

SANE Module 5: Tips from a SANE Expert about Legal Issues

A Special Note to Participants

This course is the fifth module in the Sexual Assault Nurse Examiner (SANE) Online Course. The SANE Online Course represents twenty hours of a 40-hour New York State Department of Health (NYSDOH) certified Sexual Assault Forensic Examiner (SAFE) Training Program.

The online course is a collaborative effort between the New York State Nurses Association and four certified NYSDOH Sexual Assault Nurse Examiners who provided the curriculum for the online course. The requirements to complete the comprehensive NYSDOH-certified SAFE Training Program are:

- SANE Online Course (20 hours)
- Live clinical course with a certified SANE educator (20 hours)
- Clinical preceptorship (arranged with a SANE educator)

The development of the five online modules was funded in part through a grant from the New State Division of Criminal Justice Services (DCJS). Additional information concerning the SANE Online Course and requirements for completing the SAFE Training Program can be found in Module 1.

NYSNA Continuing Education

The New York State Nurses Association is accredited as a provider of continuing nursing education by the American Nurses Credentialing Center's Commission on Accreditation.

This module has been awarded 4 contact hours and contains two components: online didactic content and an online discussion forum. **Participants must read the online material, contribute to the discussion forum, pass an online exam with at least 80%, and complete an evaluation in order to receive a certificate of completion.**

How to Take This Module

Please take a look at the steps below these will help you to progress through the module.

1. REVIEW THE OBJECTIVES

The objectives provide an overview of the entire module and identify what information will be focused on. Objectives are stated in terms of what you, the participant, will know or be able to do upon successful completion of the module.

2. STUDY EACH SECTION OF THE MODULE IN ORDER

Keep your learning "programmed" by reviewing the content in order. This will help you understand the sections that follow.

You will need to enter the online discussion forum as directed throughout the module. When you see the rotating stop sign, you are expected to enter the online forum to answer questions or engage in discussion with your SANE educator and other participants in the online course. **Participation in the online forum is required and will be monitored by your SANE educator.**

3. COMPLETE THE MODULE EXAM

After studying the module and completing the requested activities in the forum, click on the "Course Exam" option located on the module navigation toolbar. Answer each question by clicking on the button corresponding to the correct answer. All questions must be answered before the exam can be graded; there is only one correct answer per question. You may refer back to the module material by minimizing the exam window.

4. GRADE THE MODULE EXAM

Next, click on "Submit Test." You will know immediately whether you passed or failed. If you do not successfully complete the exam on the first attempt, you may take the exam again. It is highly recommended to review the material for the questions missed **BEFORE** attempting the exam again. If you are unsuccessful on your second attempt, you will need to contact your SANE educator.

5. COMPLETE THE EVALUATION FORM

Upon passing the module exam you will be prompted to complete an evaluation. You will have access to the certificate of completion **after you have passed the discussion forum, passed the exam, and completed the evaluation.** At this point, you should print the certificate and keep it for your records. You will need to provide a copy of all five certificates to your SANE educator as proof of completion of the 20 hours of online content.

SANE Module 5: Objectives

Upon completion of this course, the learner will be able to:

- Identify the role of the sexual assault nurse examiner in reporting.
- Discuss the evidence collection requirements for compliance with New York State regulations.
- Contrast the role of law enforcement with the role of the sexual assault nurse examiner in sexual assault cases.
- Identify the role of local law enforcement in the SANE participant's hometown.
- Review the laws in New York State that address sexually-related crimes.
- Discuss the role of the SANE in the prosecution of sexual assault perpetrators.
- Identify "tips" for communicating as an expert or a fact witness.

SANE Module 5: Introduction

This module presents an overview of the legal process following a sexual assault and some of the ethical issues that the SANE may face. Patients have a choice in whether or not to report to the police and pursue prosecution; therefore the SANE may or may not have a role in the legal process. The legal process is unique and complex. From the perspective of law enforcement, sexual assault is not a crime unless it is reported.

Sexual assault regulations vary from state to state, but most have similar provisions. However, definitions and lengths of punishment may differ. We will focus on New York State exclusively in this module. You may also find that within your own county or region there are differences, so it is important to be aware of your local customs and policies.

A Word about the Activities of this Module

A private, online discussion forum has been set-up for your region of New York State. At various points in this online module you will be asked to research local resources, create a CV, and provide feedback on presented questions. You should complete the discussion board postings **in sequence** as you come across them in the module content. It may be helpful to keep the course window and discussion forum window open at the same time so you can move more quickly between the module and the forum. When you enter the discussion forum, the first topic provides instructions on how to post your responses.

When you see the rotating stop sign you will have access to a link that directs you to the discussion forum entrance page, where you will be prompted for a username and password. Enter the username and password assigned to you. Next, click on your region-specific forum and enter the appropriate password. As a reminder, your SANE educator e-mailed username and password information at the time of your course enrollment.

We encourage you to read each other's postings and respond. **Reminder!** Your participation in the discussion forum will be monitored by your educator.

SANE Module 5: About the Author

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Ms. Ceccucci is formerly the Forensic Nurse Examiner Coordinator for Samaritan Hospital, SANE program in Troy, New York and Albany Memorial Hospital in Albany, New York, where she performed examinations on all ages of sexual assault patients. She completed the Adult/Adolescent Sexual Assault Nurse Examiner 40-hour training in October 2005, and joined the SANE program at Samaritan Hospital as an on-call SANE examiner. She revised the curriculum of the Adult/Adolescent SANE training and the new curriculum received certification from the New York State Department of Health as an Official Training Program, only the sixth training program in New York. Additionally, she has completed the 40-hour Pediatric SANE program training in 2007. Ms. Ceccucci received her associate's in nursing from the Samaritan Hospital School of Nursing in 2003. She received a Master's of Science degree in December 2009 from the State University of New York Institute of Technology, and in 2010 became a certified Family Nurse Practitioner.

Reporting

One of the goals of a sexual assault exam is to give a patient his or her choices back, since they have been taken away. Therefore, the patient has the choice whether or not he or she would like to report the assault to the police. The only exception to this relates to the mandatory reporting obligations of the Sexual Assault Nurse Examiner (SANE).

These include:

- Reporting child abuse.
- Reporting patients with stab or gunshot wounds. These patients must be reported to the police.

However, if the patient is sexually assaulted, the patient **does** have a choice whether or not to report the sexual assault. Healthcare providers must report a gunshot or stab wound, but are not required to report the sexual assault.

Patients may arrive at the emergency department or other facility in a variety of ways, including by ambulance, with police, referred by another provider or community agency, or they may come in by themselves. This also means that the patient may have already reported to the police prior to arriving at the hospital.

Other times, patients may arrive confident that they do not want to make a police report. Many patients may be unsure of what to do. Patients may have questions about what will happen after speaking with the police, or if they will have to go to court. These are difficult questions to answer for patients, as we are not able to provide patients with concrete answers.

Questions that patients may ask you include:

- Will the police believe me?
- What do I have to tell the police?
- How long will this process take?
- Will I have to testify?
- What happens next?
- When will he/she be arrested?
- When will I find out the results of my kit?

These are just a handful of the commonly asked questions of sexual assault patients. Many of the above questions do not have easy answers and **there are no easy answers**. The answers you give to patients may simply be to say "I'm not sure." You can never make any promises, since the SANE has little, if any involvement after the examination. We will now discuss the processes that take place following the SANE examination.

The Role of the SANE

The SANE should always assess whether or not a patient is choosing to report to the police or not. A discussion should be held regarding the pros and cons of reporting, and what will happen with the forensic evidence collected. The SANE should also document the physical location of the assault (the address or the city/town) in case the patient later decides to report. Having the address will assist in determining which police department will handle the investigation.

If the patient does not choose to report, the SANE should perform a physical examination with appropriate evidence collection. **The exam and the evidence collected should not differ between patients that have reported and patients that have not reported.** Patients may report days, weeks, or months later and the SANE will only have one chance to collect the forensic evidence.

Evidence Collection

Evidence kits that are collected must be held for a minimum of *thirty days* in the hospital, and kept in appropriate locked storage. The preferred method of storage of Sexual Offense Evidence Collection kits is locked freezing. However, this is an impractical method of evidence storage for the large majority of hospitals. Evidence that is frozen can become thawed when it is released or transferred to the local crime lab.

If freezing the evidence is not an option, the next preferred method is locked refrigeration. Locked refrigeration may be problematic because space and cost are a primary concern in healthcare facilities. It is also acceptable to store kits in a dry, temperature controlled, locked storage area. For Drug-Facilitated Evidence Collection Kits, the **only** acceptable storage is locked refrigeration. All hospitals must have access to locked storage areas in order to comply with New York State Department of Health (NYSDOH) rules and regulations. As a reminder, you read the *New York State Protocol for the Acute Care of the Adult Patient Reporting Sexual Assault* in module 1, but you can access this document again by visiting:
http://www.health.state.ny.us/professionals/protocols_and_guidelines/sexual_assault/index.htm.

With storage of evidence, an evidence log should be kept in order to maintain the chain of evidence. New evidence should be “logged in” within a book that contains the patient’s name, the date, the time, and the person’s name who is logging in the evidence. The SANE should also have a way to track every time a person enters the locked storage area. There are many ways to do this, including a sign-in sheet or locking the keys in an automated medication dispensing machine which tracks who removes keys and when.

If releasing evidence to the police department, the SANE should sign the log book, document the date and time, and identify to whom the evidence is released. Evidence must only be released to sworn police officers or troopers. Sworn officers are state certified, have powers of arrest, and have the right to carry firearm without a license. Sometimes when dealing with local colleges, they may or may not have sworn officers on campus – you must determine this prior to release of evidence.

For patients who would like to report but have not reported yet, you should ask them whether they would like you to contact the police for them. The police should send an officer to the hospital immediately. However, the police may also send a detective or they may not send anyone immediately. This is especially true if the assault occurs on an off shift, if the department is functioning with only a few officers, or if the department is a far distance away.

Sometimes it may be difficult for the SANE to determine which police department to contact. The SANE should determine exactly where the assault occurred, again, an actual address would be extremely helpful. Generally speaking, the police agency responsible in the town or city where the

assault took place will be responsible for the investigation of the assault. However, there are also exceptions to this rule.



Key Points to Remember

- ✓ The exam and the evidence collected should not differ between patients that have and have not reported.
- ✓ Evidence kits that are collected must be held for a minimum of *thirty days*, and kept in appropriate locked storage.

The Role with Law Enforcement

Types of Police Agencies

First, let's determine the different types of police agencies. There are many different types of police agencies across the state of New York.

- College Police / Public Safety – (may or may not be sworn officers)
- Town/City Police Departments
- County Sheriff Departments
- State Police Agencies
- Federal Bureau of Investigations (FBI)

The SANE may tend to work with some agencies more than others depending on the geographic region in which you live or work. Some counties rely heavily on local departments, while others are more focused on sheriff or state police agencies. Certain counties may not allow the sheriff's department to investigate sex crimes. Depending on the geographic area, there may be more than one agency covering the specific location in which the assault occurred. It is not the SANE's responsibility to determine who has jurisdiction in each sexual assault case. If a SANE is unsure, she or he should call the local department and ask for advice.

Location of the Crime

Other considerations for reporting include whether the assault occurred in a variety, or more than one jurisdiction. The patient may decide to report to one agency and then that same agency may involve other agencies. If this situation occurs, and the case is going to be completed in New York State, the NY State Police may take over the investigation. If the assault occurred across state lines, the FBI may become involved.

A patient may also be concerned about reporting to a specific department, either because the perpetrator works for the department or a perpetrator's family member may work for the department. Another concern may be that the patient either works or knows someone who works for the department. In these cases, the patient may choose to report to the state police who always have jurisdiction. However, there is no guarantee that the original department will not receive information surrounding the assault.

Working Directly with Law Enforcement

Dealing with the police may be a positive or negative experience for the SANE and the patient. Immediately after the assault, you may encounter an officer who has little training in sexual assault cases. They may be uncomfortable talking with patients and taking their statement. They may also be uncomfortable talking with the SANE about the results of the exam and may have unrealistic questions for the SANE that are unable to be answered. A sample of questions you may encounter from police and potential answers include:

Police "So, was she raped?"

SANE: "She stated to me that this man named Bill had raped her."

Police "Yeah, but do you believe her?"

SANE: I believe every patient, it is not up to me to decide what did or did not happen."

Police "Did you find any semen or sperm?"

SANE: "Only the crime lab has the capability to test for sperm and semen. I have collected the specimens they'll now be analyzed by the crime lab."

Police "Did she have any injuries?"
SANE: *Answer honestly* – Don't try to talk speak positively or negatively about the patient. If she does not have any injuries say so! Then, educate the officer that it is normal not to have any injuries.

You may also be in contact with a detective or investigator. Generally, you can tell the difference between an investigator and an officer by the clothing they are wearing. Investigators or detectives tend to dress in suits and ties, not police uniforms. Depending on the department, you may have a detective that is specifically trained in sexual assault cases, but there are no guarantees about their training. Even seasoned detectives may ask you some of the questions like the prior dialog. Another important point is you **must always** have the patient's consent prior to speaking to any law enforcement official, whether an officer or a detective. As a SANE, I would recommend that you talk with the patient and determine exactly what is okay to speak with law enforcement about.

Interacting with Law Enforcement and the Sexual Assault Patient

Working with the police within the hospital setting may be difficult, especially if you both arrive at the same time to evaluate the patient. The police may want to immediately speak with the patient, forcing or requesting you to wait. However, the medical assessment and evaluation generally always comes before the forensic evaluation. One way to handle a situation like this is to speak with the law enforcement official privately and determine a course of action together. For example, allowing law enforcement to speak with the patient while you set up your examination room may be a good compromise. Inform the officer that your exam will take several hours and she or he may choose to wait, or you may suggest that you can call them when everything (the evidence) is ready to be picked up. Many law enforcement officers do not choose to wait around; however, some may. You should never have arguments or speak harsh words with law enforcement in front of the patient.

Another situation that may occur is when the police arrive in the middle of your examination (More than once I have had the police knocking on my exam door while I had a patient in stirrups). If this happens, you may want to have the advocate act as the go between to speak with law enforcement while you complete your examination. If the advocate is unavailable, you should inform the officer that you are in the middle of the examination and will be with him or her as soon as possible.

As a general rule, it is not appropriate for law enforcement to be present during your documentation of medical history or your examination. However, like all rules, there are always *exceptions*. For example, if your patient is an inmate or under arrest, it may be required to have an officer present during the entire process. Additionally, if your patient insists that law enforcement be present during the history or exam, you should accommodate your patient's wishes.

Next Steps After the Examination

Following a SANE exam, the police have a great deal of work to complete. Always ensure your patient has the full name and contact information for the officer or the detective he or she talked to in the hospital. If possible, ask who specifically will be assigned to the case so the patient can contact them with questions or if they remember any new details (Captain J. Cooney, personal communication, March 2, 2009).

After the initial police response, an attempt is made to identify and locate a suspect. An interview with the suspect is critically important to attempt to obtain a confession from the perpetrator of the assault. The police will identify the scene of the crime and collect all the evidence at the scene.

The investigator may need to obtain search warrants for the scene of the crime or other areas that are specific to the case.

The patient will eventually need to sit down and give a full, detailed account of the assault to the investigator and complete a more in-depth interview. The patient may choose to have an advocate present at this time. The police may perform research on the suspect and interview other potential witnesses. Following all of the collection of evidence and witness statements, an arrest may or may not be made depending on the strength of the case. At this time, the police may consult with the local District Attorney's office for advice on how to proceed. Generally, the patient does have a choice about whether or not they would like to pursue the case further (following reporting). However, this differs between jurisdictions. If an arrest is made, the patient will be contacted by the police and may need to testify. The length of the police investigation process varies, but on average it takes about three to four weeks.

Many things may affect a patient's case in the criminal justice system. If the patient does not report immediately, the SANE should be careful about not demonstrating any prejudice in the patient's case. However, delayed reporting will make the patient's case more difficult to investigate due to the potential loss of physical DNA evidence. False reporting could be an issue in the investigator's mind. While the false reporting rate in sexual assaults is no higher than any other type of crime, it does exist. Depending on the investigator's choice and the motives behind the false reporting, the patient may or may not be charged. There is a potential for an arrest and conviction of a misdemeanor.

The importance of **developing a relationship with your local police agencies** cannot be stressed enough. The SANE should be aware of what local departments his or her hospital serves and which detectives or investigators are generally assigned to sex crimes.



Key Points to Remember

- ✓ You **must always** have the patient's consent prior to speaking to any law enforcement official.
- ✓ Develop a relationship with your local police agencies.

Laws in New York State

There are multiple laws in New York State that address sexually related crimes. These laws fall under the New York State Penal Code 130.



Activity #1

Please read the New York State Coalition Against Sexual Assault (NYSCASA) document entitled "A Summary of New York State Penal Code 130 Sex Offenses as of 2008." This is available from: <http://nyscasa.org/understanding/penalcodes>.

After reviewing the document, what do you understand about Penal Code 130? Go to the discussion forum and post your response.

As a reminder from what you learned in module 1, the definition of penetration/rape in New York State is "penetration, however slight" as found in Article 130 of the New York State Penal Law. The definition can be interpreted within the criminal justice system differently, but generally means any time something passes the vulva, specifically the labia majora and minora. This is an important concept to understand, as many people are under the impression that penetration only means a penis into the vaginal vault, but legally this is not the case. So, it is important to document exactly what the patient tells you.

Avoid the terms internal and external as they may confuse the penetration issue. Document your findings using the exact anatomical terms and **avoid** such terms as "external vaginal area" or "outside the vaginal opening. For example, *write* "There is a 2 mm tear to the posterior fourchette at 6 o'clock." You should *not* write "There is a 2 mm tear to the exterior vagina."

Charges for the Perpetrator

Now let's discuss the different types of charges a perpetrator can be charged with under the law in New York State. Remember – these laws vary from state to state. You do not need to memorize these laws. You only need to be aware of the laws. Your role as the Sexual Assault Nurse Examiner is to provide the medical examination and evidence collection; you should not be concerned for or care about the case outcome.

Many of the most serious charges must include a concept called "forcible compulsion" as described in Article 130 of the New York State Penal Law. The prosecution will need to prove that the sex was forced or that a threat of physical harm was implied in order to charge at a certain level of felony. It is important to document within the patient's history if the perpetrator had a weapon or threatened her in any way. Knowledge about weapons and/or threats is also helpful in determining a patient's safety plan upon discharge. Many of the charges listed within the NYSCASA summary of New York State sex offenses document you read previously also list age ranges for certain charges. Again, you do not need to memorize this, but be aware.

Prosecution

Only a small percentage of sexual assault cases actually go to trial, and many times even with a conviction, a perpetrator may not spend time in jail. According to a 1999 National Crime Victim Survey as cited in Domestic Abuse and Sexual Assault Intervention Services (n.d.), 72% of rapes/sexual assaults are not reported to police.

- Of the 28% of rapes that are reported, probability statistics show:
 - There is a 50.8% chance that an arrest will be made.
 - If an arrest is made, there is an 80% chance of prosecution.
 - If there is a prosecution, there is a 58% chance of a felony conviction.
 - If there is a felony conviction, there is a 69% chance the convict will spend time in jail.

Note: While the probability statistics listed above may appear outdated, they are the most recent data currently available. Regardless, they help paint the picture of the likelihood an assailant will be arrested and prosecuted for rapes that are reported.

Many times, nurses become discouraged after hearing these statistics. However, things are changing and the SANE is the beginning of change. Also, remember that the response a patient receives during the beginning stages of the sexual assault are the most critical for his or her recovery after a sexual assault. A SANE that can provide the sexual assault patient with their undivided attention and demonstrates empathy and support and a belief in what they have experienced, may be more beneficial than any successful prosecution could ever be.

Judicial Process

Now that we know the majority of cases do not get prosecuted, let's talk about what happens during the judicial process. Figure 1 maps the judicial process from the time of the sexual assault to the sentencing.

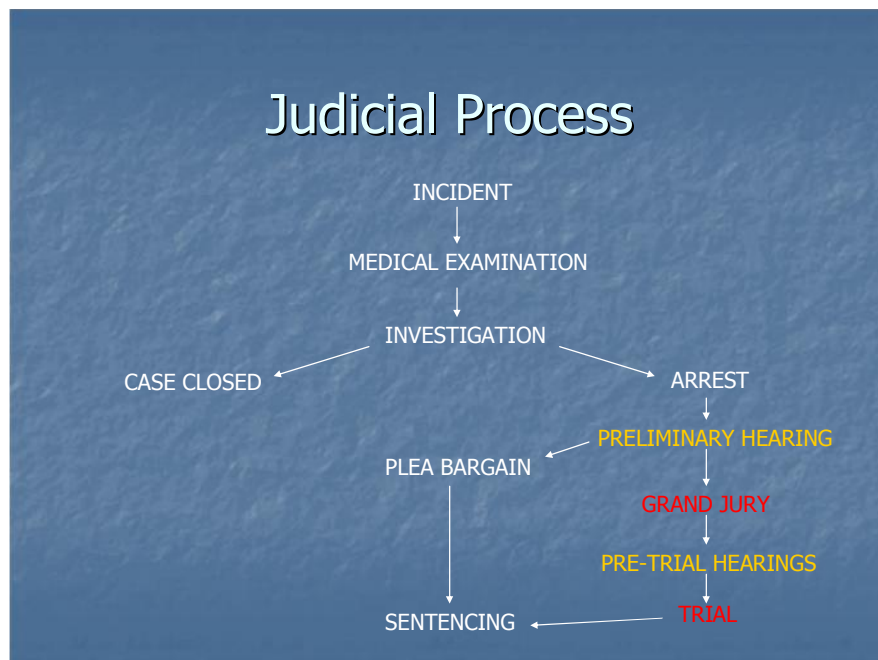


Figure 1. *Judicial Process*. Developed by David Rossi in Albany, NY, and used with permission.

Following the medical examination, an investigation is made by the police department and a decision is made to make an arrest. If law enforcement has decided that an arrest will not be made (for example, there is not enough evidence to support the charges), the case will be dropped and closed. It is possible that the case could be reopened in the future.

The Hearing

Following the arrest, a preliminary hearing is held. This hearing must be held within *144 hours* of the arrest and is a hearing to determine whether there is sufficient evidence to maintain the charges. At this point in the hearing, it is not necessary to prove “beyond a reasonable doubt”. Many times this hearing is held in the local courts. One note I would like to make about local courts is that the judge may or may not be an attorney. These judges are elected officials and are voted into office (not really important for you to know, just interesting). You may be asked to testify at this hearing, but usually you do not need to testify. Defendants may waive their preliminary hearing (this is a common plea bargain technique).

Plea Bargaining

The next step in the process is plea bargaining. This is a continuous process by the District Attorney’s office to try and get the Defendant to plead guilty to a lower offense to avoid a trial. Plea bargaining is sometimes looked upon as a negative process. However, this can be a beneficial process for many people.

If the defendant accepts a plea bargain, the victim will not have to testify at trial (and neither will the SANE). Also, the avoidance of a trial saves money in the District Attorney’s office and the Defendant is still being punished. Again, this is a continuous process and all parties need to agree on the plea bargain terms (the District Attorney’s office, the victim, and the Defendant). The plea bargaining agreement can happen at any step of the process prior to the conclusion of the trial.

The Grand Jury

The next step in the process is the Grand Jury. You may be asked to testify in this proceeding. The Grand Jury is where the prosecutor presents evidence to a jury of approximately 23 people. The defendant and the defense attorney are not present. The judge is also not present. The prosecutor decides which testimony is relevant to the case. This is a secret proceeding. Because it is a secret proceeding, no one can talk about it outside the Grand Jury room.

Commonly what happens in the Grand Jury is you, as the examiner, will be called to testify. The prosecutor will ask you questions and you will be required to answer them. After the questioning is completed, the Grand Jurors are also allowed to ask you questions. Many times they will not ask any questions, other times they will ask several. The prosecutor will determine whether or not you are allowed to answer the question. Following the entire presentation of evidence, the Grand Jury will vote on what to do with the case. They must have 12 votes out of 23 to indict, which means the case will go forward to trial. However, the Grand Jury may also do a variety of other things with the case including:

- Dismiss the case entirely
- Move the case to family court
- Decide that the charges are too high and recommend misdemeanor charges

If the Grand Jury dismisses the case entirely, nothing else happens from this point forward. Another point I would like to make is that Grand Juries are only for felonies (as are preliminary hearings). For more information please go to:

<http://campus.udayton.edu/~grandjur/recent/hnygjw.htm> and
<http://www.jimmurphyda.com/grandjury.html>.

Pre-Trial Hearings

Following the Grand Jury, are pre-trial hearings. The pre-trial hearings are hearings that normally determine what can and cannot be allowed into trial as evidence. You may be required to testify at the hearing, but commonly you will not need to testify.

The Trial

Finally, the time has come for the trial. At trial, the following individuals will be present:

- Defense attorney
- Defendant
- Prosecutor
- Judge
- Jury (of 12 people plus 2 alternates)
- Whoever else is in the courtroom to watch

You will be called into the courtroom, sworn in, and then be asked to take a seat on the witness stand. First, the prosecutor will ask questions, and then the defense attorney will ask questions. After the initial questions, the prosecutor may ask you even more questions. The jury is not allowed to ask you questions at the trial, but the judge may ask questions. Any previous testimony you have given may be used against you (i.e., if you said something different or testified incorrectly). This is the part that many nurses are the most nervous about, but it is usually not so bad.

Sentencing

After the trial, there will be a sentencing, provided there is a conviction. The jury may choose to find the defendant not guilty or may not be able to come to a consensus (deadlock, also known as a hung jury) and the case may be tried again.

Preparing for Court

Before you have even been called to testify in a case, you should prepare yourself for court. You never know when you will be called to court on a case. It may be your first case or your 100th case. Therefore, treat every exam as if it could be going to court and that there may be a possibility that you will be required to testify.

The first thing you should prepare, prior to being called to testify, is your curriculum vitae, or CV. Include everything on your CV, any training you have attended (including this one) and any work experience you have had. This is your time to build yourself up and show the world how wonderful you are! You should also include what was offered in your training – what was the training about, and what you learned.



Activity #2

Please visit the following Web sites:

- <http://www.dartmouth.edu/~gradstudy/careers/services/vita.html>
- <http://owl.english.purdue.edu/owl/resource/641/01/>

Write or spruce up your CV if you already have one. **Please e-mail your completed CV to your educator.** When you have done so, go to the discussion forum and post your reactions to this activity.

I have been called to court – now what?? The very first thing you should do is speak to the Assistant District Attorney handling the case. You need to meet with him or her and discuss what questions they may ask you and any issues within the case. You should have a copy of your CV in hand and give it to them. This meeting should **not** occur the night before the trial, as you need to have time to prepare and ready yourself for the trial.

You should review the chart, review any prior testimony you have given (you do not want to contradict yourself). You may also want to review any literature published surrounding the issues of sexual assault – this is especially important if you are testifying as an expert witness (more about this later). Some common issues in sexual assault cases are:

- Lack of consent
- Lack of injury or presence of injury
- Age of the patient
- Any issues with the SANE records

Another common point of conflict is: “You’ve only done one sexual assault exam, right? Wouldn’t someone with more experience be better?”

Be prepared to answer this.



Activity #3

Imagine you are in court and on the stand. The defense attorney is questioning your qualifications in regard to the case and asks you the questions above. How would you respond? Go to the discussion forum and post your response.

A Few More Tips Before Testifying

What if the defense attorney calls me and wants me to testify – what do I do?

You can speak with him and you can also testify for the defense if called. You should speak with the District Attorney’s office as well.

You must turn over any notes that you have taken in this case to the District Attorney’s office. You should not take separate notes from the medical chart, and if you do – only keep brief information and no names or identifying information, as this would be a HIPAA violation. It is also okay for you to say if you prepared for court with the District Attorney’s office (everyone does!). If you get asked, “What did he tell you to say?” Answer, “He told me to tell the truth.”

A note about payment – different programs have payments for testifying in different ways. Some programs do not pay nurses separately for testifying, it is included in their case fee. Other programs are paid by the hospital to testify, and others bill their testimony to whoever called them to testify. You want to know how your payment will be handled prior to being called to testify.

What should I wear to court? You should wear professional attire to the courtroom (e.g., a business suit). You should be comfortable and not wear anything outrageous or distracting. Many people recommend that you stick to the colors blue or gray. Depending on where you live, it may or may not be appropriate to wear scrubs. This is a jurisdictional decision. Remember, you are “on” from the time you park your car and should act appropriately. You never know when a potential juror is nearby.

Fact Witness or Expert Witness

What is the difference between a fact witness and an expert witness? A *fact* witness only gives what they saw, heard, or did. An *expert* witness is allowed to give an opinion. You must be “qualified” as an expert during the court proceeding to be allowed to testify as an expert. This process differs from county to county and from judge to judge. The individual judge is the person who makes the determination on whether you will be allowed to testify as an expert witness or a fact witness.

Exception to “Hearsay”

What is the medical exception to hearsay? This rule allows you to testify to what the patient said to you during the examination process. What the patient has said **must** be related to the purposes of diagnosis and treatment.

Common tips for testifying:

- Let the attorney finish a question before answering.
- Use “just enough” medical jargon.
- Be courteous to the judge.
- Speak slowly or the court reporter will yell at you.
- Stop speaking when there is an objection.
- Ask for clarification if you do not understand a question.
- Use the words, “if I can explain”.
- Don’t say “I do not recall.” (This term implies you might have the answer in the future.)
- Use “I don’t remember”.
- Don’t be afraid to ask for the records.
- Never show anger or frustration.
- Don’t appear interested in the outcome.
- You are objective!!!
- Opinion is only allowed if asked.
- Use the wording, “With a reasonable degree of medical certainty”.
- Don’t try to make the attorney look stupid.



Key Points to Remember

- ✓ Treat every forensic exam as if it could be going to court.
- ✓ If you are called to court – first speak to the Assistant District Attorney handling the case.
- ✓ A *fact* witness only gives what they saw, heard, or did. An *expert* witness is allowed to give an opinion.

Conclusion

We have discussed the complexities and pitfalls of the criminal justice system. Remember, the patient has the choice to participate in this process and the SANE should never force a patient to make this decision. The SANE should treat every exam as if it will be going forward in the criminal justice system: maintain proper chain of evidence procedures and proper evidence storage. As always, be aware of your local procedures and policies. We will continue to discuss the legal system and testifying in court during the in-person portion of this training. This is an area which causes anxiety for many SANEs, so it will be discussed at length.

Reminder! If you have not already completed the required activities for the discussion forum please post your responses **BEFORE** attempting the examination.

References

Captain J. Cooney (personal communication, March 2, 2009)

Domestic Abuse and Sexual Assault Intervention Services. (n.d.). *Sexual assault statistics*. Retrieved May 7, 2009, from http://www.dasi.org/sa_statistics.html

David Rossi, Esq. (personal communication, May 11, 2009)

SANE Module 5: Tips from a SANE Expert about Ethical and Legal Issues

Module Exam

After studying the downloaded version of the module, posting responses in the discussion forum and completing the exam, you need to enter your answers online. **Answers cannot be graded from this downloadable version of the module.** To enter your answers online, go to e-leaRN's Web site, www.elearnonline.net and click on the Login/My Account button. As a returning student, login using the username and password you created, click on the "Go to Course" link, and proceed to the exam.

Use the following scenario to answer questions 1 through 3.

A 25-year-old female arrives in the emergency department and states she has been sexually assaulted.

1. Which of the following would be an appropriate response?
 - a. Have you reported to law enforcement?
 - b. Let me call the police for you.
 - c. Please have a seat in the waiting room until the SANE nurse arrives.
 - d. Oh, we have another one of those patients.

2. The patient is determined to have a small stab wound in her right leg. The bleeding is controlled. Your next step is to:
 - a. Inform the patient that the next course of action would be to take her to the trauma room.
 - b. Inform the patient that it is necessary to remove all of her clothing immediately.
 - c. Inform the patient that you are required to report the stab wound to law enforcement, but she does not have to report the sexual assault.
 - d. Inform the patient that you are required to call law enforcement about the stab wound, and that she must report the sexual assault.

3. The patient isn't sure if she'll report the sexual assault to law enforcement, and completes a sexual assault examination. She asks you, "What happens next to the things you have collected from my exam if I don't report?" You advise her that the exam kit is:
 - a. Sent to the lab where it will be analyzed by the forensic experts.
 - b. Held in locked storage for at least thirty days.
 - c. Given to law enforcement and they will contact you to complete a report.
 - d. Discarded after a week following the completed analysis since it won't be needed for a trial.

4. You are allowed to release evidence to all of the following **except**:
 - a. An officer from the Happy Town Police Department
 - b. A trooper from the state police
 - c. A Happy Town County Sheriff deputy
 - d. A public safety officer from Happy Town University

5. A detective approaches you following your examination on a patient and asks you to discuss specific details of the examination. Which of the following information are you allowed to discuss with the detective?
 - a. The findings of the medical examination
 - b. Anything the patient consents to release
 - c. The past medical history the patient provides
 - d. The forensic evidence you have collected

6. In which situation would it be appropriate to have a law enforcement officer present during an examination?
 - a. If the patient was an inmate.
 - b. If the patient requested that an officer be present.
 - c. It is never appropriate to have an officer present during an examination.
 - d. Both A and B

7. The patient asks you, "How many times am I going to have to tell my story?" The most appropriate response is to say:
 - a. "I'm not sure, but you may have to tell several people, so we can help you."
 - b. "You only have to tell me the story, and then you don't have to talk about it again."
 - c. "You'll only have to tell your story again if you decide to go to court."
 - d. "Don't worry; whoever needs the information can just read what I write down."

8. All of the following are reasons why a case does not move forward within the criminal justice system **except**:
 - a. The case has been determined to be a false report.
 - b. There isn't enough evidence to support an indictment.
 - c. The patient chooses to not pursue any charges.
 - d. Cases move through the criminal justice system without issue.

9. In New York State, the definition of rape is:
 - a. Anything placed into the vaginal vault
 - b. Any penetration, however slight
 - c. Penetration past the hymen
 - d. None of the above

10. The majority of sexual assault patients can expect that their assailant will be convicted of a felony.
 - a. True
 - b. False

11. A Sexual Assault Forensic Examiner may be needed to testify at all of the following **except**:
- Preliminary Hearing
 - Trial
 - Sentencing
 - Grand Jury
12. The following are all benefits from a plea bargain **except**:
- The defendant is not being punished.
 - The victim will not have to testify.
 - The SAFE does not have to testify.
 - The lack of a trial saves money for the taxpayers.
13. You are testifying in a room with 23 jurors. There is a court reporter and a prosecutor present. Where are you?
- At a trial
 - At a preliminary hearing
 - At a pre-trial hearing
 - At the Grand Jury
14. Which of the following is **not** an outcome of a trial?
- Conviction
 - No Bill
 - Deadlock
 - Mistrial
15. You have been contacted by the prosecutor to testify in a trial of a sexual assault examination that you performed six months ago. Which of the following is **not** an appropriate response?
- You update your CV and provide a copy to the prosecutor.
 - You go back and review your documentation.
 - You plan to take vacation during the time you are scheduled to testify.
 - You schedule a meeting with the prosecutor to review your testimony.
16. It is the morning of a sexual abuse trial where you will be the expert SAFE witness. You are looking through your closet to decide what to wear. Which would **not** be appropriate attire in any circumstance?
- Stilettos and leather pants
 - Scrubs and a stethoscope
 - Business suit with sneakers
 - Work clothes that are formal

17. You are on the stand at a trial and are asked, "Miss Smith, please describe for me the circumstances under which you met Patient A." Your best response should be:
- "I met her while I was working."
 - "I don't remember when I met her."
 - "I believe she was the one that was raped."
 - "I performed a sexual assault exam on her."
18. The SAFE should remember the following techniques when testifying:
- Stop speaking if an objection is raised.
 - Ask for clarification if a question is not understood.
 - Ask to review the records if needed.
 - All of the above.
19. You have been asked to testify in an exam you performed on a 16-year-old female patient one year ago. The ADA would like you to testify as an expert. Which of the following are not true regarding testifying as an expert witness?
- You may testify about the facts of the examination.
 - You may give an opinion regarding the examination.
 - You cannot testify as an expert because you are a nurse.
 - You must be qualified as an expert by the judge.
20. The sexual assault victim with a stab wound will always have the forensic examination completed first.
- True
 - False