



ASA GUIDELINE: INTIMATE EXAMINATIONS CONSENT AND CHAPERONES



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for sonographers

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1. Purpose

The purpose of this document is to provide a guide for medical sonographers who carry out intimate examinations.

It provides a set of principles and guidelines that can be applied to examinations that may be considered intimate by the patient. This document aims to help sonographers reduce potential harm and improve patient outcomes by proposing practices that manage medico-legal risk.

This guideline may be of interest to all health professionals who conduct or assist with intimate examinations. It may also serve as a reference for the development of supporting materials.

It is intended to provide a flexible, principles-based framework that is easily adapted to a range of circumstances rather than a prescriptive and limited set of instructions that may quickly become redundant by advances in technology or practice.

2. Scope

This guideline is provided to inform members of the Australasian Sonographers Association who carry out or assist in intimate examinations of patients in a variety of clinical settings. It should be read with other guidelines, the *ASA Code of Conduct for Sonographers*¹, *Standards of Practice*² and other documents related to ASA membership, workplace protocols and other relevant regulation.

More broadly, non-members, other healthcare professionals, patients and other stakeholders may find this document provides useful information.

This document provides information and guidance only. It does not provide legal advice. Members should seek independent legal advice as required.

3. What is an intimate examination?

Any medical examination may cause distress. Many patients find examinations of the breasts, genitalia or rectum particularly intrusive and may feel additionally anxious and vulnerable when examinations involve undressing or are carried out in rooms with dimmed lights.

Workplaces may have guidance on what constitutes an intimate examination. Workplace guidelines must be followed.

However, with the patient-centred approach that this guideline advocates, the definition of an intimate examination may differ from patient to patient for religious or cultural reasons, because of previous experiences, sex, sexuality or age.

The sonographer should be sensitive to and make no assumptions about what the patient may consider intimate.

4. Strategic framework

Healthcare services in Australia and New Zealand are amongst the world's best. High quality care puts patient needs at the centre and challenges the health workforce to develop value for money and valued services through investment and innovation.

Our healthcare system is managed with various guidelines and forms of regulation, for example, self-regulation and co-regulation, which safeguard patients by defining ethical behaviour and regulating the actions of healthcare professionals.

In addition, moves to improve healthcare have brought the development and implementation of concepts and practices to improve patient outcomes, such as clinical governance frameworks¹ that embed consumer participation, clinical effectiveness, and risk management.

4.1. Regulation

ASA members voluntarily agree to meet the standards of the *ASA Code of Conduct for Sonographers* and *Standards of Practice*. This document supports the *ASA Code of Conduct for Sonographers*.

Members are obliged to meet any other legal requirements that apply to sonographers, such as those related to privacy, child protection and anti-discrimination legislation.

4.1.1. Medico-legal considerations

The patient who consents to an ultrasound examination may reasonably expect it will be performed by a competent sonographer.

A competent sonographer works to the standards defined by workplace guidelines; the professional body's code of conduct; relevant guidelines and regulation, as appropriate; and provides care that the majority of similar individuals would provide and/or which a significant body of similar individuals would provide in similar circumstances.¹

The sonographer must recognise their scope of practice and work within its boundaries, delegated responsibilities and in accordance with local practice and guidelines.

Sonographers are legally accountable for their professional actions, including ultrasound examinations and resulting documents, images or records. Images that accompany an ultrasound examination, carried out by a competent sonographer, are evidence that the patient has received the necessary standard of care. Any records, documents or images stored are subject to guidelines on the duration of storage and the security of storage. Robust recordkeeping, including notes on patient consent, protect the integrity of the sonographer and the safety and health of the patient.

4.2. Patient-centred approach

Healthcare providers recognise that efficient, outcomes-focused delivery considers a patient's unique needs, concerns and preferences. Patient-focused care means people are treated with respect and as an individual, and means health professionals consider the patient's comfort, their beliefs and values, and their family and others involved in care.³

This approach to patient care has been shown to improve the quality and safety of care, reduce costs, and improve the patient experience, business and operations, and most importantly, the patient outcome.⁴

4.3. Patient rights

Patients have a right to access appropriate, safe and high quality care and to receive services that respect the patient's individual circumstances and background. The Australian Commission on Safety and Quality in Healthcare developed the *Australian Charter of Healthcare Rights*⁵ (the Charter) for people receiving health services.

The Commission has set out seven rights in the Charter which were developed to enhance the quality and safety of healthcare, and to create partnerships between patients and providers to achieve better outcomes.

Similarly in New Zealand, the Health and Disability Commissioner oversees the application of the *Code of Health and Disability Services Consumers' Rights*⁶, which describes the 10 rights of consumers and the duties and obligations of providers to comply with, to ensure they promote and enable consumers to exercise their rights.

Patients have a right to participate in healthcare choices and to receive information about their diagnostic examination and care, its cost, examination options and risks and benefits. They also have an obligation to provide information that may affect their examination and a right to privacy and confidentiality. Patients have a right to comment on the care they receive and seek redress if things go wrong.

This document supports the Australian Charter and the New Zealand *Code of Health and Disability Services Consumers' Rights*.

4.4. Principles

Principles provide a flexible and adaptable framework rather than a rigid set of prescriptive rules and procedures. Principles provide consistency, and because they are stable, they help us work in environments that are complex and diverse, for example, in remote and rural areas or where systems, resources and technology change.

The principles presented here reinforce and support those expressed by the Australian Commission on Safety and Quality in Health Care, the New Zealand *Code of Health and Disability Services Consumers' Rights*, Consumers Health Forum of Australia, the *ASA Code of Conduct for Sonographers* and *Standards of Practice*, and by our national and international partners.

These principles should not be seen as independent of each other. Instead, they form a web of interrelated and interdependent concepts that together help the sonographer improve patient outcomes by encouraging participation in the examination process.

The principles apply across a range of examinations, including those considered intimate by the patient.

4.4.1. Safety

Patients and staff have a right to be as safe as possible when receiving or providing healthcare services. Patient safety is both a characteristic of a quality healthcare system and drives improvements in care.⁷

Safe equipment, safe practices and safe workplaces are part of providing quality healthcare. Robust monitoring of safety, and applying lessons learnt, is part of a system of continuous improvement. Safety is promoted by legislation, workplace practices and guidelines.

ASA contributes to improving safety by developing and promoting clinical guidelines and learning materials.

Safe practices reduce costs, for example, by reducing injury, infection and unnecessary examinations, and increase the system's capacity overall. A safer healthcare system enhances the reputation and integrity of healthcare providers, which increases patient trust in individuals and organisations.

Ultrasound has proven to be a safe and effective tool if used by a competent operator. However, like any tool ultrasound machinery and techniques could cause harm. Technology changes, the range of clinical applications widens, and as the number of patients undergoing ultrasound examinations grows, so it is important to maintain vigilance to ensure the continued safe use of ultrasound.

Sonographers shall consider:

- potential effects of ultrasound
- relative risks for each application

and

- ensuring detailed knowledge of ultrasound equipment to ensure it is appropriate for purpose
- optimising use of the equipment to ensure the best possible examination is performed
- ensuring that an agreed equipment maintenance program includes regular inspection of ultrasound machines and auxiliary equipment.

4.4.2. Communication

Communication is ranked as the second most common factor contributing to sentinel events.⁸ Ineffective communication is reported as a significant contributing factor in medical errors and inadvertent patient harm. In addition to causing physical and emotional harm to patients and their families, adverse events are also financially costly. Better communication reduces harm.

Effective communication promotes access to health services and ensures patients are participating in their examination and are making informed choices. It also makes sure sonographers are making better decisions and providing better services by listening to patients and by observing other non-verbal cues that influence the examination. Importantly, it provides an opportunity to learn more about and educate the patient. All this combines to improve patient outcomes.

Communication is essential to obtaining informed consent. Providing consent is a process that ends with a patient allowing their body to be examined for a specific purpose. Sonographers must explain the nature of an examination to the patient and establish that the patient understands the procedure so that he or she can provide consent.

Communication and related materials should promote and adhere to the principles set out here, relevant workplace guidance, codes of practice and legislation.

Communicating with different patient groups

The use of technical terms and jargon, acronyms and abbreviations in conversations, written materials and diagrams, influences how well information is shared and may need to be adapted to the patient to ensure equality of access. The sonographer may also ask the patient what might help increase his or her understanding.

The following are suggestions a sonographer might consider for ensuring the patient understands the purpose and scope of an examination for the purposes of securing consent.

- **Patients who are children** – Address children as individuals. Use illustrations and adjust vocabulary appropriate to the age level.
- **Patients with learning disabilities** – Simplify text a little, using more symbols and pictures. Suitable DVDs or books, for example, may supplement written information. Carers, support groups and other professionals may provide further guidance.
- **Patients with hearing difficulties** – Provide written information or AUSLAN interpreters and consult with patient carers to ensure understanding.
- **Patients with sight difficulties** – Use clear, large print; at least 14 point. Use audiotapes, electronic text, or Braille, as required by the patient. Avoid reversed-out text and make sure that the contrast between the text and the background colour enhances rather than hinders readability.
- **Patients whose first language is not English** – Provide written text in translation, using a reliable translator. Some languages are spoken and not written, so it is important to check where this applies. Where appropriate, use other media and resources, such as audiotapes, videos and professional interpreters.
- **Patients who have reading disabilities** – Consider using audiotapes and videos.
- **Expert patients** – Patients with long-term medical conditions often have a very good understanding of their condition and related vocabulary, research and information. These patients may need information that is specially researched by experts or they may need help locating the most reliable and up-to-date information available.

4.4.3. Respect

Patients and healthcare staff have a right to be shown respect, to be treated with dignity and consideration, and without discrimination.

The communities of Australia and New Zealand are made stronger by their diverse people. Diversity of culture, language, faith, gender, ethnicity, race, age, gender identity and sexuality, and physical and mental ability, enrich

our society. In a system of patient-focused healthcare we are challenged to adapt to and provide services for people whose individuality influences service delivery.

Respect of diversity is essential to reducing health inequalities. We improve access to healthcare by respecting differences and thinking about and adapting delivery to meet patient needs. Responsiveness to differences improves patient outcomes.

In addition to respecting and considering others' differences, sonographers should also respect patients' dignity. The principle of respect supports, for example, the requirement to get informed consent, as well as other actions such as ensuring the examination is in surroundings that allow privacy, and that discussion of patients and their treatment is professional and respectful.

4.4.4. Trust

Trust underpins healthcare.⁹ Trust encourages access, facilitates disclosure of important information and has an indirect influence on health outcomes through patient satisfaction, adherence to examination programs and continuity of care.

Patients are often at their most vulnerable when seeking healthcare and patients put themselves in the hands of strangers on the basis of trust in that person's assumed knowledge and skills.

In a patient-focused system in which patients participate in decision-making, trust depends on communication, provision of information and the use of evidence to support decisions.

Trust in the sonographer is built on demonstrated caring, empathy and competency. It is enhanced by demonstrating understanding, by respecting differences and individual needs and also by the sonographer trusting the patient.

Trust in healthcare institutions is also important and may affect patient support for and use of services and thus the sustainability of those institutions. Monitoring, reporting and regulation also contribute to the public's trust in systems and institutions.

4.4.5. Improvement

Healthcare systems have long been continuously thinking about how to deliver services to improve patient outcomes.

Continuous improvement or clinical governance is a systematic approach to improving the quality of patient care and helping improve access, increase safety and reduce health inequalities.

An effective improvement system is about learning and reflecting on and implementing change that improves outcomes. It includes systems and processes that clearly identify needs and expectations, plan and deliver, and then check that what is delivered meets needs, is reliable and of a consistently high standard.

Part of improvement involves the sonographer's ongoing learning and personal and professional development. This provides a means to acquire and share new skills and knowledge and to keep up to date with new practices, techniques and technology.

ASA contributes to continuous improvement by providing training delivered by experts in the field of sonography, access to research and literature through the online reference collection, and the PD-**asa** CPD program.

4.4.6. Comment

In a patient-focused healthcare system with strong improvement cultures, patients have a right to provide feedback, ask questions and seek redress when things go wrong.

Each state or territory has a body that handles complaints about the quality of services provided by a health professional or healthcare facility.

The ASA provides a framework for listening to and responding to complaints about members that are referred to the ASA by those agencies or by members of the public directly. The framework includes the *ASA Code of Conduct for Sonographers, Standards of Practice* and the complaints procedure.

5. Consent

Sonographers must refer to legislation in the relevant state or territory and seek independent legal advice.^{10,11}

Informed consent is a process in which the patient understands why and how an examination may be performed, and the associated risks, costs and benefits of the examination, and on that basis allows his or her body to be touched.

A person consenting to or refusing examination must be able to understand the information about the procedure to make an informed decision. The sonographer may need to supply written material, diagrams or further explanation to be certain the patient has sufficient understanding to provide consent.

Consent may be implied, provided by gesture or verbally, or as written consent. However, the foundation of consent is always that the patient understands. An important aspect to this understanding is that they understand their rights, including the patient's right to withdraw consent at any time.

A patient's consent is implied in attending an examination. There is an assumption, for example, that a patient is seeking treatment and therefore consenting to some form of examination. However, before proceeding with an examination, sonographers must always obtain, by word or gesture at least, like nodding or removing clothing, some further explicit indication that the patient understands the need for and scope of the examination and agrees to it being carried out.

Consent is valid until the patient withdraws consent or until circumstances change, like a change in the patient's condition affecting the examination, the need for examinations different to the recommended procedure or the sonographer may identify new risks or side effects associated with the recommended procedure.¹² Consent should also include circumstances in which a reasonable person would expect to give consent, for example, when a trainee sonographer undertakes part or all of the ultrasound examination.

In such circumstances, consent should be confirmed again to capture the change in circumstances.

Consent should always be appropriate to the examination being carried out and the patient. For example, for a pelvic examination verbal consent may be sufficient; however, this may be influenced by other factors such as the patient's English language skills.

Consideration may be given to requiring written consent for some procedures, particularly examinations of the breasts, genitalia or rectum, and those that the patient considers intimate. Notwithstanding guidance here, local workplace guidelines should state which examinations require written consent and must be adhered to.

Written consent involves the patient reading and understanding information about the examination and signing to indicate consent for the examination. Written consent provides an additional safeguard for the patient and sonographer. However, the sonographer must still ensure the patient understands why and how an examination may be performed and the associated risks, costs and benefits of the examination. The patient's right to withdraw consent at any time should be respected and acted on immediately in a non-judgmental fashion.

In all cases the sonographer must have the patient's consent before starting an examination and the patient can withdraw consent at any stage. Sonographers who do not have consent may be liable to legal or disciplinary action. For the purposes of maintaining robust and complete records, the sonographer may consider recording that the patient has given consent and how.

5.1. Capacity and consent

Capacity is the ability to reason things out, to understand, retain, believe, evaluate and weigh relevant information.

Any person can consent to or refuse an examination if they have capacity to understand the information and the implications of the procedure to which they are consenting. Sonographers should check legislation in the relevant state or territory.¹³

In general, a person under 18 years of age requires a parent or guardian's consent, except in emergencies or for minor treatment. However, each state and territory applies different legislation e.g. *Minors (Property and Contracts) Act 1970* (NSW) and *Consent to Medical Treatment and Palliative Care Act 1995* (SA) and common law principles, such as the Gillick common law case, that recognises the competency of adolescents with the requisite intelligence and understanding to make decisions about medical treatment, give a valid consent, but not to refuse treatment.

A person may lose capacity to make decisions permanently or temporarily due to accident or illness. If a person cannot understand the information about the proposed examination, and it is determined they lack capacity, another person must make decisions on their behalf. This person is determined by law.

Special consideration needs to be given to establishing capacity and obtaining consent from patients who are:

- unable to give valid consent, including children
- intellectually impaired
- mentally ill
- physically impaired
- drug or alcohol affected
- non-English speaking background
- injured, in pain or in shock
- sleep deprived.

An appropriate adult witness, support person or formal chaperone should be present when examining a person who cannot provide informed consent. For example, children may prefer the support of a trusted family member. Other personnel who might be appropriate include: medical, nursing/allied health staff, interpreters, culturally congruent persons or caseworkers.

Children, or those with intellectual or learning disabilities and their parents or guardians, must receive an appropriate explanation of the procedure in order to obtain their cooperation and understanding. If a minor or person with intellectual or learning disabilities presents in the absence of a parent or guardian the sonographer must ascertain if they understand the need for examination. In these cases, sonographers should follow workplace protocols, secure consent and have a formal chaperone present for any intimate examinations.

5.2. When is consent not needed?

Consent is not needed in cases of medical emergency, to prevent death or serious damage to the patient's health, or if the patient is suffering from significant pain or distress.¹⁴

In the absence of informed consent for any examination, the sonographer must act in the patient's best interests.

In cases of medical emergency, where urgent treatment is required to save a patient's life or prevent serious harm to his or her health, or where consent cannot be obtained due to severe disability, illness or unconsciousness, it is good practice to consult those close to the patient, although nobody can give consent to treatment on behalf of another adult unless provided for under legislation or common law.

The circumstances that constitute the emergency and the patient's lack of competency must be documented.

6. Chaperones

At the centre of the discussion of chaperoning are the principles of safety, trust and respect and the concepts of patient choice and of risk management and clinical governance.

For professional integrity and personal safety the sonographer should give equal consideration to their own need for a chaperone irrespective of the examination being undertaken or the gender of the patient.

A chaperone is present as a safeguard for patients and sonographers and is a witness to continuing consent to the procedure. Studies indicate broad preferences to the presence of a chaperone, for example, by age group and gender. With increasing age, males preferred to be alone with the examining sonographer, whereas females preferred to be accompanied. However, no assumption should be made about patient preferences.

6.1. Role of the formal chaperone

A formal chaperone is usually a health professional and the sonographer must be satisfied that the formal chaperone will:

- be of a gender approved by the patient or by the patient's support person. A support person such as a parent, carer, guardian or friend may attend but is not a formal chaperone
- be sensitive and respect the patient's dignity and confidentiality
- reassure the patient if they show signs of distress or discomfort
- be familiar with the procedures involved in a routine intimate examination
- stay for the whole examination and be able to see what the sonographer is doing, if practical
- be able to reliably judge whether the sonographer's actions are professionally appropriate and justifiable
- be prepared to raise concerns if they are concerned about the sonographer's behaviour or actions.

A relative or friend of the patient is not an impartial observer and so would not be a suitable formal chaperone, but would be considered a witness. The sonographer should comply with a reasonable request to have such a person present and consider the use of a formal chaperone if it can be accommodated.

6.2. Offering chaperones

Chaperones are most often appropriate or requested where a male examiner is carrying out an intimate examination of a female patient. However, it is good practice to offer all patients a formal chaperone for any examination where the patient feels one is required. This offer can be made through prominently placed posters, practice leaflets and verbally, prior to the examination. No assumptions should be made on the basis of sex, age, culture or proposed procedure and no party should feel coerced into proceeding with an examination if an acceptable chaperone is not available.

A record should be made in patient notes when chaperones are offered and used, and when they are declined, and any information, such as reasons for accepting or declining the chaperone, if relevant. The record should also include the name and designation of the chaperone.¹⁵

If a chaperone is not available, or the patient may not be comfortable with the choice of chaperone, the sonographer may offer to postpone the examination until an appropriate chaperone is available, if this does not impact on the patient's healthcare.¹⁶

Sonographers should:

- honour patient requests to be examined with or without a chaperone
- reserve the right to insist on a chaperone being present and explain clearly why a chaperone is necessary
- delay examination until a suitable chaperone is available if either patient or sonographer does not want the examination to go ahead without a chaperone present, or if either is uncomfortable with the choice of chaperone
- consider referring the patient to a colleague who would be willing to examine them without a chaperone, as long as a delay would not adversely affect the patient's health.

6.3. When a chaperone is not available

When a sonographer is working away from other colleagues, for example, out-of-hours centre or in remote locations, the same principles for offering and use of chaperones should apply.

However, in cases where this is not an option, for example, due to the urgency of the situation or because the sonographer is community-based, sound communication and robust recordkeeping are essential.

If the patient has requested a chaperone and none is available at that time, the patient must be given the opportunity to reschedule their appointment within a reasonable timeframe.

If the seriousness of the condition would dictate that a delay is inappropriate this should be explained to the patient and recorded in their notes. A decision to continue or otherwise should be reached together.

In cases where the patient is not competent to make an informed decision, or for any other mitigating factor, the sonographer must use his or her own professional judgment about the use of chaperones and record and be able to justify the course of action.

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7. Applying the principles

When conducting an intimate and/or invasive examination, the sonographer should:

- act safely and comply with workplace protocols, guidance, codes of practice and regulation
 - communicate sensitively and politely using professional terminology
 - respect cultural diversity and the patient's history
 - act with propriety and in a courteous and professional manner
 - respect the patient's rights to dignity and privacy
 - obtain informed consent
 - use a chaperone when appropriate and follow workplace protocols.
1. Before carrying out an examination, sonographers must ensure that relevant information is available from the case notes, previous investigations and other sources to justify and carry out the examination requested.
 2. Patients must be given a full explanation of the procedure to be carried out, the relative risks and benefits and the opportunity to ask any questions.
 3. Sonographers must provide suitable resources, including but not limited to interpreters or easily understood literature and diagrams, to ensure patients understand and consent to examination, except in emergency situations.
 4. A formal chaperone should be offered to all patients undergoing intimate procedures or for any other procedure if the patient requests it, regardless of the patient's gender.
 5. Private, warm, comfortable and secure facilities for undressing and dressing should be provided. Assistance with undressing should be offered if necessary.
 6. Only personnel necessary for carrying out the ultrasound examination should be in the room during intimate examinations.
 7. The sonographer may consider offering the patient the probe for self-insertion for a transvaginal scan. The sonographer should consider the clinical setting as well as patient preference.
 8. Throughout a procedure the patient should be observed for any signs of distress. Any request that the procedure be discontinued must be respected. Resistance to examination must be interpreted as a refusal to provide consent.
 9. Privacy and dignity should be maintained during the procedure. Patients should not be asked to remove clothing unnecessarily – during the ultrasound examination only those body parts under investigation should be exposed.
 10. Delays to examination should be avoided and the examination should be conducted without interruption.
 11. Wash hands and clean equipment in view of the patient to provide reassurance that effective infection control procedures are being applied.
 12. Gloves should be worn during examinations. The hand used to operate machine controls may be ungloved, as long as it does not come into contact with the patient.
 13. Remarks of a personal nature should be avoided during examination.
 14. Images and notes that accompany an ultrasound examination must include the correct patient identifier(s) and the date and time.
 15. When the patient is dressed, the sonographer should explain any aftercare for the procedure and inform the patient how to obtain the examination results.

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