MEDICAL EXAMINATION TO DIRECT EXAMINATION:
THE CONNECTION BETWEEN THE MEDICAL ASPECTS OF A CASE AND A SUCCESSFUL PROSECUTION

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Medical Aspects of a Case

Medical Evaluations
- Maximization of medical, legal, and protective outcomes
Medical Evaluations

• Maximization of medical, legal, and protective outcomes
• Utilization of medical professionals specializing in child abuse an neglect

Medical Evaluations

• Maximization of medical, legal, and protective outcomes
• Utilization of medical professionals specializing in child abuse an neglect
• Emergency Room vs. Children’s Justice Center
  - Referral of the medically stable child/adolescent should be made to the local CJC

Determining Who/When to Examine the Child

Medical Emergencies
- Severe pain, bleeding, fractures, head trauma, loss of consciousness, etc.

Everything Else
- CJC Facility with child abuse professional or nearest child abuse specialty facility
Determining Where to Examine the Child

**Children** (<18 years old)

**Adolescents** (14+ years old)

**Developmentally Delayed Adults**
Protocols for Determining Emergent Exams

<table>
<thead>
<tr>
<th>Age</th>
<th>Last Sexual Contact</th>
<th>Injuries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newborn ➔ 18 years old (unless developmentally delayed)</td>
<td>Within last 72 hours (pubertals up to 120 hours)</td>
<td>Vaginal/rectal pain or bleeding Physical Abuse injuries that need documented (urgent not emergent)</td>
</tr>
</tbody>
</table>

True or False?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Answer</th>
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<tbody>
<tr>
<td>The exam will be traumatic to the child.</td>
<td>FALSE</td>
</tr>
<tr>
<td>The exam will hurt the child.</td>
<td>FALSE</td>
</tr>
<tr>
<td>An exam is unnecessary if child has only disclosed limited contact.</td>
<td>FALSE</td>
</tr>
<tr>
<td>The medical evaluation will confirm the child’s story.</td>
<td>FALSE</td>
</tr>
</tbody>
</table>

Necessity of an Exam

Determination made by:
- Medical
- Law Enforcement

- How is decision made?
- Examples of not needing an exam
Components of a Medical Exam
- Medical history
- Behavioral history
- History of present illness
- Full body exam / colposcopic exam
- Evidence collection (if acute only)
- Medical/Legal Report

Medical History
- Medical Background
- Medications
- Immunization History
- Diet History
- Development History
- History of Bruises/Fractures/Clotting Disorders
- Family History

Behavioral History
- Changes in behavior
- Wetting/stooling problems
- Acting out at school/grades
- Bullying
- Sexual behavior
History of Present Illness

- NOT a forensic interview (FIT)
- Further disclosure of details
- Safe, healthy environment
- Misconception: “They’ll be able to tell what happened when they look at my body”
- Type of questions asked in medical history must be “for the purpose of diagnosis and treatment” to be admissible at trial

Importance of History of Present Illness

- History is often the most beneficial thing in the medical report, especially when the findings are normal
- Information can lead to the scene for evidence not previously gathered (i.e., creams, lotions, bedding, nightgown, underwear)
- DNA swab from suspect – victim disclosure may provide enough information for search warrant
- Medical exam history may provide secondary locations, victims, etc.

Full Body Exam / Colposcopic Exam

- Full head-to-toe physical examination
- Photo documentation of ANY findings
- Collection of evidence (when needed)
- Colposcopic exam (when needed)
- IT IS OKAY TO HAVE A NORMAL EXAM!
Positive vs. Negative Findings

- Conclusive findings are rare
  - 95% of exams are perfectly normal
- Physical evidence is uncommon in sexual abuse of children
  - Investigative challenges
  - Absence of signs of trauma may support disclosure

Prepubertal vs. Adolescent Girls

- Prepubertal tissue ➔ fragile, thin, sensitive
- Estrogen effect ➔ hymen becomes pale, elastic, redundant
- Adolescents may tolerate vaginal penetration without injury
- "Virgin checks" mean nothing and we do not do them
- Adolescent’s genital tissue may appear the same as it did before the assault

Colposcopic Exam

Provides:
- Evidence not visible to the naked eye
- Photographic/video graphic documentation
- Physical indicators which may validate the victim’s account of the abuse
Evidence Collection

- Photo documentation of injuries
- Code-R Kit
- Lab work
  - DNA
  - STIs
  - HIV
  - Spermatozoa
  - Other infections

Medical / Legal Report

Report Contents:
- The parents accounting of the event
- The child’s disclosure of the abuse
- Any medically historical issues which may cause suspicion
  - UTI
  - “Yeast” infections
  - Encopresis/enuresis
  - Behavioral changes
  - Lab findings
- Physical examination findings with photo documentation
- Conclusion – Opinion of the child abuse expert

Expert Witnesses

- Degree and experience make us expert witnesses
- Primary care physician will not want to come to court to testify
- Have the backing of Primary Children’s Hospital
- Peer review on cases
- Effectively testify to normal or abnormal findings
Blending of Medical and Law

- Sexual abuse examiner acts as a member of the multidisciplinary team to facilitate the investigation.
- Physical examination assists in ensuring the health and safety of the child.
- Medical component of the sexual abuse investigation provides one piece of the challenging puzzle of formulating a plan for prosecution.

Legal Aspects of a Case

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Case Study #1
Rule 412 – Rape Shield Rule

(a) Prohibited Uses. The following evidence is not admissible in a criminal proceeding involving alleged sexual misconduct:
(1) evidence offered to prove that a victim engaged in other sexual behavior; or
(2) evidence offered to prove a victim's sexual predisposition.

(b) Exceptions. The court may admit the following evidence if the evidence is otherwise admissible under these rules:
(1) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;
(2) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; or
(3) evidence whose exclusion would violate the defendant's constitutional rights.

(c) Procedure to Determine Admissibility. If a party intends to offer evidence under Rule 412(b), the party must:
(A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;
(B) do so at least 14 days before trial unless the court, for good cause, sets a different time; and
(C) serve the motion on all parties.

Rule 412 – Admissibility

(3) Hearing. Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing are classified as protected.

Rule 412 – Hearing

Is the trial court required to hold an evidentiary hearing before determining that evidence of sexual history is inadmissible?

State v. Quinonez-Gaiton
2002 UT App 273

The plain language of this rule indicates that a trial court is required to hold a hearing only if it intends to admit evidence of the victim's prior sexual conduct. The plan language of this rule indicates that a trial court is required to hold a hearing only if it intends to admit evidence of the victim's prior sexual conduct.

Such a hearing provides the victim with a final opportunity to be heard prior to having his or her sexual history discussed in open court. A hearing is contemplated only if the court sees the applicability of one of the limited exceptions and intends to admit such evidence.

State v. Clark
2009 UT App 252

Can the court hold an evidentiary hearing to determine whether 412 evidence should be admissible?

Defendants may be entitled to a rule 412 hearing if there is evidence of a prior allegation and a legitimate reason to question its veracity.

A rule 412 hearing is not a discovery tool.
Granted, in part
Denied, in part

“[I]n the event that the State attributes Victim S.L.’s bruising and tearing injuries were caused by the Defendant, then only the results of Victim S.L.’s DNA and NUSANE exam reports are admissible.”

Case Study #2

Rule 803 – Hearsay Exception
803(4) – Statement Made for Medical Diagnosis or Treatment. A statement that:
(A) is made for— and is reasonably pertinent to— medical diagnosis or treatment; and
(B) describes medical history, past or present symptoms or sensations, their inception, or their general cause.
“It is important to note that a negative exam does not rule out child sex abuse and that [victim’s] disclosure should be taken into account.”

**Expert Witnesses**

**SANE Nurse** - i.e. Stacie Mecham
- Children’s Justice Center
- Primary Children’s Medical Center

**Child Abuse Pediatrician** - i.e. Dr. Antoinette Laskey
- Center for Safe & Healthy Families
- University of Utah

**Notification**

Notice that required if government employee and reasonable notice through general discovery that the expert may be called as a witness at trial. § 77-17-13(9)

If notice is required – as soon as practicable and not less than 30 days prior to trial. § 77-17-13(10)

If anticipated testimony will be based in whole or part on the results of any test or other specialized data, must provide to defense upon request. § 77-17-13(11)
Scientific Studies

The Doctor Cannot Always Tell: Medical Examination of the "Intact" Hymen
The Lancet (February 1978)


Reports of Repetitive Perineal-Genital Penetration Often Have No Definitive Evidence of Penetration (Abstract) September 1999

Updated Guidelines for the Medical Assessment and Care of Children Who May Have Been Sexually Abused (Executive of Pediatric Adolescent Gynecology 2016)