

## **Medical examination and rape: avoid confusion of terms!**

### **Press release of the French National Academy of Medicine (\*)**

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Following several recent cases which have been extensively covered by the media, the French National Academy of Medicine recalls that clinical examination is an essential part of the medical consultation. Called physical examination, it involves a direct contact with the patient (inspection, palpation and auscultation). In some situations, this examination requires more intrusive gestures affecting the patient's intimacy: perineal examination with digital anorectal penetration (digital rectal examination), instrumental penetration for endoscopy (anoscope, rectoscope or colonoscope) or digital vaginal penetration (vaginal touch) or instrumental penetration (speculum, ultrasound probe) through the vulva, examination of the breasts by palpation or for an echography. These examinations remain currently indispensable and cannot be substituted for the diagnosis and follow-up of some pathologies, in particular anorectal, urogenital or sexual.

As the National College of the French Gynaecologists (“Collège National des Gynécologues Français”) [1] recently reminded us, the French Penal Code (article 222-23) defines rape as "any act of sexual penetration of any kind, or any oral-genital act committed on another person by violence, constraint, threat or surprise". It is clear that the above-mentioned acts performed in the context of a medical examination fall outside this definition, as long as they are medically justified (Article 16-3 of the Civil Code).

Beyond the legal framework, health professionals concerned are aware of factors that may contraindicate such gestures: 1) individual modesty marked, for example, by the discomfort felt when undressing in 33% of men and 46% of women (with great variations linked to the cultural context, religious prohibitions and the age of the patients) [2] and 2) supremacy of complementary examinations in the minds of the people.

These examinations, which affect the privacy of patients, must therefore be carried out by health professionals with the utmost delicacy, with respect for the dignity of the person, after time taken for information, and obtaining a formal consent possibly written of the patients or their representatives (in the case of young minors and patients under guardianship). Refusal of the examination must be respected and patients informed of the consequences of this refusal.

In the course of carrying out these examinations, any offhand remark or inappropriate gesture must be avoided in such a way to dissipate any risk of misunderstanding. An imperfection in the performance, an unpleasant or painful feeling are possible, but nothing should allow the gesture to be interpreted as a rape or an act of sexual nature.

**The National Academy of Medicine wishes to:**

- 1) reaffirm that clinical examination with physical exploration adapted to each situation remains a necessity as part of the medical consultation,
- 2) insist on the necessity of a mutual trust relationship between caregiver and patient, essential for an efficient care,
- 3) recall the need for information and formal patient consent prior to any manual body exploration,
- 4) emphasize that, in this context, a professional attitude and a real empathy from healthcare professionals are essential to avoid any ambiguous interpretation.

References:

[1] French National College of Gynaecologists and Obstetricians. Press release of the French College of Gynaecologists and Obstetricians, June 23, 2022. [Online] Available at: <https://www.academie-chirurgie.fr/admin/uploads/media/photo/0001/05/c5854d8af7ce1612fdcf40114178d3c0f0315aa1.pdf> (accessed on 07/25/2022).

[2] Lorge H.F., Obstacles to the undressing of the patient in the general practice in 2020. Doctoral thesis in medicine-University of Strasbourg 2022, N°90.

(\*) Communiqué from the Academy's Rapid Communication Platform validated by the members of the Board of Directors on July 23, 2022.