

## MEDICINE AND THE LAW

# Improving the recording of clinical medicolegal findings in South Africa

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**Background.** The accurate recording of findings in clinical medicolegal cases is important, yet the current J88 form used for this purpose in South Africa has been reported to have many flaws. In addition, there are reports of poor completion of the form, which could in part be due to its poor design and clarity.

**Objective.** To describe the process that was undertaken to revise the current J88 form.

**Methods.** A repetitive consultative process was used to revise the current J88 form and to obtain inputs from relevant government institutions.

**Results.** A brief outline of the changes that have been made to the current J88 form and the reasons why these changes were proposed by national experts is provided.

**Conclusion.** The revised J88 form will provide clearer guidance to healthcare providers on the completion of necessary information in an expedited fashion. It is hoped that the form will soon be approved by the necessary government institutions.

*S Afr Med J* 2016;106(9):872-873. DOI:10.7196/SAMJ.2016.v106i9.11081

Accuracy of medical notes is important, particularly in forensic and clinical medicolegal cases. Any medical record can be presented in court, but many countries have developed special forms to facilitate the process. In South Africa the J88 form, which is owned by the Department of Justice and Constitutional Development (DOJ&CD), is used for this purpose. The latest J88 form has been in use for approximately 17 years, but over time healthcare providers and members of the criminal justice system have noted that it has flaws.<sup>[1]</sup> Research on rape cases has also shown that there is poor completion of the form, with multiple inaccuracies.<sup>[2]</sup> There are many potential reasons for this, including untrained or inexperienced healthcare providers, the attitude of providers to clinical medicolegal cases, lack of time to complete the form properly, and poor design and language of the form.

During the development of a national post-rape training programme for the Department of Health in 2007, the quality of documentation and its presentation in court was noted as a gap in current service delivery.<sup>[3]</sup> It was noted that parallel to the training programme, efforts had to be made to revise the J88 form so that it could enhance the documentation of clinical medicolegal evidence, even in the case of healthcare providers who had not received the national training. This would help them to complete the form more accurately and appropriately, recording information of relevance without missing any information of importance. At present, the form may be considered confusing with regard to what is important for adult v. child offences, and it raises unreasonable expectations relating to the significance of normal findings. Furthermore, the form requires healthcare providers to complete some additional information that may be considered irrelevant and may cloud understanding by the legal fraternity.

## Objective

To describe the process that was undertaken to revise the current J88 form, the changes that have been made to the form, and the

process that has been followed so far to have the new form approved. Although the format of the form has been revised, taking both general and sexual offences into account, this article focuses on sexual offences as this area was considered to be most problematic.

## Methods

A repetitive consultative process was used for the revision of the form during each stage when feedback was received. In 2007, at the 8th conference held by the South African Professional Society on the Abuse of Children, Dr Marianne Kotzé, an experienced doctor from the Free State, and Adv. Retha Meintjes from the National Prosecuting Authority (NPA) began a process to have the current J88 form revised. In May 2007, the Gender and Health Unit of the South African Medical Research Council (MRC) became aware of this process and decided to support their work. With assistance from the MRC, a group of national experts comprising doctors and prosecutors met in November 2007 to discuss opinions on the current J88 form and approaches to how to improve it. This was followed by electronic communication whereby a new form was drafted and submitted to Adv. Meintjes in August 2008 for further action.

Following this submission, feedback was received from the NPA in July 2009, followed by comments from the DOJ&CD. An individual meeting with an NPA representative was subsequently held in November 2011 to review both sets of comments and agree on an approach to address them. The revised form was extensively circulated to members of the original committee and to representatives in family medicine, emergency medicine and forensic services. Requests were also made for healthcare providers to pilot the form in their relevant working environments. A revised form was resubmitted to the NPA in May 2012, and after a year with no feedback, a motivation for the new form was submitted in October 2013. In March 2015, comments were received from the South African Police Service (SAPS), which were addressed in a submission made in March 2015. This was then followed by a second round of comments from the SAPS in

December 2015, with a revised form and details of how the comments were addressed being submitted back to the NPA in February 2016.

## Results

A number of reasons to revise the form were considered pertinent. The current form does not reflect new research findings and opinions that had evolved extensively since the 1990s. The form also includes certain information that is only relevant to medical care and not the legal case and therefore impinges on patient confidentiality unnecessarily, e.g. age of menarche for female patients and contraceptive history. In other instances, information required could be misinterpreted by defence attorneys in favour of the suspect: for example, if the emotional state of a patient was recorded as normal or calm, could one argue that no offence had taken place? In addition, some of the information required, e.g. number of fingers admitted during the vaginal examination, is considered to be a violation of sexual rights by Human Rights Watch and the practice should be discouraged.<sup>[4]</sup> Finally, the current form does not adequately address the new definitions of rape.<sup>[5]</sup>

Major changes were made to the design of the form to improve the flow and to replace as much of the form as possible with tick boxes. This was done to minimise the likelihood of healthcare providers leaving sections of the form blank, or writing in inappropriate or illegible information. The form was reorganised in the order of a medical examination, but also so that relevant questions for male and female sexual offences are clearer. At present, many healthcare providers miss pertinent questions that are relevant to male sexual offences/male rape, e.g. actions taken after the sexual offence occurred, as it is placed at the end of section D, which commences with information relevant to female patients only. Similarly, findings for the perineum are only placed with the gynaecological examination, and not included under the anal or male genitalia examination section.

Areas that were considered to be poorly completed in previous studies were revised.<sup>[2]</sup> For example, a clear space is now provided for the history of the alleged offence, encouraging healthcare providers to complete the information on previous medical history more clearly. At present, healthcare providers tend to complete details of the offence in the section on medical history and medication while neglecting to give information on the latter, as no space is provided for reporting of the incident on the current form. Some examples of clinical signs of drug and alcohol intoxication are also provided on the revised form, and this is followed by questions on whether relevant blood and urine samples are collected. Normal, nonspecific or irrelevant findings have also been removed from the gynaecological, male genitalia and anal examination to limit confusion when these are recorded as being present. These include, among others, hymenal bumps, synechiae, smegma, sections for findings on the testes, vas deferens and epididymis, and reflex dilation on anal examination.

Some areas have been revised to provide more pertinent information for the legal case. For example, in the current form information is required on the use of condoms in section D 12, but it

is unclear whether this relates to previous consensual encounters, as the question follows information on those encounters, or to the use of condoms during the sexual offence itself. This has now been replaced by a question on whether condoms were used during the offence, and whether any form of lubrication was used. Similarly, information on the menstrual cycle has been replaced by questions on whether the patient was menstruating at the time of the offence, after the offence or during the examination.

Sections C 8, F 3, G 22 and H 16 have all been replaced with one conclusion section for the entire examination, inclusive of general assaults and sexual offences. This will allow healthcare providers to make one holistic conclusion pertaining to the patient as a whole.

Although there was always a general feeling that the diagrams in the J88 form should be improved, this was not addressed during the revision as the team lacked the necessary drawing skills. However, revisions to the diagrams are still being encouraged, and it is hoped that the DOJ&CD will include this in the process when the form is redesigned and formatted for printing.

## Conclusion

The revisions to the J88 form included opinions and input from national experts. However, it has been difficult to obtain consensus in all regards, especially in areas that lack clear scientific evidence, and where personal ideas or experiences sway opinions. This was especially difficult when deciding on the level of detail that is required on the patient's previous sexual history. However, it is considered that the proposed form will dramatically improve the recording of clinical medicolegal evidence. Owing to the number of role-players involved, inputs have been required from the various parties and this has delayed the process, but healthcare providers who have been part of this process hope that the new form will be approved soon.

**Research ethics committee approval.** As this was not a research study and did not involve any subjects of any kind, ethics approval was not obtained.

**Acknowledgements.** The authors would like to acknowledge Rachel Jewkes, Neil McKerrow, Sagie Naidoo, and all other doctors and nurses who provided inputs on the revised form over the years. A special thanks to Bradley Smith and Retha Meintjes from the NPA, who co-ordinated the submissions and feedback from the various government departments.

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Accepted 30 May 2016.