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Analysis of alleged sexual misconduct by physicians in the practice of medicine ☆



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KEYWORDS

Sexual assault;
Medical ethics;
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Abstract

Introduction: Some physicians are singled out for sexual misconduct in a professional practice. Knowledge of the characteristics of such cases may allow their prevention and the development of recommendations regarding this.

Material and methods: Review of the files for alleged offences against sexual freedom among the 11,273 complaints of the Council of Medical Associations of Catalonia (CMAC) and the judicial database 'vLex' (1985-August 2024).

Results: 76 cases were obtained, studying the present elements and comparing them according to resolution (conviction or acquittal).

Discussion: The sample size conditions the analysis. However, the difficult access to these cases and their relevance gives great value to the study. The elements presented should be evaluated in each specific case and their judicial treatment is subject to interpretation.

Conclusions: Better information is recommended regarding about the need for a physical exam, its consent, the need to remove clothing, the use of gloves, inappropriate comments and the presence of a witness is recommended.

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PALABRAS CLAVE

Agresión sexual;
Ética médica;
Conductas
inapropiadas;
Exploración física

Análisis de presuntas conductas sexuales inapropiadas de médicos en el ejercicio de la profesión

Resumen

Introducción: Algunos médicos son señalados por conductas sexuales inapropiadas en el ejercicio profesional. El conocimiento de las características de dichos casos puede permitir su prevención y la elaboración de recomendaciones al respecto.

Material y métodos: Revisión de expedientes por presunto delito contra la libertad sexual entre las 11.273 reclamaciones del Consell de Col·legis de Metges de Catalunya (CCMC) y la base de datos jurisprudencial «vLex».

Resultados: Se obtuvieron 76 casos, estudiándose los elementos presentes y comparándose según resolución (condena o absolución).

Discusión: El tamaño muestral condiciona el análisis. Sin embargo, el difícil acceso a estos casos y su relevancia confiere valor al estudio. Deben evaluarse los elementos expuestos en cada caso concreto y su tratamiento judicial está sujeto a interpretaciones.

Conclusiones: Se recomienda una mejor información acerca de la necesidad de una exploración física, su consentimiento, la necesidad de retirar la ropa, el uso de guantes, los comentarios inapropiados y la presencia de algún testigo.

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Introduction

Sexual misconduct by physicians in the practice of their profession may be defined as any behaviour which takes advantage sexually of the physician-patient relationship. The various codes of ethics in force in Spain¹ establish the ethical principles that should guide professional practice, urging physicians to “act with correctness and delicacy, respecting the patient’s privacy,” and that therefore they “should not participate in any activity that involves manipulating the patient’s will.” Consequently, any sexual misconduct constitutes a serious violation of medical ethics and deontology, which is why there is growing international interest in combating these circumstances.² Furthermore, it should be noted that the legislation related to crimes against sexual freedom was amended in Spain in 2022.³

Thus, sometimes, due to a misinterpretation of the privacy of the medical act itself by the patient or due to genuine inappropriate conduct by the professional, some doctors have been accused of alleged sexual misconduct in the context of their professional practice.

It is also a legal requirement for doctors to have a civil liability policy to address claims and cover compensation arising from harm in the exercise of their profession.⁴ However, these policies cannot be held liable for personal penalties imposed in these types of criminal claims. Some claims for alleged crimes against sexual freedom committed by doctors during the exercise of their profession are brought against the medical professional liability insurer, which, according to the technical requirements of the policy coverage, defends the accused doctors and therefore has information on these cases. The objective of this study was to understand the profile and characteristics of complaints for alleged crimes against sexual freedom, providing highly

useful data for addressing them from two perspectives: first, to prevent potential crimes against sexual freedom, and second, to develop recommendations to prevent false reports of these crimes.

Material and methods

Catalonia has a unique model for professional liability insurance (PLI). This is a comprehensive model of a joint voluntary insurance policy for physicians, members of the Consell de Col·legis de Medges de Catalunya (CCMC), and the Health Administration. The CCMC policy is the main private PLI insurance in Catalonia and covers nearly 27,000 physicians.⁵ The 11,273 CCMC files were reviewed from 1986 to August 2024, inclusive, and those whose reason for the claim was an alleged crime against sexual freedom were selected. The raw sample included 19 files, of which the three oldest files (1989, 1991, and 2005) were excluded due to lack of documentation. Subsequently, the legal database “vLex” was consulted using the search criteria: “sexual experience in medical consultation,” “abuse,” “assault,” and “reported doctor,” for the period from 1985 to August 2024. The aim was to compile rulings from all over Spain and ensure there were no duplicate cases.

The legal and clinical documents of each case were reviewed, recording data such as the age and sex of the complainant and the doctor, as well as their professional specialty. In addition, study-specific variables were recorded, such as consent and information provided to the patient; the presence of witnesses; the use of gloves; inappropriate comments; possible nudity; expressions of discomfort; penetration or touching of the pubic area/underwear; whether it was the first consultation; the doctor’s acceptance of the facts; whether the consultation

involved surgery, and the existence of a medical history. When the variable was not clearly defined, it was recorded as "undefined."

Results

Sixteen cases were obtained from the CCMC database and 60 from the vLex case law database, with an uneven distribution over time. The first recorded case was in 1985. The variables analysed are presented in Table 1, while their comparison according to whether the cases resulted in a conviction or acquittal is presented in Table 2.

The analysis of the specialty and age of the accused did not reveal a characteristic profile, although there are some specialties with a higher rate of complaints, such as family and community medicine, anaesthesiology, and gynaecology and obstetrics. However, in the convicted cases, these specialties did not have a higher proportion of convictions than the rest. Regarding age, no pattern was found that would allow for the establishment of a characteristic profile.

Table 1 Variables analysed in the 76 sample cases.

	Yes	No	Undefined
Consent ^a	14	60	2
Information given ^b	21	49	6
Witness present ^c	9	67	—
Use of gloves ^d	13	29	34
Inappropriate comments ^e	38	36	2
The patient undressed ^f	55	19	2
Expressions of discomfort ^g	22	51	3
Penetration ^h	31	45	—
Touching of the pubic area ⁱ	56	20	—
Touching of underwear ^j	43	29	4
First consultation ^k	37	33	6

^a Depending on whether it was established that the physician requested the patient's consent before beginning the physical examination.

^b Depending on whether it was established that the physician provided the patient with all necessary information about what was being done while performing the examination.

^c Depending on whether there was a witness present during the medical procedure.

^d Depending on whether gloves were worn during the physical examination.

^e Depending on whether inappropriate, degrading, or unprofessional comments were made to the patient about their physique, etc.

^f Depending on whether the patient undressed during the medical procedure.

^g Depending on whether the patient verbalised their discomfort with the situation.

^h Depending on whether penetration occurred.

ⁱ Depending on whether the physical examination involved the pubic region.

^j Depending on whether the patient's underwear was touched during the physical examination.

^k Depending on whether it was the first consultation conducted, and therefore there had been no prior personal contact of any kind.

Table 2 Variables compared according to whether there was a conviction or acquittal, with respect to the 70 closed cases^d in the sample (47 convictions and 26 acquittals).

	Conviction	Acquittal
Consent NOT requested	35	20
Explanation NOT given	36	10
Absence of witness	46	16
NO use of gloves	22	4
Comments YES	26	8
The patient undressed	36	16
Discomfort verbalised	16	5
Penetration	22	9
Touching the pubic area	38	16
Touching underwear	30	9
First consultation	22	12
Acceptance of version ^a	10	12
With surgery ^b	1	3
Physician's history ^c	4	0

^a Depending on whether there was evidence that the doctor accepted the patient's version of events regarding the physical examination performed.

^b Depending on whether the visit consisted of a surgical procedure.

^c Depending on whether there was evidence that the doctor had previously been prosecuted for similar acts.

^d Of the total sample, a court ruling was issued in 70 cases, while 5 cases remain open, and in one case, the death of the doctor extinguished potential criminal liability.

The patients who were mostly women expressed their bewilderment at the events with expressions such as "I didn't understand what was happening," "no explanation," and "I didn't see the need." The acts that motivated the complaints followed a common pattern, highlighting two types of behaviour. First, touching over underwear and even in the pubic area, along with inappropriate comments about it, such as "Does your mother have the same thing?" or "You smell like an animal." Second, easily misinterpreted actions, such as giving a phone number, pinching the patient, or using expressions of confidence such as "You need to relax more," "Take life more calmly," or "Darling." Finally, the most repeated behaviour in the complaints analysed was touching that seemed unnecessary, without gloves or warning of its necessity. It is worth noting that in all cases, the doctor reported was a man.

Discussion

To our knowledge, this study is the first of its kind in our field on inappropriate conduct by physicians in the practice of medicine. Therefore, despite the limited sample size, which may affect the statistical analysis and, consequently, the conclusions drawn, and the difficulty in accessing these types of cases, the relevance of the issue addressed, which is of great social impact, lends value to the sample and the results, which merit a separate approach.

Furthermore, it should be noted that the legislation related to crimes against sexual freedom³ was amended in 2022. In any event, its entry into force in October 2022 means that it is only applicable to eleven cases in the

sample, which does not allow for an analysis of the possible changes that this legislative amendment could affect.

Information and consent for examination

In 64.5% of cases, a lack of information about the need for the examination was recorded, and in 78.9%, consent was not requested.

Feeling out of control or lacking an understanding of what is happening due to denying the so-called "patient's right to know"⁶ can cause a feeling of helplessness, confusion, and bewilderment in patients, which can lead to a sense of fear and a perception of abuse by the physician.

Informed consent can be defined as a model of clinical relationship where there is a gradual process of information transmission within the doctor-patient relationship, by virtue of which the competent or capable subject receives sufficient and understandable information that enables them to participate voluntarily, freely, and actively in decision-making regarding the diagnosis and treatment of their illness.⁷ This enables the patient to accept or reject certain therapeutic or care actions, in addition to understanding the medical procedure. This contributes to the patient feeling more comfortable, understanding the reasons for the examination, and reducing the likelihood of filing a complaint.

The demand for removal of clothing

In 72.4% of cases, it was recorded that the doctor urged the patient to undress, either completely or partially (mainly trousers and underwear). Unknown medical justifications can significantly increase the patient's discomfort and sense of vulnerability. Furthermore, if this is the patient's first medical consultation, this discomfort can increase. In several cases, it was reported that the doctor himself undressed the patient, causing great confusion and discomfort.

In these cases, the medical justification for an undressed examination is crucial from a legal perspective. If the doctor acknowledges and justifies the examination, he is acquitted in 54.5% of cases. However, if the doctor denies having performed the examination and offers no explanation, he is convicted in 76.3% of cases. In any event, it is considered inappropriate in any case for the physician to be the one to undress the patient.

Use of gloves

In cases involving examinations of fully or partially nude individuals, 54.3% of physicians were found not to wear gloves, while in the case of any physical examination (without the need for nudity), only 17.1% of physicians did. It is important to note that in 89.4% of cases in which the physician was convicted, there is no record of whether the physician wore gloves, or it is specified that the physician did not wear gloves during the examination. Furthermore, in 75.9% of cases where gloves were not used, the physician reportedly examined the patient's pubic area.

Beyond the hygienic barrier provided by gloves,⁸ examinations with gloves are less intimate and uncomfortable for the patient, especially when examining sensitive areas.

Inappropriate comments

Although this is an element with a high degree of conflicting accounts, in 50% of cases, the patient reported inappropriate comments, primarily of a sexual nature, that made the patient uncomfortable or ridiculed them. In this regard, the WHO, in its policy for the prevention of sexual misconduct,⁹ considers "comments about a person's attractiveness [...] or appearance, [...] or body parts" to be abuse.

Other circumstances

In our study, 100% of those reported were men, as is the case internationally,¹⁰ while 94.7% of the complainants were women, confirming gender inequalities, male predominance in sexual violence, and the asymmetry of power between women and men.

Regarding the absence of a witness, in 88.2% of cases, there was no direct witness to the events. When witnesses were present (11.8% of reported cases), 66.7% involved a companion (family member or partner) of the patient, rather than another medical professional. All cases in which a witness was absent occurred during medical consultations, so it is recommended that, if an intimate examination is necessary, another professional be present as a witness.

Conclusions

While all the elements presented must be evaluated individually in each case, and their judicial treatment is subject to different interpretations, it is advisable to improve certain aspects of care, which are essential for proper and safe practice.

Thus, when physicians deem a physical examination necessary in the context of a normal doctor-patient relationship, the following recommendations are considered pertinent:

- (1) In accordance with the existing legal obligation, the patient must be informed of the need for the examination and the corresponding consent must be sought.
- (2) Remove clothing only when strictly necessary (and never by the physician). Complete nudity should be avoided, and the use of disposable towels by the patient is sometimes appropriate.
- (3) Wear gloves, especially when examining sensitive areas.
- (4) Avoid inappropriate comments.
- (5) Ensure the presence of a witness, preferably another physician.

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Conflict of interests

The authors have no conflict of interests to declare.

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