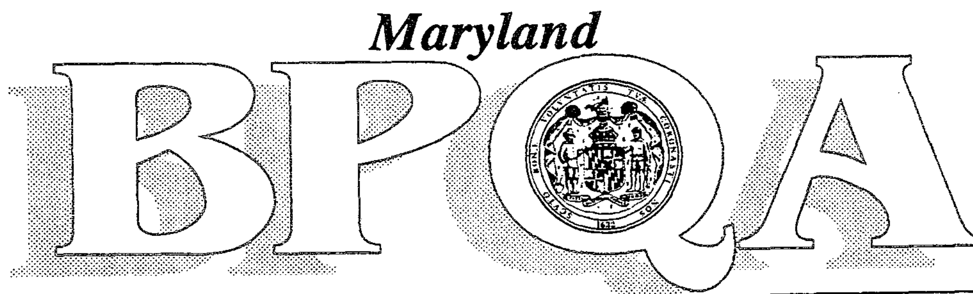

NEWSLETTER

Maryland Board of Physician Quality Assurance

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PHYSICIANS' USE OF CHAPERONES

by: Cheryl Winchell, M.D.

About half of patients' complaints to the Board alleging physician sexual misconduct deal with non-consensual doctor-patient sexual contact. Board members repeatedly remark that such claims would have little credibility if the physician had used a chaperone. Claims range in severity from charges of rape to allegations of fondling under the guise of appropriate physical examination. These latter claims are particularly troublesome because they often boil down to a "she said/he said" situation in which the patient alleges improper touching and the physician responds that the patient misinterpreted his appropriate and proper physical examination.

Although it is widely presumed that most male physicians utilize a chaperone when examining their female patients, in actuality there is great variability in how often and when a chaperone is used. Those physicians who always use a chaperone generally do so because they are concerned about medical-legal issues. Allaying patients' anxieties and having an extra set of hands to assist the physician are relatively minor considerations compared to their concerns about avoiding a damaging claim of sexual misconduct brought by a disgruntled or mentally unbalanced patient. At the other end of the spectrum are the physicians who never utilize a chaperone. They might cite financial or staffing constraints or say that having a third person in the room impairs the doctor-patient relationship or compromises patient confidentiality. Then there is a middle group of physicians who use chaperones sometimes, particularly if the patient is new to their practice or they "sense" the patient might be a problem. With established patients they forego a chaperone altogether, utilize one only for pelvic examinations, or they may just leave the door ajar as though that confers protection or comfort to either party.[1]

What about patients' attitudes toward the use of chaperones? Some patients mistakenly think that a chaperone is "required by law" and would presume impropriety if they were examined without a third person in the room. But many female patients are just as comfortable to forego a chaperone and male patients almost never want a third person in the room during more intimate examinations regardless of the sex of the physician. Most women desire a chaperone for a pelvic examination when the physician is male, but have no preference or would decline a chaperone if the physician is female. **Those patients who desire a chaperone feel that the third person should be present for the entire exam, not just the pelvic exam. The group of patients most likely to prefer a chaperoned exam is teenaged girls being examined by a male or female physician, particularly if the physician is new to them, and the patient has not had a pelvic examination done before.** They want a family member or nurse to be present but may be uncomfortable making such a request unless a chaperone is offered.[2-4]

The State Medical Board of Ohio advocates as its policy that "a third party be readily available at all times during a physical examination and that the third party be actually present when the physician performs an examination of the sexual reproductive organs or rectum. It is incumbent upon the physician to inform the patient of the option to have a third party present. This precaution is essential regardless of physician/ patient gender."[5] **It seems prudent to follow the policy of always offering a chaperone. However, if the offer is declined and the physician proceeds without a chaperone, the physician is still open to a claim of sexual impropriety.**

In all but one of the sexual misconduct cases charged by the BPQA, the physician charged was male, the patient was female, and the doctor-patient contact was unchaperoned. At the time the Board brings charges against a physician it becomes public record. Unless the physician has purchased special malpractice coverage, generally their insurer does not provide legal counsel for administrative hearings such as those conducted by the Board. If the physician is sued in the civil courts with the patient alleging sexual assault and seeking damages, the insurer will provide a defense for the physician but will not indemnify him if the court awards compensation to the victim. If the physician is criminally charged with sexual assault by the state, neither defense counsel nor indemnification is provided by one's malpractice policy. **Given the magnitude of the consequences a physician may suffer if a patient makes a credible claim of sexual misconduct or assault, physicians should give serious thought to their policies on the use of chaperones in their practices.**

References:

1. Jones R.H. "The use of chaperones by general practitioners." *J R Coll Gen Pract* 1982\3; 33:25-6.
2. Jones R. "Patients' attitudes to chaperones." *J R Coll Gen Pract* 1985; 35:192-3.
3. Penn MA. "Patients' attitudes regarding chaperones during physical examinations." *J Fam Pract* 1992; 35:639-643. 1985; 35:192-3.
4. Patton, DD, Botke S, Horner RD. "Patient perceptions of the need for chaperones during pelvic exams." *Fam Med* 1990;22:215-8.
5. State Medical Board of Ohio. Your report (news letter). Columbus, Ohio: State Medical Board of Ohio, 1989; 3 spring/summer:3.

Dr. Cheryl Winchell is the Secretary/Treasurer of the Board and Editor of the BPQA newsletter. An active member of the Board since 1991, Dr. Winchell is a family practitioner in Montgomery County.

SEXUAL MISCONDUCT COMPLAINTS ON THE INCREASE

Sexual misconduct complaints have become the third most common reason for BPQA opening an investigation of a physician. Perhaps because of the recent intense media coverage of sexual exploitation as well as the trend toward victims confronting their abusers by going public with their complaints, patients appear to be more willing to make allegations of sexual misconduct against their physicians. BPQA has brought charges against several physicians when only one patient has made a credible allegation of sexual impropriety. Penalties for sexual misconduct tend to be severe. A period of suspension, mandatory psychiatric counseling, and prolonged probation with restrictions on practice setting are often imposed. If the Board determines that the physician is not a candidate for rehabilitation, permanent revocation of licensure has been imposed.

The enclosed brochure, "Medical Treatment Never Includes Sexual Contact," is endorsed by BPQA and reflects the Board's posture on this issue.

CLINICAL NOTE

by:
Lawrence A. Jones, M.D.

Occasionally the Board recognizes medical conditions which tend to generate an unusually high number of complaints. One of these problems, within the specialty of urology, is testicular torsion. This condition, which is most common during adolescence, occurs in approximately one in 4000 males under age 25. Although testicular torsion can occur any time from in utero to well into the patient's thirties, it is most common during that period when the testes is undergoing relatively rapid increase in size. Most often it is associated with a narrow mesenteric attachment of the cord to the testis and epididymis thus producing the classic "bell clapper deformity."

The patient will usually present with pain and swelling in the affected hemiscrotum. Pain is often abrupt in onset and occasionally associated with nausea and vomiting. On physical examination, the cord is often shortened and the testicle high riding. The physician may have difficulty palpating the epididymis. Detorsion will occasionally occur at the time of examination. Differential diagnosis includes acute epididymitis, torsion of the appendix testis, hematocele, hydrocele, hernia, and testicular tumor.

Torsion of the testis is a true urologic emergency requiring prompt evaluation and treatment. Unnecessary delay in diagnosis can result in infarction and loss of the testicle. Evaluation includes prompt physical examination and detorsion if possible. Urinalysis will help rule out an infectious process. If available, radioisotopic scan can be of benefit. I have found that testicular sonogram with doppler flow capability is extremely useful in early diagnosis. The procedure's reliability is operator dependent to a great degree and not quite as accurate on the small, pre-pubertal testicle. But in my personal experience it has been very helpful. If any question still exists after careful evaluation, surgical exploration is necessary. If a viable testis is found, the three point fixation orchiopexy on both the involved and contralateral side is indicated. If the testis has undergone infarction, then orchiectomy is usually necessary.

"It is a wise axiom that an acutely painful, swollen testis in an adolescent is due to torsion until proven otherwise at surgery."[1] The urologic standard of care for treatment of testicular torsion requires prompt diagnostic evaluation, and if the diagnosis of torsion is made or even suggested, then emergency surgical exploration is necessary. Failure to promptly personally examine the patient has led to testicular loss and subsequent litigation.

Reference:

1. Campbells Urology, 1992, pp 1566-1157, 6th Edition, Vol. II.

Dr. Jones, a Board member since 1988, is a urologist in Washington County.

BOARD ADVISORIES

RESPIRATORY CARE PRACTITIONERS

The first renewal of certification of respiratory care practitioners commenced in March. Current certificates expire May 30, 1994, and continuing education credits are waived for this renewal only. Thereafter, 16 hours of continuing education will be required for subsequent renewals. Currently, Maryland has more than 1,800 certified respiratory care practitioners.

If you have not received your renewal packet, please contact the Board. If you have moved but have failed to provide the Board with your current address, your packet may be delayed or may be undeliverable.

CHANGES FOR PHYSICIAN LICENSE RENEWAL 1994

New Forms! A shorter renewal form will be sent out for the first time.

New Fee! In addition to your renewal fee, the Maryland Health Care Access and Cost Commission (HCAAC) has assessed each renewing physician a user fee. The fee is estimated at $70. BPQA is required to collect this fee as part of the renewal process. You are required to pay it to fund HCAAC. It's the law.

New address! Completed renewal forms must be sent to P.O. Box 17314, Baltimore, MD, 21203-7314.

You CANNOT expedite a late application by coming to the BPQA offices. Save yourself trouble by renewing promptly and avoiding the $50. late penalty.

REPORTS REQUIRED BY BPQA FROM HEALTH FACILITIES

These are commonly asked questions about reports required under MD Health Occ. Code Ann. Sections 14-413 and 14-414. The same apply to reports made by "health related institutions" such as nursing homes, and "alternative health systems" such as HMO's.

Q: Should a hospital report to BPQA that a new applicant to the medical staff has been denied appointment?
A: Yes, if the denial was based on a question of the applicant's competency or morality.

Q: If a new applicant withdraws his/her application before the Credentials Committee considers it, is this reportable?
A: No.

Q: If a physician is denied specific privileges on initial appointments because he/she lacks experience in a particular medical procedure, is that reportable?
A: No, if a physician's privileges are restricted because the doctor has not met a minimum level necessary to assure continued competence, (i.e., must perform five procedures per year to show competency, etc.) and this reduction is not due to any bad outcome.

Q: Are "administrative" reductions (i.e., delinquent medical records) reportable actions?
A: This depends. Certain "administrative" reductions can be for reasons of incompetence. For example, a failure to complete medical records can be so egregious as to constitute incompetent practice. When in doubt, the hospital should report to BPQA giving the details. The Board will determine whether the basis for the action falls under Health Occ. Article 14-404.

Q: If privileges are changed from active to consulting at a physician's request, and this change is NOT related to performance issues, is this reportable?
A: No.

Q: If a physician is "slowing down" and wishes to voluntarily limit his/her privileges, is this reportable?
A. No.

Q: When is an action reportable?
A: As soon as an action changing the individual's privileges is taken -- **NOT** after the appeal process.

Q: If a new physician's probationary period is extended past the usual one year, is this reportable?
A: A report should be made only if the extension is based on problems with the practice of medicine, competency or morality.

Q: Are suspensions of less than 30 days reportable?
A: Yes.

Q: Are mandatory consultations considered a change of privileges and therefore reportable?
A: Yes, if the requirement singles out one individual as opposed to a general requirement applying to the medical staff as a whole.

Q: If a physician is appointed to the staff and it is learned during the provisional appointment period that he/she lacks the level of knowledge needed to treat the hospital's patient mix, is failure to grant him/her full appointment reportable?
A: Yes.

Q: Does the report to BPQA on the Board form satisfy the hospital's obligation to report to the National Practitioner Data Bank?
A: No. Reports to the National Practitioner Data Bank are governed by federal law (U.S.P.L. 99-660) and regulations (45 CFR Part 60) and use a different form -- "Adverse Action Report." The federal regulations require that the Adverse Action Report form be sent to the Board which, in turn, sends the Adverse Action Report form on to the National Practitioner Data Bank.

Q: Is there a penalty for not reporting?
A: Yes, failure to report may result in a civil penalty of up to $5,000 (Health Occ. Article 14-413 (f)).

Q: When in doubt about the requirements to report, what should a hospital do?
A: Contact BPQA and let the Board decide.

Q: Whom do hospitals contact?
A: Margaret T. Anzalone, Deputy Director (410-764-4780) **OR** Barbara K. Vona, Esquire, Chief of Compliance Division (410-764-2475), Board of Physician Quality Assurance, 4201 Patterson Avenue, P.O. Box 2571, Baltimore, MD, 21215-0095.

BOARD DISCIPLINARY ACTIONS
OCTOBER 1 - DECEMBER 31, 1993

HALLOWITZ, Robert A., M.D., License #D16524. **The physician's license is revoked, and the physician will not be eligible to petition the Board for reinstatement of his license earlier than five years from the effective date of the order.** The physician engaged in sexual relationships with patients, involved patients in cultism and provided professional services while using narcotics. Effective 7/28/93. ***(Note: The above information is a correction to the report as it appeared in the December 1993 newsletter.)***

PETIT, Anne Ingrid, M.D., License #D42374. **Reprimand with conditions.** The physician shall not practice medicine in the State of Maryland until she appears before the Case Resolution Conference of the Board and obtains approval of the Board. The physician was disciplined by the New Jersey Board of Medical Examiners for an act that would be grounds for disciplinary action under the Maryland Practice Act. The physician issued prescriptions for a patient in the name of another. Effective 10/5/93.

WALLS, Philip D., M.D., License #D17832. The **stay of suspension of the physician's license, effective December 16, 1992, continues in force and effect, and the three year period of probation with conditions imposed effective March 26, 1992, continues with conditions.** The physician's practice shall be limited to that of a staff psychiatrist at a Veteran's Administration Medical Center under supervision. The physician has complied with conditions precedent for a limited stay of the suspension of his medical license. Effective 10/5/93.

LEVITT, Jeffrey, M.D., License #D29875. **License suspended for three years from effective date of the order with conditions imposed during the period of suspension.** The physician was found guilty of immoral and unprofessional conduct because he engaged in sexual relationships with two patients while he continued to provide their gynecological services. Effective: 10/13/93.

CARPENTER, James B., M.D.. License #D27401. **The application for reinstatement of a medical license is denied.** The physician violated conditions of his disposition agreement in regard to alcohol abuse problems. Effective: 10/18/93.

EMICH, Charles H., M.D., License #D25100. **Probation for one year commencing July 21, 1993, subject to conditions.** The physician was disciplined by a licensing or disciplinary authority for an act that would be grounds for disciplinary action under the Maryland Medical Practice Act, that is, maintaining two drug dependent patients on various controlled substances of high abuse potential. Effective: 10/18/93.

NATHANSON, Barry, M.D., License D23454. **The Board accepted a revocable surrender of the physician's license in lieu of the Board considering issuing a summary suspension because of his inability to work competently due to illness.** Effective: 10/18/93.

HARRIS, Craig E., CRT, Certification #L-1411. **Surrender of certification as a Certified Respiratory Therapist (CRT).** The surrender was prompted by an investigation into the CRT's termination from a hospital based on the following: neglectful performance of duties which could have resulted in injury to a patient, deliberate falsification of official hospital record, and theft of hospital property. Effective: 10/26/93.

SIMON, Edward J., M.D., License #D12082. **Irrevocable surrender of the physician's license to practice medicine.** The physician was prompted to surrender his license because of information regarding a law enforcement investigation of the physician's prescribing practice of controlled dangerous substances to patients without medical indication, without physical examination, and without medical record keeping. Effective 10/27/93.

SOLOMON, Neil, M.D., License #D12963. **Irrevocable surrender of the physician's license to practice medicine.** The physician's decision to surrender his license, in lieu of a summary suspension, was prompted by an investigation and because he used his position as a physician to instigate sexual relations with at least eight patients. Effective 10/27/93.

OWENS, Eugene H. Jr., M.D., License #D12607. **The physician agreed to a surrender of his medical license.** The physician failed to meet the appropriate standards of care as determined by appropriate peer review in his practice of general medicine. Effective 12/31/93.

JACKSON, Howlett, M.D., License #D20993. **The physician's license was reinstated, and the physician was placed on probation for three years subject to conditions.** Effective 11/2/93.

BROWN-CHRISTOPHER, Cheryl, M.D., License #D27848. **The public charges against the physician are dismissed.** The matter was closed contingent upon the physician agreeing to prepare and utilize an in-depth consent form for all her patients whom she treats with facet joint injections or any other non-traditional medical care, if any. Effective 11/9/93.

BEALS, Paul V., M.D., License #D25922. **Suspended for a period of three years; suspension immediately stayed; probation for a period of three years subject to conditions.** The physician failed to meet appropriate standards of care as determined by peer review in his medical practice. Effective 11/10/93.

FLOWERS, John L., M.D., License #D40524. **Modifications to previous Consent Orders of October 1, 1990, and July 30, 1991.** The physician has complied with all terms of the previous consent orders, and therefore specified conditions of those orders are of no further force and effect. The remaining conditions are either modified or remain in full force and effect, and probation continues until October 1, 1995. Effective 11/16/93.

HAMILTON, John M., M.D., License #D04895. **Reprimanded and the period of probation is extended.** The physician violated two conditions of his probation. Effective 11/16/93.

RAJAN, V.K. Suresh, M.D., License #D23312. **Reinstatement of license subject to conditions.** The Board concluded that the physician had complied with the conditions precedent to requesting a stay of the suspension, that is, participating in psychotherapy, satisfying all continuing medical education credits, fulfilling all financial obligations associated with his previous order, arranging for a Board approved supervisor for his practice and submitting a detailed proposed practice setting. Effective 11/17/93.

CALTRIDER, Robert S. Sr., C00418. **Summary suspension of registration.** The Board had reason to believe that this physician assistant prescribed drugs for illegal or illegitimate medical purposes. Effective 11/23/93.

BERMAN, Merrill I., M.D., License #D00603. **The stayed suspension is terminated, probation is terminated, and the physician's license is reinstated.** The physician has complied with all the terms of the consent order of October 12, 1989. Effective 12/7/93.

OVER, George R., Applicant. **Application for certification as a physician assistant is denied.** The applicant fraudulently or deceptively used a certificate by altering an expired certificate. Effective 12/7/93.

TOLLIVER, John D., M.D., License #D36868. **Reprimanded and placed on probation for a period of five years subject to conditions.** The physician falsely answered a licensure question as to conviction of a crime. Effective 12/7/93.

STERRETT, Michael J., Applicant. License #D45461. **Granted a license to practice medicine and was reprimanded.** The applicant's activities while employed from 1988 through 1991 exceeded the permissible scope of activities for an unlicensed medical practitioner and therefore constituted the practice of medicine without a license. Effective 12/7/93.

MILLER, Gerald A., M.D., License #13275. **Suspension for a period of three months, effective February 1, 1994, with conditions.** The physician failed to meet appropriate standards as determined by appropriate peer review in his practice of ophthalmology. Effective 12/14/93.

MOSTAAN, Mehrdad, M.D., License #D24061. **Revocation is terminated. The physician's license is reinstated with probation subject to conditions until December 31, 1994.** The Board reinstated the physician's license based upon evidence of rehabilitation by his community service with the Red Cross in compliance with his Federal probationary requirements. A probationary condition imposed by the Board is that the physician comply with the terms and conditions of probation imposed by the Virginia Order for reinstatement. Effective 12/15/93.

YOUNG, Henry A., M.D., License #D33875. **Revocation.** The physician failed to meet the appropriate standards of care as determined by peer review in his practice of neurosurgery. Effective 12/15/93.

COLWELL, Edward J., M.D., License #D15081. **Reprimand.** The physician demonstrated unprofessional conduct in the practice of medicine when he presigned death certificates. Effective 12/15/93.

HUGHES, Donald W.O., M.D., License #D05341. **Probation imposed by an Order dated June 30, 1981, was terminated.** The physician is no longer engaged in the practice of medicine and was not otherwise in violation of the terms of probation of the original consent order. Effective 12/21/93.

DE LA ROCHA, Manual, M.D., License#D02105. **Probation imposed by the final order, dated February 2, 1992, is terminated and the license is reinstated without restrictions.** The physician satisfactorily complied with all terms of his probation. Effective 12/21/93.

PANAYIS, Artemis H., M.D., License #D10764. **The probation imposed by the final order of June 17, 1980, was terminated.** The physician is no longer engaged in the active practice of medicine, is engaged in teaching and has not violated any conditions of his consent order. Effective 12/21/93.

MILLER, Ted, D.O., License #H29971. **Reprimand and placed on three years probation subject to conditions.** The osteopath engaged in inappropriate touching during a patient's exam which constituted unprofessional conduct. Effective 12/21/93.

SMITH, Clarence Jr., License #D30878. **Reinstatement of license subject to terms and conditions.** The physician received probation before judgement subsequent to his arrest for possession of cocaine and heroin. He was placed on supervised probation with the special condition that he continue with his physician rehabilitation contract with the Medical and Chirurgical Society of Maryland. Effective 12/21/93.

SOUDAH, Truman F., License #D18966. **Suspension for six months beginning January 1, 1994. The suspension was stayed on March 31, 1994, and the physician was placed on probation for three years beginning April 1, 1994, subject to conditions.** The physician surrendered his Ohio license while under investigation for an act that would be grounds for disciplinary action in Maryland, specifically immoral and unprofessional conduct in the practice of medicine, in that the physician admitted he engaged in sexual relations with a patient while he continued to provide gynecological services. Effective 12/21/93.

KIM, Young Cue, M.D., License #D29976. **The Board accepted the irrevocable and public surrender of the physician's license.** The surrender had been prompted by an investigation which revealed that on or about November 27, 1991, the physician surrendered his North Carolina license because of a North Carolina investigation of overutilization of office tests and procedures. Effective 12/21/93.

FARSAII, Asghar, M.D., License #D40392. **Reprimand with condition.** The physician was disciplined in West Virginia for an act that would be grounds for discipline in Maryland, specifically, for the substandard treatment he rendered regarding a balloon dilation of the prostate. Effective 12/21/93.

FARSAII, Asghar, M.D., License #D40392. **Suspension for six months; suspension stayed subject to conditions.** The physician failed to comply with a condition of a West Virginia consent order. Effective 12/21/93.

JUNG, Ha Yong, M.D., License #D28993. **Revocation of license.** The physician entered a guilty plea pursuant to North Carolina v. Alford 400 U.S. 25 (1970) to one felony count of medicaid fraud. Effective 12/28/93.

ADKINS, R. Thomas, Jr., D.O., License #H43718. **Summary suspension of April 28, 1993, is vacated; license to practice medicine is reinstated; suspension retroactive to April 28, 1993, suspension stayed and probation for five years from December 28, 1993, subject to conditions.** The respondent was found guilty of unprofessional conduct in the practice of medicine, was mentally incompetent, habitually intoxicated and was addicted to, or habitually abused a controlled dangerous substance as defined in Article 27 of the Annotated Code of Maryland. Effective 12/28/93.

AMAR, Leroy J., M.D., License #D17949. **License remains subject to conditions of the July 8, 1992, Consent Order with an increase of the number of hours of community services to be performed per month during the remaining months of his five years probation.** The physician had been charged with a violation of probation because of his failure to comply with the community service requirement of his Consent Order. Effective 12/28/93.

PATEL, Kanaiyalal, M.D., License #D21799. **Suspension of license.** The physician pled guilty to one count of bribery in United States District Court for the District of Maryland. Effective 12/28/93.

ROSS, Alan J., M.D., License #D22050. **Suspension for one year; suspension is immediately stayed, a fine is assessed, and probation for three years from the effective date of the order subject to conditions.** The physician failed to meet appropriate standards as determined by appropriate peer review for delivery of quality medical and surgical care in his practice of obstetrics and gynecology. Effective 12/28/93.

WASSIF, Anis M., M.D., License #D12445. **Reprimand with probation for a period of three years subject to conditions.** The Board concluded as a matter of law that the physician was guilty of unprofessional conduct in the practice of medicine, and willfully made or filed a false report in the practice of medicine in the field of anesthesiology. Effective 12/28/93.

MUSTAFA, Jamal D., License #D42875. **Reinstatement of license with conditions.** Approximately one year after surrendering his license, the physician, upon his petition, was granted reinstatement with conditions. Effective 12/28/93.

NABAVI, Mehdi, M.D., License #D25180. **Reprimand.** The Virginia Board censured the physician for an act that would be grounds for disciplinary action under the Maryland Medical Practice Act, specifically inappropriate prescribing practices. Effective 12/29/93.