

In The Aftermath

**A guide for victims of sexual assault and/or
intimate partner violence in the BDSM community**

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CONSULT A LOCAL ATTORNEY IN YOUR AREA.

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About the Author...

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Natalie is a dynamic speaker who, for the past 13 years, has helped educate legal and medical personnel and social service providers on issues affecting marginalized populations including the LGBTQ population, victims of sex trafficking, and victims of intimate partner violence. She has authored evidence-based curricula aimed at the primary prevention of intimate partner violence as well as several educational publications on healthy intimate relationships, cultural competency, and social change.

Natalie currently works as the Manager of Professional Education for a certified domestic violence center and serves as a consultant to a variety of non-profit agencies on building program capacity, strategic planning, and outcomes-based programming and funding.

Natalie believes strongly in the mission of the National Coalition for Sexual Freedom and is excited to join them in service to the community.

Purpose of this Publication

To educate anyone in the BDSM community who has been victimized on:

- what they might expect to experience after an assault,
- what their options are,
- things to consider when weighing options and making a decision,
- what they might expect if they decide to report their experience
- resources available to assist in coping with and healing from abuse

We recognize that anyone, regardless of gender, orientation, or interest can be victimized. This publication is intended for all victims, regardless of genders and orientations.

Clarifying Terminology

There are many definitions used for both sexual assault and domestic violence and in spite of all the information that has been written and distributed surrounding the topics of sexual assault and domestic violence in the BDSM community, there are still a lot of varying opinions and misinformation about what constitutes abuse or assault in the context of a BDSM relationship. In the interest of assuring a common understanding of these terms as they are used in this publication, they are defined and outlined here.

SEXUAL ASSAULT:

Sexual assault is defined by the Department of Justice Office of Violence Against Women as any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the legal definitions of sexual assault are sexual activities such as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape.

While people participate in BDSM activities for sexual gratification, many of these activities, like impact play and bondage, are not legally considered to be sexual activities and therefore violations that occur during BDSM play may not legally be considered to be sexual assault. They may, however, be considered criminal assault or battery.

RAPE:

Rape definitions vary by state and in response to legislative advocacy. Most statutes currently define rape as non-consensual oral, anal, or vaginal penetration of the victim by body parts or objects using force, threats of bodily harm, or by taking advantage of a victim who is incapacitated or otherwise incapable of giving consent. Incapacitation may include mental or cognitive disability, self-induced or forced intoxication, status as minor, or any other condition defined by law that voids an individual's ability to give consent.

INTIMATE PARTNER VIOLENCE:

The Centers for Disease Control and Prevention define intimate partner violence as follows: Intimate Partner Violence (IPV) occurs between two people in a close relationship. The term "intimate partner" includes current and former spouses and dating partners. IPV exists along a continuum from a single episode of violence to ongoing battering and includes three types of behavior:

- Physical violence is when a person hurts or tries to hurt a partner by hitting, kicking, or other type of physical force
- Sexual violence is forcing a partner to take part in a sex act when the partner does not consent. Threats of physical or sexual violence include the use of words, gestures, weapons, or other means to communicate the intent to cause harm.
- Emotional abuse is threatening a partner or their possessions or loved ones, or harming a partner's sense of self-worth. Examples are stalking, name-calling, intimidation, or not letting a partner see friends and family

Many BDSM activities involve the same acts as described in the definition of Intimate Partner Violence. For the purpose of this publication, the term "Intimate Partner Violence" is used to denote activities both parties have **not** agreed to and that are **not** consensual BDSM activities.

CONSENSUAL BDSM:

BDSM includes a broad and complex group of activities between consenting adults involving the consensual exchange of power, and the giving and receiving of intense erotic sensation and/or mental discipline for the purpose of sexual gratification

In a healthy BDSM relationship all parties involved are actively invested in the well-being of each other and themselves.

According to the National Leather Association, BDSM is not abuse or domestic violence because:

- BDSM is voluntary. The partners agree to erotic power exchange of their own free will and choice. Either partner is free to leave at any time. The fact that BDSM relationships do split without retaliation or violence supports the importance of this distinction.
- BDSM is consensual. All partners involved agree to what is going to happen. Discussion of limits is usual and customary. Violation of those limits is a serious offense within the BDSM community.
- BDSM partners are informed. Participants involved in erotic power exchange have an understanding of the possible consequences.
- BDSM partners ask for and enjoy the behavior; they are often disappointed if the behavior does not happen. There is no apology for the behavior after it is over, rather both partners are happy and satisfied that it occurred.
- BDSM partners take great care to make sure that their activities are as safe as possible. To truly damage their partner would deny themselves of being able to participate in the behavior. Individuals that violate their partners' limits soon find that they are lacking partners in which to engage in the behavior. To emphasize the point, BDSM groups frequently hold educational meetings on how to safely engage in the behavior.

More on Consent

Consent is the keystone to healthy sexual relationships. This is particularly true in the BDSM community where it is the central difference between a mutually satisfying relationship and an abusive one. For this reason, it is important to clarify some important concepts related to consent as it relates to BDSM relationships. For the purpose of this discussion, all BDSM activities are considered to be sexual acts.

When you consent to an act it means that you approve of and agree to what is going to happen. There are three main considerations in judging whether or not a sexual act is consensual: 1) are the parties old enough to consent, 2) do they have the capacity to consent, and 3) did they agree to the sexual contact.

1. Are the participants old enough to consent?

Each state sets an "age of consent," which is the minimum age someone must be to consent to sexual activity. People below this age are considered children and cannot legally agree to sex. In other words, even if the child or teenager says yes, the law says no.

In most states, the age of consent is 16 or 18. In some states, the age of consent varies according to the age difference between the participants. Generally, "I thought she was 18" is not considered a legal excuse - it is the responsibility of each person to make sure all parties are old enough to legally take part in sexual activity.

Because laws are different in every state, it is important to find out the law in your state.

2. Do the participants have the capacity to consent?

States also define who has the mental and legal capacity to consent. Those with diminished capacity - for example, some people with disabilities, some elderly people and people who have been drugged or are unconscious - may not have the legal ability to agree to sexual contact.

In BDSM activities, it is also important to consider the mental capacity of someone to consent when they are in the altered mental state commonly referred to as "subspace". Subspace is an altered state resulting from the flood of neurochemicals and hormones that are released when a submissive or bottom participates in intense BDSM activities. This state may be different for each individual but is physiologically akin to opiate intoxication and can impair the ability of the individual to give consent to additional activities or to changes in previously negotiated activities.

3. Did both participants agree to all aspects of sexual activity?

In order for parties to consent to sexual activity they must know what they are consenting to. It is important for partners to discuss sexual activities prior to engaging in them. This is true for casual play partners and for longer term relationships.

For a casual encounter, it may be enough to have a discussion about each person's expectations, desires, and limits. This process of negotiation should take as long as necessary until everyone is comfortable that the guidelines are clear.

It is important to check in with your partner(s) during play and to get explicit consent if the scene moves in a direction other than what had already been discussed, keeping in mind the previously mentioned issue of "subspace" and altered mental states.

It doesn't matter if you've already started having sex or what you have previously negotiated. You have the right to change your mind. If you use a predetermined "safe word," "safe signal," or express to your partner that you want to end an encounter or a scene and your partner does not stop or if your partner forces sex when it was not previously discussed, that is assault.

For longer term relationships, the discussion of boundaries should be an ongoing process. The issues of expectations, desires and limits should be discussed on a regular basis and each person involved should have a way to voice concern, discomfort, or a desire to change the terms of the relationship.

If you are in a relationship with a Master/slave dynamic, it is important to understand that under the law, a person cannot give up their right to withdraw consent in the future regardless of what contracts might exist between the parties. A healthy relationship will include protocols for negotiating issues of consent that may arise, for the protection of all parties involved.

Regardless of the duration or dynamic of a relationship, you have a right to say "No" and a responsibility to speak up when you are uncomfortable or change your mind about engaging in any sexual behavior.

Intimate Partner Violence

BDSM VERSUS ABUSE

Because the BDSM lifestyle involves so many activities that are (improperly) considered abusive in the mainstream, it may be hard for some individuals to distinguish between what is abuse in a relationship and what is healthy, consensual BDSM.

Intimate partner abuse occurs when one person demonstrates a pattern of assault and coercive behaviors intended to exert control over their partner in non-consensual ways that were not previously discussed, have not been consented to and are not desired.

Intimate partner abuse can occur between any two or more intimates. Intimate partner abuse is not isolated to any particular group. Submissives and those new to the lifestyle are not the only potential victims of intimate partner abuse within the BDSM lifestyle. Dominants may be victims as well.

Non-consensual dominance and control, also known as "intimate partner abuse" or "domestic violence", may include:

- physical abuse
- threats of physical abuse
- emotional abuse
- threatening phone calls
- stalking

The most important consideration in determining whether or not a relationship is abusive is the issue of consent. In a healthy BDSM relationship, all parties are vested in the well-being of the others in the relationship and communication is ongoing. Any party should feel that they withdrawal consent for specific activities at any time and that they can leave the relationship if they decide to do so.

If you feel like something is not right in your relationship or you are uncomfortable with your partner's behavior you should pay attention to that feeling and explore with someone you trust those things that cause you concern.

WARNING SIGNS

While most abusers purposely try to hide their intentions and/or have many rationalizations about their behavior, there are some things to look for that can be red flags:

- Isolation: In most abusive relationships, the abuser attempts to cut off the victim's family, friends, and independent financial resources. This can be very subtle. Beware of anyone who criticizes your friends and family or tries to monopolize all of your time.
- "Jekyll and Hyde" behavior: Most abusers are not obvious but will go back and forth between being loving, caring and attentive and then angry and abusive. The abuser may then apologize and make excuses for their behavior.
- Unrealistic expectations of the relationship: Many abusers will push for intimacy very quickly and expect you to make decisions about the future of the relationship after a very short period of time. Consider carefully requests to move in, be collared, or any other relationship milestone that seems to come too quickly. They may also become very dependent very quickly and expect you to meet all of their needs.
- Blaming: A person who never seems to take responsibility for his/her problems in day-to-day life is unlikely to take responsibility for problems in a relationship.
- Intense Jealousy: Abusers will accuse you of having affairs or seeing other people. Or say things like, "If I can't have you no one will."

- Fostering financial or emotional dependence: Abusers will often manipulate their partner to become fully dependent on them. They can then use this dependence to coerce their partners into doing activities they don't want to do. Similarly, abusers can also be manipulative from the other side, using guilt to control their partner, gain support, etc.
- Minimizing and Denial: Abusers frequently deny or minimize their abusive behavior.

SAFETY PLANNING

In healthy, consensual power exchange relationships, both parties are in agreement to the level of control that one partner exerts over the other. It is important to understand that NCSF does not advocate that people in consensual BDSM Master/slave or Dominant/ submissive relationships need to adopt safety planning measures like those listed below. But safety planning is important to those whose relationships have elements of intimate partner abuse as discussed above.

A safety plan is a strategy that helps to identify ways to keep you and your family safe. Your plan will be unique to your situation and may include a plan to leave the abuser or it may be a plan to protect yourself while remaining with the abuser. The plan will adapt and change over time as your situation changes.

Having a safety plan is important regardless of what decisions you make about your relationship.

Safety plans should address:

- How to escape if there is an emergency
- How to get help if leaving is not an option (neighbors, family)
- Where to go once you get away (if leaving)
- How to be secure at a new location
- How to keep a link to helpers/support network
- How to stay safe at work, leisure, and while commuting
- How to keep kids and pets safe
- Protecting your "Stuff" (bank accounts, email accounts, personal property)
- Anticipating/Responding to abuser's actions: who to call, maintaining a journal or log, how to communicate if necessary
- How to use computers and other technology safely

In an Emergency:

- Remember that your safety and well-being are your primary concern. If your partner becomes violent, do not hesitate to call the police.
- In the midst of a violent incident stay away from the kitchen and garage or any other room that contains visible weapons. Avoid small spaces where you might become trapped like bathrooms or closets.
- If you call police, explain what has occurred and write down the officer's badge number and name. You might also want to take pictures of all injuries and damages even if the police have already done it.

Protect Yourself at Home:

- Always carry a charged cell phone; know your phone's blackout areas. Most domestic violence centers offer recycled cell phones that you can use in an emergency to summon 911.
- Plan an escape route from your home and teach it to your children; know where you will go to escape. Know the domestic violence shelter in your area.

- Develop a signal with a trusted neighbor to alert them to when you are in danger (flipping on a porch light, etc.).
- Take a self-defense course and carry a noisemaker or personal alarm.
- If you are no longer living with the abuser, change all of your locks.

Protect Yourself Outside Your Home:

- Change routes to work, school, stores and ride with others; shop and bank in new places.
- Cancel joint bank accounts and credit cards; open new accounts in your name only at a different bank.
- Keep any court orders and emergency numbers with you at all times!
- Carry noisemakers or pepper spray/mace. (Consult your local laws, pepper spray/mace is not legal in all jurisdictions.)
- Park in a well-lit space close to the door; ask security or a coworker to walk you to your car, bus, and lunch.

Actions to Consider:

- Call a confidential 24-hour crisis line. Resources are available in the back of this publication.
- Keep a journal and photos of the abuse (keep this in a spot where the abuser will not find it).
- Prepare an Escape Bag:

An escape bag can give you access to the things you need if you have to get away in a hurry. Keep a bag/box/ suitcase in a safe place away from home (at work or a friend's). Place "originals" in the bag except for items you must carry with you or things you can't take without the abuser knowing. Do not use your car or purse as these are places that an abusive partner might look.

Your emergency bag might contain:

- Identification for you and your children: driver's license, birth certificates, Social Security or immigration cards
- Cash
- Extra keys: car, house, storage, business, etc.
- Checkbook, ATM Card, credit cards, bank books, etc.
- Address book and phone numbers
- Food stamps, Medicaid cards, insurance cards, etc.
- Car registration; car, health and life insurance papers
- School and medical records
- Divorce, custody or injunction papers
- Proof of your partner's income (copy of a check stub)
- Home calling card (calls can be traced and cell phones have GPS in them)
- Copies of bills you owe with partner
- Change of clothes
- Medications and prescriptions for you, your children and pets (bring extra)
- Personal hygiene products (toothbrushes, tampons, deodorant, etc.); diapers, formula, toys, blankets
- Abuser's personal information (picture, date of birth, Social Security number, work permit information, place of employment, vehicle description and license plate)

Getting Help

ADVOCACY

If you are being abused you may feel very alone. You may feel like you are trapped in the relationship and that you cannot get away. There are many resources available that can help you to plan for your safety. **YOU ARE NOT ALONE!**

Domestic violence advocates are specially trained in the dynamics of abuse and can work with you on a personal safety plan and help you access resources that can help you in making decisions about your relationship.

Many victims of abuse are hesitant to reach out for help for a variety of reasons. They may be afraid of judgment, afraid that they won't be believed, or afraid that the abuser will find out that they told and retaliate. For those in the BDSM lifestyle, these fears may be compounded by the inclusion of BDSM activities and the unique dynamics of power exchange relationships.

Because there is frequent confusion among service providers about the difference between BDSM and abuse, it might be helpful to bring information like this manual along with you to help facilitate any discussion around your involvement in BDSM, power exchange and/or other activities.

MEDICAL TREATMENT

Your health and safety are of primary importance. If you have been injured by abuse, please seek medical attention.

As important as it is for you to seek treatment for any injuries, it is also important for you to know how your medical information might be shared.

When seeking medical treatment, you will be asked to sign a statement of understanding regarding privacy laws under the Health Insurance Portability and Accountability Act (HIPAA). It is important for you to understand that privacy laws do allow for medical personnel to release your information in making reports to law enforcement about intimate partner violence, under certain conditions:

- 1. you agree to the release of the information, or**
- 2. the disclosure is (a) required by state mandatory reporting law or (b) expressly authorized by statute or regulation.**

Some medical personnel may be mandated to report certain injuries or crimes. Some states require medical personnel to report intimate partner violence or injuries made with weapons or that are the result of violence. Laws about this vary from state to state. More information about this can be found at: Futures Without Violence. (Appendix A)

Medical personnel can also make reports to law enforcement without telling you first if they feel that the disclosure is necessary to prevent serious harm. They do have to inform you if they make a disclosure or report but they can do so after the fact. For this reason, it is important for you to be informed about mandatory reporting laws in your state and to be prepared to discuss with medical personnel your desire and reasons for not wanting any disclosures to law enforcement if that is the case.

If you find that you have to explain BDSM to medical personnel during the course of treatment, you might want to use resources available from the National Coalition for Sexual Freedom including this manual and/or:

- SM vs. Abuse (Appendix C)
- SM issues for Healthcare Providers (Appendix D)

Sexual Assault

QUESTIONS ABOUT SEXUAL ASSAULT AND BDSM

People participate in BDSM activities for sexual gratification, however, many of these activities, like impact play and bondage, are not legally considered to be sexual activities and therefore violations that occur during BDSM play may not legally be considered to be sexual assault. They may, however, be considered criminal assault or battery.

In the following discussion, the term "assault" refers to acts that are legally defined as sexual assault, like rape, and to violations of consent that may take place during a BDSM "scene" or relationship, like paddling someone who is bound without previously negotiated consent or leaving someone caged after they have stated that they do not want to be confined.

Was I Assaulted?

There are lots of misperceptions about what does and does not constitute an assault in the context of BDSM activity. Any act that falls under the legal definition of sexual assault, as it was defined at the beginning of this publication (See "Clarifying Terminology"), constitutes an assault. The main consideration in this circumstance was whether or not the act was consensual.

If the act in question does not fall under the legal definition of sexual assault, it may be considered under the law to be a criminal assault or battery. (Under current laws, a person cannot consent to an assault on their person. Therefore, even consensual BDSM activities can, and have been, prosecuted in court.)

In spite of the fact that your consent to an activity does not provide a legal defense for engaging in that activity, consent matters in determining whether or not your boundaries and limits have been violated. If your partner goes beyond pre-established limits and acts without your consent; that is an assault.

I didn't resist physically - does that mean it isn't rape or criminal assault?

Physical resistance is not always possible or safe but many victims believe that only a violent incident is truly considered rape. This is not true. If you are coerced, threatened or forced into sexual activity when you did not want to, you have been sexually assaulted.

I used to date the person who assaulted me - does that mean it isn't rape or criminal assault?

Even if you are involved in a long term relationship with someone, married to them, have played with them in the past, or have had sex with them in the past, it does not mean that you consented to an assault. You have the right to change your mind about your relationships and to withdraw consent at any time.

I was drunk or my partner was drunk - does that mean it isn't rape or criminal assault?

You have the right to drink if you are of legal age to do so. This does not give anyone the right to have sexual contact with you without your consent. If you are intoxicated, you are not able to consent.

Your attacker's state of intoxication is not an excuse for assault.

I have a Master/slave contract... doesn't that mean I have to tolerate whatever my Master does?

A Master/slave contract is not a defense against the crime of sexual assault, nor is it an excuse to be abusive

You have the right to leave a relationship or to withdraw consent. It is important to understand that under the law, a person cannot give up their right to withdraw consent in the future regardless of what contracts might exist between the parties. A healthy relationship will include protocols for negotiating issues of consent that may arise, for the protection of all parties involved.

SAFETY AND PREVENTION

While this publication is aimed at assisting victims of assault, many who read it may not have been assaulted and may be looking for ways to keep themselves safer and be prepared in the event that something happens. Although it is never the fault of the victim when someone chooses to assault them, there are some things that people can do to reduce the likelihood of an assault. Please keep in mind, however, that not remembering or implementing these safety strategies does not mean that the victim is responsible for the assault. Perpetrators are the only ones responsible for their behavior.

There is no absolute way for a victim to prevent rape or sexual assault, but there are precautions and strategies that one can use to decrease both the motivation and opportunity of a perpetrator. Most sexual assaults are perpetrated by someone the victim knows. These precautions are suggestions for minimizing your chances of sexual assault by someone you are dating, considering playing with or having a relationship with.

SAFETY IN RELATIONSHIPS

It is an unfortunate fact that most sexual assaults (between 73% and 85%) are perpetrated by someone known to the victim. Because of this, it is important to understand safety in relationships. It cannot be stressed enough that a victim is never to blame for having been assaulted but there are some precautions and tips that may help to decrease the likelihood of assault:

- Be aware that the victim's home is the most common location (other than the offender's home) for sexual assault to occur. Homes, yours or theirs, should NOT be the first place where you meet someone alone early in the relationship, and especially for a first in-person meeting. Many accountings of sexual assault in the BDSM community are in the context of play with in a private setting with someone not very well known. Under those circumstances there is little to no accountability.

If you are new to the BDSM lifestyle, make connections in the community through munches and other public events. These are great, safer places to meet someone that you may be interested in dating or playing with. Ask your potential play partners for references in the local community.

Even if you have been around for a long time, this is a safe thing to do when meeting new potential partners. Whether you choose to meet at a lifestyle event or a "vanilla" venue, you should meet publicly. Anyone who hesitates to meet publicly should be considered with caution.

- When you are out at clubs, bars, munches or any other social gathering, always keep your drink in your hand. If you must leave your drink, order a fresh one when you get back. Leaving a drink unattended gives opportunity for someone to put date-rape drugs in it.
- Be mindful of your alcohol and/or drug consumption when you are with someone that you do not know well. Being under the influence can impair your ability to respond to a situation and your ability to consent to sexual activity. If you know you are going to use any mind-altering substance, it is best to have someone you know well and trust with you.
- Get comfortable with being honest about your desires and intentions in a relationship. When negotiating a scene or a BDSM relationship, it is important for you to know what you are willing and not willing to experience and to communicate these things clearly.
- You have a right to control your life and your experiences, including the right to decline any level of sexual activity, at any time, with anyone. Even if you have previously consented to something, you have the right to change your mind. Don't allow yourself to be pressured into any sexual or play activity that you don't want or don't feel good about.

- Trust your instincts. This is the most important thing. If a person seems to have nothing wrong with them that you can put your finger on, but you just don't feel good about them: **DO NOT PLAY WITH THEM.** If a particular activity, invitation, or group of people makes you uncomfortable--stay away. Your feelings and instincts are the best safety aides you have. They are not wrong. They are not silly. You should not "give that person/activity a chance." Do not doubt your gut.
Don't be afraid to be picky. "No" requires neither explanation nor debate. Play with someone because you want to, not because you can't come up with a good reason not to. If someone asks you "Why Not?" after you have said "No" that is a warning sign in itself.
- Remember that you don't "have to" do anything. Beware of anyone who tells you that to be a "real" Dominant or submissive you must act a certain way or engage in a specific activity in a specific way. Consent to things because you want to do those things specifically, not because anyone or anything challenged your authenticity or competence, or in any other way made you feel obligated.
- Whether you are a top or a bottom you should be knowledgeable about the specific play you engage in. Take a class, go to a party and watch an experienced person at work or ask an experienced person to teach you. The more that you know about the play you are engaging in the easier it will be to keep yourself safe and to know when things are not as they should be.
- Use a safe word or safe signal. Although safe words are no substitute for trust and knowledge, and a person who is unsafe may disregard the word, it can clearly communicate your desire to stop a scene and demonstrate that you are no longer consenting. If you are engaging in activity that may limit your ability to assert a safe word verbally, consider using a safe signal.

ONLINE SAFETY

It is important to use discretion when engaging in online correspondence. Never give out personal information to anyone online unless you are absolutely sure of who is receiving that information. Especially do not give information to anyone you do not know well.

Remember that it is very easy for a person to hide their true motives when they are corresponding online. A few things to consider:

- Does this person seem too good to be true?
- Are they consistent in what they write and say? Do they contradict themselves?
- Does this person express a level of intimacy in the relationship right away? Do they expect complete submission from a stranger? Or do they immediately call you "Master" before you have established a relationship?
- Does this person push you for "cybersex" when you don't want it?
- Do they respect your concern about safety? Do they belittle your precautions and try to coerce you?
- What do they say about past partners? Is it all negative?

IF YOU ARE SEXUALLY ASSAULTED

During the course of an assault, it may be hard to think. You may be paralyzed with fear or you may fight back physically. Trust your instincts. Fighting back or confrontation may deter the perpetrator or it might put you at risk of significant injury or death depending on the situation. Only you can decide the right course of action. Try to stay as calm as possible in the moment and pay attention to specific details. This can increase the likelihood of accountability for the perpetrator if you decide that you want to report an assault.

The perpetrator may be someone you have just met or may be someone you know well. Regardless of the situation, you should pay attention to as many specific details of the incident as possible

Once you are safe you may want to write down as much as you can remember of your encounter. Include as many details as you can of the events leading up to the assault, as well as the assault itself including:

- *Details of your conversations:*
Be as specific as possible and try to remember and write down exactly what was said.
- *Details of past encounters and any differences between those encounters and the assault.*
- *Details of the relationship:*
Is it a neighbor, coworker? Play partner? Is this an intimate partner? Someone you just met? A stranger?
- *Clothing:*
What is he wearing? Is his face covered? If so, with what? What kind of shoes is he wearing? Does he have jewelry on?
- *Features:*
What is his eye color? Hair color? Does he have facial hair? Body hair?
- *Odors:*
Do you notice an odor of alcohol? Body odor?
- *Voice:*
What does he sound like? What does he say?
- *Weapons:*
Does he have a weapon? What kind? What does it look like?

GETTING SAFE AFTER AN ASSAULT

The first and most important thing for you to do is to get away from the perpetrator and to a safe place. This might mean getting to your home, a friend's home, a police station or a hospital. Make sure you are not in any danger anymore.

This can be particularly difficult if you are living with your perpetrator, such as a spouse or a relative. If this is the case, you might need to develop a safety plan with someone you trust before leaving.

GETTING HELP

Your health and physical safety should always be the first priority. If you are injured, call an ambulance or get to the nearest hospital immediately.

There are many services available to assist in the immediate aftermath of an assault. Because this is such a difficult time and because there are so many decisions that you will have to make, it is important to have help and support. Some people or places that you might want to reach out to include:

- Rape Crisis Line
- Domestic Violence Hot Line
- NCSF Incident Response Line
- Law Enforcement
- Family
- Friends

Some things that you should know when seeking assistance after an assault:

- If you have been raped, do not shower, wash your hands, change your clothes, brush your teeth, drink anything, douche, urinate, etc. All of these things will destroy evidence such as fibers, hairs, saliva or semen which may help law enforcement to identify your attacker. This can be very difficult as the feeling of being "unclean" and wanting to shower is very strong for many victims.
- Most states have victim assistance programs that will pay for evidence collection, medical treatment and other financial losses that are incurred as a result of a crime; however some of these programs require that the victim cooperate with law enforcement and prosecution. An advocate can help you to access these resources and can explain to you the requirements for each state.

BDSM AND MEDICAL TREATMENT

As important as it is for you to seek treatment for any injuries, it is also important for you to know how your medical information might be shared and to keep in mind that once information is disclosed, you have no control over how that information might be used.

When seeking medical treatment, you will be asked to sign a statement of understanding regarding privacy laws under the Health Insurance Portability and Accountability Act (HIPAA). It is important for you to understand that privacy laws do allow for medical personnel to release your information in making reports to law enforcement about intimate partner violence, under certain conditions: (1) you agree to the release of the information, or (2) the disclosure is (a) required by state mandatory reporting law or (b) expressly authorized by statute or regulation.

Some medical personnel may be mandated to report certain injuries or crimes. Some states require medical personnel to report intimate partner violence or injuries made with weapons or that are the result of violence. Laws about this vary from state to state.

More information about this can be found at: Futures Without Violence. (See Appendix A)

http://www.futureswithoutviolence.org/section/our_work/health/health_material/mandatory_reporting

Medical personnel can also make reports to law enforcement without telling you first if they feel that the disclosure is necessary to prevent serious harm. They do have to inform you if they make a disclosure or report but they can do so after the fact. For this reason, it is important for you to be informed about mandatory reporting laws in your state and to be prepared to discuss with medical personnel your desire and reasons for not wanting any disclosures to law enforcement if that is the case.

If you do not have injuries that resulted from BDSM activities or the attack was not in the context of a BDSM event or relationship, it may not be necessary to discuss your BDSM activities or lifestyle with medical personnel. If however, your attacker is your intimate partner in a BDSM relationship, the incident occurred during the course of BDSM activities or if you have marks, cuts or bruising that resulted from consensual BDSM activities prior to the assault, you may have to discuss this with medical personnel or with others involved in reporting a crime if you decide that you want to make a report.

This can be a difficult decision as many people engaged in consensual BDSM activities report that they have been discriminated against by medical personnel when disclosing their involvement. While it is very understandable in the face of trauma to want to avoid this discussion, it is important to be honest. Resist the urge to cover up or misrepresent anything as that might be related to the assault or to the collection of any evidence.

If you find that you have to explain BDSM to medical personnel during the course of treatment, you might want to use resources available from the National Coalition for Sexual Freedom including this manual and/or:

- SM vs. Abuse (Appendix C)
- SM issues for Healthcare Providers (Appendix D)

Common Reactions to Sexual Assault

After going through a trauma like sexual assault or domestic violence, survivors often say that their first feeling is relief to be alive. This may be followed by stress, fear, and anger. Survivors may also find they are unable to stop thinking about what happened. Many survivors will show a high level of arousal, which causes them to react strongly to sounds and sights around them.

Most people have some kind of stress reaction after trauma. Having such a reaction has nothing to do with personal weakness. Stress reactions may last for several days or even a few weeks. For most people, if symptoms occur, they will slowly decrease over time.

If you understand what is happening when you or someone you know reacts to a traumatic event, you may be less fearful and better able to handle things.

SELF-BLAME

Because a victim's behavior and actions are often questioned after an attack, it is easy for a victim to believe that they have some responsibility for rape or for a BDSM-related non-consensual assault. One study showed that 25% of rape victims believed that the attack was 100% their fault. Another 50% believed that the attack was partially their fault. **THIS IS NOT TRUE!** Only the perpetrator is responsible for assault.

Regardless of your actions, behaviors, style of dress or any other factors, you are not to blame. The only possible way for rape or assault to occur is that a person makes the decision to act.

REACTIONS TO A SEXUAL ASSAULT MAY INCLUDE:

- Feeling hopeless about the future
- Feeling detached or unconcerned about others
- Having trouble concentrating or making decisions
- Feeling jumpy and getting startled easily at sudden noises
- Feeling on guard and constantly alert
- Having disturbing dreams and memories or flashbacks
- Having work or school problems

COMMON PHYSICAL REACTIONS INCLUDE:

- Stomach upset and trouble eating
- Pounding heart, rapid breathing, feeling edgy
- Sweating
- Severe headache if thinking of the event
- Failure to engage in exercise, diet, safe sex, regular health care
- Excess smoking, alcohol, drugs, food
- Having your ongoing medical problems get worse
- Trouble sleeping and feeling very tired

COMMON EMOTIONAL REACTIONS INCLUDE:

- Feeling nervous, helpless, fearful, sad
- Feeling shocked, numb, and not able to feel love or joy
- Avoiding people, places, and things related to the event
- Being irritable or having outbursts of anger
- Becoming easily upset or agitated
- Blaming yourself or having negative views of yourself or the world
- Distrust of others, getting into conflicts, being over controlling
- Being withdrawn, feeling rejected or abandoned
- Loss of intimacy or feeling detached

Do not hesitate to seek assistance for yourself during this time. A list of resources is available at the end of this publication. Find someone in your area to reach out to. **YOU ARE NOT ALONE!**

Many victims in the BDSM community hesitate to seek assistance because they are afraid to talk about their involvement in BDSM, kink or other sexual activities outside the mainstream. Please do not let this deter you from seeking assistance. The National Coalition for Sexual Freedom has a directory of professionals, including therapists, who are familiar with and non-judgmental of BDSM, swing and polyamory activities. Please look here (<http://www.ncsfreedom.org/kap.html>) to find someone in your area.

Considering Your Options

WHO TO TELL

You have no obligation to report intimate partner violence or sexual assault against you. The decision is a very personal one and is entirely up to you. Do not let yourself be pressured into doing anything that you are not comfortable with.

Many victims say that reporting is the last thing they want to do; especially right after an assault. That's perfectly understandable; reporting can seem invasive, time consuming and difficult. Victims may not want to disclose their involvement in BDSM activities and may be concerned about the impact of disclosure. Many others want their perpetrator brought to justice.

There are many good reasons to report, and some victims say that reporting helped their recovery and helped them regain a feeling of control. There are also many good reasons for not reporting. Only you can decide what is right for you.

You have some options about who to tell. You could reach out to a domestic violence or sexual assault center. You could call police and make a report for crimes against you. You can seek medical treatment if necessary. You could also reach out to friends or family. The decision about whom and what to tell is up to you.

Sexual assault centers and domestic violence centers have advocates available to guide you through the process of making a decision like this. In most states, these advocates are able to keep your information confidential and you can speak freely with them. They can also guide you through the process of a medical exam, evidence collection, reporting to law enforcement, and the other processes of recovering from abuse or sexual assault and reclaiming your life.

If you have been raped, even if you don't think you want to report the crime or you are uncertain, you may want to consider getting to a medical facility that can do a "rape kit" to gather evidence and to protect and treat you for any health issues related to the assault. An advocate, friend or family member can accompany you for support and to help guide you through the process.

Remember that you may change your mind and want to pursue accountability for your attacker. The gathering of evidence is a necessary part of this and can only effectively be done immediately after the attack.

Sexual Assault and Sexually Transmitted Diseases

Besides the collection of evidence that may help hold your perpetrator accountable, a health examination can also address the potential issue of sexually transmitted diseases. Sexually transmitted disease (STD) can be a big concern after rape. This concern can be an additional traumatic burden. There are some things that can be done to help ease that burden.

The CDC recommends preventative treatment for victims of sexual assault. This can be done if you go to a medical facility after the assault, regardless of whether you decide to allow for the collection of evidence. You can ask the doctor about preventative treatment and can also show the doctor the recommended guidelines for this treatment which can be found here. (Appendix E)

Although it is not part of the routine guidelines for preventative treatment after sexual assault, many victims will be concerned about infection with human immunodeficiency virus (HIV); which is the virus that causes acquired immune deficiency syndrome (AIDS).

Statistically, the rate of infection with HIV when sexual assault is the only risk factor is very low. However, you can discuss preventative treatment with the doctor if you are concerned about the likelihood of infection as a result of the attack. Guidelines on preventative treatment for HIV can also be shared with your doctor.

They can be found here: (<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5402a1.htm>)

As with all decisions about your health, it is important that you discuss and understand all your options with your healthcare provider. Having an advocate, friend or family member can be helpful. If you prefer not to have another person present when you talk to the doctor, it might be helpful to keep a notebook and write down your questions and your doctor's responses.

IF YOU DECIDE TO REPORT TO LAW ENFORCEMENT

You can report a crime whenever you make the decision to do so; even months afterwards. However, contacting the police and informing them as soon as possible following an incident will allow for the strongest evidence to be gathered. It is also important to remember the positive impact that can come from taking control of the situation and bringing the perpetrator justice.

It is important to weigh your options carefully when making this decision. Remember that you can report the crime at any time but once it is reported, you no longer have control over what happens next.

Knowing what to expect from the reporting process can help you to be more prepared. Remember that the only chance for a perpetrator to be brought to justice is by working within the system. Also, because many rapists are repeat offenders, reporting the crime to the police can potentially help prevent future sexual violence from occurring.

Once you have reported, the criminal justice process begins. There may be many individuals with whom you will have to speak and tell your story. You may find that you have to tell your story many times to different people or sometimes to repeat it to the same person again. It is important to understand the roles of each person, your rights to refuse to talk to them, and things to consider when making disclosures.

It will be very helpful to keep a notebook or journal to keep track of the people that you are speaking to whether you speak to them on the phone or in person. Things that you should keep track of in your notebook include:

- Date and time of communication
- Name of person with whom you spoke
- Agency with whom that person is affiliated
- Content of the communication
- Anything of note about the communication (were they particularly helpful or not; were they rude or demeaning, were you comfortable talking to them)

The criminal justice process can be confusing for anyone. Being prepared and keeping track of information as you go may help you to be less overwhelmed.

Remember that you do not have to do this alone. You can ask a trusted friend or family member to be with you during this process. You can also have an advocate with you at any point of the process.

A WORD ON CONFIDENTIALITY

Once you have made the decision to report, much of the information that you disclose to the individuals involved may become part of public record or may be shared with other people. It is important for you to know how your information may be used and shared among all parties involved. Federal laws exist that provide for the privacy of rape victims but other laws vary from state to state.

The National Center for Victims of Crime offers some information about privacy here:

<http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32473>

Know the limits of confidentiality for each person with whom you speak. Only a few people involved in the criminal justice process are able to keep your information confidential. Sexual assault and domestic violence advocates are usually able to keep your information private depending on the laws of the state you are in. If you want to tell someone information but are not sure that you want that information shared with others, please make sure that you ascertain their role and obligations.

For example, you may need to process with someone before revealing relevant details of BDSM activities. You will want to make sure that this person can and will keep that information confidential until you have made a decision about if and how you want

to reveal it. If you reveal this information to a member of law enforcement or prosecution, that information will become part of the investigation and will be shared. Once information is given to law enforcement, you have very little control over how that information is used.

If you are especially concerned about the confidentiality of your information, you may want to speak to an attorney before making any disclosures. NCSF offers a directory of Kink Aware Professionals, including attorneys. Also, below is a link to state laws regarding sexual assault and domestic violence advocate-victim privilege and confidentiality.

State Laws on Advocate/Victim Privilege

<http://www.americanbar.org/content/dam/aba/migrated/domviol/docs/AdvocateConfidentialityChart.authcheckdam.pdf>

You may want to ask the question "Is the information I give you going to be shared as part of the investigation or is this confidential between us?" Don't hesitate to question further if you are not clear about the role and obligations of the person you are speaking with. Remember that once information is given, you cannot take it back.

KNOW WHO IS WHO:

Advocates

An advocate is someone whose job it is to support you through the aftermath of intimate partner violence and/or sexual assault. Their role is to explain your options, assist you in making decisions about what you want to do, and to support you emotionally through the trauma that you have suffered.

An advocate is not the same as a counselor or therapist although many counselors and therapists can fit into this role.

Many law enforcement agencies have victim advocates who respond to the needs of crime victims either at the scene of a crime or afterwards. There are also advocates available through crisis centers. While both have the primary function of supporting victims of crimes, sexual assault and domestic violence advocates are specialized in this area and are often granted privileged communication with victims through state laws which helps protect your confidentiality while you are making a decision about what to do next.

Law Enforcement

Police are the first responders in the criminal justice system. Their role is to respond to reports of crime from citizens and to identify and apprehend suspects. Sometimes a suspect can be identified and apprehended immediately and sometimes a thorough investigation is needed.

Law enforcement includes uniformed officers and detectives. If you call 911 or report the attack immediately, a uniformed officer will usually take the report. Detectives will follow up and continue investigations. Both are part of the initial investigation phase of a crime report. You may speak to several different law enforcement officers who are working together.

During the investigation, law enforcement will gather any physical evidence available and will identify and question any witnesses. Questions from law enforcement may seem probing at times but remember that they must gather as much evidence as possible.

Once a perpetrator is identified, law enforcement will make efforts to apprehend that person. If the person is not arrested at the scene, police will present evidence to a judge and request a criminal arrest warrant. Once a warrant is issued, police will look for and apprehend the perpetrator. It can take some time between the incident and an arrest for many reasons, even if you knew the person that attacked you.

During the course of the investigation, law enforcement will work with the prosecutor.

Prosecutor

The prosecutor is the government's attorney in a criminal case such as a District Attorney, States Attorney, U.S. Attorney, Attorney General, Solicitor General, or special prosecutor. They represent the government and the people.

The prosecutor works with law enforcement officers during the investigation and makes the decision whether or not to bring charges for a crime and against whom the charges will be brought. Contrary to what most people believe, it is the State, as represented by the prosecutor that decides whether or not charges will be pursued in a criminal case; it is not the victim's decision. Crimes of sexual violence are tried in criminal court, with the state acting as the prosecuting party and typically the victim acting as a witness on behalf of the state.

In the case of sexual assault and domestic violence, most prosecutors do not pursue charges in cases where the victim does not want to testify or prefers not to move forward with the case. This may not be true in cases of BDSM-related criminal assault, where prosecutors seem likely to move forward in spite of the "victim's" wishes, even when all acts were consensual. If at any point you have a preference about whether or not you want to continue cooperating in the criminal justice process, you should discuss this with an advocate and with the prosecutor, but keep in mind that once a case is in the hands of the criminal justice system, you have little control over the decisions that are made and can be compelled to testify even if you decide later that you do not want to.

The prosecutor must persuade the jury or judge "beyond a reasonable doubt" of every fact necessary to constitute the crime charged. It is important for victims/survivors to be aware of the intricacies in moving a case forward to prosecution. There are many factors prosecutors take into consideration when deciding whether or not a case can be moved forward to trial:

- Is the offender known?
- Is there forensic evidence (DNA) or other physical evidence to corroborate?
- Are there witnesses? Is the victim willing and able to testify?

If a prosecution team feels that they are not able to prove guilt beyond a reasonable doubt, they will not move forward with prosecuting the crime. If you are informed by the prosecutor that they are not going to prosecute the perpetrator, you may speak to the prosecutor about the reasons that they feel unable to move forward.

If the prosecutor feels there is sufficient evidence against the perpetrator, the case will go forward to trial. If this happens, you will generally be asked to testify.

Although there are no guarantees, prosecutors often have legal tools they can use to protect the victim in court, such as a rape shield law, which limits what the defense can ask the victim about prior sexual history. A chart of these laws by state can be found here. (http://www.arte-sana.com/articles/rape_shield_laws_us.pdf) The prosecutor can also file legal motions to try to protect the victim from having to disclose other personal information. If you have any concerns about the disclosure of personal information during the course of trial, it is important to discuss these with an attorney, a sexual assault advocate and with the prosecutor.

Criminal Defense Attorney

The role of the criminal defense attorney is to protect the rights of the accused and to defend the accused against the accusations against them. You may be contacted by the perpetrator's criminal defense attorney or investigator to independently investigate the crime and to prepare a defense for the accused.

When the prosecutor files charges with the court, the defendant may plead not guilty and retain a criminal defense attorney. The prosecutor will send a copy of the police report and any other evidence to the defense attorney.

The defense attorney may conduct further investigation into the crime. A defense investigator works for the person accused of

the crime and will use information obtained to help the defendant have charges dismissed or reduced, or to receive a lighter sentence. The defense, like the police, may electronically record conversations without your knowledge or consent.

Some things to keep in mind if you are contacted by a defense attorney or investigator:

- You do not have to have contact with a defense investigator.
- You have the right to have a prosecutor or other person present for any contacts.
- If an interview is electronically recorded, you can request and must be provided with a copy of any electronic recordings and any transcripts prepared of the contacts.
- A defense investigator must tell you that he works for the criminal defendant, that the victim may choose whether to have contact with the defense, and that the victim may have a prosecutor or other person present during any interviews.

Resources

HOTLINES:

The hotlines listed below can provide access to domestic violence and sexual assault resources in your community:

The National Domestic Violence Hotline

1-800-799-SAFE (7233). Offers callers information about domestic violence services in their area, and is accessible 24/7.

National Sexual Assault Hotline:

1-800-656-HOPE (4673) This line will connect callers to their nearest rape crisis center, and is accessible 24/7.

National Coalition for Sexual Freedom Incident Response Line:

(410) 539-4824

WEBSITES:

The National Coalition for Sexual Freedom: www.ncsfreedom.org

Office of Victims of Crime: Directory of crime victim services: <http://ovc.ncjrs.org/findvictimservices>

The National Leather Association Domestic Violence Project: <http://www.nlaidvproject.us/web>

Rape, Abuse and Incest National Network (RAINN): www.rainn.org

National Coalition Against Domestic Violence: www.ncadv.org

National Sexual Violence Resource Center: www.nsvrc.org

APPENDIX A: MANDATORY REPORTING LAWS, STATE BY STATE

APPENDIX IX

STATE CODES ON INTIMATE PARTNER VIOLENCE VICTIMIZATION REPORTING REQUIREMENTS FOR HEALTH CARE PROVIDERS^{xiii} Current through March 8, 2002

Code Number	States with General Mandatory Reporting Laws	IF ANY OF THE FOLLOWING TYPES OF INJURIES ARE PRESENT, PRACTITIONERS IN THE STATE MUST MAKE A REPORT								Treatment of Specified Injuries Requires Practitioners to Report
		Injuries Resulting from Domestic Violence or Abuse	Injuries Resulting from Criminal Activity	Injuries Resulting from General Violence	Intentionally Inflicted Injuries	Injuries Inflicted by Gun or Firearm	Injuries Inflicted by Knife or Other Sharp Object	Burn Injuries	Injuries Likely to Cause Death	
AL										
AK	Alaska Stat. §08.64.369	*			*	*	*	*	*	*
AZ	A.R.S. §13-3806	*	*		*	*	*	*	*	*
AR	A.C.A. §12-12-602	*			*	*	*	*	*	*
CA	Cal. Pen. Code §11160	*	*	*	*	*	*	*	*	*
CO	C.R.S. §12-36-135	*	*	*	*	*	*	*	*	*
CT	Conn. Gen. Stat. §19a-490f	*			*	*	*	*	*	*
DC	D.C. Code §7-2601	*	*		*	*	*	*	*	*
DE	24 Del. C. §1762	*			*	*	*	*	*	*
FL	Fla. Stat. §790.24	*		*	*	*	*	*	*	*
GA	O.C.G.A. §31-7-9	*		*	*	*	*	*	*	*
HA	HRS §453-14	*		*	*	*	*	*	*	*
ID	Idaho Code §39-1390	*	*	*	*	*	*	*	*	*
IL	20 ILCS 2630/3.2	*	*	*	*	*	*	*	*	*
IN	Ind. Code Ann. §35-47-7-1	*	*	*	*	*	*	*	*	*
IA	Iowa Code §147.111	*	*	*	*	*	*	*	*	*
KS	K.S.A. §21-4213	*	*	*	*	*	*	*	*	*
KY	KRS §209.030	*	*	*	*	*	*	*	*	*
LA	La. R.S. §14:403.4 to 3.5	*	*	*	*	*	*	*	*	*
ME	17-A M.R.S. §512	*	*	*	*	*	*	*	*	*
MD	Md. Ann. Code art. 27, §336A	*	*	*	*	*	*	*	*	*
MA	Ma. Ann. Laws ch. 112, §12A	*	*	*	*	*	*	*	*	*
MI	MCLS §750.411	*	*	*	*	*	*	*	*	*
MN	Minn. Stat. §626.52	*	*	*	*	*	*	*	*	*
MS	Miss. Code Ann. §45-9-31	*	*	*	*	*	*	*	*	*
MO	§578.350 R.S.Mo.	*	*	*	*	*	*	*	*	*
MT	Mont. Code Anno. §37-2-302	*	*	*	*	*	*	*	*	*

Identifying and Responding to Domestic Violence: Consensus Recommendations for Child and Adolescent Health

xiii This document is intended to provide a cursory overview of mandatory reporting laws. Please be sure to consult the complete set of mandatory reporting laws in your state for further information. If you note any changes or errors on this document, please contact the FVPPF at 415-252-8900.

xiv Under a strict reading of these laws, practitioners must be providing treatment or medical care to the person with specified injuries in order to trigger the reporting requirement. Therefore, in a pediatric or family practice setting, if an attending parent with injuries is bringing her child in for a health care appointment, the attending parent is not actually receiving treatment or medical care from the practitioner, and thus the practitioner in the state would not be required to report. Further discussion is merited, given the lack of statutory or case law that have been developed around this area.

xv The law provides an exception to reporting if the patient is over the age of 18, did not suffer a gunshot wound, and does not consent to reporting.

xvi Report is made for medical data collection purposes only, and does not contain identification information.
Prepared by Josephine Yeh, J.D., for the Family Violence Prevention Fund

APPENDIX B: HIPAA AND VICTIMS OF DOMESTIC VIOLENCE

SUMMARY OF NEW FEDERAL MEDICAL PRIVACY PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE

JUNE 4, 2003

**Written by Rodney Hudson JD, an Associate of Drinker, Biddle and Reath
for the Family Violence Prevention Fund**

www.endabuse.org

The Department of Health and Human Services (HHS) released the final modifications to the federal medical privacy regulation on August 9, 2002. This regulation provides important new protections for victims of domestic violence and incorporates some—but not all—of the protections set forth in Health Privacy Principles for Victims of Domestic Violence (Family Violence Prevention Fund (October 2000) (endabuse.org)) that protect the privacy of victims. The following provides background and a brief description of the domestic violence related provisions of the regulation as adopted by HHS.

I. BACKGROUND

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) required that the Secretary of HHS issue health privacy regulations if Congress did not enact comprehensive health privacy protections by August 21, 1999. Congress failed to act by the deadline. The Secretary released proposed regulations in November 1999. The Secretary received over 52,000 comments, including many from domestic violence advocates, shelters, state coalitions, and national domestic violence and women's organizations about how those protections should be crafted.

As required by HIPAA, HHS published the final regulation in the Federal Register on December 28, 2000. This regulation became effective on April 14, 2001 but covered entities were not required to comply until later. On March 20, 2002, HHS proposed modifications to the privacy regulation. The final modifications, which scaled back some of the basic protections included in the December 28, 2000 version, was published in the Federal Register on August 14, 2002. The modifications to the regulation took effect on October 15, 2002. Covered entities, except small health plans, must comply with the regulation by April 14, 2003. Small health plans have an additional year to comply.

II. COMPREHENSIVE PROTECTIONS REQUIRE CONGRESSIONAL ACTION

Under HIPAA, the Secretary only had authority to require that health care providers, health plans and health care clearinghouses comply with the regulation.

Therefore, despite the new regulations, many entities that regularly receive health information, including employers (see special rules regarding employers below), casualty and property insurance companies and workers compensation carriers, are not required by this federal law to protect patient privacy.

This is an excerpt of the original 15 page document. You can view the document in it's entirety at:

http://new.vawnet.org/Assoc_Files_VAWnet/FVPFSummary.pdf

APPENDIX C: NCSF POLICY STATEMENT



national coalition for sexual freedom

EDUCATION OUTREACH PROGRAM (EOP)

SM VS. ABUSE

The following Principles and Guidelines are intended to help law enforcement and social services professionals understand the difference between abusive relationships vs. consensual sadomasochism (SM). SM includes a broad and complex group of behaviors between consenting adults involving the consensual exchange of power, and the giving and receiving of intense erotic sensation and/or mental discipline.

SM includes

"Intimate activities within the scope of informed consent that is freely given."

Abuse is

"Physical, sexual or emotional acts inflicted on a person without their informed and freely given consent."

Principles

The SM-Leather-Fetish communities recognize the phrase "Safe, Sane, Consensual" as the best brief summary of principles guiding SM practices:

Safe is being knowledgeable about the techniques and safety concerns involved in what you are doing, and acting in accordance with that knowledge.

Sane is knowing the difference between fantasy and reality, and acting in accordance with that knowledge.

Consensual is respecting the limits imposed by each participant at all times. One of the recognized ways to maintain limits is through a "safe word" which ensures that each participant can end his/her participation with a word or gesture.

Guidelines

Informed consent must be judged by balancing the following criteria for each encounter at the time the acts occurred:

- a) Was informed consent expressly denied or withdrawn?
- b) Were there factors that negated the informed consent?
- c) What is the relationship of the participants?
- d) What was the nature of the activity?
- e) What was the intent of the accused abuser?

RESOURCES

Whether an individual's role is top/ dominant or bottom/submissive, they could be suffering abuse if they answer no to any of the following questions:

1. Are your needs and limits respected?
2. Is your relationship built on honesty, trust, and respect?
3. Are you able to express feelings of guilt or jealousy or unhappiness?
4. Can you function in everyday life?
5. Can you refuse to do illegal activities?
6. Can you insist on safe sex practices?
7. Can you choose to interact freely with others outside of your relationship?
8. Can you leave the situation without fearing that you will be harmed, or fearing the other participant(s) will harm themselves?
9. Can you choose to exercise self-determination with money, employment, and life decisions?
10. Do you feel free to discuss your practices and feelings with anyone you choose?

APPENDIX D: SM ISSUES FOR HEALTHCARE PROVIDERS



17th Annual Symposium

in San Diego, California on Aug 27, 1999

1. WHO WE ARE... WHY WE ARE DOING THIS

Introductions of Dr. Ruth asks., neurologist. and Susan Aright. Policy Director of NCR

We are presenting on "SM issues for Healthcare providers" because the same issues which may lead to inadequate health care for patients with non-mainstream sexual orientations or gender identity affect those who participate in sexual minority practices.

There are many questions related to physical or psychological health which patients may feel unable to ask because of fear of discrimination or of breach of confidentiality. As health care providers we have a responsibility to be able to address these concerns without passing judgement.

An understanding of the basic principles of SCSi play enables us to fulfill this responsibility. In addition it is important that we be able to identify when someone is in an abusive, non-consensual situation, and to provide them with appropriate support. This Irish; will address the physical and psychological aspects of SM practices and provide an understanding of common scenarios.

II. EXAMPLES OF QUESTIONS DOCTORS MAY GET

A 50 y/o man defers contacting his family physician about lower abdominal cramping associated with bowel movements because he is afraid the doctor will be able to tell he is into anal sex play and enemas and that this may tie related to his problem.

A 30 y/o woman gets a vaginal tear from fisting which is continuing to bleed but doesn't want to consult her doctor or go to the ER.

A 45 y/o man is left in bondage by a professional dominatrix for too long and develops numbness and weakness of both arms which does not resolve after a couple of days.

A 25 y/o woman newly diagnosed with MS is scared to explore her new interest in SM with her girlfriend, because she doesn't know how to ask her neurologist about what might be safe or dangerous for her to do.

The same issues which may lead to inadequate healthcare for patients with non-mainstream sexual orientation or gender identity affect those who participate in sexual minority practices. This includes gays, lesbians, bisexuals, folks who enjoy SM, who have body modifications such as piercings, tattoos, who cross-dress, who are sex workers, who have multiple partners, who are transgendered or engage in fetish behavior.

There are many questions related to physical or psychological health which patients may feel unable to ask because fear of discrimination or of breach of confidentiality. Simple problems fester or become chronic. Patients are afraid to tell their doctors about their alternative sexual expression - even doctors they know are kink-friendly.

We are all unused to discussing sexuality in a neutral atmosphere and we are not given training to do it. In the LGBT community we are at an advantage, because sexuality is often more to the forefront than in the heterosexual community, but this certainly doesn't make us immune to being judgmental about practices outside our realm of experience. But precisely because of this reason I would argue that we have more of a responsibility to address issues related to alternative sexual practices.

Everyone deserves adequate health care, whether they are kinky or straight. As a prerequisite to good health care, the patient must trust their physician.

As healthcare providers we have a responsibility to be able to address these concerns without passing judgment. An understanding of the basic principles of SM play enables us fulfill this responsibility. In addition it is important that we be able to identify when someone is in an abusive situation and to provide them with appropriate support.

III. WHAT IS SM?

SM includes a broad and complex group of behaviors between consenting adults that involves the consensual exchange of power. This includes the giving and receiving of intense erotic sensation and/or mental discipline and power games.

SM activity is often called "playing" or having a "scene" because that is the way the SM-Leather-Fetish community approaches our form of sexual expression. Our equipment is often referred to as "toys". Like any other kind of game, we have rules we play by.

Individuals negotiate their limits prior to having a scene. Negotiation is ongoing; before, during and after the scene (what's known as "aftercare") to make sure the bottom is fine with what occurred. In our community, it's considered polite to check in with a bottom the day after the scene (or to request that they call you). This is usually more for the psychological issues that may have arisen rather than physical concerns.

SM does not feel like what it looks like. SM rests on a firm foundation of ongoing communication because most of what's going on is in the participants head. I'll use the term top and bottom, but it's also called dominant and submissive, or master and slave. SM is sometimes called D/S or BDSM or the practitioner may not identify or label their activities at all.

Contrary to popular stereotypes, the bottom is in control of the scene and can stop the activity at any time. Often people use a predetermined "safe word". This is a word or gesture that will stop the scene. At community events, the established safe word is "safe word," but individuals often have their own personal safe word, or some simply use "no" to mean "no." Sometimes people who are very submissive have trouble saying no, so a word like "red" is easy for them to say. Or some bottoms like to resist and say no, when they really mean yes, so they choose to have a safe word.

This community-wide standard was codified more than ten years ago in the creed: "safe, sane, consensual."

1. Safe is being knowledgeable about the techniques and safety concerns involved in what you are doing, and acting in accordance with that knowledge.

This includes protection against HIV, STDs, and hepatitis. It also includes notifying your partner of any physical condition that may impact on the scene, like asthma, bad back, epilepsy, etc. It also includes psychological safety, such as you were abused as a child and don't like a particular part of your body touched.

The community concerns itself with safety issues by supporting hundreds of educational and social organizations that teach people the proper way to use their equipment. Such as: how to tie wrists without putting pressure on the insides; how to properly clean equipment; which areas on the body are unsafe to stimulate, such as the face, joints, spine, bottoms of the feet.

2. Sane is knowing the difference between fantasy and reality, and acting in accordance with that knowledge.

Since physical acts has so much power, there are many fantasies that can be acted out by only hinting at the physical conditions someone fantasizes about. That's why our language is so symbolic: dungeon, slave, words of humiliation, or affectionate ownership. You may have to break through the fantasy to make sure your patient likes and wants what is happening.

Sane includes being of clear mind, and the community strongly recommends that mind-altering substances should be avoided during a scene, including alcohol, illegal drugs, and prescription drugs that impair judgment.

3. **Consensual is respecting the limits imposed by each participant at all times.**

One of the recognized ways to maintain limits is through the "safe word" I mentioned. If it's non-consensual, then it's abuse or assault. SM must be consensual.

To determine if informed consent has been reached, you can ask the following questions:

1. **Was informed consent expressly denied or withdrawn?** (similar to rape standards, if one of the participants withdraws consent during the activity, that must be respected)
2. **Were there factors that negated the informed consent?** (alcohol impairment, drug use, underage participants)
3. **What is the relationship of the participants?** (first encounter or long-term partner?)
4. **What was the nature of the activity?** (did it cause permanent harm, was it unsafe, was it enjoyable?)
5. **What was the intent of the accused abuser?** (to cause pleasure, to gain dominance, to gain control, to hurt?)

IV. SM VS ABUSE

The community standard of safe, sane and consensual emerged from the growing national concern with domestic violence. SM is not domestic violence, but increasingly as SM gains wider mainstream acceptance, there are abusers who take advantage of men and women who enjoy SM. This makes it difficult for you, as a doctor who is required to report abuse.

If there are physical signs, you can usually judge by the marks:

1. SM rarely results in facial marks or marks that are received on the forearms (defensive marks).
2. There is usually an even pattern of marks if it is SM, indicating the bottom held quite still during the stimulation.
3. The marks are often quite well-defined when inflicted by a toy like cane or whip, whereas in abuse there are blotches of soft-tissue bruising, randomly distributed.
4. The common areas for SM stimulation is on the buttocks, thighs, back, breasts, or the genitals. The fleshy parts of the body can be stimulated intensely and pleasurably.

QUESTIONS TO ASK TO DETERMINE IF IT IS ABUSE.

Whether an individual's role is top/dominant or bottom/submissive, they could be suffering abuse if they answer no to any of the following questions:

1. Are your needs and limits respected?
2. Is your relationship built on honesty, trust, and respect?
3. Are you able to express feelings of guilt or jealousy or unhappiness?
4. Can you function in everyday life?
5. Can you refuse to do illegal activities?
6. Can you insist on safe sex practices?
7. Can you choose to interact freely with others outside of your relationship?
8. Can you leave the situation without fearing that you will be harmed, or fearing the other participant(s) will harm themselves?
9. Can you choose to exercise self-determination with money, employment, and life decisions?
10. Do you feel free to discuss your practices and feelings with anyone you choose?

V. INTERSECTIONS OF SM AND HEALTHCARE

The role of Health Care Providers is to educate the patient to understand the medical problem. Give the patient the info to help determine what is safe, and what to do if there is a problem. If they don't know already, they should know to educate play partner(s).

1. When SM causes health problem (least common). An accurate report of activity is essential and requires trust from patient:

- a) Fainting or dizziness
- b) Bondage-related - causing nerve damage, joint strain, numbness
- c) problems releasing retained rectal objects

2. When the patient wants advice on what is safe (pretty common). Much of this we can figure out from common medical knowledge (eg how long can vascular supply be cut off), but you may need expert advice on this from scene-friendly physicians:

- a) extreme bondage (breast, genital)
- b) play-piercing
- c) breath control
- d) anal play
- e) nipple piercing and breast-feeding

- 3. When health problem inhibits a patient from full expression of sexuality.** This is more straightforward, and involves educating patient about their disease:
- a) MS: fatigue, overheating, numbness, coordination, sexual dysfunction,
 - b) CAD: HTN level of exertion,
 - c) Diabetes: avoiding hypoglycemia,
 - d) Asthma: need quick-release restraints, no chest or breath restraint,
 - e) Epilepsy: awareness of aura, what to do if seizure occurs,
 - f) LBP, arthritis: avoid putting strain upon joints (shouldn't do this anyway).

VI. TALKING TO YOUR PATIENTS ABOUT SM

1. Who is involved in SM?

You have patients involved in SM practice and you don't know it. One out of every ten Americans engages in diverse sexual behaviour, yet the stigma against these millions of people means that these people aren't talking about their sexuality as it impacts on their health concerns.

How does a patient come out about SM activities to a healthcare provider? It may be that the provider simply notices piercings or marks or shaved skin. Don't ignore these signs--ask questions to ensure it is consensual SM. That will encourage your patient in turn to ask their health care questions. As you ask questions, never assume you know the kinky activity by a person's appearance.

As an added bonus, Doctors can benefit from being kink-aware because the SM community constantly talks to each other. They belong to support groups, women's groups, special interest groups, and word gets around. You could find you're getting many referrals if it's known that you don't pass judgment on their lifestyle.

2. Don't discriminate against SM practitioners.

It is imperative for you to be non-judgmental. As a prerequisite to good health care, the patient must trust their physician. To create that trust, the HCP must be receptive. Patients are often inhibited from going to HCP in the first place because of embarrassment/fear of being judged or discriminated against. Many practitioners don't even tell their therapists much less their doctors.

You must be aware that there is REAL discrimination and persecution going on against SM practitioners. The analysis of the NCSF Violence and Discrimination Survey indicates that 1/3 of the respondents have suffered discrimination because of their SM practice, and another 1/3 have suffered attacks and harassment because of their SM practice. People lose their kids, their jobs, their spouses, and even suffer estrangement from family members because of the stigma. NCSF has received complaints from people who have been lectured by their doctors to stop what they are doing, or they were made to feel like they were wrong.

Just because you treat and understand a kinky patient, that's not the end of the road. Often you have to make referrals, and you will have to educate other HCP. This includes making them comfortable enough and knowledgeable enough to give quality medical care to the patient.

3. How do you talk about SM with your patient?

You as the Health Care Provider may be embarrassed about expression of sexuality in patient. Most of us are uncomfortable with discussing sexuality. Medical school doesn't address this issue, and our society is taught to treat sexuality as a joke or something to be avoided.

4 out of 5 of the people who participate in the organized SM community are closeted at work or with their friends and family. Some don't even tell their primary partner about the SM activities they engage in. This can cause problems for the doctor when the patient hems and haws and doesn't ask their real question until your hand is on the door knob. It can take up extra time you don't have. So be sensitive to hints and tentative probes - it may be up to you to help them discuss their activities and how it might be adversely affecting their health.

Remember that your patients have had no experience talking about this in the way that you require. They may provide too much information about their personal desires and explain their sexual encounters in ways that are embarrassing to you. They aren't trying to shock you - they are simply sharing in the way they've learned through SM support and educational groups. You can gently help them stay on track by asking questions and keeping the dialogue moving.

VII. CONCLUSION

We are here because we want to be able to address these needs of our patients, as they can have deep impact upon level of healthcare sought and given. Patients have a right to this. If we don't feel comfortable we should refer to someone else, and not at patient's emotional expense. As LGBT Health Care Providers, I feel we are better equipped to deal with these issues because our sexuality is a more prominent factor in our identity, and we should have more empathy for those who feel marginalized because of sexual practices.

We don't have all the info about what the patients' needs are, and they may not tell, or even anticipate all of their activities, and they don't have the medical information to make decisions about safety.

How we can appear non-judgmental:

- a) Ask about sexual partners/activities when taking medical history
- b) Be very careful about judgmental language and use open ended questions.
- c) Ask patient to define terms used rather than making assumptions.

APPENDIX E: PREVENTATIVE TREATMENT FOR STD AFTER SEXUAL ASSAULT

Recommendations for Post-exposure Assessment of Adolescent and Adult Survivors within 72 Hours of Sexual Assault

- Assess risk for HIV infection in the assailant.
- Evaluate characteristics of the assault event that might increase risk for HIV transmission.
- Consult with a specialist in HIV treatment, if PEP is being considered.
- If the survivor appears to be at risk for HIV transmission from the assault, discuss anti-retroviral prophylaxis, including toxicity and lack of proven benefit.
- If the survivor chooses to start anti-retroviral PEP (78), provide enough medication to last until the next return visit; reevaluate the survivor 3-7 days after initial assessment and assess tolerance of medications.
- If PEP is started, perform CBC and serum chemistry at baseline (initiation of PEP should not be delayed, pending results).
- Perform HIV antibody test at original assessment; repeat at 6 weeks, 3 months, and 6 months.