

Guideline

Subject: **Compulsory and/or Intimate Body Examinations of Persons in Custody**
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Purpose

Doctors are sometimes asked to perform intimate body examinations of people in custody for purposes including specimen collection, anatomical comparison or detection of drugs or objects secreted in a body cavity. The purpose of this Guideline is to provide advice regarding ethical and safe practice in such cases. This Guideline does not apply to intimate examinations of victims of sexual offences.

Definition of an Intimate Examination

Specific definitions of an intimate procedure, body examination or search may be included in legislation in particular jurisdictions. For the purposes of this document, a generic definition is an examination (including specimen collection and/or photography) of the mouth, female breast or the ano-genital region including internal examination of the relevant orifices.

Consent

It is always necessary to obtain consent for any medical examination (see also section on Compulsory Examinations). Consent is a fundamental ethical principle in all medicine and has particular relevance to many forensic situations. A detailed discussion of consent is beyond the scope of this document but it is worth remembering that police detainees or prisoners may have limitations to their competence to give consent. Reasons for limited competence to give consent include but are not limited to:

- Fatigue, illness or intoxication;
- Lack of privacy during the preliminary consultation may limit the ability to be informed adequately;
- The temptation to comply in the hope of favourable treatment or early release;
- Fear of an assumption of guilt or adverse inference if consent is refused; and
- Fear that if consent was refused, the procedure would be performed under duress by a non-medical person.

When attempting to obtain consent from a detainee for an intimate procedure, doctors should:

- Avoid discussing legal implications of either providing or refusing consent. If a detainee wishes to discuss these issues they should be referred to attending police, a custodial officer or a legal advisor.;
- Advise the detainee about medical or health risks of not undertaking an examination such as the risk of a drug package leaking or bursting;
- Describe how the procedure would be conducted;
- Describe any alternatives to a physical examination; and
- Describe any potential for injury.

Emergency Situations

In situations where a person becomes acutely unwell and there is a suspicion that injury or drug effects from a secreted object may be involved, an intimate examination is no longer a purely forensic procedure and if indicated, would be justified as an emergency procedure in the usual way.

Compulsory Examinations including Court Orders

There are no legal provisions in Australia or New Zealand that compel a doctor to perform any procedure. Police or other organisations may provide documentation such as legislation, regulation or a court order that mandates an examination, specimen collection or body search. **These documents put the onus on the subject to undergo the procedure and it is the subject who may face legal consequences if they refuse.** The existence of such an order in no way diminishes the ethical and consent issues discussed in this document.

Police and other non-medical personnel occasionally misunderstand this distinction and may attempt to put pressure on a doctor who refuses to perform a compulsory procedure. In such cases, it is helpful to discuss the reasons for a refusal with senior doctors or senior police officers. Advice may also be sought from medical defence organisations.

Ethical Considerations

In some cases, a detainee may consent to an examination but express a preference that it not be done by a police or custodial officer but by a health professional or under the supervision of a professional. This is most likely to occur in a custodial situation where a body search is compulsory. Where a doctor is available at a custodial facility, they should ideally be informed when an intimate search is to be conducted and should arrange to be present, even if not actually carrying out the procedure. Different policies about this may exist in different jurisdictions.

Some doctors may decide that, because of the pressures on detainees, they will not undertake intimate body searches even where the individuals give apparent consent. As stated above, a doctor cannot be compelled to undertake any examination for legal reasons.

It is important to recognise however, that despite the inevitable pressures imposed by the nature of being detained, the individual may be able to make valid choices. An individual may, for example, have no option about whether the search will be undertaken but may nevertheless wish to express a preference about how or by whom it is to be done.

Who should perform the Examination

It is highly advisable that intimate examinations be performed by health professionals such as doctors, nurses or paramedics who are properly trained in the relevant procedures. This is mandated by law in some jurisdictions. Doctors who participate in, or supervise, a body search by an unqualified person may be held liable for any adverse effects suffered by the subject.

Where possible, the examination should be performed by a person of the same gender (sex) as the subject. Transgender patients may express a preference for a particular gender of the examiner and this should be respected where possible. It is most inadvisable to conduct such examinations without a third person in the room. The third person may be another health professional or preferably a custodial officer and should where possible be of the same sex as the subject. This gender policy should also apply to observers, chaperones, police or custodial personnel who are present during an examination.

Location & Procedures

- Where possible, intimate searches should be conducted in a medical facility such as a hospital emergency department where unforeseen complications such as a ruptured drug package or injury from a sharp object can be dealt with immediately.
- Therapeutic procedures (when required) always take precedence over examinations performed for medico-legal reasons.
- The patient should be informed about what is proposed and given details of what will occur during the examination. This should include information about possible medical risks or injury associated with the examination and possible medical risks of not proceeding (e.g. leakage from concealed drug packages). Specific consent must be obtained, preferably in writing, before proceeding with the examination. This also applies to compulsory procedures as mentioned above. The doctor should satisfy him or herself that any order regarding compulsory procedures is correctly made out and that the proposed examination is in accordance with what is specified in the order. The doctor should retain a copy of the order for their records.
- Examinations should never be conducted under duress or where there is a non-consenting subject.
- If there is a suspicion of an internal foreign object, then an X-ray, ultrasound or CT scan may be indicated prior to a physical examination. Procedures for dealing with internal objects, body stuffing or body packing are beyond the scope of this guideline.
- The subject's privacy during undressing should be respected but after discussion with custodial staff it may be necessary for the person to be observed during this part of the procedure. Custodial staff may need to examine clothing but this is not a specific medical procedure.
- When examining genital areas, the subject should be draped with a sheet so that only the areas to be examined are exposed.
- In some jurisdictions, there may be a requirement for the examination to be photographed or video recorded. The purpose of video recording is usually to document that the examination was done in accordance with legal requirements and not to demonstrate the findings. The subject should be oriented in such a way that their intimate areas are not visible to the video camera.
- Examiners must wear gloves and may need to wear gowns, masks or other Personal Protective Equipment.
- If instruments such as speculums or anosopes are to be used or photographs are to be taken, the subject must be informed and consent obtained in advance.
- All aspects of the procedure including consent, findings and chain of custody of any retrieved swabs or objects must be adequately documented.

Alternatives to a Body Search

In some cases, X-ray, ultrasound or CT scan may be an acceptable alternative to a physical examination. This should be negotiated with police or custodial staff bearing in mind that not all objects or substances may be visible on imaging. If in doubt, any limitations on what may be visible on imaging and the interpretation of images should be discussed with a radiologist.

References

Faculty of Forensic & Legal Medicine (UK). "Recommendations for healthcare professionals asked to perform intimate body searches" September 2017

NSW Justice and Corrective Services. Custodial Operations Policy and Procedures Chapter 17.1 "Searching Inmates" version 1.0, December 2017 (redacted)