

## Emergency physician's poor consent, communication and documentation lead to immediate suspension



### Key messages from the case

A patient failing to object to and permit an examination does not mean the requirements of informed consent have been met – particularly in the context of intimate examinations.

Documentation and good communication with other health professionals is also key – this can help establish what occurred and the clinical rationale for the examination if there is ever any misunderstanding.

### Details of the decision

This was a Tribunal decision reviewing the decision of the Medical Board to take immediate action as an interim step pending the outcome of an investigation into the patient's complaint.

### Lack of informed consent for examination

Dr R was an emergency medicine specialist working in several hospitals. He examined a female patient who had presented complaining of chest pain, having been referred by her GP with a preliminary diagnosis of muscular / soft tissue pain.

The patient complained Dr R had inappropriately touched her breast. She claimed that having told her that her x-ray and blood tests were fine, Dr R "told" her he would do a breast check". She claimed that he did not ask for permission and at no stage did she consent to the examination. She claimed he also touched her on her right leg in a way she also felt was inappropriate.

The tribunal accepted Dr R believed he had a clinical reason for the breast examination.

However, the standard of practice was below that expected due to:

- poor communication of the clinical reason for a breast examination in the context of an emergency presentation
- failure to obtain her informed consent.

The tribunal considered the patient should also have been offered a chaperone, but Dr R's failure to do so was not a breach of professional standards.

### Poor documentation

Dr R did not document the examination, or whether he obtained consent, in the patient's clinical notes.

The tribunal also considered that Dr R's standard of practice was below that expected due to his:

- failure to document the rationale, patient's consent, results of examination, and
- failure to communicate with patient's GP or other treating doctors.

### Outcome

The Board initially took immediate action to suspend Dr R's registration. It later revoked the suspension and imposed conditions – including supervision conditions and a ban on contact with female patients. These conditions effectively meant Dr R was

unable to practise since he could not avoid female patients while working in an emergency department.

The tribunal accepted that the examination could have been motivated by genuine clinical motives. It considered that although Dr R's actions on this occasion were below the expected standard, there was no evidence he posed a risk to other patients.

The tribunal set aside the Board's conditions. The alleged deficiencies in Dr R's practice were not sufficient to base a reasonable belief as to a serious risk.

However, as this was an interim decision, an investigation into the initial complaint continued and Dr R undertook to use a practice monitor for female patients until the complaint was resolved.

### Insight and education

Between the time of the complaint and the hearing in the tribunal, Dr R undertook further education in relation to effective communication, use of chaperones and the code of conduct. He changed his practice to include the use of a practice monitor for intimate examinations, pending the outcome of the investigation.

### Key lessons

Never assume a patient's understanding, or consent to an intimate examination.

Respectful professional practice requires you to:

- Carefully assess whether an intimate examination is needed.
- Clearly explain the medical reasoning to the patient in a way they can understand.
- Check that the patient understands and give them an opportunity to ask questions or object.
- Explain what you are doing and seek express consent at each stage of the examination.

### References and further reading

Avant factsheet: [Boundary issues 2020](#)

Medical Board of Australia Guidelines: [Sexual boundaries in the doctor-patient relationship](#)

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