Protection against allegations of sexual assault when undertaking ultrasound examinations

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Abstract

The Medical Defence Union has reported an increase in the numbers of sexual assault allegations against doctors, although these are still thankfully rare. This short article discusses the experience of the Society of Radiographers in advising members who have been accused of sexual assault and identifies ways in which ultrasound practitioners can reduce the risk of having such an accusation made against them.

Keywords

Ultrasound, professional issues, intimate examinations, chaperones, sexual assault

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Introduction

Ultrasound practitioners come from many different professional backgrounds. They will be working within their respective professional codes of conduct and in most cases for an employer who has written policies relating to the work that they do. As part of a professional approach to their work, they will take any complaints or allegations made against them seriously and will need to engage constructively with any subsequent investigations that may be deemed necessary.

Allegations of sexual assault

One of the most difficult allegations that an ultrasound practitioner may have to face during their career is one of sexual assault. These are still, fortunately, rare but allegations made against NHS staff are reported regularly in the media and some headlines have clearly been worded to be provocative.¹ Legal cases in general involving healthcare professionals are also on the rise, at least partly due to the constant advertising by law firms. These, along with the recent Savile enquiry,² are likely to have raised this as a potential issue in the public's mind and to have increased the likelihood of an allegation of sexual assault being made against an ultrasound practitioner.

The Medical Defence Union (MDU) has reported a general increase in allegations against doctors in recent years.³ They report a 66% increase over an 11-year period, with 20 advice files being opened in 2013, compared with only 12 in 2003. In total, there were 167 cases of doctors being accused of sexual assault over the period. Over half of cases (55%) resulted in a criminal investigation, and a third (35%) in a General Medical Council investigation. Just 15% were investigated at a local level. Only three doctors were convicted of a criminal offence or faced disciplinary action.

The Society of Radiographers' (SOR) experience

The SoR has members who work as radiographers and sonographers within diagnostic imaging and radiotherapy. Like the MDU, the SoR provides advice and

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support to those of its members who are accused of sexual assault; although numbers are small, they are growing. The SoR's experience is that these are often made as a result of patients not fully understanding the nature of the examination; the incidences of actual sexual assault are thankfully rare. They can potentially arise from any examination and not just those that are clearly intimate, such as transvaginal scans. By the nature of their work, ultrasound practitioners are in close proximity to their patients and in rooms with reduced lighting, which can be unsettling for patients. As well as the application of the transducer itself to the patient's body, they also often have to directly touch them, for example to palpate a suspected mass or to squeeze the calf in an examination for suspected deep vein thrombosis. Inadvertent touching, even through clothes, can also be misinterpreted and become the focus of an allegation of sexual assault. All this puts ultrasound practitioners of either gender at risk. Accurate and effective communication with the patient should, therefore, be an essential and key part of the process of obtaining informed consent and patients should be encouraged to say if they feel uncomfortable about anything or want the ultrasound practitioner to stop during the examination itself.

Apart from those allegations of sexual assault arising from a misunderstanding or poor communication on the part of the ultrasound practitioner, it is also possible for a vexatious or malicious allegation to be made.

Dealing with allegations of sexual assault

Allegations of sexual assault may be made to the employer, but may also be made directly to the police. Employers may now be more likely to refer an allegation on to the police, as they now have statutory safeguarding responsibilities under the 2014 Care Act.⁴

Where allegations are made to the employer, it is important that the matter is dealt with under the employer's patient complaint procedure and does not automatically become a disciplinary issue. Patient complaint procedures vary from employer to employer, but the most robust ones will set out not just how the complaint will be dealt with from the patient's perspective, but also the involvement of the ultrasound practitioner in addressing the allegations. This is not the case when dealt with under the disciplinary procedure, where the individual practitioner is immediately in the position of having to defend themselves.

When allegations are made to the police or referred on to them, they have a duty to investigate and it can become very uncomfortable and distressing for the ultrasound practitioner involved. The ultrasound

practitioner may have to attend a police station to be formally interviewed under caution, either voluntarily or perhaps following arrest. Police investigations are likely to be based on the provisions of the Sexual Offences Act 2003,⁵ with any subsequent decision to prosecute the ultrasound practitioner being taken by the Crown Prosecution Service.

Investigations can take some time (weeks or even months) to conclude and it is often inevitable that the ultrasound practitioner will be unable to have contact with patients while the investigations are proceeding or be required to have a chaperone present. In some cases, there may be a formal suspension. Practitioners will have additional concerns about the allegations becoming public knowledge and it can affect all aspects of their professional and family life. The stress caused can also seriously affect their health. Employers will conduct their own internal safeguarding or service enquiry and the possibility of a referral to a statutory regulator such as the General Medical Council, Health and Care Professions Council or Nursing and Midwifery Council also exists. These regulators may also suspend the ultrasound practitioner or impose other conditions of practice³ while the investigations are on-going. Although the majority of allegations do not result in any prosecution or action, this does not diminish the stress caused by the allegation and the subsequent enquiries.

Clearly every case has different circumstances and each must be properly investigated but the impact of a malicious, vexatious or deliberately false accusation on the individual can be seen as similar to the impact of a physical assault. Such assaults would not be tolerated by employers and the same duty of care an employer has to their employees should extend to dealing with these types of allegation. The police should also consider whether such allegations made to them result in police time being wasted investigating the allegation.

Protecting against allegations of sexual assault

In view of the above, how can an ultrasound practitioner protect themselves against allegations of sexual assault?

1. All employers will have policies relating to intimate examinations and the use of chaperones that ultrasound practitioners should be aware of and monitor for updates. These policies are often found on the employer's intranet. Ensuring the chaperone policy is fit for purpose and applied is often the best protection for ultrasound practitioners.
2. Read published guidance documents by regulators and professional organisations. Key to many of

these is the 2013 GMC advice on intimate examinations and chaperones.⁶ The Royal College of Radiologists⁷ and the Society and College of Radiographers⁸ have also published intimate examination and chaperone policies that are particularly relevant for ultrasound practitioners. These documents should be read in full to obtain the complete context and advice; they cannot be easily précised.

3. Discuss with local management how to resolve the common situation where not enough trained chaperones are available. In many departments, they are only readily available for male ultrasound practitioners undertaking transvaginal sonography or for female ultrasound practitioners undertaking testicular examinations; the rest of the time, the ultrasound practitioner is just expected to get on with the examination without. This is not in accordance with the advice given in the guidance documents identified above. In particular, relatives or friends of the patient are often thought to be able to fulfil this role but they do not have the 'impartial observer' status of a chaperone and may make any allegation of sexual assault more difficult to defend. You should, however, comply with a reasonable request to have such a person present as well as a chaperone.⁶ Chaperones need to be able to remain for the full examination and should be trained for the role. They also need to be able to see what the ultrasound practitioner is doing, if practicable. Further details of the duties and requirements of a chaperone, advice on their use and the information that should be recorded are given in the documents referred to above.
4. The MDU³ has published advice on reducing the risk of a sexual assault allegation. This is summarised as below but it is recommended that their advice is read in full.

- Familiarise yourself with local and national guidelines
- Get consent for the examination
- Offer a chaperone
- Give patients privacy to dress and undress
- Avoid light hearted or personal comments
- Stop if the patient asks
- Keep careful records

If you are ever the subject of an allegation of sexual assault, contact your professional organisation, trade union or insurer as soon as you can for independent advice and support. They will be able to ensure the matter is dealt with correctly using the appropriate procedures and can raise concerns if the chaperone policy has not been used correctly. Ask also what support your employer will or can provide during what is likely to be a very difficult time.

Helpers and assistants who are actively involved with patient care, including acting as a chaperone, should consider joining a union or professional organisation that can provide support; they are not immune from allegations themselves.

Conclusion

In conclusion, although still rare, allegations of sexual assault against ultrasound practitioners are likely to rise in the current climate due to high profile cases, increased public awareness, and the increased number and complexity of ultrasound examinations being performed. Such allegations may cause extreme anxiety and stress for those staff involved. While ultrasound practitioners can never totally avoid an allegation, they can minimise the chances of an allegation being made through communicating effectively with the patient at all times and following the simple steps outlined in this article.

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