NEW SOUTH WALES MEDICAL BOARD

POLICY

TITLE	Mandating the Use of Chaperones	**FILE REF**	03/52
NUMBER	C13.2	**MPA REF**	S66
CREATED	February 2003		
REVISED	August 2004, June 2007		

Background

From time-to-time the Board becomes aware of a medical practitioner facing criminal charges in the nature of sexual assault. In addition complaints alleging serious sexual misconduct may be made which may not necessarily result in criminal charges. As well as referring a complaint to the Health Care Complaints Commission for investigation, the Board's usual practice is to obtain preliminary information about the matter and consider whether or not urgent interim action should be taken. The Board has power to take action in the context of its jurisdiction to protect the public. This is done by convening an urgent Section 66 Inquiry under section 66 of the *Medical Practice Act, 1992*. Generally, the Board's delegates at the section 66 hearing will have no greater evidence than the laying of charges or in some cases information from the Commission or the complainant. The delegates appointed to conduct the inquiry must decide whether action is necessary to protect the life or physical or mental health of any person, by either suspending or placing conditions upon the practitioner's registration.

The Inquiry may determine that even though only a complaint has been made or there are criminal charges that have not been proved, in order to ensure that the public is protected from any risk, pending the full investigation of the matter, a condition or conditions be imposed requiring a chaperone to attend patient consultations with the practitioner concerned, in accordance with criteria relevant to the particular circumstances of the matter.

Prior to the Court of Appeal decision in the Litchfield matter, the use of a chaperone was regularly ordered both on an interim basis and as a public protective measure after the completion of a disciplinary hearing in the Medical Tribunal. The Litchfield case however, established that if a practitioner needed a chaperone to ensure the safety of the public then the practitioner should not be practising medicine. As a result, Medical Tribunals and PSC's no longer generally order the imposition of a condition requiring the practitioner to have a chaperone whilst practising, rather de-registration is the common occurrence.

Policy

Taking Litchfield into account, the Board's policy is that a condition imposing the use of a chaperone may be ordered as a result of a Board hearing – such as a Section 66 hearing, Schedule 1 Inquiry or Section 23 hearing – but only as an interim measure until a complaint has been investigated – not as a permanent public protective measure.

Issues to Consider

The important elements are:

1. the practitioner's employer or partner/s (or any subsequent employer or partner) must be aware of the need for a chaperone, to ensure that chaperone arrangements can be facilitated within the practice as well as ensuring that it may actually occur.

2. Confidence in achieving the protective intent of the condition/s is optimised when the chaperone is a Board-approved registered nurse employed for the purpose, either by the practitioner or by the practitioner's employer. A nurse, nurse practitioner, or enrolled nurse, who is currently registered, is accountable to independent professional standards and the Board approval process provides an information base which facilitates effective monitoring of the practitioner's compliance with the condition/s.

3. The chaperone must be acceptable to the patient, therefore a spouse or family member of the patient may fulfil the role of chaperone, in which case the Board needs to know the relationship to the patient, and be assured that the chaperone is over 18 years of age.

4. The chaperone cannot be a relative of the practitioner.

5. The chaperone needs to be apprised of the relevant condition/s and to understand the requirements of the role.

6. The chaperone must sign and date the Patient Log at the time of the consultation as evidence of the fact the chaperone attended the appointment. This constitutes the Chaperone Report which the practitioner must forward to the Board on a monthly basis.

7. Chaperone condition/s are monitored by the Board by comparing Medicare Australia data against the practitioner's declared Chaperone Reports.

Approval of Chaperone(s)

The following criteria are required unless overridden by an Inquiry considering a particular matter. In such a case the Inquiry must indicate in the conditions it imposes, specific requirements for the medical practitioner that differ from the Board's policy.

- The chaperone(s) nominated by the practitioner must be approved by the Board.

- A chaperone must be a nurse, enrolled nurse or nurse practitioner, who is currently registered.

- The chaperone(s) must be of the same gender as the at-risk patient group. In cases where there is a restriction with respect to both genders, there must be a chaperone of each gender available.
- The chaperone(s) must be over 18 years of age.
- The chaperone(s) must be independent of the doctor (i.e. not a relative or family member of the doctor).
- A person in an employment relationship with the practitioner (such as a receptionist) is not suitable because of a conflict of interest.
- The chaperone(s) cannot be another patient of the doctor or of the doctor's practice.