



Testifying: Cross-Examination by Defense Attorneys

Clinicians, as with all witnesses, must always testify truthfully whether on direct examination or cross examination. Clinicians should rely on their expertise, their education, and knowledge of the exam they conducted. Testimony should be clear, objective, and align with the ethics of their profession. If a clinician is unclear about what is being asked, the clinician should ask the attorney to rephrase or clarify the question.

Cross-examination typically entails leading questions that call for a yes or no answer. Although clinicians may not be permitted to provide a more detailed explanation during cross-examination, the prosecutor will, if necessary, ask for a detailed answer on re-direct examination. This will allow for the clinician to provide a more comprehensive answer with context. For example, a defense attorney may suggest an alternative cause of injury, and consequently, the clinician may agree during cross examination that it is possible for a victim to sustain the injury from something other than sexual assault. On redirect examination, the prosecutor can then give the clinician an opportunity to explain if there was any indication the victim engaged in any activities that could have caused the injury recently (if ever).

The best way for a clinician to prepare for cross-examination is to meet with the prosecutor prior to testifying. Prosecutors will be able to anticipate most of the questions that the clinician will be asked, avoiding surprise for the clinicians. Moreover, while the overall defenses to sexual assaults are generally the same, depending on the case, defense attorneys may challenge the way in which evidence was collected, the manner in which the exam was conducted, or the way in which the victim, particularly child victims, were questioned. Just because a defense attorney asks questions about those subject areas does not mean that the clinician did anything wrong or that the evidence is problematic. Yet the clinician needs to be prepared to answer such questions.



When preparing for cross-examination, clinicians should understand that the defense to most sexual assault cases (where the identity of the perpetrator is not at issue) is that the victim is not telling the truth about the sexual assault: Either the sexual conduct did not occur, or it was consensual. Note that while both defenses are available for cases involving adult victims, for cases involving child victims, typically, consent is not the defense. Therefore, in those cases, the questions during cross examination will focus on casting doubt on whether the sexual conduct occurred. For example, the defense attorney will question whether lack of injury and/or lack of semen is consistent with lack of sexual conduct, or whether the cause of injury could result from something other than sexual conduct. Where consent is the defense, the questions during cross-examination will be designed to cast doubt on evidence that is consistent with sexual assault, i.e., lack of consent. For example, the defense attorney will question the clinician as to whether the presence of injuries and/or semen can be consistent with consensual sex.

Defense attorneys may also question the clinician about whether they always believe victim-patients. Clinicians can explain the process of identifying the patient's chief complaint and obtaining the medical history of patients to assist in the development a care plan, delivery of treatment, and medical diagnosis. Clinicians can also explain that this process is consistent across all patients, regardless of the patient's reason for accessing healthcare. Note, however, that if a defense attorney asks a question about believing the victim, it may also be a basis for allowing the clinician to testify more about the victim's credibility than they would ordinarily be permitted to do. Prosecutors will be able to advise the clinician as to what sort of answer is allowable.