Independent review of chaperones to protect patients

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Do you think chaperone conditions are an effective measure to protect patients, and why?

The review will consider whether, and if so in what circumstances, it is appropriate to impose a chaperone condition on the registration of a health practitioner to protect patients while allegations of sexual misconduct are investigated.

The primary purpose of the regulation and registration of health professionals is to protect the public. The basis of any relationship between a patient and their health practitioner must be trust. Patients are obliged to submit themselves for intimate examinations and they need to know their providers are trustworthy. Complaints received about health practitioners that make allegations of sexual misconduct must be taken extremely seriously and acted on quickly.

Currently Australia wide there are about 47 health practitioners who have conditions on their practice allowing them only to see patients with a chaperone present. The AHPRA website indicates:

> Of Australia's 106,857 registered medical practitioners, 47 have chaperoning restrictions on their registration (0.04%). Chaperoning restrictions are used as an interim measure while investigations into allegations of serious misconduct continue. Restrictions are published on the online Register of practitioners and compliance is actively monitored by AHPRA.

Although AHPRA says chaperoning is monitored the patients I have spoken to indicate otherwise. They were not informed of who the chaperone was or why they were there. It is unclear whose responsibility monitoring is and it appears this is left to the individual practices.

There is no exact definition of a chaperone.[1] Chaperones are supposed to be witnesses who safeguard patients or doctors or both during a medical examination or procedure. AHPRA has published Guidelines on when Chaperones are to be used to protect patients but these are often ignored.

[1] Chaperones: are we protecting patients?
Debbie Wai, Mythily Katsaris, and Rishi Singhal, Br J Gen Pract. 2008 Jan 1; 58(546): 54–57.
RACGP Position Paper: the use of chaperones in general practice. July 2007
http://www.racgp.org.au/download/Documents/Policies/Clinical/racgpposition-chaperones.pdf
Medical Board of Australia. *Sexual Boundaries: Guidelines for doctors.* 28 October 2011.

Chaperones are widely used for gynecological and other intimate examinations. A chaperone may provide a patient with reassurance and emotional support during a procedure or examination that the patient may find embarrassing or uncomfortable. However patients do not always want to have chaperones present and indeed the presence of another person in the room other than the doctor may in itself be a source of embarrassment.

In cases where there are complaints of sexual misconduct by a health services provider, chaperones are insufficient to protect the safety of patients.[2] They are also contrary to notions of patient centered care and patient autonomy.

[redacted]

There is case law and research showing chaperones are not a sufficient protection for patients and many patients do not want them to be present when intimate examinations are being conducted. [3] Chaperones, just like the rest of us mere mortals, need sometimes to go to the toilet. A serial predator will take advantage of that. They may be in the rooms but not behind the curtains. A serial predator will take advantage of that and sadly, among the health professions, just as in every other profession, there are serial predators

If a health service practitioner cannot be trusted to treat patients without a chaperone the practitioner is untrustworthy and should not be seeing patients at all.

The costs of chaperoning are not negligible. In the private sector the health service bears these costs that will be passed on to the consumer. In the public system the costs are borne through government funding and therefore the public. For chaperoning to be effective there would need to be many more controls in place and these would be very expensive.

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[2] Department of Health. Committee of inquiry: independent investigation into how the NHS handled allegations about the conduct of Clifford Ayling.
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4088996 (accessed 28 Nov 2007)
Beth Wilson, "Imposed chaperones can't guarantee patient safety",
Australian Doctor, 10 August, 2016

[3] The role of patient chaperones in clinical practice
By Dr Vas Kavadas, MDU medico-legal adviser - November 8th, 2009

Chaperones would have to be appropriately qualified and trained to detect the conduct they are supposed to be preventing. At the moment medical students or other clinic staff are used as chaperones and they have little expertise in forensic matters or in detecting criminal behaviour and there are obvious power imbalances. It seems the current system simply assumes the presence of a chaperone will automatically prevent any offending behaviour but this has been shown to be incorrect.

Chaperones would need to be monitored by an independent body such as AHPRA but this has not been done and is impracticable and resource heavy. There would need to be a guarantee that the chaperone would always be present when the health practitioner is examining patients and this is also impracticable. Patients should always be told who the chaperone is and why they are present. This is currently not done despite the AHPRA Guidelines. [redacted]

While the primary concern is protection of the public it is also in the interest of the health professions to have systems in place to keep patients safe and stop predators from re-offending. The chaperone system currently allows health practitioners charged with offences to keep seeing patients. While health practitioners are entitled to a presumption of innocence if we are serious about protecting the public we need to acknowledge that patient safety is the primary objective. The practice of using chaperones in cases where there are allegations of sexual misconduct has not worked and should be abandoned.

If chaperone conditions are appropriate in some circumstances, what steps do you think need to be taken to ensure patients are protected and adequately informed?

Chaperones being used as a condition on a health practitioner's practice where allegations of sexual offences have been made has failed to protect patients and to prevent further offending and should be abandoned. Chaperones are also used to protect health practitioners. If the practitioner wants to have a chaperone present patient consent must be sought. If the patient does not consent the practitioner does not have to see them except in an emergency.

In what circumstances do you think chaperone conditions are not appropriate, and why?

Chaperones have failed to protect the public in cases where sexual misconduct is being investigated. Further offences have been committed even with a chaperone

present [redacted]. AHPRA Guidelines for the use of chaperones are rarely adhered to. [redacted]

[redacted]

If a doctor has anyone else present in their rooms, for example a student, informed consent should be obtained from the patient. If that other person is a chaperone the patient has very little say. The chaperone is there because the regulator has mandated it. This is inconsistent with patient autonomy.

Can you suggest an alternative regulatory measure to protect patients while allegations of sexual misconduct are investigated?

It has been argued a better alternative to chaperones is the use of video cameras. I do not support this. It is inconsistent with confidentiality and many patients would feel extremely uncomfortable about being filmed while having a pap smear test or a rectal examination. The patient has no control over who will view such videos.

Where there are allegations of sexual misconduct under investigation a health practitioner should not be allowed to see patients. There should be strict time limits on how long AHPRA has to conduct such investigations to decide whether the matter requires referral to the administrative tribunal. There also needs to be much better communication between AHPRA and the police and improved feedback to notifiers. If the AHPRA investigation indicates there is sufficient evidence to send the matter to the tribunal then the health practitioner should not be permitted to see patients until the tribunal has made a decision or the police investigations are completed.

AHPRA investigations into allegations of sexual misconduct should include timely examination of the health practitioner by a forensic psychiatrist. The psychiatrist's advice should be acted on quickly. While a forensic psychiatrist may not be able to predict future offending he or she could identify whether the practitioner has a mental illness or psychopathic tendencies.

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