



Governor Brian Schweitzer

# Montana

## Department of Labor and Industry

### Business Standards Division

#### STATEMENT ON THE USE OF CHAPERONES IN THE EXAMINING ROOM

Using nurses or medical assistants as chaperones in the examining room has long been recommended for physicians performing pelvic and breast examinations. In the last decade, however, the Board has received an increasing number of complaints of sexual impropriety by physicians of all specialties, during examinations of other kinds. Montana law states that "Commission of an act of sexual abuse, misconduct or exploitation related to the licensee's practice of medicine," is "unprofessional conduct," for which the physician's license may be disciplined, up to and including revocation. Administrative Rules of Montana, Rule 24.156.625(o); Montana Code Annotated Sections 37-1-312, and -319.

Allegations of sexual misconduct are particularly difficult to investigate and resolve if there is no witness to the physician/patient interaction. Few physicians believe they are or can be perceived as threatening to their patients. But, as any physicians who has been the target of a complaint of this nature will say, it is very hard to know in advance who may be offended, and what behavior may be considered offensive by the patient. (For example, the Board has received one complaint about the way the physician auscultated the female patient's heart.)

The Board believes that many complaints, stressful investigations, and adverse outcomes could be avoided by physicians' routine use of chaperones in the examining room.

Physicians performing examinations in which the patient has little or no choice in who will provide the examination (e.g., the Independent Medical Examination for insurance carriers or employers), are at particular risk for allegations of improper behavior. There is little time to establish the trust necessary for the patient to be comfortable with the touching and prodding of a stranger whose interests may lie with the insurer, and not with the patient. Complaints can range from sexual misconduct or verbal harassment to intentional infliction of pain.

In such examinations, it is important for the physician's own protection to consider using a chaperone in the examining room.

Unless there is a third party present, the Board's determination of unprofessional conduct will rest on the credibility of the complainant versus that of the physician. If the patient's version of events is credible, the physician may regret not having used a chaperone. The same is true if the patient files a complaint on the incident with the Medical Legal Panel and the District Court; the outcome may depend heavily on a jury's assessment of the parties' credibility.

Other recommendations for avoiding misunderstandings during examinations include:

1. Sensitivity to patient dignity. The patient should not be asked to disrobe in the presence of the physician. The examining room should provide both auditory and visual privacy. Gowns, sheets or other protective apparel should be available to protect patient dignity and decrease embarrassment.
2. The physician should explain the necessity of the particular examination and the procedure the physician will follow, in order to alleviate the patient's fear and embarrassment as much as possible.
3. The physician and staff should exercise the same degree of professionalism and care when performing examinations or procedures when the patient is less than fully conscious.
4. The physician should be on the alert for suggestive or flirtatious behavior by the patient (including non-therapeutic dependence or transference), and should not permit a compromising situation to develop. The use of a chaperone could greatly assist the physician in these circumstances.

Most patients appreciate the use of chaperones. Some patients mistakenly believe that physicians are required to use chaperones for certain types of examinations. The Board has no such requirement, and failure to use a chaperone is not, without more, grounds for disciplinary action. The use of chaperones, however, is highly recommended, both for the physician's protection and the comfort of the physician's patients.

This "Statement" reflects the Board's recommendations, and does not purport to be a law, rule or regulation in itself.

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Montana Board of Medical Examiners