The University of Texas Medical Branch

# Robotic Surgery

University of Texas Medical Branch
Galveston, Texas

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Director of Minimally Invasive Gynecology and Research
Obstetric and Gynecology
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# MIS Surgeons

# BUSINESS

- IDENTIFY MARKET
- CREATE

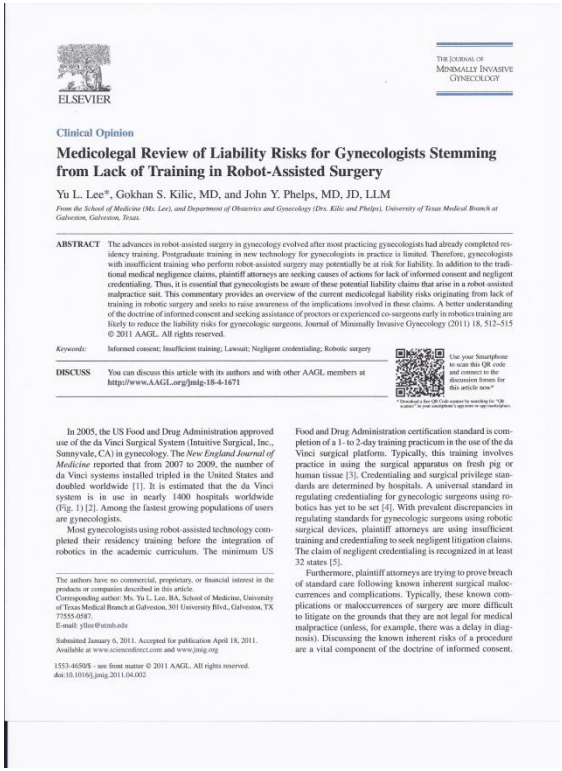
# ART

- CREATE
- IDENTIFY MARKET


UNITED STATES OF AMERICA
IN GOD WE TRUST
LIBERTY
QUARTER DOLLAR

# Medical Legal Review of Liability Risks for Gynecologists Stemming from Lack of Training in Robot-Assisted Surgery

By Yu L. Lee, BA, Gokhan S. Kilic, MD, and John Y. Phelps, MD, JD, LLM



ELSEVIER

THE JOURNAL OF MINIMALLY INVASIVE GYNECOLOGY

Clinical Opinion

**Medicolegal Review of Liability Risks for Gynecologists Stemming from Lack of Training in Robot-Assisted Surgery**

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**ABSTRACT** The advances in robot-assisted surgery in gynecology evolved after most practicing gynecologists had already completed residency training. Postgraduate training in new technology for gynecologists in practice is limited. Therefore, gynecologists with insufficient training who perform robot-assisted surgery may potentially be at risk for liability. In addition to the traditional medical negligence claims, plaintiff attorneys are seeking causes of actions for lack of informed consent and negligent credentialing. Thus, it is essential that gynecologists be aware of these potential liability claims that arise in a robot-assisted malpractice suit. This commentary provides an overview of the current medicolegal liability risks originating from lack of training in robotic surgery and seeks to raise awareness of the implications involved in these claims. A better understanding of the doctrine of informed consent and seeking assistance of proctors or experienced co-surgeons early in robotics training are likely to reduce the liability risks for gynecologic surgeons. Journal of Minimally Invasive Gynecology (2011) 18, 512–515


*Keywords:* Informed consent; Insufficient training; Lawsuit; Negligent credentialing; Robotic surgery

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In 2005, the US Food and Drug Administration approved use of the da Vinci Surgical System (Intuitive Surgical, Inc., Sunnyvale, CA) in gynecology. The *New England Journal of Medicine* reported that from 2007 to 2009, the number of da Vinci systems installed tripled in the United States and doubled worldwide [1]. It is estimated that the da Vinci system is in use in nearly 1400 hospitals worldwide (Fig. 1) [2]. Among the fastest growing populations of users are gynecologists.

Most gynecologists using robot-assisted technology completed their residency training before the integration of robotics in the academic curriculum. The minimum US Food and Drug Administration certification standard is completion of a 1- to 2-day training practicum in the use of the da Vinci surgical platform. Typically, this training involves practice in using the surgical apparatus on fresh pig or human tissue [3]. Credentialing and surgical privilege standards are determined by hospitals. A universal standard in regulating credentialing for gynecologic surgeons using robotics has yet to be set [4]. With prevalent discrepancies in regulating standards for gynecologic surgeons using robotic surgical devices, plaintiff attorneys are using insufficient training and credentialing to seek negligent litigation claims. The claim of negligent credentialing is recognized in at least 32 states [5].

Furthermore, plaintiff attorneys are trying to prove breach of standard care following known inherent surgical malocurrences and complications. Typically, these known complications or malocurrences of surgery are more difficult to litigate on the grounds that they are not legal for medical malpractice (unless, for example, there was a delay in diagnosis). Discussing the known inherent risks of a procedure are a vital component of the doctrine of informed consent.

The authors have no commercial, proprietary, or financial interest in the products or companies described in this article.

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# Liability Exposure for Surgical Robotics Instructors

**By Yu L. Lee, BA, Gokhan S. Kilic, MD, and John Y. Phelps, MD, JD, LLM**

# Elements of a Medical Malpractice Claim

- Duty
- Breach
- Damages
- Causation

# Standard Injured Patient has to Prove

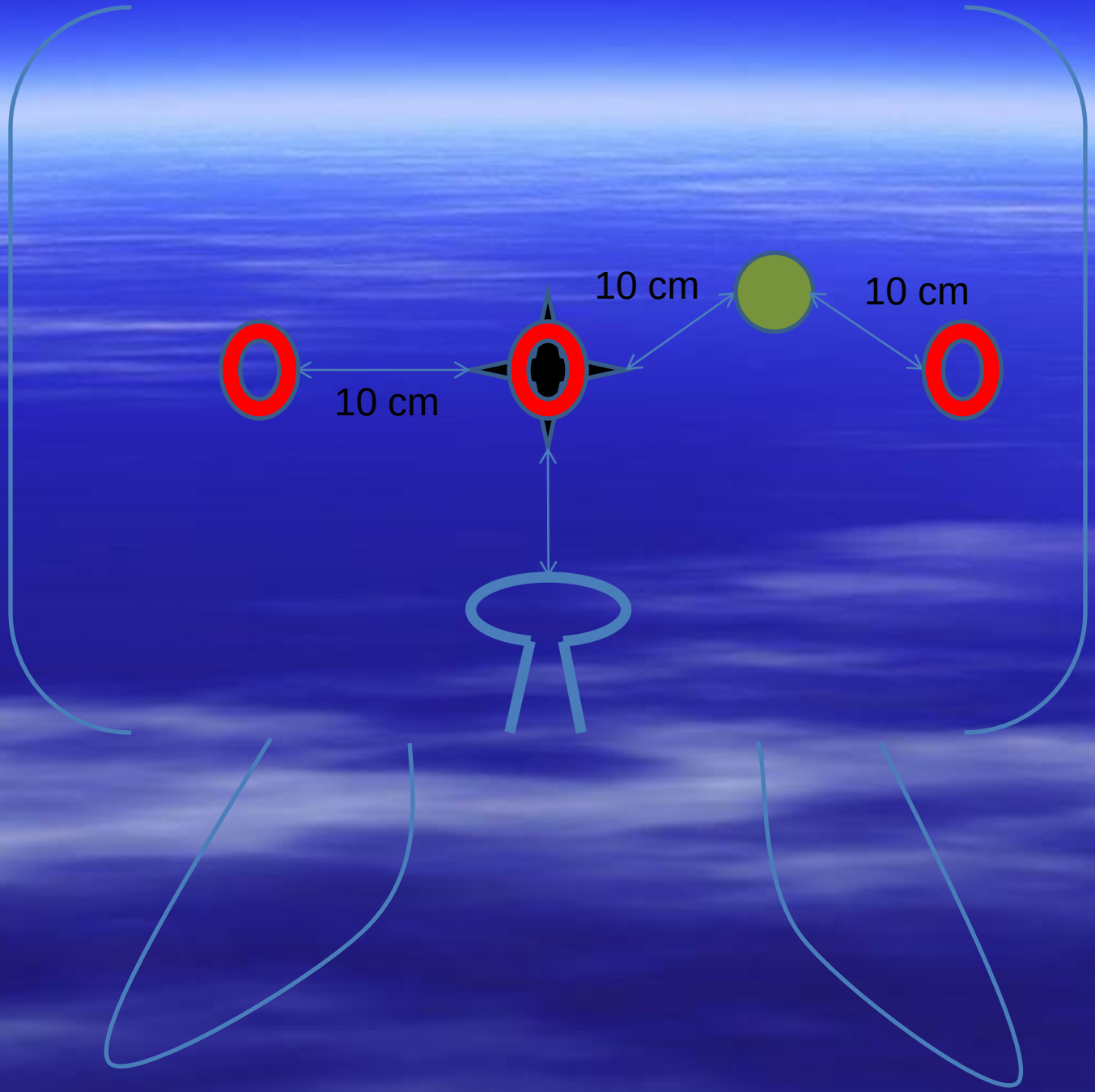
- Medical Probability
  - –More than 50%
- Not Medical Certainty

# Alternative Causes of Action against Inexperienced Robotic Surgeons

- Lack of Informed Consent
- Negligent Credentialing

# *Boone v. Goldberg*
## Maryland 2006

- The patient alleged that the physician had not informed him that the physician had performed only 1 revisionary mastoidectomy in the last 3 years,
- The Maryland court ruled in favor of the patient and awarded $943,000.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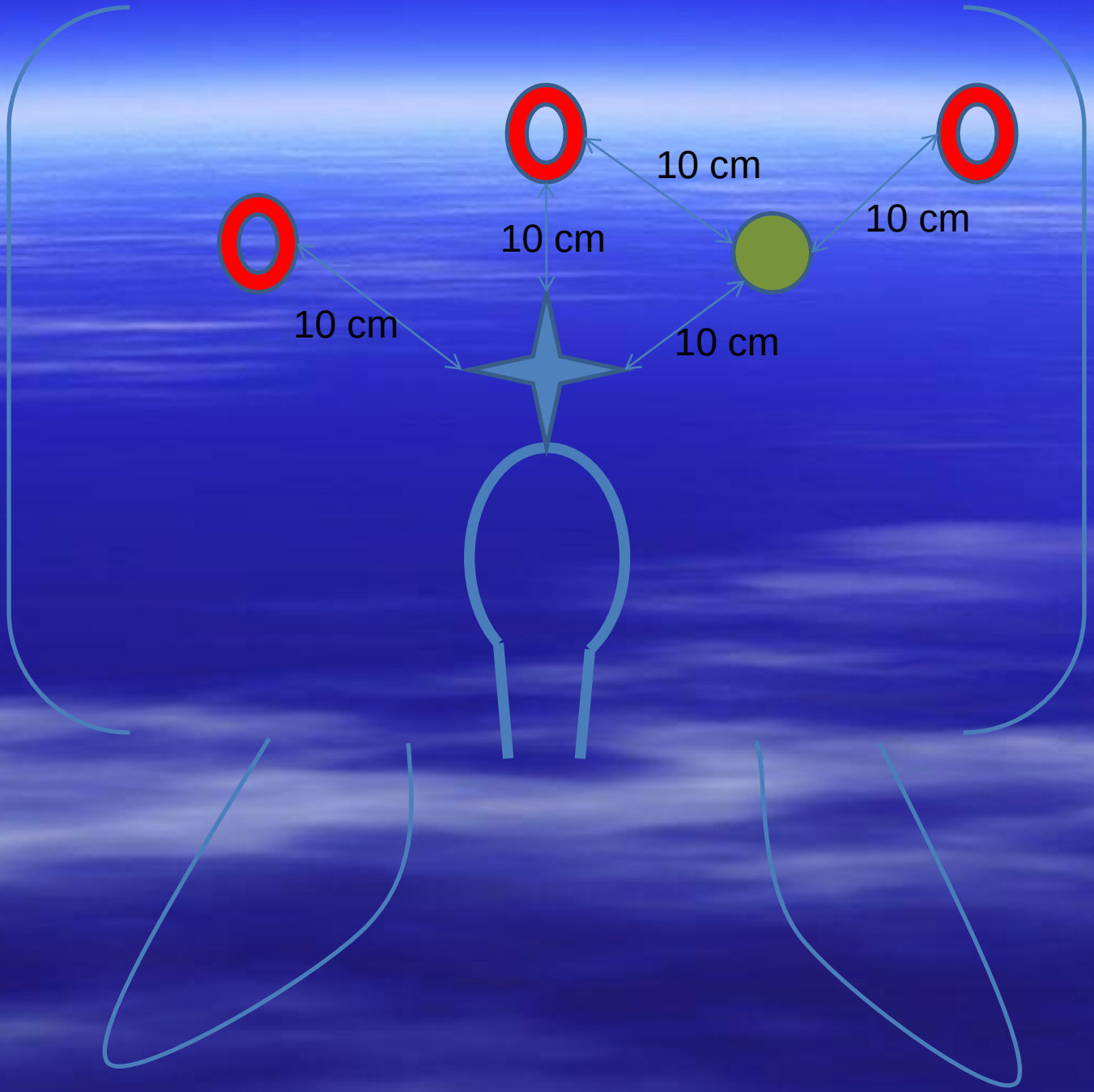
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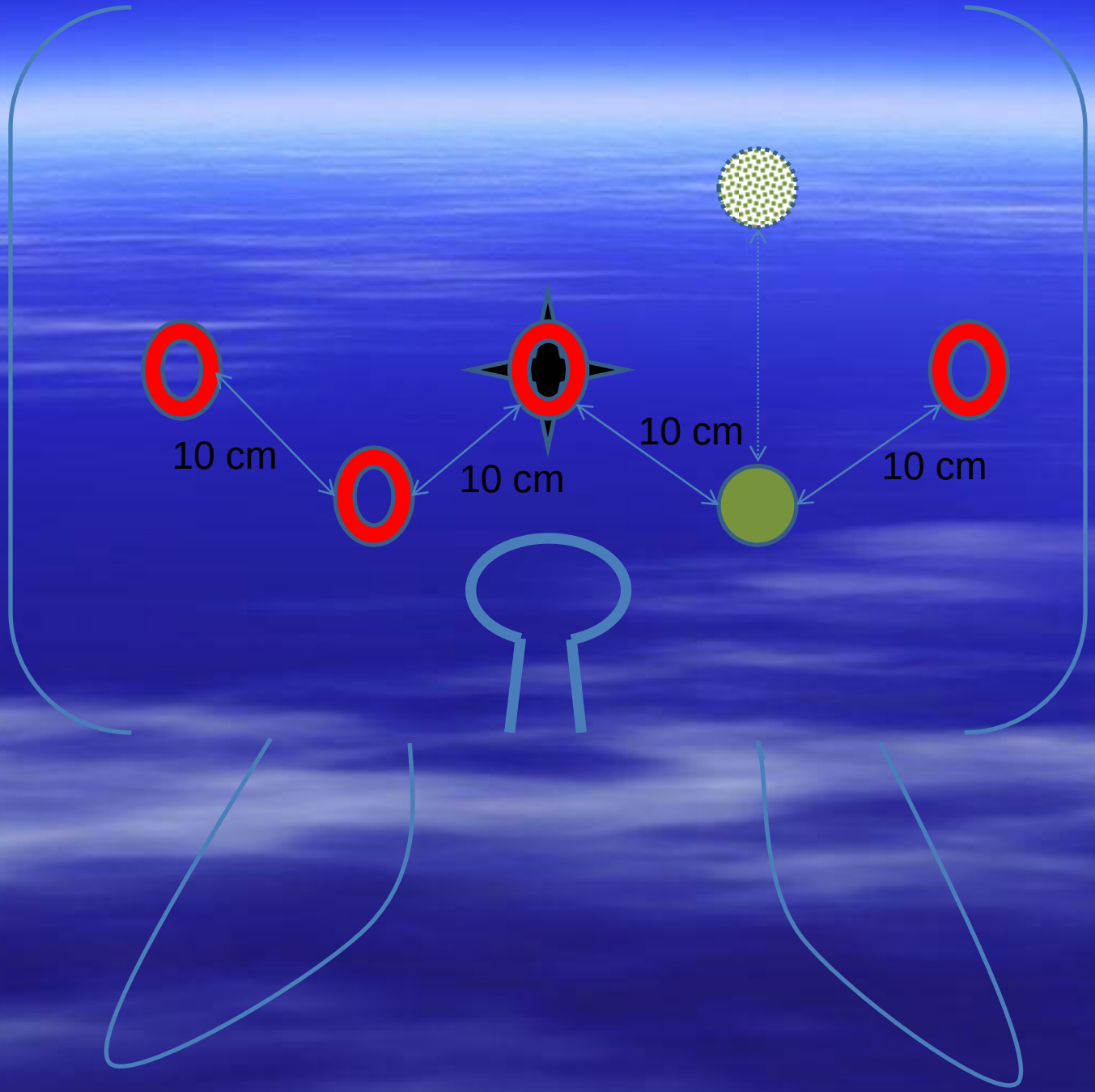
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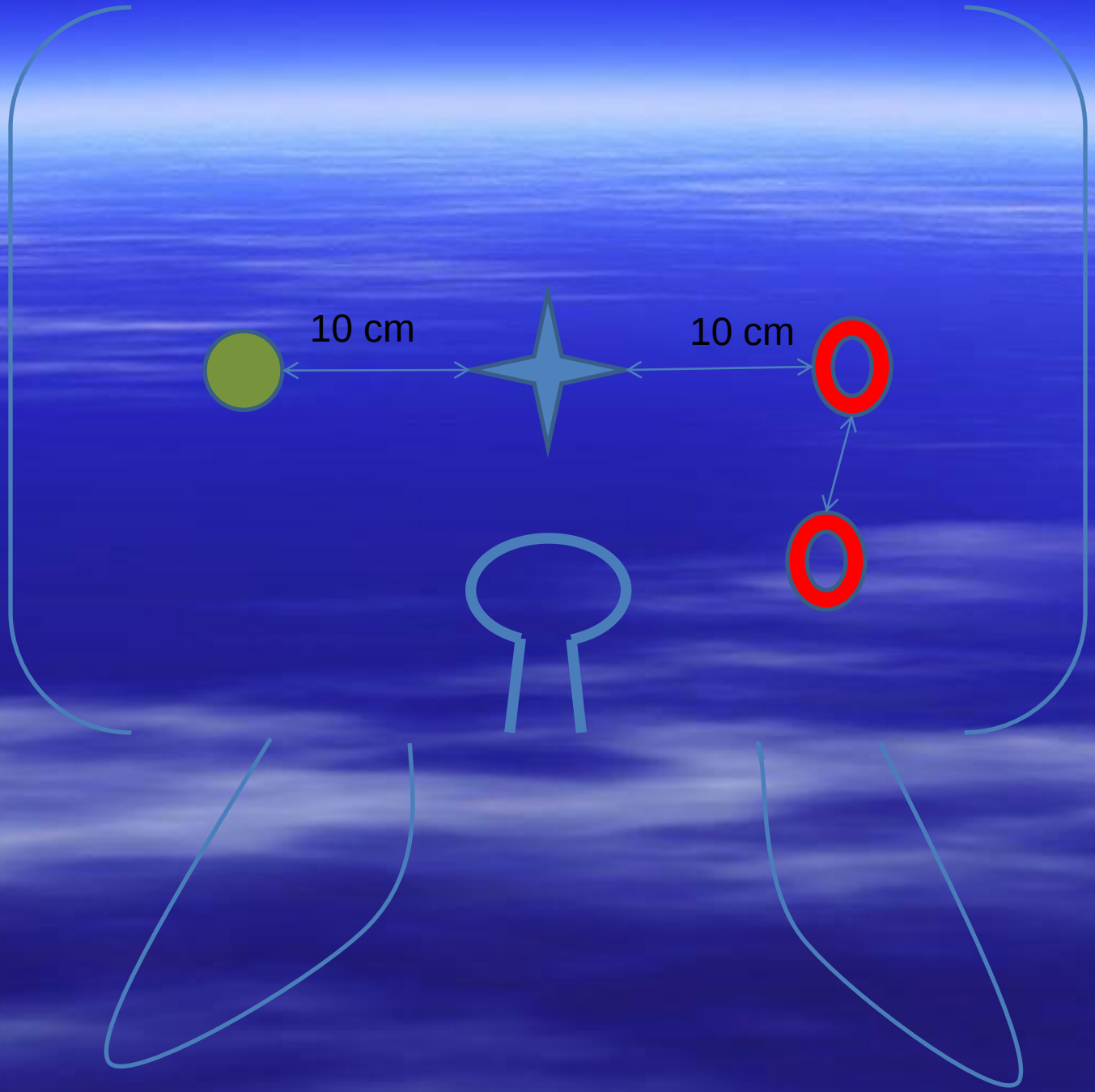
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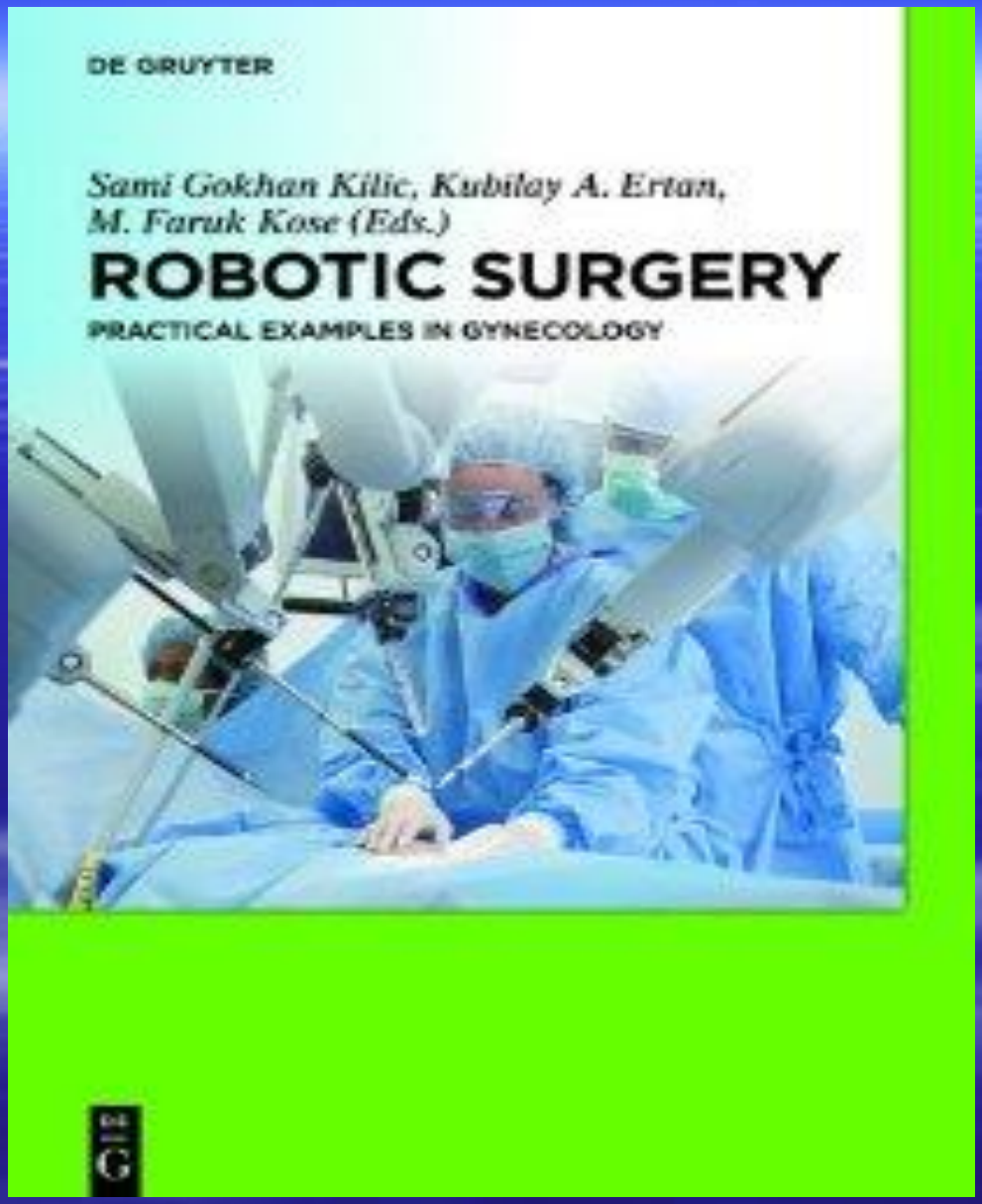
# Suggested implications

- Attending MIS conferences regularly
- AAGL- COEMIG collaboration
- Reading materials
- Sharing ideas

# Conclusion

- Know Legal Issue in your local area
- Tailor your own institutional regulations
- Continue training
- Quality control in regular basis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