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

This position paper reflects the views of the Medical Forensic Subcommittee and was approved by the Steering Committee of the Attorney General’s Sexual Assault Task Force Advisory Committee on June 5, 2012.

Abstract

Photo-documentation of genital injuries presents both benefits and potential untoward consequences. In consideration of these consequences, The Medical Forensic Subcommittee of the Oregon Attorney General’s Sexual Assault Task Force believes that except in cases of peer review, quality assurance programs, or medical documentation, genital photography is not appropriate, and it is furthermore inappropriate for said photographs to be presented in the criminal justice system.

During a sexual assault forensic examination (SAFE), medical providers are charged with 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, specifically, genital injuries is the standard of care for pediatric sexual assault forensic examinations, this adjunct is not consistently used in all examinations of adolescents and adults. Photo-documentation of genital injuries presents both benefits and potential untoward consequences.

Benefits of genital injury photography include improved injury identification and documentation (Ledray 2001), specifically when a colposcope is used in the examination. The colposcope is able to magnify injury up to 30 times greater than what can be visualized with unaided visual examination (White and Du Mont, 2008). Thus, the practitioner is able to document “more types and a greater number of anogenital injuries” (Id., 2008) when a colposcope is used during the examination.

An additional benefit of genital injury photography is the potential elimination of the need for repeated examinations because “photographs or digital images can be shown to experts or consultants” (Sawyer Sommers, et al., 2005). Similarly, this can also extend to an educational
application, when sexual assault nurse examiners (SANEs) or other trained medical professionals use photographs to increase their exposure to the various genital injury that results during a sexual assault. Finally, quality assurance programs can also benefit from this type of injury documentation during case reviews and chart auditing.

While the aforementioned benefits exist with genital injury photography, it is critical that potential consequences be acknowledged. Although physically non-invasive, clearly genital photography can be perceived as very invasive by both the patient and the examiner.

Additionally, from a criminal justice perspective, genital photography presents a number of issues. First, there is a possibility that these very sensitive pictures are shown in court, and viewed by the jury and the alleged perpetrator, potentially re-victimizing the patient. Also, if the record is not sealed, there is potential for others to have access to these photographs. 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 genital injury can unintentionally work to continue to place a disproportionate emphasis on physical injury to prove non-consent.

Finally, if genital photography is to be included in the sexual assault examination, protocols must be in place to ensure 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 (2008) recommends that ano-genital photographs should always be stored according to the institution’s policies, and released only for ongoing medical care, or 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 these sensitive photos be used in criminal justice proceedings and informed consent must be provided.

Consistency among providers and between patients is key to quality forensic evidence collection. Each community must develop their protocols, with these issues in mind, while referring to the State of Oregon Medical Guideline for Sexual Assault Evaluation: photography guidelines, to mitigate any potential untoward consequences. Thus, the Medical Forensic Subcommittee of the Attorney General’s Sexual Assault Task Force recognizes the utility of ano-genital photographs, and therefore recommends ano-genital photography for quality assurance processes, including peer review, and for medical documentation. **Given the aforementioned potential consequences of this nature of photography, the Oregon Attorney General’s Sexual Assault Task Force strongly recommends that, except in very rare circumstances, ano-genital photographs not be used in a criminal justice setting.**
References


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