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Research in Brief

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Issues and Findings

Discussed in this Brief: A well-documented medical record can strengthen domestic violence cases when they are brought to court. It constitutes third-party, factual evidence corroborating or establishing that abuse has occurred and may be useful to pro se litigants in a variety of less formal legal contexts. Today the importance of documenting abuse is recognized in many health care protocols and training programs. However, many medical records contain shortcomings that prevent their admissibility as evidence in court and other legal proceedings. Health care providers can improve the admissibility of evidence and strengthen the case of domestic violence victims.

Key issues: Medical records are often difficult to obtain, incomplete, or inaccurate, and the handwritten notes are often illegible. Health care providers are often confused about whether and how to record information useful in legal proceedings. They also may be reluctant to testify in court, concerned about confidentiality and liability, and uncertain which statements might inadvertently harm the victim. Out-of-court statements are not admitted as evidence, but some States allow parts of the medical records related to diagnosis and treatment to be admitted without requiring that the physician testify. This makes it even more important for records to be comprehensive, specific, and legible. A victim's excited or

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Documenting Domestic Violence: How Health Care Providers Can Help Victims

by Nancy E. Isaac and V. Pualani Enos

Physicians and other health care providers know that often the first thing victims of domestic violence need is medical attention. They also know they may have a legal obligation to inform the police when they suspect the patient they are treating has been abused. What they may not know is that they can help the patient win her case in court against the abuser by carefully documenting her injuries.[1]

In the past decade, a great deal has been done to improve the way the health care community responds to domestic violence. One way that effort has paid off is in medical documentation of abuse. Many health care protocols and training programs now note the importance of such documentation. But only if medical documentation is accurate and comprehensive can it serve as objective, third-party evidence useful in legal proceedings.

For a number of reasons, documentation is not as strong as it could be in providing evidence, so medical records are not used in legal proceedings to the extent they could be. In addition to being difficult to obtain, the records are often incomplete or inaccurate and the handwriting may be illegible. These flaws can make medical records more harmful than helpful.

Health care providers have received little information about how medical records can help domestic violence victims take legal action against their abusers. They often are not aware that admissibility is affected by subtle differences in the way they record the injuries. By making some fairly simple changes in documentation, physicians and other health care professionals can dramatically increase the usefulness of the information they record and thereby help their patients obtain the legal remedies they seek.

Why thorough documentation is essential

The victim's attorney, or the victim acting on her own behalf as a pro se litigant, can submit medical documentation as evidence for obtaining a range of protective relief (such as a restraining order). Victims can also use medical documentation in less formal legal contexts to support their assertions of abuse. Persuasive, factual information may qualify them for special status or exemptions in obtaining

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Issues and Findings

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spontaneous utterances, which the court assumes could not be feigned, may also be admissible, making it essential to record them accurately. The shortcomings of medical records and how health care providers can improve them were revealed in a study of 184 visits for medical services in which there was a suggestion of domestic violence.

Key findings: The study found that although health care providers described the patients' injuries in detail, photographs were taken in only a few cases involving physical injury. Body maps—drawings of the human figure on which physicians mark injuries or other medical problems—were also used in only a few cases. In one-third of the visits in which abuse or injury was noted, key parts of the records contained illegible writing. In only a small percentage of cases were all factors for using the patient's spontaneous utterances as evidence considered.

Health care providers can improve recordkeeping in a number of ways, such as by documenting factual information rather than making conclusory or summary statements; photographing the injuries; noting the patient's demeanor; clearly indicating the patient's statements as her own; avoiding terms that imply doubt about the patient's reliability; refraining from using legal terms; recording the time of day the patient was examined; and writing legibly.

Target audience: Health care providers and researchers, especially those who deal with domestic violence; organizations focused on domestic violence; legal professionals, including judges and prosecutors; and law enforcement professionals.

public housing, welfare, health and life insurance, victim compensation, and immigration relief related to domestic violence and in resolving landlord-tenant disputes.

For formal legal proceedings, the documentation needs to be strong enough to be admissible in a court of law.[2] Typically, the only third-party evidence available to victims of domestic violence is police reports, but these can vary in quality and completeness. Medical documentation can corroborate police data. It constitutes unbiased, factual information recorded shortly after the abuse occurs, when recall is easier.

Medical records can contain a variety of information useful in legal proceedings. Photographs taken in the course of the examination record images of injuries that might fade by the time legal proceedings begin, and they capture the moment in a way that no verbal description can convey. Body maps[3] (see exhibit, p. 3) can document the extent and location of injuries. The records may also hold information about the emotional impact of the abuse. However, the way the information is recorded can affect its admissibility. For instance, a statement about the injury in which the patient is clearly identified as the source of information is more likely to be accepted as evidence in legal proceedings. Even poor handwriting on written records can affect their admissibility.

Overcoming barriers to good documentation

There are several reasons medical recordkeeping is not generally adequate. Health care providers are concerned about confidentiality and liability. They are concerned about recording information that might inadvertently harm the victim. Many are confused about whether, how, and why to record information about domestic violence, so in an effort to be "neutral," some use language that may subvert the patient's legal case and even support the abuser's case.

Some health care providers are afraid to testify in court. They may see the risks to the patient and themselves as possibly outweighing the benefits of documenting abuse. Even health care providers who are reluctant to testify can still submit medical evidence. Although the hearsay rule prohibits out-of-court statements, an exception permits testimony about diagnosis and treatment. In addition, some States also allow the diagnosis and treatment elements of a certified medical record to be entered into the evidentiary record without the testimony of a health care provider. Thus, in some instances, physicians and other health care providers can be spared the burden of appearing in court.

The patient's "excited utterances" or "spontaneous exclamations" about the incident are another exception to the prohibition of hearsay. These are statements made by someone during or soon after an event, while in an agitated state of mind. They have exceptional credibility because of their proximity in time to the event and because they are not likely to be premeditated.

Excited utterances are valuable because they allow the prosecution to proceed even if the victim is unwilling to testify. These statements need to be carefully documented. A patient's report may be admissible if the record demonstrates that the patient made the statement while responding to the event stimulating the utterance (the act or acts of abuse). Noting the time between the event and the time the statements were made or describing the patient's demeanor as she

made the statement can help show she was responding to the stimulating event. Such a showing is necessary to establish that a statement is an excited utterance or spontaneous exclamation, and thus an exception to the hearsay rule.[4]

What the records lack

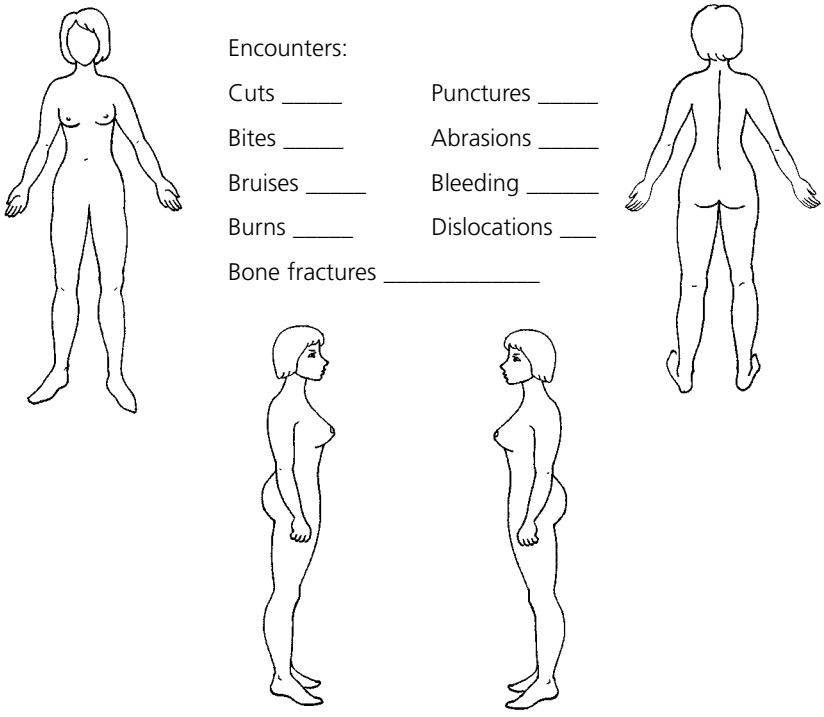
It appears that at present, many medical records are not sufficiently well-documented to provide adequate legal evidence of domestic violence. A study of 184 visits for medical care in which an injury or other evidence of abuse was noted revealed major shortcomings in the records:

- For the 93 instances of an injury, the records contained only 1 photograph. There was no mention in any records of photographs filed elsewhere (for example, with the police).
- A body map documenting the injury was included in only 3 of the 93 instances. Drawings of the injuries appeared in 8 of the 93 instances.
- Doctors' and nurses' handwriting was illegible in key portions of the records in one-third of the patients' visits in which abuse or injury was noted.
- All three criteria for considering a patient's words an excited utterance were met in only 28 of the more than 800 statements evaluated (3.4%). Most frequently missing was a description of the patient's demeanor, and often the patient was not clearly identified as the source of the information.

On the plus side, although photographs and body maps documenting injuries were rare, injuries were otherwise described in detail. And in fewer than 1 percent of the visits were negative comments made about the patient's appearance, manner, or motive for stating that abuse had occurred. (The study method is described in "Assessing the Medical Records," page 4.)

Example of an injury location chart (or "body map")

Indicate, with an arrow from the description to the body image, where any injury was observed. Indicate the number of injuries of each type in the space provided. Mark and describe all bruises, scratches, lacerations, bite marks, etc.



Source: Adapted from *Improving the Health Care Response to Domestic Violence: A Resource Manual for Health Care Providers,* by Carole Warshaw, Anne L. Ganley, and Patricia R. Salter, San Francisco: The Family Violence Prevention Fund, 1995. Used with permission of the Family Violence Prevention Fund.

What health care providers can do

Medical records could be much more useful to domestic violence victims in legal proceedings if some minor changes were made in documentation. Clinicians can do the following:

- Take photographs of injuries known or suspected to have resulted from domestic violence.
- Write legibly. Computers can also help overcome the common problem of illegible handwriting.
- Set off the patient's own words in quotation marks or use such phrases as "patient states" or "patient reports" to indicate that the information recorded reflects the patient's words. To write "patient was kicked in abdomen" obscures the identity of the speaker.
- Avoid such phrases as "patient claims" or "patient alleges," which imply doubt about the patient's reliability. If the clinician's

observations conflict with the patient's statements, the clinician should record the reason for the difference.

- Use medical terms and avoid legal terms such as "alleged perpetrator," "assailant," and "assault."

Assessing the Medical Records

To find out whether the quality of medical records is good enough to be useful in legal proceedings, researchers examined the charts of almost 100 domestic violence victims.[a] The records came from two sources. One was a Boston-area legal advocacy program, which in the course of offering legal assistance to domestic violence victims often consults their medical records. The other sources were two Boston-area hospitals.

The documentation came from physicians, nurses, social workers, psychiatrists, and emergency medical technicians. In all, 96 medical charts for 86 women—who made 772 visits to obtain care of various kinds (emergency, primary, specialty, obstetric/gynecological, or other)—were examined. The visits were recent: Most were made in 1997 or later.

A team of medical professionals, social workers, attorneys, judges, and researchers analyzed the records of all 772 visits, extracting those in which evidence of domestic violence was suggested. From the total, 184 visits (24 percent) were selected for indepth study because the medical records contained one or more indicators of abuse: a completed screen for domestic violence, mention of domestic violence, referral to domestic violence services, notation of problems with an intimate relationship, or indication of an injury of any type. (See exhibit A.)

a. All appropriate steps were taken to preserve the confidentiality of the individuals participating in the study and to adhere to regulations found in 28 CFR 46 Protection of Human Subjects.

Exhibit A. ***Reasons for including incident in the medical records analysis***

Reason for Inclusion	Number of Visits for Care*	Percentage of Records Analyzed
Injury noted in record	93	50.5
Domestic violence noted in record	59	32.1
Problems with intimate relationship noted in record	46	25.0
Domestic violence screen completed	41	22.3
Referral made to domestic violence services	23	12.5

* The total adds to more than the 184 visits because in some instances the medical record met more than one criterion for review.

- Describe the person who hurt the patient by using quotation marks to set off the statement. The clinician would write, for example: *The patient stated, "My boyfriend kicked and punched me."*
- Avoid summarizing a patient's report of abuse in conclusive terms. If such language as "patient is a battered woman," "assault and battery," or "rape" lacks sufficient accompanying factual information, it is inadmissible.
- Do not place the term "domestic violence" or abbreviations such as "DV" in the diagnosis section of the medical record. Such terms do not convey factual information and are not medical terminology. Whether domestic violence has occurred is determined by the court.
- Describe the patient's demeanor, indicating, for example, whether she is crying or shaking or seems angry, agitated, upset, calm, or happy. Even if the patient's demeanor belies the evidence of abuse, the clinician's observations of that demeanor should be recorded.
- Record the time of day the patient is examined and, if possible, indicate how much time has elapsed since the abuse occurred. For example, the clinician might write, *Patient states that early this morning his boyfriend hit him.*

Model protocol under development

Increasing the number of medical charts that contain information useful in legal settings is the goal of a followup study now under way. Professor

V. Pualani Enos is developing a protocol that seeks to improve the way domestic violence is documented. Developing training for practitioners is a major part of this NIJ-sponsored study. Design of the training will draw on input from practitioners, researchers, and domestic violence survivors. An evaluation will document the new protocol and compare medical records before and after the protocol is adopted.

Notes

1. Although men as well as women are victims of domestic violence, terms referencing women are most often used in this report because women are more frequently injured, in heterosexual relationships.

2. The evidentiary laws of each State define the scope and degree of use of medical records in legal proceedings.

3. A "body map" is a drawing of the human figure used by physicians. In domestic violence protocols, body maps are used to mark the locations, size, and age of injuries observed during a medical examination.

4. The rules of evidence adopted in most States include this exception to the general rule that statements made outside the courtroom are inadmissable. The exception is premised on the notion that if a speaker makes a statement while responding to an exciting or emotionally charged experience, that substantially reduces the likelihood that the speaker had time to fabricate the statement. This makes the statement more reliable.

Additional Information and Resources

The full report of the study summarized here is on the Web site of the Domestic Violence Institute, Northeastern University School of Law: http://www.dvi.neu.edu/ers/med_doc.

The Web site of the Domestic Violence Institute, Northeastern University (http://www.dvi.neu.edu/default.htm), has additional information, including information about the collaboration between the Institute and the Boston Medical Center Domestic Violence Project.

- American Medical Association, *Diagnostic and Treatment Guidelines on Domestic Violence,* Chicago: AMA, 1992. 19 pages. Ordering information is on the AMA Web site: http://www.amaassn.org/ama/pub/category/3548.html.

- Massachusetts Medical Society Seminar Series on Domestic Violence. This series of four interactive educational seminars—available on slides, video, and CD-ROM—is intended to improve physicians' ability to screen and care for patients at risk for domestic violence. Information is at the Society's Web site: http://www.massmed.org/pages/dv_curriculum.asp.

- Following up the study described here, V. Pualani Enos is developing a protocol to improve the documentation of domestic violence in health care settings. (The study is supported by NIJ grant 2000–WT–VX–0014.) The report of the study is expected in 2003.

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Recent Publications on Violence Against Women and Related Issues From the National Institute of Justice, the Bureau of Justice Statistics, and the Office for Victims of Crime

- *Sexual Assault Nurse Examiner (SANE) Programs: Improving the Community Response to Sexual Assault Victims*. Kristin Littel. Bulletin. NCJ 186366. Washington, DC: U.S. Department of Justice, Office for Victims of Crime, April 2001. Available electronically at *http://www.ojp.usdoj.gov/ovc/publications/bulletins/sane_4_2001/186366.pdf.*
- *Sexual Victimization of College Women*. Bonnie S. Fisher, Francis T. Cullen, and Michael G. Turner. Research Report. NCJ 182369. Washington, DC: National Institute of Justice, Bureau of Justice Statistics, December 2000. Available electronically at *http://www.ncjrs.org/pdffiles1/nij/182369.pdf.*
- *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey.* Patricia Tjaden and Nancy Thoennes. Research Report. NCJ 183781. Washington, DC: U.S. Department of Justice, National Institute of Justice, November 2000. Available electronically at *http://www.ncjrs.org/pdffiles1/nij/183781.pdf.*
- *Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey.* Patricia Tjaden and Nancy Thoennes. Research Report. NCJ 181867. Washington, DC: U.S. Department of Justice, National Institute of Justice; and U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, July 2000. Available electronically at *http://www.ncjrs.org/pdffiles1/nij/181867.pdf.*
- *Intimate Partner Violence*. Callie Marie Rennison. BJS Bulletin. NCJ 178247. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, May 2000. Available electronically at *http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv.pdf.*
- *Findings About Partner Violence From the Dunedin Multidisciplinary Health and Development Study*. Terri E. Moffitt and Avshalom Caspi. Research in Brief. NCJ 170018. Washington, DC: U.S. Department of Justice, National Institute of Justice, July 1999. Available electronically at *http://www.ncjrs.org/pdffiles1/170018.pdf.*

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