



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

Dr Walid Jammal  
 MBBS FRACGP DCH MHL  
 Senior Medical Advisor – Advocacy


The Annual Women's Health Update – Sydney  
 February 2015



## Conflict of interest statement




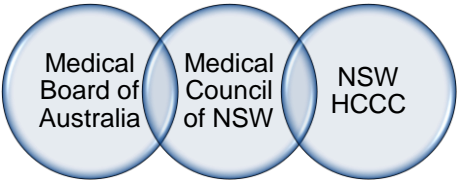
- > Practising GP
- > Senior Medical Advisor in Advocacy at Avant
- > Member of two subcommittees of MSAC
- > Review Therapeutic Guidelines
- > Past hearing member of Medical Council of NSW
- > No direct or indirect conflict of interest



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

2



## The role of statutory authorities (in NSW)

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

3

## The role of statutory authorities (in NSW)






- > looks after registration issues

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

4

## The role of statutory authorities (in NSW)






- > protects the public by:
  - conducting disciplinary hearings
  - monitoring performance
  - looking after impaired doctors

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

5

## The role of statutory authorities (in NSW)

- > protects the public by:
  - complaint management and investigation
  - liaison with the NSW Medical Council on disciplinary matters
  - prosecutes matters in front of a PSC or NCAT (former Medical Tribunal)

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

6

### The role of statutory authorities (in NSW)

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

7

### Unsatisfactory professional conduct

Any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of medicine is **significantly below** the standard reasonably expected of a practitioner of an equivalent level of training or experience

Health Practitioners Regulation National Law NSW No 86a-sect 139E

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

8

### Professional misconduct

Unsatisfactory professional conduct of a sufficiently serious nature to **justify suspension** of the practitioner from practicing medicine or the removal of the practitioner's name from the Register.

Health Practitioners Regulation National Law NSW No 86a-sect 139E

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

9

### Code of conduct

- > Maintain professional boundaries
- > Never use your professional position to establish or pursue a sexual, exploitative or other inappropriate relationship with anybody under your care

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

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

10

### 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)*

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

11

### 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)*

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

12

### What is the issue here?




- > 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)*


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

13

### What is the issue here?




- > 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



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


14

### 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



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

15

### 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?

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

16

### 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.

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

17

### 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'*

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

18

## 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.

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

## 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'*

## 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

## 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.



## 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.



## Cultural sensitivities



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



## 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



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

25

## 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

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

26

## Take home messages



- > Communication
- > Consent
- > Document

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

27

## Important notices

### General disclaimer

The information in this presentation is general information relating to legal and/or clinical issues within Australia (unless otherwise stated). It is not intended to be legal advice and should not be considered as a substitute for obtaining personal legal or other professional advice or proper clinical decision-making having regard to the particular circumstances of the situation.

While we endeavour to ensure that documents are as current as possible at the time of preparation, we take no responsibility for matters arising from changed circumstances or information or material which may have become available subsequently. Avant Mutual Group Limited and its subsidiaries will not be liable for any loss or damage, however caused (including through negligence), that may be directly or indirectly suffered by you or anyone else in connection with the use of information provided in this document.



28