

Medico-legal issues: intimate examinations, cultural sensitivities and the use of chaperones

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Conflict of interest statement



- > Practising GP
- > Senior Medical Advisor in Advocacy at Avant
- > Member of two subcommittees of MSAC
- > Review Therapeutic Guidelines
- > Past hearing member of Medical Council of NSW
- > No direct or indirect conflict of interest



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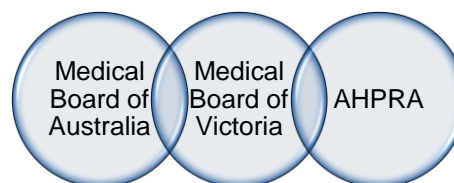
Let us start with a story..... "it was just a misunderstanding"



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The role of statutory authorities (in Vic)



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The role of statutory authorities



- > The *Medical Board of Australia* looks after registration issues
- > Uniformity of complaints handling and assessments has not been achieved
- > All complaints must be referred to AHPRA, which then refers the matter to National Board (Victorian Board in Vic) for assessment
- > AHPRA prepares a "brief" for the Board

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Unsatisfactory professional performance



"unsatisfactory professional performance":
–the knowledge, skill or judgment possessed, or care exercised by, the practitioner in the practice of the health profession in which the practitioner is registered is below the standard reasonably expect of a health practitioner of an equivalent level of training or experience

Health Practitioners Regulation National Law (Victoria) Act 2009 s5

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Unprofessional conduct



"unsatisfactory conduct"

–means professional conduct that is of a lesser standard than that which might reasonably be expected of the health practitioner by the public or the practitioners' professional peers, and includes.....(a number of things)

Health Practitioners Regulation National Law (Victoria) Act 2009 s5

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Professional misconduct



> Unprofessional conduct by the practitioner that amounts to conduct that is substantially below the standard reasonably expected...

Health Practitioners Regulation National Law (Victoria) Act 2009 s5

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Code of conduct



Medical Board of Australia's code of conduct,
Good Medical Practice: A Code of Conduct for Doctors in Australia section 8.2

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Medical Board of Australia



Sexual harassment is unwelcome behaviour of a sexual nature including, but not limited to, gestures and expressions. The **doctor's intention** in behaving in this way does not minimise the seriousness of the behaviour.



Sexual Boundaries: Guidelines for Doctors (28/10/11)

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Medical Board of Australia



- Making an unsolicited demand or request for sexual favours
- Irrelevant mention of patient's sexual preference
- Comments about sexual history not clinically relevant
- Requesting irrelevant details of sexual history or preferences
- Conversations of sexual problems or fantasies of the doctor
- Making suggestive comments about patients appearance or body

Sexual Boundaries: Guidelines for Doctors (28/10/11)

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One of the main issues: Consent




- > Consent, information and trust are the underpinnings of the doctor–patient relationship
- > For the vast majority of patients ... respect, explanation, consent and privacy are more important than the use of a chaperone, and are not negated by having a third party in the consulting room. In fact, you need consent to have a third party present!
- > "When discussing what is to occur in an intimate examination....a doctor should explore with the patient the value of a chaperone being present during the examination to allow the patient to bring a support person of their choice if this would make the patient feel more comfortable."

Sexual Boundaries: Guidelines for Doctors (28/10/11)


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One of the main issues: Consent




- > Chaperones will make the patient feel more comfortable
- > Chaperones assist doctors in cases of allegations of:
 - inappropriate examination
 - inappropriate questioning
 - sexual misconduct
- > Chaperones are a safeguard for all parties, and are witness to the **continuing consent** of the procedure or examination



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Implied consent is NOT expressed consent



- > A patient who comes into your office, and later gets up onto the examination couch, **implies** they consent to the examination.
- > **But did you explain:**


Listen to heart	stethoscope and/or hand under the breast
Listen to the chest	lifting up the top
Properly examine skin	looking under or undoing the bra strap
Examine abdomen	pulling down clothing to pubic line



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Implied consent is NOT expressed consent




- > **And did you explain:**

Where your hands are going to be during a pap smear?
What exactly does a "internal" examination mean?
What you are doing when you are performing a bimanual vaginal examination?
How and why you are doing what you are doing?

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Types of chaperone



Informal chaperone

→

- family member
- friend

Formal chaperone

→


- health care professional

Many consults have an informal chaperone in the room by default but care needs to be taken to ensure you balance the patient's privacy and the need for a chaperone.

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Role of the chaperone




- Provide emotional comfort and reassurance to a patient
- Assist in the examination, for example, handing instruments during IUCD insertion
- Assist with undressing patients
- Act as an interpreter
- Provide protection to healthcare professionals against unfounded allegations of improper behaviour
- In very rare circumstances, protect the clinician against an attack
- Identify unusual or unacceptable behaviour on the part of the healthcare professional (experienced chaperone)

NHS (UK) Clinical Governance Support Team 'Guidance on the role and effective use of chaperones in primary care and community care settings'

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Who should be a chaperone




- > If a doctor provides a chaperone, the chaperone **must:**
 - be qualified, for example, a registered or enrolled nurse or appropriately trained, that is, the chaperone understands the support role they are performing on behalf of the patient
 - be a gender approved by the patient or the patient's support person such as a parent, carer, guardian or friend
 - respect the privacy and dignity of the patient.

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Risk management tips



- > During an intimate examination:
 - explain what you are doing
 - offer reassurance
 - keep talking, but keep discussion relevant
 - avoid unnecessary comments
 - encourage questions and discussion
 - remain alert to verbal and non-verbal indications of distress from the patient.




NHS (UK) Clinical Governance Support Team 'Guidance on the role and effective use of chaperones in primary care and community care settings'


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When to use a chaperone




- > No firm guidelines on when to use chaperone- consider it on a case by case basis
RACGP position on the use of chaperones in general practice
- > When patients seem anxious and/or afraid
- > When you have a patient who goes out of their way to make an appointment with you at unusual hours or when other staff are not present
- > When it is good practice to do so, for example:
 - a new patient that requires an intimate examination
 - a teenage patient
 - a medico-legal examination




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When to use a chaperone




- > **Alarm bells should be ringing (in your head):**
 - if you are alone in your practice with no-one other than you and the patient (this should be avoided)
 - when you have a patient coming in for the first time asking for an intimate examination
 - when a patient starts to 'cross the line', for example, 'would you like to meet for coffee?'
 - when a patient starts asking a lot of personal questions about you.




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When to use a chaperone





- > **Alarm bells should be ringing (in your head):**
 - when a patient goes out of their way to make an appointment with you at unusual hours or when other staff are not present
 - when your gut feeling tells you something is wrong, for example, a patient begins showering you with expensive gifts.





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Cultural Sensitivity in Medicine

Strategies for Cultural Sensitivity


Cultural sensitivity and awareness checklist




- Communication method**
 - Identify the patient's preferred method of communication. E.g. translator
- Language barriers**
 - Identify potential language barriers (verbal & non-verbal)
- Cultural identification**
 - Identify the patients culture.
- Comprehension**
 - Double check comprehension
- Beliefs**
 - Identify religious/ spiritual beliefs
- Recovery**
 - Does the patient/family have misconceptions or unrealistic views
- Assessments**
 - Conduct with cultural sensitivity in mind

J Med Ethics 2002;23:145-148 doi:10.1136/jme.20.3.145

Cultural sensitivities




- > Indigenous patients
- > Religious dress
- > Religious beliefs
- > Cultural issues with the doctor themselves
- > A language barrier – a barrier to proper consent




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Your records ...




- > If you **feel the need** to offer a chaperone, you should **feel the urge** to write it down and also note whether the patient accepts the offer
- > If there is someone else in the room, it is best practice to write down who was there
- > Documenting consent and discussions with the patient is crucial
- > The more uncomfortable the situation, the more you should write



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Case examples




- > One GP who offered to do a breast examination, and found himself charged with a criminal offence and in front of a medical tribunal
- > Another GP did a vaginal examination, and then undid a bra to have a look at a post sunburn rash with poor communication. This led to a criminal charge and a professional services committee hearing
- > Another GP took a detailed sexual history whilst performing a vaginal examination-led to a complaint and conditions on his practice
- > A female GP proceeds with a vaginal examination despite the patients apprehension- complaint to the HCCC

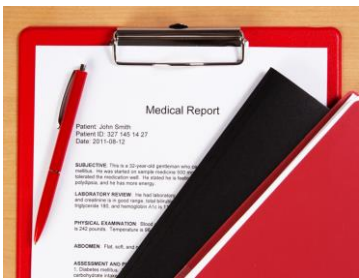
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Take home messages



- > Communication
- > Consent
- > Document



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Important notices

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