



## PHOTOGRAPHY AS AN ADJUNCT TO THE SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATION

Medical Forensic Subcommittee

Published April 1, 2020

### Introduction

Photo-documentation of injuries associated with sexual assault presents both benefits and potential untoward consequences. While photo-documentation may be beneficial for medical providers and the criminal justice system, it is critical to acknowledge the potential consequences.

Although physically non-invasive, both patients and examiners may perceive photography as very invasive. Additionally, from a criminal justice perspective, photography presents a number of issues. First, there is a possibility that photographs of sensitive parts of the body (such as the ano-genital area, breasts, or any other body part deemed as sensitive by the patient) will be shown in court and viewed by both the jury and the alleged perpetrator. If the court record is not sealed, there is also potential for others to have access to these photographs. Each of these situations can potentially re-victimize the patient. Second, White and Du Mont concluded that “genital injuries alone are not related to positive criminal justice outcomes” (2009). Finally, the significance of the presence or absence of injuries to sensitive areas can unintentionally work to continue to place a disproportionate emphasis on physical injury to prove non-consent.

If photographs are to be included in the sexual assault examination, protocols must be in place to ensure informed consent by the patient/guardian, proper photographic procedure, evidence storage and release to law enforcement, in addition to maintenance of victim privacy. *The State of Oregon Medical Guideline for Sexual Assault Evaluation (2017)* recommends that photographs should always be stored according to the institution’s policies, and released only for ongoing medical care, by patient request following a signed release, or for legal proceedings under a HIPPA-compliant subpoena. The patient and provider should be aware that there remains a risk that any photographs obtained may be used in criminal justice proceedings and informed consent must be provided. Release of photos must follow the same restrictions and guidelines as other parts of the medical record.



Given the potential consequences, the Medical Forensic Subcommittee of the Oregon Attorney General's Sexual Assault Task Force believes that photography of sensitive areas of the body is rarely appropriate in adolescent/adult patients (>17 years of age), and it is furthermore inappropriate for any sensitive photographs to be presented in the criminal justice system without additional protections in place.

---

During a sexual assault forensic examination (SAFE), medical providers are responsible for both treating the medical needs of the patient and collecting forensic evidence of the sexual assault. This includes forensic history documentation, a thorough physical examination, and documentation of injuries. In all cases, injuries are documented in the medical chart and on a trauma body-gram. In some cases, injuries are also photo-documented. Although photo-documentation of non-genital and genital areas is the standard of care for pediatric sexual assault forensic examinations, this adjunct is not routinely part of all examinations of adolescents and adults. Photo-documentation of sensitive areas in particular, needs special considerations when providing care for patients.

### **Reasons to take photographs**

Some of the circumstances when photographs, especially of a sensitive body part, can be beneficial include the following:

1. There is a visible injury on the patient and initial and follow-up photographs of the area may show both injury progression as well as the healing process
2. There is a visible distinctive pattern of injury on the patient
3. There is a symptom, such as pain reported by the patient but there are no visible signs, but initial and follow-up photographs of the area may reveal visible injury
4. To help medical providers, such as SANES, recall details of an injury
5. To document injuries in a patient who has sought treatment multiple times in cases involving on-going abuse
6. Whenever patients request photo documentation of injuries or symptoms of a sensitive area of their body

While education of other medical providers and peer review are important, this should not be the sole reason for photographs to be taken.



### **Informed consent**

All patients must have informed consent for photographs to be taken. Elements of informed consent must include the following elements:

1. An assessment of the patient's capacity to consent
2. An explanation of the purpose of the photography
3. What areas may be photographed
4. How photographs will be obtained (camera/colposcope/use of a measuring device/possibility of other medical staff in the room to help facilitate photographs)
5. How the photographs will be stored and who will have access to them
6. How long the photographs will be stored
7. How photographs will be released and to whom they can be released
8. How photographs may be used by the criminal justice system
9. Whether deidentified photographs will be used for education of other medical providers or for peer review
10. Circumstances when additional photographs may be recommended

### **Storage, access, and retention of photographs**

Photographs are part of the medical record of the patient. All SANE programs should have protocols and procedures delineating how photographs are taken, who may take photographs, and how photographs will be securely stored, as well as a process for release of photographs when subpoenaed or requested by the patient or another outside entity. Photographs should never be included in any evidence provided to law enforcement or released to the forensic lab.

Elements of secure storage include the following:

1. Limitations on who has access to photographs within a medical record.
2. A means of tracking when and who accesses photographs.
3. A policy on retention that recognizes that photographs are part of the medical record and should therefore be retained as long as the medical record
4. A policy for release of any photographs, which provides additional protections for patients when photographs are subpoenaed, including notifying the patient of the



subpoena in order to allow them the option of challenging the court order or working with the judicial system to limit use of the photographs

5. Policies around the use of colposcopy or other adjunctive techniques to enhance photographs

Photographs should be made available to other medical providers only if needed for on-going medical care. Every institution also needs to consider that there may be circumstances in which employees may be friends or family members or acquaintances of either a patient or the suspect/accused person of a crime.

The IT, legal and risk management teams within each facility should be involved in creation of all policies and procedures around access, handling, storage, retention, enhancement, release and use to ensure compliance with privacy laws, rules, and regulations for storage of electronic records and images.

### Conclusion

Consistency among medical providers and other professionals involved in providing services to patients who have been a victim of a crime is key to quality forensic evidence collection and quality patient care. Each community must develop their protocols, with these issues in mind, while referring to the photography guidelines in the *State of Oregon Medical Guideline for Sexual Assault Evaluation*, to mitigate any potential untoward consequences. The Medical Forensic Subcommittee of the Attorney General's Sexual Assault Task Force recognizes both the utility of photography for medical documentation and their potential use in the criminal justice system. **However, given the aforementioned potential consequences of this nature of photography, the Oregon Attorney General's Sexual Assault Task Force strongly recommends that SANES have a clear indication for taking any photographs and that, except in very rare circumstances, sensitive photographs not be obtained.**

### References

Ledray, L. 2008. "Consent to photograph: How far should disclosure go?" *Journal of Forensic Nursing*, 4(4): 188-189. doi:10.1111/j.1939-3938.2008.00032.x



Office for Victims of Crime. [SANE Program Development and Operation Guide](#). Retrieved August 2019.

Office on Violence Against Women. 2013. [A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents Second Edition](#). Retrieved August 2019.

Oregon Sexual Assault Task Force. 2019. [State of Oregon Medical Guidelines for Sexual Assault Evaluation Adolescent \(≥15 years\)/Adult](#). Retrieved August 2019.

White, D., Du Mont, J. 2009. "Visualizing sexual assault: An exploration of the use of optical technologies in the medico-legal context." *Social Science and Medicine*, 68(1): 1-8. doi: 10.1016/j.socscimed.2008.09.054

---

Please contact the Oregon Attorney General's Sexual Assault Task Force for permission to reproduce this document in full or in part:

3625 River Rd. N., Suite 275, Keizer OR 97303 | Phone: (503) 990-6541 | Fax: (503) 990-6547  
Email: [taskforce@oregonsatf.org](mailto:taskforce@oregonsatf.org) | Web: [www.oregonsatf.org](http://www.oregonsatf.org)