

Board Opinion Regarding Physical Examinations by Physicians

LEGAL AUTHORITY

This is a Board opinion issued pursuant to the Board's statute, KRS 311.602, to assist licensees in determining what actions would constitute unacceptable conduct under the provisions of KRS 311.595. The Board has decided to publish this opinion because it addresses issues of significant public and medical interest.

This opinion is not a statute or regulation, and does not have the force of law.

STANDARDS OF ACCEPTABLE AND PREVAILING MEDICAL PRACTICE RELATING TO PHYSICAL EXAMINATIONS BY PHYSICIANS

The Board has determined that the following principles constitute the standards of acceptable and prevailing medical practice relating to physical examinations by physicians.

Patient complaints of sexual misconduct by physicians are the most sensitive and difficult the Board investigates. The incidents are rarely witnessed. Allegations of sexual misconduct are particularly difficult to prove and can lead to public humiliation for both the patient and the physician involved.

Physicians will, of course, continue to routinely perform physical examinations in the course of patient care out of medical necessity and professional responsibility. In order to prevent misunderstandings and protect physicians and their patients from allegations of sexual misconduct, the Board offers the following opinion regarding physical examinations by physicians:

1. Maintaining patient dignity should be foremost in the physician's mind when undertaking a physical examination. The patient should be assured of adequate auditory and visual privacy and should never be asked to disrobe in the physician's immediate presence. Examining rooms should be safe, clean and well-maintained, and should be equipped with appropriate furniture for the examination and treatment (examining table, chairs, etc). Gowns, sheets and/or other appropriate apparel should be made available to protect patient dignity and decrease embarrassment to the patient while promoting a thorough and professional examination.
2. A third party should be readily available at all times during a physical examination, and it is suggested that the third party be actually present when the physician performs an examination of the sexual and 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.
3. The physician should individualize his/her approach to physical examinations so that the patient's apprehension, fear and embarrassment are diminished as much as possible. An explanation of the necessity of a complete physical examination, the components of that examination and the purpose of disrobing may be necessary in order to minimize the patient's apprehension and possible misunderstanding.

4. The physician and his/her staff should exercise the same degree of professionalism and caution when performing diagnostic procedures (i.e. electrocardiograms, electromyograms, endoscopic procedures and radiological studies, etc.) as well as surgical procedures and post-surgical follow-up examinations when the patient is in varying stages of consciousness.
5. The physician should be alert to suggestive or flirtatious behavior or mannerisms on the part of the patient and should not put him or herself in a compromising position.
6. The physician shall not exploit the physician/patient relationship for sexual or any other purposes. Moreover, such an allegation against a physician constitutes grounds for investigation on the basis of alleged unethical behavior.

Physicians should also be aware that any failure to conform to the principles of medical ethics of the American Medical Association constitutes unprofessional conduct, in violation of Board statutes. Current Opinion 8.21 of the AMA Code of Ethics provides,

From the standpoint of ethics and prudence, the protocol of having chaperones available on a consistent basis for patient examinations is recommended. Physicians aim to respect the patient's dignity and to make a positive effort to secure a comfortable and considerate atmosphere for the patient; such actions include the provision of appropriate gowns, private facilities for undressing, sensitive use of draping, and clear explanations on various components of the physical examination. A policy that patients are free to make a request for a chaperone should be established in each health care setting. This policy should be communicated to patients, either by means of a well-displayed notice or preferably through a conversation initiated by the intake nurse or the physician. The request by a patient to have a chaperon should be honored.

An authorized health professional should serve as a chaperon whenever possible. In their practices, physicians should establish clear expectations about respecting patient privacy and confidentiality to which chaperons must adhere.

If a chaperone is to be provided, a separate opportunity for private conversation between the patient and the physician should be allowed. The physician should keep inquiries and history-taking, especially those of a sensitive nature, to a minimum during the course of the chaperoned examination.

Adopted: March 2009