

# Do SANE Examinations Satisfy the EMTALA Requirement for “Medical Screening”?

**Author:** Susan Chasson, MSN, JD, and Ann Russell, MSW, JD,  
Provo, Utah, and Minneapolis, Minn

**Section Editors:** Linda E. Ledray, RN, PhD, FAAN, and Gail  
Pisarcik Lenehan, RN, EdD, FAAN

---

Susan Chasson is Assistant Lecturer, J. Reuben Clark Law School,  
Brigham Young University, and Lecturer, College of Nursing, Brigham  
Young University, Provo, Utah.

Ann Russell is Associate Counsel, Catholic Health Initiatives,  
Minneapolis, Minn.

For reprints, write: Susan Chasson, MSN, JD, 2295 W 600 S, Provo,  
UT 84601; E-mail: chasson@utah-inter.net.

J Emerg Nurs 2002;28:593-5.

Copyright © 2002 by the Emergency Nurses Association.

0099-1767/2002 \$35.00 + 0 18/9/129937

doi:10.1067/men.2002.129937

**R**ecently, sexual assault nurse examiners (SANEs) have asked whether their protocols could violate the Emergency Medical Treatment and Active Labor Act (EMTALA). Specifically, they want to know the following:

1. Can a nurse perform the required medical screening examination?
2. Does a physician also need to evaluate every sexual assault patient admitted to the emergency department? If a SANE does the initial screening, must the SANE, before or after the forensic examination, ask the patient if she would like to see a physician?
3. What is the appropriate procedure if a patient needs to be transferred to a facility with a SANE for the purpose of receiving a sexual assault examination?

This article will provide a general overview of the relevant EMTALA law and address these questions.

## Can a SANE provide the required screening?

---

Yes, a SANE can provide the required screening. Once a patient seeks emergency care, a hospital must provide an appropriate medical screening examination to determine the presence or absence of an emergency medical condition. An emergency medical condition is defined as:

...(A) medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—(i) placing the health of the individual...in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part....<sup>1</sup>

EMTALA does not indicate who should perform the medical screening examination. The courts have stated that to avoid an EMTALA violation, the main requirement for a medical screening examination is that the procedure used should be the same for all patients with similar symptoms.<sup>2</sup> There is no requirement that a physician conduct the medical screening examination, but policies should specifically state who is designated as the qualified medical personnel (QMP) to perform examinations for specific types of conditions. For example, designated nurses presently do the majority of medical screening examinations to determine whether a patient is in active labor; furthermore, in many facilities, patients are discharged from labor and delivery without an examination by a physician.

Studies show that most sexual assault victims do not have injuries that meet the definition of an emergency medical condition. In fact, only “3% to 4% have injuries requiring treatment and less than 1% are so severely injured they require hospital admission.”<sup>3</sup> If a patient comes to the emergency department with a complaint of sexual assault without serious physical injury, hospital policy may indicate that a SANE is a QMP to conduct that specific medical screening examination.

#### **Does a physician need to provide a screening?**

No, a physician does not need to provide a screening. A physician is required to examine a patient prior to evidence collection only if a patient’s injuries obviously require prior care. If no serious injuries are evident, a standard examination by the SANE will indicate whether further medical evaluation is needed before or after evidence collection is completed. The SANE should be aware that any examination evaluates both the potential for physical and emotional trauma that requires emergent intervention or treatment.

Offering the opportunity to see a physician is not necessary, and it may be confusing to patients to ask them to make this decision. Such decisions are made by the SANE. If a patient asks to see a physician, it may be reasonable to honor the request; however, EMTALA does not require that another examination be offered.

#### **What is the appropriate procedure for transferring a patient?**

If a hospital does not provide forensic evidence collection for sexual assault victims, the transferring hospital must follow certain procedures prior to transfer. A medical screening examination must be performed to determine if the patient has an emergency medical condition that must be stabilized prior to transfer to another facility.

Furthermore, to “minimize the risks to the individual’s health,” the receiving facility “must have available space and qualified personnel for the treatment of the individual” and the receiving facility must agree “to accept transfer of the individual and to provide appropriate medical treatment.”<sup>4</sup>

Although EMTALA regulations may not be applicable, if a patient is directed by his or her physician to come to the emergency department as an outpatient for a nonemergency test or procedure, this exception probably would not apply to victims of sexual assault.<sup>5</sup> Part of the role of the SANE is to evaluate the patient for nongenital and genital trauma. This examination could potentially uncover a medical condition that requires emergency care. Referral by police of a patient to an emergency department for a sexual assault examination does not create an exception to EMTALA, and referral to an outpatient department still triggers EMTALA if an emergency medical condition exists. Hospital-owned outpatient departments and off-campus facilities must have personnel available to screen and stabilize patients if a patient presents with a medical emergency.<sup>6</sup>

Finally, although the potential exists for serious fines and penalties for violating EMTALA regulations, it is important to understand that an investigation of a hospital is usually begun after a patient or another hospital files a complaint. In a review of EMTALA violations published by the United States General Accounting Office, the majority of violations concern failure to appropriately screen, stabilize, or transfer patients; most involve a bad outcome.<sup>7</sup> With 97 million ED visits in 1999, the Centers for Medicare and Medicaid Services investigated only 400 EMTALA complaints and confirmed only 215 actual violations.<sup>8</sup>

### Practice pointers

SANEs should ensure that their hospital has policies and procedures for the treatment and transfer of patients. Policies approved by the hospital's governing board and medical staff that designate who may perform a medical screening examination should clearly state who is designated as a QMP in specific situations. If SANEs routinely screen all sexual assault patients admitted to the emergency department, this position should be clearly stated in that policy.

A standard screening procedure approved by the hospital should be used. Procedures must also include evaluation of the patient for unstable psychological conditions that might require stabilization prior to discharge; this would include any suicide potential or other risk of harm to self or others that requires further evaluation and treatment or hospitalization.

Some SANE protocols require that every patient should be offered the opportunity to see a physician. If the SANE has screened a patient and determined that there is no medical or psychological condition that is not stabilized, it is NOT necessary or recommended that this offer be made. In fact, such an offer may be confusing to a patient. If the request is made by the patient, the SANE *may* make a referral (and perhaps good practice would be to always honor this request), but the SANE is not required to do so under EMTALA regulations.

The SANE should document the screening examination and should state in the medical record that the patient is *stable* for discharge.

If SANE procedures are adequate for screening and treating sexual assault patients, and the procedures are followed with each patient, EMTALA's standards will be met.<sup>9</sup> It is important to remember that the courts are constantly adding new interpretations to the EMTALA regulations; thus, someone who is familiar with these new changes in the law should regularly review your policies.

### REFERENCES

1. 42 U.S.C.A. §1395dd(e)(1).
2. Marshall on Behalf of Marshall v. East Carroll Parish Hosp. Service Dist., 134 F.3d 319.
3. Ledray L. Sexual assault nurse examiner development and operation guide. Washington: US Department of Justice. 1999. p. 38.
4. 42 U.S.C.A. §1395dd.
5. Bruns C, Bell WA. EMTALA ED screening for non-ED patients. In: Zimmermann PG, editor. Managers Forum. J Emerg Nurs 2001;27:68.
6. Emergency care EMTALA implementation and enforcement issues (GAO-01-747). Washington: United States General Accounting Office; June 2001. p. 16.
7. Emergency care EMTALA implementation and enforcement issues (GAO-01-747). Washington: United States General Accounting Office; June 2001. p. 30.
8. Emergency care EMTALA implementation and enforcement issues (GAO-01-747). Washington: United States General Accounting Office; June 2001. p. 17.
9. Fisher by Fisher v. New York Health and Hospitals Corp., 989 F. Supp. 444.

Submissions to this column are welcomed and encouraged. Contributions may be sent to one of the following:

**Linda E. Ledray, RN, PhD, FAAN**

Sexual Assault Resource Service, 525 Portland Ave South, Minneapolis, MN 55415

612 347-5832 • linda.ledray@co.hennepin.mn.us

**Gail Pisarcik Lenchan, RN, EdD, FAAN**

c/o Managing Editor, PO Box 489, Downers Grove, IL 60515

800 900-9659, ext. 4044 • karen.halm@attbi.com