

## 5. Photography

Recommendations at a glance to photograph evidence on patients:

- Consider the extent of forensic photography necessary.
- Consider the equipment.
- Be considerate of patient comfort and privacy.
- Explain forensic photography procedures to patients.
- Take initial and follow-up photographs as appropriate, according to jurisdictional policy.
- Consider policies on storage, transfer, and retention of photographs.

**Consider the extent of forensic photography necessary.** Taking photographs of patients' anatomy that was involved in the assault should be part of the medical forensic examination process in sexual assault cases. Such photographs can supplement the medical forensic history, evidence documentation, and physical findings.<sup>182</sup> As to the extent of photographs necessary, communities appear to take two different approaches. Some routinely take photographs, with patients' permission, of both detected injuries and normal (apparently uninjured) anatomy involved in the assault. These jurisdictions encourage examiners to collect and document all evidence and leave the determination about the value of the evidence to litigants. Other communities limit photographs to detected injuries. However, photographs should not be used to interpret subtle and/or nonspecific findings (e.g., erythema or redness) that are not noted on exam documentation. Review of photographs cannot reliably diagnose injuries not seen by examiners.

Involved prosecutors, law enforcement officials, examiners, and advocates should further discuss the extent of photography they view as critical, examine any related case law, consider their concerns on this issue and how to be sensitive to victims, and, ultimately, determine what strategy is right for their community.

**Consider the equipment.** Examiners should take these photographs, due to the highly personal nature of the photography involved. Examiners are responsible for forensic photography during the exam because patients are often more comfortable and less traumatized when they take photographs.<sup>183</sup> Any photographs taken by nonmedical personnel should include only the head and extremities and should not document findings on the torso or genital region.

Examiners should be familiar with equipment operation and be educated on forensic photography in sexual assault cases. Photographic equipment should be used that can clearly document the level of injury. Consult with local criminal justice agencies regarding the types of equipment that should be used (e.g., prosecutors can assess which types of equipment produce results that are acceptable to the court).<sup>184</sup> Also consult with local examiners, because they are often knowledgeable regarding photographic and video equipment used in these cases and their effectiveness in capturing images during the exam.

**Be considerate of patient comfort and privacy.** Minimize patients' discomfort while they are being photographed and respect their need for modesty and privacy. Drape them appropriately while taking photographs.<sup>185</sup>

Also, consider how to best provide support to patients during this time. Patients may want an advocate and/or a personal support person to be present. Take measures to avoid allegations of impropriety when photographing patients. For instance, if for some reason a male examiner is photographing a female patient, another woman should be present at this time.

<sup>182</sup> The *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 56.

<sup>183</sup> Avoid requiring that patients go to another site (e.g., the law enforcement agency) to have initial photographs taken.

<sup>184</sup> For a discussion of the admissibility of digital photographs, please see D. Nagosky, *The Admissibility of Digital Photographs in Criminal Cases*, *FBI Law Enforcement Bulletin*, December, 2005.

<sup>185</sup> Drawn from the *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 56, and the American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, p. 113.

**Explain forensic photography procedures to patients.** Taking photographs of patients in the aftermath of an assault can be retraumatizing. To help reduce the chances of retraumatization, examiners can help patients understand the purpose of photography in forensic evidence collection, the extent to which photographs will be taken and procedures that will be used, potential uses of photographs during investigation and prosecution (especially anogenital images if taken), and the possible need to obtain additional photographs following the exam. (Also see A.3. *Informed Consent*.)

**Take initial and follow-up photographs as appropriate, according to jurisdictional policy.**<sup>186</sup> Strive to control every element in the photograph to produce a clear, powerful statement. Photographs should be taken prior to evidence collection.

Patient identification. Link patients' identity and the date to the photographs, according to jurisdictional policy.<sup>187</sup> For example, print the patient's name, date of exam, and the examiner's name/initials on a plain sheet of paper, or using a patient label. Photograph this sheet at the beginning and end of the roll of film for identification. Some jurisdictions also photograph the face of patients for identification purposes. Some cameras offer the option of imprinting the date and/or time on the negative, and some have the ability to enter a case number so the face or name of a patient is not on the film. Digital imaging can automatically embed the date/time and a variety of other technical data in each image. This information can be accessed when the image is downloaded onto the computer.

Mechanisms should be in place (e.g., at law enforcement agencies and exam facilities) to protect patients' privacy and confidentiality related to the photographs.

Clear and accurate photographs. Use the shutter speed and lens aperture to control exposure (automated cameras and flash units can give incorrect exposures). Use adequate lighting whether the source is natural, flood, or flash. Use of flashes and lighting in the exam room can change the color of evidence; a filter may help adjust lighting so that the photograph is truer to color (noting in records any alterations to the environment to enhance photographs). Include a color bar in the photograph to ensure accurate color reproduction.

Strive for undistorted photographs with good perspective (whenever possible, use a normal focal length lens, and keep the plane of the film or digital sensor parallel to the plane of the object to be documented. Maintain sharp focus (keep the camera steady, focus carefully, use maximum depth of field, and look at the frame of the scene).

A good-quality macro lens with a ring strobe flash offers the best quality and most flexibility for forensic photography involving sexual assault.

Scale. Use a forensic scale or ruler for size reference in photographs. In addition to those photographs that identify patients and anatomical locations being photographed, take at least two photographs of each area—one with and one without scale. Taking two photographs in this manner demonstrates that the scale was not concealing anything important. Photograph evidence in place before moving it or collecting it. Do not alter or move evidence when photographing, and make every effort to minimize background distraction in photographs while maintaining the focus of areas being photographed.

Orientation of shots. Take at least two shots at three orientations:

1. Take medium-range photographs of each separate injury, including cuts, bruises, swelling, lacerations, and abrasions. Work from one side to the other and then top to bottom, or design a workable method. Be consistent. Take "regional" shots to show injuries in the context and orientation of a body region; these photographs should include easily identifiable anatomical landmarks.
2. Take closeup images of particular injuries, using the scale. When photographing a wound, show its relationship to another part of the body. Take at least three photographs involving a wound area. Shield

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<sup>186</sup> This section is drawn from the American College of Emergency Physicians' *Evaluation and Management of the Sexually Assaulted or Sexually Abused Patient*, 1999, pp. 113–115.

<sup>187</sup> The *California Medical Protocol for Examination of Sexual Assault and Child Sexual Abuse Victims*, 2001, p. 56.

uninvolved breast or genital areas when possible; highly graphic photos may be deemed inadmissible in court and make the case less credible. All injuries should be recorded with a closeup view using a macro lens or setting. Try to capture subtleties in texture and color. Document pattern injuries caused by an object. Do not use a flash function around an injured eye as it can cause retinal damage.

3. In some cases, a full body photograph may be appropriate to show scope of injury or state of clothing. However, such photos should be taken ensuring as much modesty and privacy as possible, through draping and other techniques. Photos taken solely for the purpose of identification should be done with patients fully clothed or in a gown.

Photographing skin. Closeup photographs of hands and fingernails may show traces of blood, skin, or hair. Be sure to look for damage to nails or missing nails. Photograph marks of restraint or bondage around wrists, ankles, or neck; they may be compared later with the object in question that made the marks. Photograph transfer evidence present on the body or clothing, such as dirt, gravel, or vegetation.

Bite mark evidence. Photograph bite marks, according to jurisdictional policy.<sup>188</sup>

Accountability. All photographs should be clearly labeled and the chain of custody maintained. Follow jurisdictional policy for development of film, transfer, duplication or additional prints, and storage of photographs. Do not include photographs in the evidence collection kit sent to the crime lab.

Follow-up photographs. Photography should be repeated as new or different evidence on patients' bodies is found following the exam (e.g., bruising may appear days later). Create procedures that examiners, law enforcement investigators, and patients follow to ensure this evidence is documented. In addition to documenting emerging or evolving injuries, follow-up photographs provide documentation of healing or resolving injuries and clarify findings of stable, normal variants in anatomy and nonspecific findings like redness or swelling that could be confused with acute injuries.

**Consider policies on storage, transfer, and retention of photographs.** Photographs taken by examiners should primarily be considered as part of the patient's medical forensic record and should not be automatically turned over to law enforcement. Law enforcement should be guided by the body diagrams used in documentation in deciding what photographs to subpoena.

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<sup>188</sup> When bite mark evidence is presented, it may be helpful to consult a forensic odontologist, if one is available. However, this type of evidence is controversial. It is more important to ensure swabbing of bite marks.