tubal ligation sterilization procedure and parental care. She was informed that, should she wish to have another child after the tubal ligation sterilization procedure, it could be reversed. Based on the professional advice of the gynaecologist, she consented to the medical procedure.

However, four years later, the patient and her husband wanted the tubal ligation sterilization reversed, as they wanted another child. She underwent a diagnostic radiology examination with a radiologist, which revealed that her right ovary had been removed. In her action against the gynaecologist, the patient alleges that her ovary had been removed by the gynaecologist four years earlier without her authority. Her action against the gynaecologist is based on a wrongful and unlawful medical procedure, resulting in damages in the sum of R4.5 million. The action is defended, and judgment will be delivered in due course.

A medical practitioner is obliged in law to provide a patient with full details regarding the nature, scope and risks of an operation to be performed, to enable the patient to take an informed decision, before consenting to such medical procedure. The operation must be performed within the confines of the patient's consent and no unauthorised procedures may be undertaken, except for sudden, unforeseen complications, necessitating immediate, emergency treatment, not consented to by the patient prior to the operation.

The medical practitioner may accordingly only perform a medical procedure to which the patient had given his/her consent and any unauthorised procedure will result in an unauthorized and unlawful act, which might give rise to a claim based on medical malpractice.

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