

Medicolegal File

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Is a chaperone always necessary?

QUESTION

Doctors are often advised to have a third party in the room when examining female patients. I followed this advice for years, but some of my patients told me they felt uncomfortable. I now have a chaperone present only when a patient requests it or if the patient is unknown to me. Is this wise or acceptable?

ANSWER

While your current approach is certainly one taken by many physicians, it is important to recognize its inherent dangers.

Allegations of sexual impropriety have been made by both male and female patients against doctors of the same or opposite sex. Nevertheless, the vast majority of concerns are with regard to inappropriate questioning or examination of female patients by male doctors.

Accusations of sexual impropriety are, unfortunately, not rare. Tribunals, such as the courts or college disciplinary committees, take such allegations seriously and must come to conclusions based on the evidence presented. In the absence of testimony of a third party, the decision will necessarily be based largely on the apparent credibility of the doctor and the patient. A judge or disciplinary committee would recognize that a doctor has a genuine interest in denying wrong-

doing, but might wonder why a patient would lodge a false complaint. The presence of a witness will clearly provide a better opportunity for the tribunal to assess the facts and rely on something more than the statements of the doctor and patient. Occasionally, allegations of sexual impropriety have been made despite the presence of a chaperone, but the chaperone's presence certainly helped with the doctor's defence.

It is not only patients new to a practice who register complaints. Doctors have been accused by long-term patients of sexually inappropriate actions on single or many occasions. The perceived power imbalance between physicians and patients is said to make it possible for a physician to continue to abuse a patient over a prolonged period, so these claims are also serious.

On balance, the presence of a third party is highly desirable when performing intimate examinations. Having a third party present might also be advisable when discussing intimate problems, because some complaints have involved allegations of unnecessary

questions with regard to sexual matters or lifestyle. If a patient refuses to have a third party present, a doctor might wish to consider whether to proceed with the examination at that or any time, or whether the patient should be referred to another physician. Except

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Although laws governing medical practitioners are similar across the country, they can vary greatly from one jurisdiction to another. Specific answers to questions cannot be given in a national publication. While the information in this article is true in general, it is intended to bring issues to your attention, not to give specific advice. You should consult a lawyer if you have specific concerns. Members of the Canadian Medical Protective Association can contact the Association at 1-800-267-6522.

Readers may submit questions on medicolegal issues by fax to Dr Philip Winkelaar at (613) 725-1300. They will be considered for future Medicolegal Files.

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in an emergency, a doctor is not obliged to do an intimate examination.

Some patients want to have someone of their own choice present. There could be danger in accepting that offer because the person chosen by the patient might not recognize what is or is not acceptable behaviour. It might be wise to have your own assistant present as well. It would be wise to include in the record the identity and address of any third party present.

In any event, it is important to communicate clearly to patients what they can expect in the course of examinations, the questions you propose to ask, the purpose of the questions and examination, and the reason you wish to have a chaperone present. It is wise, of course, to document all your discussions with patients.

If you choose to perform an examination without a chaperone, you should do so only after careful discussion with the patient and after documenting the patient's choice on the record. You must also recognize that proceeding without a chaperone could put you at some risk of allegations of impropriety. ❁

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