



End Violence Against Women International (EVAWI)

# More on Advocates, Routine Notification, and HIPAA

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Recently, we sent out a training bulletin addressing the question of whether notifying an advocate violates the federal law known as HIPAA (Health Insurance Portability and Accountability Act). Because the issues surrounding this question are critical, yet complex, we are sending out this follow-up bulletin to address some common questions and concerns we have heard over the years. Our goal is to extend the discussion and spark further conversation in communities across the country.

## Need for Advocacy Services

As we have trained across the country, some medical professionals have raised concerns about statements that seem to underestimate the ability of health care providers to provide crisis intervention, resources, and referrals for victims. For example, the previous bulletin included the following statement from Kim Day, SAFE TA Coordinator for the IAFN:

*In some facilities the Triage Nurse or Forensic Nurse will tell the patient that volunteer advocates are available to talk to them and ask whether the patient would like the volunteer to be called. There are also some facilities that request the patient to sign a specific consent form to have an advocate called out to respond.*

*It should be foremost in the healthcare provider's mind that the patient may be in crisis and may not have all the information necessary to make an informed decision right up front as they are beginning the episode of care. This results in the advocate not being called and the patient will probably not be provided any immediate crisis counseling or advocacy – nor will the patient be adequately connected with referrals to counseling, emergency assistance, health care services, legal resources, or assistance with crime victim compensation. The nurse may or may not have sufficient knowledge of the intricacies of these community referrals, and the hospital's social work department will not typically be involved to fill that void.*

The point of a statement such as this one is not to question the competence or compassion of health care providers, who provide outstanding services every day, but rather to highlight the fact that the professional role of victim advocates goes far beyond that of forensic examiners in this particular arena.

## Role of Advocates

At the time of the exam, the role of an advocate is to focus exclusively on the needs of the victim. Forensic examiners are certainly focused on the needs of the victim as well, but their professional role also includes preparing for and performing the exam, which is a complex and demanding task.

As Dr. Rebecca Campbell and colleagues described in a 2008 article in the *Journal of Forensic Nursing*:



*The work of Sexual Assault Nurse Examiner (SANE) programs is complex and multifaceted as nurses must attend simultaneously to sexual assault patients' psychological, medical, forensic, and legal needs (Campbell, Patterson, Adams, Diegel, & Coats, 2008, p. 19).*

Moreover, the training advocates receive prepares them to offer victims a broader range of services and specific referrals. Advocates typically have the most thorough and up-to-date knowledge of services available in the community, so they are prepared for a wide range of questions, concerns, and requests from victims. As one example, advocates will often be able to secure a bed at a local shelter if needed, either because they are part of a dual services agency that provides services for intimate partner violence as well as sexual assault, or because they have a memorandum of understanding with the shelter agency. Such intricate knowledge can reduce the need for repeated phone calls or other attempts to get information, as well as decreasing the likelihood that victims waste time pursuing services that are not appropriate for them or for which they are not eligible. Another example is mental health services; agencies typically have strict guidelines for referrals, so advocates can help ensure that victims are directed toward services that are most appropriate for them and for which they are eligible.

The support of an advocate can also help victims stay engaged in the criminal justice process. As two nurses interviewed by Campbell, Greeson, and Patterson (2011) explained:

*Just that there is support for them for that [participating in prosecution]. You know, let them know of [the local rape crisis center's] counseling and availability to support them through that process. So...they'll know that they don't have to be alone in that, that there are people who can give them some guidance...and help them through that process.*

*I think that right away, having a strong support system and advocacy, and whether it be family support as well as making sure that they get the information and get set up with an advocate or follow-up. And I think that that could potentially have an impact on them following through with prosecution (p.21).*

Depending on the laws in each jurisdiction, advocates may also be able to offer victims confidentiality in their private communications. This type of confidentiality is not available with health care providers within the context of a medical forensic examination, but it is often very important for victims to have someone with whom they can talk freely, without fear that the information will be shared with others.

Perhaps most important, advocates can work with victims far beyond the time of the exam, helping them to navigate the criminal justice system and other community services. When victims need help or support after the exam is concluded – through the process of their recovery and possible involvement in the criminal justice system – only an advocate can provide these services over time and with continuity.

## Benefits of Both Professionals

Clearly, the roles of forensic examiners and victim advocates are very different, even if they do share some significant overlap. Both roles are absolutely crucial, and victims benefit when they can take advantage of the unique services and caring that both professionals can offer.

This conclusion is supported by the research, which documents a range of benefits for victims who receive services from a specialized forensic examiner (Campbell, Greeson, & Patterson, 2011; Campbell, Patterson, Adams, Diegel, & Coats, 2008; Campbell, Patterson, & Lichty, 2005) as well as victim advocates (for review, see Campbell, 2006; also, Wasco, Campbell, Barnes, & Ahrens, 1999). Research also documents the fact that support people are key in helping victims decide whether or not to engage the criminal justice system – and remain engaged over the course of an investigation and prosecution (Campbell, Bybee, Ford, & Patterson, 2009; Campbell, Greeson, Bybee, Kennedy, & Patterson, 2011). Therefore, anything we can do to increase the level of support victims receive – from health care providers and advocates as well as loved ones – will benefit victims and ultimately improve the criminal justice system’s ability to hold offenders accountable.

## Routine Callout of Advocates

A second concern has been raised regarding the recommendation to call out advocates to respond as a matter of routine practice, rather than asking victims whether or not they would like an advocate to be called out. We believe this is best practice, because victims will often decline the services of an advocate when they are asked to decide – when they would actually benefit and would likely accept those services if the advocate had in fact been called out to the exam facility to meet with the victim.

Some may see this as doubting a victim’s ability to make an informed decision, so we want to be perfectly clear that victims are still presented with the opportunity to decide whether or not to access advocacy services. However, they are presented with the choice after an advocate has already been called out, and not beforehand. This way, advocates can best explain their unique role to victims – just as forensic examiners and law enforcement professionals are best equipped to explain their roles.

This practice also removes the burden victims often feel to avoid any “inconvenience” to the advocates by having them called out – perhaps from their families, in the middle of the night, on the weekend, etc. This way, victims’ decisions are based solely on whether they want the services of an advocate (as they have been described by advocates themselves), not whether they want someone called out to respond. We also believe there is a great deal of social pressure felt by victims to handle the trauma “on their own” and appear strong and capable. They are frequently focused on doing whatever they can to simply get through the process, so they can get it over with and go home. However, if they get home and have a question or concern, or if they need support, assistance, or help accessing other services, forensic examiners are typically very limited in the assistance they can provide. This is



where the role of an advocate picks up – they can offer support and assistance to victims in an ongoing way.

In fact, one forensic examiner told us that she has a routine response to victims who decline advocacy services – she asks them why. This nurse said that every once in a while, victims will say that they truly do not want an advocate involved, but often they will express these other concerns (e.g., I don't want to bother anyone, I don't want anyone called out in the middle of the night or on the weekend). With this practice of asking victims why they have declined, the nurse can address the victim's underlying concern which then increases their real and meaningful access to advocacy services.

## Conclusion

Clearly, health care providers provide a critically important service when they perform a medical forensic exam, and the benefits for victims have been extensively documented. The competence and compassion of a well-trained forensic examiner are irreplaceable – as are the services of a well-trained victim advocate. The bottom line is therefore not whether victims should be given a choice about whether or not to access the services of a victim advocate – it is simply when and how they are presented with this choice. As in so many other areas of sexual assault response, the best way to do this for victims is to eliminate as many unnecessary barriers as possible.

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