

Chaperones are more important than ever

By Daniel J. Huff, Esq., Huff, Powell & Bailey, LLC

This summer *The Atlanta Journal-Constitution* (AJC) published the results of its widespread investigation into the sexual abuse of patients by physicians. The AJC expose was widely read, and it even received national attention on NBC's *Today Show*. The investigation revealed that thousands of doctors in the U.S. had raped, molested or sexually exploited their patients while performing medical examinations over the past two decades. The scope and publicity of this investigation has led to additional victims coming forward, more investigations, and some arrests.

With this in mind, interactions between physicians and their patients will be viewed with greater scrutiny by law enforcement, the Georgia Composite Medical Board (GCMB) and, most importantly, patients. The purpose of this article is not to highlight or reiterate the impropriety of these unprofessional and improper acts. It is, instead, to highlight the important ways that you can protect yourself and your patients from inappropriate conduct and false allegations of inappropriate conduct. So, let's review the rules and standards regarding physical examinations and chaperones.

GCMB rules

Rule 360-3-.02 defines unprofessional conduct warranting GCMB to take action against one of its members. Unprofessional conduct includes:

- (12) Conducting a physical examination of the breast and/or genitalia of a patient of the opposite sex without a chaperone present.

Beyond performing an examination of the breast and/or genitalia of a patient of the opposite sex, the GCMB published the following guideline regarding other examinations in May 2016:

For all other examinations the Board recommends that physicians aim to respect the patient's dignity and to make a positive effort to secure a comfortable and considerate atmosphere for the patient; such actions include the provision of appropriate gowns, private facilities for undressing, sensitive use of draping and clear explanation on various components of the physical examination. The physician should have a policy that patients are free to

make a request for a chaperone. This policy should be communicated to patients, either by means of a well-displayed notice or preferably through a conversation initiated by the intake nurse or the physician. The request by a patient to have a chaperone should be honored. It is recommended that an authorized health professional should serve as the chaperone whenever possible. In their practices, physicians should establish clear expectations about respecting patient privacy and confidentiality to which chaperones must adhere. If a chaperone is to be provided, a separate opportunity for a private conversation between the patient and the physician should be allowed.



Increased attention on physician misconduct will not only lead to more victims coming forward, but it will also lead to false allegations of misconduct.

You can protect yourself from false allegations by adhering to patient privacy standards and having some chaperone guidelines in place."



The "unprofessional conduct" rule only requires a chaperone for the examination of the genitalia of a patient of the opposite sex. In practice, limiting chaperones to patients of the opposite sex may not be appropriate. Let the nature of the examination and your patient dictate whether a chaperone should be present – even if you and the patient are both the same sex.

Protecting yourself and your patient begins at the outset of your interaction with the patient. The patient should understand the nature of the examination that is going to be conducted, and consent to do that examination should be obtained.

The nature of any physical examination should be explained to the patient or the guardian of a minor patient in detail. Specifically, what will be done and why it's necessary. The examination itself, particularly with respect to a private area of the body, should be done with the minimum amount of physical contact necessary to perform the examination. The examiner as well as the chaperone should avoid making sexual comments or provocative statements to a patient, but this is especially true during an intimate examination.

Every practice should respect a patient's privacy consistent with common sense and GCMB guidelines. Modesty should be respected during an examination to expose only that part of a patient's body that is necessary. Patients should be allowed to dress and undress in private unless the patient is having difficulty or requires assistance.

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When an examination of the breast and/or genitalia is going to be performed and the patient is of the opposite sex, a chaperone must be present. For the benefit of you and the patient, a chaperone should be present during an “intimate examination” of a patient regardless of the patient’s sex. This is not required and there are exceptions where this need not happen, but it is an excellent standard for you and your practice.

Here are some additional guidelines regarding chaperones...

- The patient must consent to having a chaperone and should agree with the individual who will serve as the chaperone prior to the examination
- The chaperone should be an impartial observer to the examination and not a relative or friend of the patient
- If a chaperone is not available or the patient does not consent to the choice of a chaperone, the examination should be postponed unless this would impact the patient’s care
- It should be documented in the patient’s medical record that a chaperone was present for any intimate examination

Creating a culture that respects patient privacy and safety

Take any complaint from a patient about anything inappropriate seriously. Likewise, listen to feedback from your employees about patients’ and co-workers’ behavior. Be diligent about concerns that are raised regarding provider and patient contact.

Consensual relationships can develop between patients and their health care providers. These situations must be identified

and addressed when they arise. Be on the lookout for signs that the normal barriers between a patient and a provider are not in place. For example, if an employee is seeing a patient outside of normal hours or away from the office, the employee should be confronted about the relationship. [Huff will address these and other patient-provider relationship issues in the fourth quarter issue of the *MAG Journal*.]

Some bars and restaurants check their customers’ IDs regardless of age – even if they are in their 70s. And, clearly, there are some people who do not need their ID to be checked to confirm they are older than 21 years of age. Nevertheless, these bars and restaurants have the privilege of saying “we ID everyone.”

So, having a chaperone culture to promote patient safety and privacy in your office should not be considered an inconvenience. It should be an important part of your overall goal of making your patients more comfortable. You should strive to protect your patients from the possibility of inappropriate contact by one of your employees – as well as protect you and your employees from false allegations of inappropriate conduct by one of your patients.

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Huff is a founding partner at the Atlanta law firm of Huff, Powell & Bailey, LLC. Huff and the members of his firm defend civil lawsuits on behalf of hospitals, physicians, product manufacturers, businesses, corporations and other professionals. Huff and his firm try several jury trials each year. Huff can be contacted at dhuff@huffpowellbailey.com.

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