

MMA Position Paper

2. INTIMATE EXAMINATION OF FEMALE PATIENTS

PREAMBLE

The aim of this paper is to produce guidelines to help doctors in discharging their professional duties to their patients properly. The main purpose of these guidelines is to improve the practice of health professionals and to better inform the patients about the treatment options, so as to avoid litigations or untoward allegations.

In this Age of Information there is an increasing tendency for doctors to be sued by their patients not necessarily because of negligence on the part of the doctors but because of the increasing awareness of their rights as perceived by the patients themselves.

These rights emanate from the duties of a doctor which are best expressed in the *Rogers v Whitaker* case where the High Court of West Australia defined the duties of a doctor as having to provide a patient with information before giving treatment. The principles identified were :-

- a) a doctor has a duty to warn a patient of a material risk inherent in a proposed treatment
- b) a risk is material if, in the circumstances of the particular case, a reasonable person in the patient's position if warned of the risk would be likely to attach significance to it or if the medical practitioner is or should reasonably be aware that the particular patient, if warned of the risk, would be likely to attach significance to it
- c) in limited circumstances a doctor may withhold information if provision of such information will harm the patient's best interests.

Though the above principles apply to the treatment given to patients they can also be applied to the earlier component of a consultation session, namely the physical examination.

In this paper the discussion is confined to the physical examination of the female patient by a male doctor during such a consultation.

DEFINITION

For the purpose of this Position Paper an Intimate Examination of a Female Patient is defined as a physical examination which involves the exposure of any of the following areas of the body :

1. Mammary areas
2. Perineum
3. Groin

The examination may be an inspection or palpation of the above areas or an internal examination of the vagina or rectum.

ISSUES

Several issues can arise from a physical examination that is not conducted in the recommended manner. These issues may arise immediately after the consultation, or more likely much later when the doctor is least expecting anything untoward to happen in connection with a previous consultation.

1. LEGAL

■ **Litigation:** A patient may sue a doctor because of an alleged misconduct or negligence leading to dissatisfaction with the outcome of treatment or with the relationship with the health professional during the consultation.

The misconduct or negligence may be proven to have a basis or may be perceived to be so because of a discrepancy between the patient's expectation and the actual eventuality due to poor communication.

2. NON-LEGAL

■ Misconstrual

Even when there is no prima facie basis for a misconduct or negligence, the patient may misconstrue its occurrence due to misinterpretation of certain actions or procedures done by the doctor. A simple explanation by the doctor prior to the commencement of any physical examination would obviate such misconstrual in many cases.

■ Psychological Trauma

Any rough and callous physical examination, whether involving orifices or not, can be psychologically traumatic to the patient, especially when it is painful.

Similarly an intimate examination can be just as traumatic if it is done without a prior explanation, without exercising the necessary duty of care and without a tactful and considerate exposure of the patient's anatomy. This traumatic experience is more likely to occur in children and adolescents.

PREREQUISITES for an Intimate Examination

1. CONSENT

The canon of informed consent should be rigorously followed. The consent need not be written, as a verbal one is adequate.

In Malaysia the legal age of consent is 18 years, otherwise the consent would have to be obtained from the parent or guardian.

Consent is implied if the patient does not show any objection to the examination after hearing the doctor's explanation.

The need for clear communication regarding every stage of the physical examination cannot be over-emphasised.

The giving of consent does not preclude the presence of a chaperon.

2. CHAPERON

The presence of a chaperon is mandatory during the performance of an intimate examination, and she should preferably be a female clinic staff. An alternative chaperon may be the next-of-kin, if the patient consents. Where possible, proof of the presence of the third party should be recorded.

The presence of a chaperon not only ensures that propriety is observed by both the patient and the doctor, but also protects the doctor from any false or misplaced accusation of misconduct by the patient.

Among the Muslims the presence of a chaperon would also eliminate the possibility of the doctor being charged with being in close proximity with the patient (*khalwat*).

Footnote

In performing an intimate physical examination, there is a need to consider the patient's cultural and religious beliefs. For example, to the patient who wears a veil (*purdah*), even an exposure of the face or abdomen could be regarded as an intimate examination. In such a situation the doctor has to have more consideration and understanding of the patient's modesty.

Prepared by

MMA Kelantan Branch

20 November 1997

References:

1. The MDU Annual Report 1987
2. The MDU Annual Report 1989
3. The Journal of the MDU Vol 8 No 3 1994
4. The Journal of the MDU Nov 1997