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Healthcare Briefing

Solicitors

# Chaperones- A help or a hindrance?

In the increasingly litigious world that we live in, healthcare practitioners face a minefield of dangers stemming from a consultation with a patient. None can be said to be more damaging both in a professional and personal capacity, than an allegation of sexual assault arising from a one to one consultation with a patient. One solution is the use of a chaperone.

## Background

The issue of chaperones was brought to the fore following the case of Clifford Ayling. Dr Ayling was convicted in the Crown Court of 12 counts of indecent assault relating to 10 female patients and was sentenced to four years imprisonment. His name was placed indefinitely on the Sex Offenders' Register and he was subsequently erased from the medical register by a GMC panel on 15th June 2001.

An independent statutory inquiry was subsequently set up investigating the surrounding circumstances of Dr Ayling's conviction. During the course of this investigation, the role of a chaperone was labelled as "ambiguous[1]". It was not actually clear what constituted a chaperone nor what their role involved. The term "Chaperone" was never defined.

[1] 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, p 125

## Role of a chaperone - who? what? when?

The NHS Clinical Governance Support Team in their Guidance on the Role and Effective Use of Chaperones in Primary and Community Care Settings[2] attempted to define a "Chaperone". This guidance has formed the basis of guidance papers of various NHS Trusts around the country. The guidance also looks into the context in which a chaperone operates.

Halton and St Helens NHS Corporate Policy Document on Chaperones has defined a chaperone as "a person who will accompany the patient to provide support during an examination." There evidently appears to be no qualification necessary or specialist knowledge required on the part of the chaperone.

The NHS Clinical Governance Guidelines have divided chaperones into two classes, an informal chaperone and a formal chaperone. They also state that it is preferable to gain an understanding from the chaperone as to how they see their role. The very notion of having to check the functions of someone to whom you have in some way assigned responsibility arguably seems strange.

An informal chaperone is seen as being someone familiar to the patient, whose aim it is to reassure the patient and provide support during the examination. Whilst the logic of an informal chaperone is clear, by

[2] http://www.cgsupport.nhs.uk/downloads/Primary_Care/Chaperone_Framework.pdf

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allowing a friend and/or family member into an examination, the practitioner is creating a potential breach of confidentiality, although one could argue that implied consent has been given for any treatment deemed foreseeable at the outset, in that the patient has been responsible for introducing the chaperone in the first instance. However, given that the examinations necessary in a consultation may change at any time, at what point should the practitioner ask the patient to decide who is to chaperone and for what procedures?
It could be argued that an informal chaperone will, in most cases, be lacking a sufficient knowledge base in order to form an objective judgement as to the suitability of examinations proposed and carried out. In any event, this will depend as to whether a chaperone is considered a silent witness to the procedure or an active participant in it.

A formal chaperone would appear to consist of a clinical health professional who may be trained to have a specific role in the examination whether it be assisting with the undressing of a patient, or assisting in the procedure itself. To avoid unnecessary embarrassment, the NHS Clinical Governance guidelines advocate the use of a chaperone of the same sex as the patient, and the giving of the patient the opportunity to decline a particular person as a chaperone should they not feel comfortable with them. It is important to note that same-sex chaperones should be used where the chaperone is in direct contact with the patient. To exclude a chaperone of the opposite sex with the intent that no contact is made with the patient could have sex discrimination consequences for the practitioner. In any event, it could be argued that the majority of healthcare professionals would need a plethora of chaperones on stand-by in the event that a particular patient decides that he/she is not comfortable with those on offer.

In line with the NHS Clinical Governance guidance, a patient should be advised as to the option of a chaperone when booking the appointment, however would it not be more sensible to send literature to patients when they register with the practise, informing them as to the meaning, use and availability of chaperones? Healthcare practitioners could then make a subjective assessment as to which patients may require chaperones in advance of an appointment.

The NHS guidance recommends that a chaperone is offered prior to any consultation or procedure. Any refusal by the patient must then be noted down in the patient notes. Although a chaperone will routinely be offered and required for intimate examinations, namely those comprising the breasts, genitals or anus, it may be that a female patient is uncomfortable with the touch of a male practitioner without the presence of another person in all circumstances, something which would not be apparent unless that patient had previously been fully informed of the options open to her.

## Conclusions

The core problem facing the issue of chaperones is a lack of consistency. The reason for a failure to provide a definition, it would seem, is confusion as to the reasons for employing chaperones in the first place.
One possible solution would be to formalise the role of chaperones as distinct from a supportive friend/family member. It should also be borne in mind that by formalising the role of chaperones, a regulatory body would be needed to manage any issues arising in practice, and the issue of funding would need to be considered. Practitioners must continue to offer chaperones as an option, but should make it clear to the patient from the outset of the course of treatment. By merely waiting until the appointment, it may be too late.

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**July 2008**