A professional Sexual Assault Nurse Examiner (SANE), who has specialized knowledge in adult/adolescent sexual assault and the sexual abuse of children, traditionally conducts forensic examinations on sexual assault victims and suspects of sexual assault events. The SANE prepares photographic and written documentation and testifies at trial in those cases in which she/he has conducted the exam. Most commonly, the SANE is called by the prosecution. Attorneys utilize high quality expert consultants in pursuit of justice for their clients. Whether the attorney’s client is the accuser or the accused, the expert knowledge of the SANE is invaluable in the interpretation of the forensic examination and Standards of Care for both the prosecution and the defense.

When a forensic nurse examiner works for defense counsel, the client is the defense attorney, not the defendant. The SANE should not have a stake in the outcome of any case. The SANE should remain objective; whether she has conducted the exam herself/himself or is working for defense counsel. The difference is that the expert defense consultant receives much more information than the examining SANE ever would. When seeing a patient, after a reported sexual assault, the SANE should not conclude whether a sexual assault occurred.

Contact with the expert is initiated by a defense attorney or an investigator. A brief introduction regarding the circumstances of the case will be followed by determining the method by which the expert’s CV and Fee Schedule will be delivered to the attorney and whether a retainer is requested. Should the attorney retain the SANE for consultation, arrangements will be made for forwarding documents and photographs and other materials that will be reviewed for the case. Documentation may include police reports, detective interviews with the accuser and the accused, interviews of witnesses, laboratory reports, phone records, transcripts of Grand Jury or preliminary hearings, arrest records, medical and forensic reports of examinations conducted on victim and the accused, and photo documentation which may include videos, photographs or digital images. There may also be other evidence that may assist in bringing the circumstances to light.

There are legal nurse consulting courses that are geared primarily toward organization of medical records and the evaluation of Standards of Care and treatment of medical and surgical patients. However, this is not necessarily the specific method that should be applied to consulting in sexual assault cases. The SANE consultant will utilize her/his own organizational skills and expertise in the assessment of records pertaining to a criminal event such as sexual assault. Additionally, one must be extremely knowledgeable in the organization of materials routinely processed in forensic cases. The more documentation available to the consultant, the
more information can be gained and errors and omissions revealed. One can acquire a very clear picture of the event and its antecedents during the process of reviewing the records. While the consultant may not have done the forensic examination, legible and well-documented reports can provide a high quality overview of the circumstances and allow the Sexual Assault Forensic Examiner to offer an expert opinion. The goal of the SANE expert will not be to disparage the work of the examining SANE, but if there are errors or omissions, the expert will be able to point them out and, if there is a difference of opinion regarding the interpretation of the examining nurse’s findings, the expert consultant will provide her own explanation. She may concur with the examining nurse’s findings. In all professions, the highest level of evaluation of one’s work takes the form of peer review and quality assurance. This ensures that standards are met, ethics are maintained and a non-biased care is provided and documented for all patients. Whatever the consultant's findings, she will tell it like it is.

Often the initial review of discovery requires an effort to organize and coordinate witness statements and evidence with the timeline. The next contact with the attorney will include a conversation regarding the findings in the case. Consistencies and inconsistencies can be discovered and whether standard procedures were followed appropriately. Professionals frequently take their knowledge for granted. Attorneys do not perform nursing tasks and may not have a basic understanding of the psychological, anatomical, bio-physical or physiological reactions of our patients. Nursing knowledge opens the door and allows for the professional collaboration that is inherent and mandatory in the role of a forensic nurse consultant.

Taking Sides

When working as a consultant, one gets a much better overview of the case from many different perspectives. When the forensic exam is conducted, although objective, only one side of the issue is experienced. Since the Forensic Nurse Examiner wasn’t present at the time of the alleged assault, she only gets one view of how the circumstances played out. It is not automatic that every accuser is completely forthcoming when they are seen at the time of the exam. When suspect exams are conducted, it is unknown if that person has actually committed any crime. This is the very reason that all patients are treated with respect and objectivity. All of the evidence in a case should be reviewed with the same objectivity. Even when inconsistencies are found, it is not so much ‘taking sides’ as it is providing a non-biased opinion. If the facts show that there are vaginal findings typical of a mounting injury, then the opinion might be that the injuries are consistent with consensual sex as well as non-consensual sex.

It is very important to be honest with the defender. Defense counsel wants to know the strengths and weaknesses of his/her case. This allows for adjustments in case strategy. The SANE’s observations can help to advise the attorney whether his/her perceptions are on the right track. For instance, if counsel believes that there is only one cause for a finding of vaginal redness, the SANE can inform counsel that there are many causes of redness and assist by listing several for him/her and state that redness is a non-specific finding.

The prosecutor has the burden of proof. It is his/her responsibility to prove the case for the jury. The defender must show reasonable doubt and convince the jury that there is not enough evidence to convict the defendant.
The Sexual Assault Nurse Examiner as Defense Consultant - Continued

The cases of consent versus non-consent are those that can cause the most consternation. Of course, the SANE can not testify whether sexual activity was or was not consensual and the degree of injury is not directly related to whether or not an assault took place. The SANE examiner can opine whether or not the findings are consistent with the history, but that is to be expected since the examining nurse only has one point of reference; the reporter. The SANE consultant can state that the findings could be consistent with both consensual and nonconsensual sexual activity, but not whether force was used and whether a sexual assault occurred. One would expect that the examining SANE would say the same thing. All too often, that is not the case. Many nurses are willing to overstep their bounds and state that force was used or that certain types or number of injuries indicate that an assault occurred. The consultant can assist the defense in the finer points of interpreting the forms, medical terminology and other documentation and photos. The consultant can assist in formulating questions for the defense to ask witnesses and opposing experts. By reviewing all the information presented, the consultant can look for inconsistencies, errors and omissions in the overall appearance of the case. The consultant can discern whether the Standards of Care were maintained. The varied behavior of victims and suspects can be difficult to evaluate, but issues may come up that suggest explanations for, or discrepancies with, certain behavior.

The Process

After reading through the received material, a telephone discussion with the attorney should follow to report any findings and discuss what the strategy of the case may be. The consultant generally will not submit a written report unless it is specifically requested by the attorney or the court. Drawings and diagrams and Power Point presentations can also be created as demonstrative evidence.

The defender wants to hear an honest, objective evaluation of the case so he/she can form a strategy. There should be no manufacturing of information to ‘help’ him/her win his/her case.

The consultant may want to suggest other experts that may assist in the case. For instance, the SANE collects the swabs for DNA testing, but the SANE does not analyze those specimens. So if there is a question about how specimens are collected, that is within the consultant’s expertise, but if the question is how the swabs are analyzed, that is beyond the SANE’s scope, so it should be suggested that an expert in that field be brought on board.

Ethics and integrity should always guide the findings. Whether the work is for one side or the other, it doesn’t mean the findings would be different. In this day of ‘hired guns,’ who will say anything, (for the money) to help ‘their side,’ it may be tempting to try to think of something that will help your client. These hired guns may stray from the ethical standards of their profession and manufacture distractions and even ridiculous opinions that defy common sense to bolster the case. It must be remembered that the SANE consultant, who actively conducts forensic examinations, must continue to conduct forensic examinations and cannot devise opinions that benefit one side or the other depending on whose camp they are in.
In the past, as the prosecution’s witness, the defense employed a physician as the opposing witness. Few physicians are experts in sexual assault evidence collection and sometimes they would offer astonishing explanations for injuries or the process of evidence collection. Most of the time, the defense thought they could ‘trump’ the nurse examiner’s testimony simply because they had “MD” behind their name. Many doctors seemed to be more focused on discrediting the nurse examiner instead of adding perspective to the case. Times are changing and with more nurse examiners acting as defense consultants, the focus is brought back to the elements of the case.

Summary

As a rule, no one witness is responsible for making or breaking a case, but certainly the credibility of witnesses may be a turning point. All the Forensic Nurse Examiner can do is to tell the truth and hope that the most accurate picture is painted with the information provided.

It has taken time for forensic nurses to be defined as consummate professionals, and as that role expands into more and more specific areas, the reflections will be positive and forensic nurses will continue to be viewed as respected professionals with integrity intact.