Understanding Genital Injury in Sexual Assault Cases

Jenifer Markowitz ND, RN, WHNP-BC, SANE-A, DF-IAFN

• Please remember: this presentation refers to the evaluation and care of adolescent/adult sexual assault patients.

• Pediatrics is a completely different issue, with different requirements and standards of practice.

Copyright Notice
This multimedia presentation contains the creative work of others and is used by permission, because of public domain, or under a claim of fair use pursuant to 17 USC 107. This presentation comports with the CONFU guidelines. Further distribution or use is not permitted.
Why do the medical-forensic exam?
• Current research says that 14% to 18% of all reported sexual assaults are prosecuted (Campbell, Patterson & Bybee, 2012)
• Many patients who present never report.
• Every one of these patients needs healthcare services, even in the absence of an official criminal complaint.

What is the value of medical evidence?

TCs Should Keep in Mind:
• Medical evidence, when presented poorly or in a limited context, will do little for your case.
• The biggest mistake the government makes when it comes to medical evidence is defining it solely as genital injury.
• Genital injury is medical evidence, but medical evidence is much more than genital injury.
Regardless of the findings, TC probably want to address the medical exam if one was done. Panel members need to understand absence of injury even more than they need to understand injury findings.

Conducting the exam

Terminology

- SAMFE: Sexual Assault Medical-Forensic Examiner (Army hospitals)
- SANE: Sexual Assault Nurse Examiner (civilian hospitals)
- SAFE: Sexual Assault Forensic Examination evidence collection kit (“rape kit”)
A note on the word “forensic”:

- Yes, the word forensic appears in our work.
- No, the word forensic is not synonymous with bias toward prosecution.
- The description of the role in the professional standards is inherently neutral.

3 Questions to Identify Bias

1. What is the role of the SANE/SAFE?
2. Will you take care of these patients if they don’t want law enforcement involved?
3. Will you take care of these patients if they don’t want a kit collected?

Goals of the exam:

In the IAFN Sexual Assault Nurse Examiner Education Guidelines
1. Purpose for the SANE interaction is assessment of injury
2. Is objective documentation of health history to determine bio-psycho-social risk and risk of medical sequelae
3. Is objective documentation of assault history
Goals of the exam:

4. Collection and preservation of forensic data
5. Prevention of potential psychological and physical health risks associated with the assault
6. Facilitation of patient control over assault/abuse issues
7. Facilitation of healthy reorganization and readaptation following a sexual assault

(IANF Sexual Assault Nurse Examiner Education Guidelines)

The medical-forensic exam

The purview of the SANE/SAMFE is the medical-forensic exam:
1. Medical history
2. Assault history
3. Physical examination (incl. external body exam, evidence collection, photography and genital exam)
4. Discharge planning (incl. med administration, safety issues)

Step 1: Medical History

• First component of any medical encounter
• Includes chronic and acute healthcare problems, current medications, pregnancy history, and drug allergies.
• May also includes last consensual sex
Step 2: Assault history

- Assault history is crucial—helps guide the medical-forensic exam.
- Includes information about areas of penetration, types of penetration, and weapons used.

Step 3: Physical exam

- External physical inspection
- Physical evidence collection
- Photography
- Genital inspection

Sexual Assault Evidence Collection Kit
Some confusion about anatomy terms:

- **Vulva**: The external genital organs of the female, including the labia majora, labia minora, clitoris, and vestibule of the vagina.
- **Introitus**: Vaginal opening
- **Vagina**: The muscular tube leading from the introitus to the cervix of the uterus in women.

*The vagina is not visible in this illustration*

**Vulva**

**Introitus**

---

**Step 3: Physical exam**

**Male exams:**
- Difference is obviously in the genital inspection and how we obtain genital evidence.
- Depending on the program and the specifics of the assault history, anoscopy may have been completed.
Step 4: Discharge Planning

- Rape is not rape is not rape
- Standard part of every emergency medical encounter

- Discharge plan should include follow-up information, including medical follow-up, crisis follow-up and plans for STI testing if appropriate.
- STI prophylaxis, including HIV
- Pregnancy prophylaxis

What can I learn from the medical-forensic exam?
Expert Opinions

- Often fall into 2 camps:
  - No injury means no rape
  - If there was injury it must have been rape
- Need to understand the scope and the limitations of the medical evidence in order to effectively identify your own expert and address the opinion at trial.

What can the exam tell us?

Sometimes there's no injury.

Absence of injury

- Rates of injury vary widely in literature.
- Injury is influenced by multiple factors, including time of exam, age and assessment techniques.
Absence of injury

• Absence of injury can mean several things:
  • No injury occurred
  • No injury was visible based on a limited exam
  • Injury may have been there, but it has already healed

Absence of injury

Timing of exam:
• Many anogenital injuries heal rapidly. With programs extending the time after assault in which an exam can be conducted, the ability to identify injury is impacted.

Absence of injury

Age:
• The age of the victim may impact the likelihood of injury. Women under 18 and past the point of menopause are more likely to have injury than other patients.
Absence of injury

Exam techniques:
• Examining the genitalia with the naked eye frequently misses injury that would otherwise be identified when toluidine blue dye and/or magnification is employed.

Absence of injury

Skin tone:
• Darker skinned patients may be less likely to have existing injury identified during the exam.

Absence of injury

Absence of injury is also a reality in cases with anal penetration:
• While most people commonly believe that anal penetration will cause injury in the majority of cases, this is not supported by the research.
What can the exam tell us?

Sometimes there's injury, but it's non-specific.

Injuries

In the female sexual assault patient, most common areas of injury are the labia minora, the hymen and the posterior fourchette.
Injuries

Challenge with injury from sexual assault is that most often it is indistinguishable from injuries from consensual sex.

Injuries

Consensual sex injury research has not evolved enough for us to be able to draw conclusions about cause of injury.

Injuries

Cannot make assumptions about cause of injury based on:

- Location
- Number of injuries
- Quality of the injuries
Human Sexual Response

- Masters and Johnson, 1966
- Sometimes used to explain presence of injury in sexual assault patients
- Not a scientifically reliable explanation

Nonspecific Injury with Anal Contact

There is no research that gives us guidance on what anal injury in particular looks like in consensual vs. nonconsensual sex:

- We know nothing about propensity for injury based on a history of consensual anal contact
- There is no research comparing injury rates in patients who have had previous anal sex vs those who never have

What can the exam tell us?

- Most genital injury is on the outside, not the inside.
- Even patients not experiencing penile penetration can still have genital injury.
What can’t I learn from the medical-forensic exam?

The medical-forensic exam can’t tell you:

• If the patient was really raped
• If the patient consented: consent, or lack thereof, is an issue for the jury, not the SANE/SAFE
• Source of non-specific genital injuries

The medical-forensic exam can’t tell you:

• Source of bruising to the external body
  • Age of those bruises, no matter what color they are
  • If the patient with no memory of events was sexually assaulted.
What is the value of the medical-forensic exam?

Question:
What is the value of the medical-forensic exam and findings if they are usually non-specific?

Value of the exam

• Non-specific findings don’t mean unimportant findings
• Every positive findings in an exam is an important one
• Key is to not define medical evidence as “genital injury”—only one aspect.
Value of the exam

• Taking all the exam findings and presenting them as a single clinical picture increases the value of the exam and the resulting evidence.
• Medical evidence won’t be conclusive, but it can be compelling if you present it fully.
Patient Statements

• Few findings from the medical-forensic exam will be specific.
• Patient statements usually the most specific evidence documented.
• Trial counsel should fight to get those statements in whenever possible.

Patient Statements

Even if you can’t get the medical hearsay exception triggered make sure you don’t release the treating clinician after their testimony, as it’s possible defense could open the door for them to come in later as prior consistent statements.

Using Medical Experts
Evaluating the Treating Clinician

- You need to evaluate the clinician in the following areas:
  - Practice philosophy
  - Training/education
  - Experience
  - Clinical approach

For the government, this will allow you to decide whether this person will be useful as a teaching witness or should be limited to fact testimony (and potentially bring in an additional expert for consultation/testimony).

For defense, this information will pinpoint specific vulnerabilities of the witness for cross-exam, and allow you to identify an appropriate consultant for trial.

Questions to consider…

- Can the witness articulate the purpose of the encounter beyond it being an investigatory one?
- Is the medical hearsay exception triggered?
- Can the witness support opinions with current, reliable research?
Questions to consider…

How good was the exam?
  • Wait—there’s a possibility the exam wasn’t good?

Questions to consider…
  • The biggest red flag that you may have a lesser quality exam is if there is no existing quality assurance process in place
  • If there’s no QA process, there are no identifiable benchmarks for quality
  • If no one ever evaluates your work, how do you know you’re doing it well and how do you improve?
  • As an expert I shouldn’t be the 1st person to vet the quality of the medical record and exam process.

Obtaining an Expert Consultant
Even if you have a treating clinician, you may still need to work with an expert. Consider using one when:
• The clinician's education is not recent or complete.
• The clinician is particularly law enforcement-focused.
• The clinician does not appear to have significant knowledge of the current research.
• The clinician has only done a handful of exams.
• The clinician has never testified before.
• The defense expert has provided a written report.

If the defense has asked for a named expert you need to ask yourself why—and then you need to work with your own to combat any of the defense's theories regarding the medical evidence or the clinician who obtained it.
• This is true even in cases where you are certain the medical evidence is inconsequential. A defense expert can turn innocuous into damning fairly quickly.

Pretrial Consultant
• Even if you don't need an expert at trial, there may be reason to have an expert consultant on your case to prepare:
  • Can be a sounding board for strategy
  • Can help craft direct and cross
  • Can help get your local witness prepared
Protecting Victim Privacy

• An expert will want to review the medical records. In order to maintain victim privacy, consider how those records are shared.
• Sending records by email is completely insecure. AMRDEC is the *best* way to share records with your expert.
• Fedex will work also work.

Protecting Victim Privacy

• Photographs are of particular issue.
• Remember: not every expert needs everything—for instance the toxicologist doesn't need to see genital injuries to effectively consult on your case.

Closing Thoughts

• Make sure you understand the left and right limits of the medical-forensic exam.
• Think about how you can use expert medical consultation during your investigation, as you prep and at trial.