

Dos and Don'ts for Pelvic or Genitourinary Exams in Minors

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The Case

A healthy 14-year-old female presents to the emergency department with her parents, who suspect she had sexual intercourse with an older male. They brought her to the emergency department, requesting she be checked to see if she has had sex and is not a virgin. If so, they will pursue criminal charges. The patient says she has never had sex with anyone, let alone an older male, and she adamantly refuses a pelvic examination, despite her parents' demands and threats to you to perform the exam. Her vital signs are normal, and her general physical examination is totally unremarkable. How should you proceed?

Discussion

This is an interesting but infrequent case seen in the emergency department. When evaluating how to proceed, there are several concepts that need to be considered. The first and ultimately most important: If the parents have a concern, what is your obligation related to reporting this to law enforcement? In our last column, we discussed rape-reporting laws and obligations.¹ This case has the added complicating factor that the patient is a minor. Even if she reports having consensual sexual contact with an adult, it would likely be classified as statutory rape. In general, statutory rape is nonforcible sexual activity between two persons, one of whom is under the age of legal consent. The age of legal consent for sexual activity is usually 16 to 18 years. The laws also often specify how many years of difference are required between the individuals (usually three to four years). For example, in Pennsylvania, the law states that teens between 13 and 15 years of age cannot consent to sexual activity with someone who is four or more years older.

Although the patient denies sexual activity, her parents have a concern—and in most jurisdictions, under mandated reporter requirements, that is enough. A mandated reporter is a person who, because of their profession, is legally required to report any suspicion of child abuse or neglect to the relevant authorities.² Therefore, you should contact law enforcement. The patient and even her parents have a right to decline to speak with the police. However, your requirement to report must be fulfilled.

Also, depending on who they suspect the adult male may be, you may also have an obligation to report the case to child protective services (CPS). If this adult male has regular contact with the patient in a supervisory role, such as a coach, teacher, family member, household member, babysitter, etc., a CPS report should be made by the emergency department clinician. If in doubt, it is safer to report.

The next issue that arises is whether the patient, a minor, can refuse a pelvic examination or a medical forensic examination, even if her parents consent to it. When considering this question, one must understand the difference between consent and assent.³ Informed consent is generally defined as a “legal concept that adults of sound mind should be able to make decisions about their own health care.”³ Most jurisdictions define the age of majority as 18, the minimal age at which consent can be provided, unless the patient is an emancipated minor.

Assent is “the expressed willingness or agreement to participate in an activity (eg, examinations).”³ The older child/adolescent must understand what is going to happen and agree to participate in the medical forensic examination, even if they legally cannot provide consent. For these patients, who are too young to provide informed consent but old enough to understand and agree to participate, the child’s “informed assent” is sought. There is no magic age of assent. It all depends on the ability of the minor to understand what is happening. If informed assent is not granted by the patient, then the examination should not be performed despite the wishes of the parent or guardian. In no instance should the patient be restrained, sedated, or forced to undergo the examination. This is tantamount to assault and battery of the patient.

When a clinician follows the desires and wishes of the minor, the parents may become upset, angry, and threatening. A calm, rational discussion of assent and consent should be conducted with the parents. It may be helpful to involve law enforcement, risk management, or the hospital’s legal counsel in these discussions. This dichotomy between what minors and their parents want can be a source of great dissatisfaction.

The final issue is, can sexual activity/virginity be assessed or determined? The concept of “virginity testing” dates back to medieval times and is still often practiced in at least 20 countries and cultures for religious, marital, and law enforcement purposes. In some countries, this practice is used to determine if a rape occurred. In some cases, these examinations are not performed by a health care professional. In October 2018, the United Nations Human Rights Office, United Nations Women, and the World Health Organization (WHO) stated that virginity testing must end as it is a painful, humiliating, and traumatic practice, constituting violence against women.⁴

The concept of virginity testing is based on evaluation of the hymen. This is often called the “two-finger test” to assess for vaginal muscle laxity and to determine if the hymen is intact. It is believed that if the hymen is “missing” and/or the fingers can be inserted, it indicates that the woman has been habituated to sexual intercourse. The truth is, there is no way to definitively determine virginity or if sexual activity has occurred.

The hymen is one of the most misunderstood and misrepresented anatomical structures by physicians and the lay public. In studies of chief pediatric residents, only 59 to 71 percent were able to correctly identify the hymen on a photograph.⁵ Every female, regardless of age, has a

hymen. The common misconception is that the hymen acts as a barrier to the vagina and completely covers the vaginal opening. This is just not true. The hymen has an orifice and comes in several shapes and sizes. Common classifications include crescentic, annular, fimbriated, septate, and cribriform. There is a rare anatomical variant where there is no hymenal orifice, called an imperforate hymen. The diameter of the hymenal orifice varies with patient age, examination technique, and state of relaxation of the patient. In addition, the finger size of the examiner can lead to incorrect assumptions. The commonly used term "hymen intact" is anatomically inaccurate and should not be used in medical documentation.

The hymen can provide valuable information in the pediatric sexual assault/abuse medical forensic examination. However, these examinations should be conducted by a child abuse pediatrician or pediatric-trained sexual assault nurse examiner. In the hands of an inexperienced examiner, normal anatomical variants can be misinterpreted as sexual contact or abuse.

Case Resolution

In private, the patient reports being safe and not abused by anyone. She adamantly denies any sexual contact and continues to refuse the pelvic examination. A lengthy discussion occurs with the parents about the lack of their daughter's assent to examination and the limitations of the physical exam in determining sexual activity. They understand and agree to discharge. Police and CPS are notified.

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Key Points

- Emergency department personnel should know the basic laws regarding sexual assault reporting in the jurisdictions in which they practice.
- Emergency department personnel are mandated reporters for pediatric abuse.
- Minors should assent to procedures and treatments, regardless of parental consent.
- All females have a hymen.
- The hymen can provide valuable information in sexual assault examinations of minors when performed by trained clinicians.
- Virginity testing is not accurate or reliable and is humiliating, painful, and traumatic.
- Do not use the term "hymen intact."

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References

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