Terra pericolosa: medical student involvement in intimate patient examinations or procedures

Medical students continue to be involved in legally and ethically concerning intimate examination practices

Terra pericolosa was the cartographical term used to denote dangerous land — regions likely to put travellers in jeopardy. Despite the degree of governance and regulation in modern health care,[1-3] medical literature,[4] student-authored ethics reports[5,6] and the media[7] continue to document medical students being involved in legally and ethically concerning intimate examination practices. This article summarises the ethico-legal aspects of medical student involvement in patient care, and reviews international best practice and the factors which influence why medical students continue to find themselves in *terra pericolosa* situations.

Ethico-legal and governance issues

Through most of its history, medical ethics maintained a utilitarian focus, usually demonstrating scant regard for patient autonomy, with non-disclosure being the norm; it was not until the 1950s that the term "informed consent" was coined.[8] The 1980s and 90s saw the first publications questioning the ethics and legality of medical students performing examinations without consent, with students often raising their concerns about the status quo.[5,9]

The legal implications of performing an examination without consent are significant. Each state and territory's criminal codes define the elements that constitute an assault, as well as various categories, including sexual assault. In general, the term "assault" refers to both "common assault" and "battery", even though the two offences remain distinct entities. Common assault typically involves intentionally or recklessly causing a person to apprehend the imminent infliction of unlawful force, while battery refers to the actual infliction of force. The legal classifications all include lack of consent as part of their wording.

Consent to medical treatment is defined by Australian common law as having three conditions: it must be voluntary, be informed, and the individual must have capacity to provide consent.[10] Consent may be given in writing, orally or be implied.[3] An Australian Law Reform Commission report states: "If consent is not established, there may be legal consequences for health professionals. Under the law of trespass, patients have a right not [to] be subjected to an invasive procedure without consent or other lawful justification, such as an emergency or necessity."[10]

Although there is no legal mandate for written consent to be obtained for medical student involvement in intimate examinations or procedures, the principles for consent are that the riskier or more potentially litigious the procedure, the higher the standard should be to ensure that the person fully understands the nature of the procedure and that their consent can be attested to in writing.[3]

The Australian Charter of Healthcare Rights[11] notes that a health care recipient should "be treated as an individual, and with dignity and respect" and have "clear information about [their] condition, the possible benefits and risks of different tests and treatments, so [they] can give [their] informed consent". There is no information about health professional student involvement in their care.

The Medical Board of Australia code of conduct[2] defines the standards of conduct for medical doctors in Australia. The code states that regarding medical students, good medical practice involves "Making the scope of the student's role in patient care clear to the student, to patients and to other members of the health care team" and "Informing your patients about the involvement of medical students and obtaining their consent for student participation, while respecting their right to choose not to consent".

The Australian Medical Council provides a core curriculum for both medical students and all medical doctors in Australia.[3] It states: "Access to patients and their cooperation is a privilege that must not be taken for granted. … Before approaching any patient, students should generally first seek permission from those responsible for the immediate care of the patient." Regarding physical examination, the authors note that:

> … when conducting a physical examination, it may be appropriate to have a nurse or medical student present who is of the same gender as the patient. Under no circumstances should medical students conduct intimate examinations — including breast, genital or rectal examinations — without supervision or an accompanying nurse of the same gender as the patient. Students need to be specifically aware of the medical school policy in regard to intimate examinations.[3]

In 2018, the Medical Board of Australia published guidelines on sexual boundaries in the doctor–patient relationship.[1] These guidelines recognise that a patient's cultural values and beliefs may influence what they perceive to be an intimate examination, and that before conducting a physical examination, good medical practice involves "obtaining the patient's permission if medical students or anyone else is to be present during an examination or consultation" and that an "unwarranted physical examination may constitute sexual assault. This includes conducting or allowing others, such as students, to conduct examinations on anaesthetised patients, when the patient has not given explicit consent for the examination".[1]

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In summary, although Australian law is clear on the importance of consent and the implications of this regarding assault, current Australian medical governance makes some assumptions about medical school policies for intimate examinations and allows discretion regarding the requirements for written consent.

What we can learn from other countries

The recognition that medical students may be involved in unconsented intimate examinations[4,9,12] has resulted in the introduction of specific ethical codes and guidance in many jurisdictions. The United Kingdom and New Zealand have similar ethical codes to Australia.[2,12,13] The UK also provides detailed guidance on good medical practice for students.[13] NZ is the most prescriptive, with specific information regarding medical student involvement in patient care documented in a national consensus statement and their Code of Rights.[6,12]

The NZ experience provides useful insights into the challenges of protecting patient rights during intimate examinations or procedures. Malpas and colleagues[6] demonstrated that despite the national consensus statement's introduction and related legislation, students continue to be involved in unconsented intimate examinations. In response, the authors recommended the following system changes in NZ:

- review consent processes to include information for patients about health professional student involvement in their care, and include specific sections in procedural consent forms for student involvement;
- provide the public with more information about patients' rights and consent processes; and
- change the culture through increased emphasis on ethical leadership by senior health professionals in modelling best practice, and ensure zero tolerance/disciplinary processes for those who commit serious ethical breaches.[6]

Future directions

The UK General Medical Council states that "Professionalism is not about doing the minimum — it is about doing what is necessary to protect patients".[13] When judged against this standard, most health care systems appear to have gaps.

An individual's likelihood of engaging in a behaviour is influenced by three factors: their attitudes towards the behaviour, their perceptions of the social norms, and their perceived ability to perform the behaviour.[14]

Although contemporary medical education and ethics actively promote patient autonomy and informed consent, students can unfortunately find themselves working in what has been described as the "weak ethical climate within the clinical workplace".[4] Most medical education and psychological research indicates that students are strongly influenced by the cultural norms of their workplace and their supervisory relationships.[4,6,14,15]

Fifteen years after a landmark paper by Coldicott and colleagues,[9] Malpas and colleagues[6] and an accompanying student-authored editorial[5] reaffirmed that the most common problems with medical student involvement in intimate examinations and procedures are not aspects of rogue student behaviour, but continue to be students struggling with the "the incongruence of what is taught … and the reality and expectations of clinical practice",[5] with students narrating specific instances of being asked by their supervisors to conduct or remain present during intimate examinations without clear and/or adequately informed patient consent.

The NZ recommendations[6] should positively influence students, health professionals and public attitudes and behaviours. However, unless resources are embedded in health professional educational and clinical environments to promote and facilitate speaking up for patient safety, the evidence suggests that those at the bottom of the hierarchy rarely feel safe in speaking truth to power;[4-6,14,15] students will continue to be led into jeopardy.

The UK experience with the Francis enquiry[16] and other patient safety system failures provided the impetus to promote patient safety at national, local and medical school levels through General Medical Council guidance and initiatives such as "Speaking up".[13,17] To assist and empower students, some medical schools have developed web portals for their students to raise concerns.[18]

The lessons from the NZ work in this area and the UK initiatives indicate that although policies, processes and pedagogy are important, Australian health care and medical education providers should also critically examine their clinical workplace cultures and consider whether they adequately protect both patients and students.

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