

**DEPARTMENT OF HEALTH****No. R. 929****22 October 2010****NATIONAL HEALTH ACT, 2003 (ACT NO. 61 OF 2003)****REGULATIONS REGARDING THE RENDERING OF CLINICAL FORENSIC MEDICINE SERVICES**

The Minister of Health intends, in terms of section 90(1)(i) of the National Health Act, 2003 (Act No. 61 of 2003), after consultation with the National Health Council, to make the regulations in the Schedule.

Interested persons are invited to submit any substantiated comments or representations in writing on the proposed regulations to the Director-General: Health, Private Bag X828, Pretoria, 0001 (for the attention of the Director: Forensic Pathology), within three months of the date of publication of this notice.

**SCHEDULE****Definitions**

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall bear such meaning and, unless the context otherwise indicates—

**“authorised person”** means a forensic pathologist, medical officer, medical practitioner registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974) or a nurse registered as such in terms of the Nursing Act, 2005 (Act No.33 of 2005) and trained to perform an examination to a victim of crime and/or violence and to collect evidence in a manner suitable for use in a court of law.

**“child”** means any person under the age of 18 years;

**“child abuse”** means any form of harm or ill-treatment deliberately inflicted on the child;

**“child sexual abuse”** means the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the law;

**“clinical forensic medical examiner”** means a physician, registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974) and who has successfully completed a prescribed training course on clinical forensic medical examination in terms of the Health Professions Act;

**“clinical forensic medicine”** means an investigative process applied in the determination of cause and manner of injuries to living victims of crime or violence and medical advice particularly in the investigation of crimes;

**“complainant”** means the alleged victim of a sexual offence who files a complaint with the South African Police Service;

**“department”** means the relevant provincial department of health;

**“designated facility”** is a specific facility where investigative process applied in the determination of cause and manner of injuries to living victims of crime or violence is conducted;

**“elder abuse”** is a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person. Abuse can be in various forms such as physical,

psychological, emotional, sexual and financial. It can also simply reflect intentional or unintentional neglect;

**“forensic health care practitioner”** means a registered Medical Practitioner, specialist or registered nurse trained in Clinical Forensic Medicine (CFM) and or parts thereof;

**“forensic medicine”** means a broad speciality that encompasses Forensic Pathology as well as Clinical Forensic Medical practice;

**“forensic pathology”** means an investigative process applied in the determination of cause and manner of unnatural deaths;

**“genital organs”** includes the whole or part of the male and female genital organs, and further includes surgically constructed or reconstructed genital organs;

**“Head of Department”** means the person appointed as the head of the provincial department responsible for health;

**“Health Professions Act”** means the Health Professions Act, 1974 (Act No. 56 of 1974);

**“informed consent”** means a voluntary consent for treatment, medical tests and procedures by a patient, following an explanation regarding all aspects of the consultation by a health care provider;

**“Inquest Act”** means the Inquest Act, 1959 (Act No. 58 of 1959);

**“investigating officer”** means a member of the South African Police Service appointed in terms of section 1 of the South African Police Service Act, 1995 (Act

No. 68 of 1995), and designated as an investigating officer to investigate a matter reported to the police and where possible, to ensure prosecution of the perpetrator of the reported offence;

**“ medical practitioner”** means a person registered as a medical practitioner in terms of the Health Professions Act, 1974;

**“medico-legal services”** means the clinical forensic medicine services in a province providing service to victims of crime and violence;

**“patients”** means individuals who are receiving a health service from, or are being cared for by a health care provider;

**“sexual act”** means an act of sexual penetration or an act of sexual violation;

**“sexual conduct”** includes –

- (a) masturbation
- (b) male genital organs in a state of arousal or stimulation;
- (c) any form of arousal or stimulation of a sexual nature of the female breast;
- (d) the undue or inappropriate exposure or display of or causing exposure or display of genital organs, female breasts or of the anal region;
- (e) sexually suggestive or lewd acts; or
- (d) bestiality;

**“sexual penetration”** includes any act which causes penetration to any extent whatsoever by—

- (a) the genital organs of one person into or beyond the genital organs, anus, or mouth of another person;

- (b) any other part of the body of one person, any object, including any part of the body of an animal or any object resembling the genital organs of a person or an animal, into or beyond the genital organs or anus of another person; or
- (c) the genital organs of an animal, into or beyond the mouth of another person, and “**sexual penetrates**” has a corresponding meaning;

“**sexual assault**” includes any act which causes—

- (a) direct or indirect contact between the:
  - (i) genital organs or anus of one person or, in the case of a female, her breasts, and any part of the body of another person or an animal, or any object, including any object resembling the genital organs or anus of a person or an animal;
  - (ii) mouth of one person and—
    - (aa) the genital organs or anus of another person or, in the case of a female, breasts;
    - (bb) the mouth of another person;
    - (cc) any other part of the body of another person or, other than the genital organs or anus of that person or, in the case of a female, breasts, which could –
      - (aaa) be used in an act of sexual penetration;
      - (bbb) cause sexual arousal or stimulation; or
      - (ccc) be sexually aroused or stimulated thereby; or
    - (dd) any object resembling the genital organs or anus of a person, and in the case of a female, her breasts, or an animal; or
  - (iii) the mouth of the complainant and the genital organs or anus of an animal;

- (b) the masturbation of one person by another person; or
- (c) the insertion of any object resembling the genital organs of a person or animal, into or beyond the mouth of another person, but does not include an act of sexual penetration, and **“sexual violation”** has a corresponding meaning.

**“sexual violence”** means any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances or acts to traffic women's sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, including but not limited to home and work;

**“the Act”** means the National Health Act, 2003 (Act No. 61 of 2003);

**“victims”** means individuals (that is, women, men, children) who have reported to the South African Police that they have been assaulted;

**“voluntary presentation”** refers to individuals who voluntarily without prompting or coercion, present at a designated facility for examination and treatment with no intention of reporting the matter to the South African police.

## **Application**

- 2(1) These regulations are applicable to both victims and injured alleged offenders of crime or violence.
- (2) For purposes of these regulations, the term “injury due to crime and/or violence” includes—
  - (a) sexual assault;
  - (b) physical assault;
  - (c) psychological trauma;

- (d) domestic violence;
- (e) substances, drugs and/or alcohol related injuries or violence;
- (f) drunken driving;
- (g) child abuse; and
- (h) abuse of older persons.

### **Clinical Forensic Medicine Service**

**3(1)** The Member of the Executive Council responsible for health in a province must ensure:

- (a) the establishment and/or improvement of a facility for the provision of clinical forensic medicine services within his or her respective provincial department of health in accordance with the provisions of these regulations;
- (b) the provision of a clinical forensic medicine services is at such facilities;
- (c) the appointment of a forensic health care practitioner with relevant clinical forensic services qualifications or experienced in forensic services, not directly involved in the treatment of persons brought or admitted for forensic services and/or treatment, to manage such a facility;
- (d) that provision is made to obtain informed consent prior to the performance of a clinical forensic examination in such a facility; and
- (e) that all victims of violence and alleged offenders are given access to clinical forensic medicine services, irrespective of, amongst others, nationality, age, gender, developmental level, physical and mental health status, ethnicity or socioeconomic background of the person concerned.

**(2)** Clinical forensic medical examinations at such facilities should at least encompass the following services—

- (a) assessment of the complainants of sexual and physical assault;
- (b) assessment of the alleged offender;

- (c) assessment of the victim for signs of alleged abuse;
  - (d) taking of blood sample and/or urine of the alleged suspects for driving under the influence of alcohol and/or drugs;
  - (e) physical and psychological examination of the accused in homicide cases;
  - (f) visits to crime scenes, evidence collection and documentation;
  - (g) age assessments for medico-legal purposes;
  - (h) general wound identification, documentation and interpretation as to causation factors of such a wound; and
  - (i) appearing in court to give expert evidence.
- (3) Clinical Forensic Medicine examinations must be conducted within 72 hours of the violent attack or sexual assault, and beyond 72 hours if the victim is still experiencing pain, bleeding, describes an unusual sensation, or reports ejaculation without cleanup, or any form of physical and psychological trauma as a result of the violent the attack.

#### **Practitioners Authorised to Conduct Clinical Forensic Examinations**

- 4(1) Forensic health care practitioners trained or experienced in clinical forensic medicine are permitted to conduct Clinical Forensic Medicine examinations.
- (2) A person still undergoing training, either formal or in-service clinical forensic medicine may only participate in a clinical forensic examination under the guidance and supervision of an authorised person.

#### **Report on the Completion of a Medico-Legal Examination Report Form**

- 5(1) Information about the completion of J88 report must be given to all clients/ victims of crime and violence.
- (2) Facilities without authorised person must refer victims of crime and violence to designated facilities for the completion of J88 report.



- (3) All completed J88 reports for voluntary presentation must be kept safe in the client's file at the facility.

### **Additional Evidence from a Clinical Forensic Medicine Examination**

- 6(1) Subject to any other law, any authorised person may submit or cause to be submitted any tissue, fluid or object, for examination, to a forensic chemistry laboratory or forensic science laboratory, in order to assist in the administration of justice.
- (2) Such authorised person is the only health care professional who has the authority to decide on samples that may be collected for special investigations.
- (3) Forensic health care practitioners who on examination of a child presented at a health care establishment finds that the child was sexually assaulted must report the matter to the South African Police.

### **Protection of Records**

- 7(1) The person in charge of a designated facility in which clinical forensic medicine examinations are conducted must set up control measures in order to prevent unauthorized access to records relating to such examinations; and to the storage facility in which records are kept.
- (2) Any person who—
  - (a) fails to perform a duty imposed on them in terms of subregulation (1);
  - (b) falsifies any record by adding to, or deleting, or changing any information contained in that record;
  - (c) creates, changes or destroys a record without authority to do so;
  - (d) fails to create or change a record when properly required to do so;
  - (e) provides false information with the intent that it be included in a record;
  - (f) without authority, copies any part of the record;

- (g) without authority, connects the personal identification elements of a patient's record with any element of that record that concerns the patient's history and/or examination;
- (h) gains unauthorised access to a record or record-keeping system, including intercepting information in transit from one person, or one part of a record-keeping system to another;
- (i) without authority, connects any part of a computer or other electronic system on which records are kept to—
  - (i) any other computer or electronic system; or
  - (ii) any terminal or other installation connected to or forming part of any other computer or electronic system; and
- (k) without authority, modifies or impairs the operation of—
  - (i) any part of the operating system of a computer or other electronic system on which a patient's records are kept; or
  - (ii) any part of the programme used to record, store, retrieve or display information on a computer or other electronic system on which a patient's records;

commits an offence.

- (3) The person in charge of a designated facility must ensure that a register is kept in which any file, or any part of a file that is removed from the storage facility, is recorded, and in which he or she must enter all particulars of the person authorised to remove such file or any of its part, the purpose, date and time removed and returned and the information extracted.
- (4) No person is allowed to make copies of any documentation from the file without prior written approval of the person in charge of the designated facility.
- (5) No person may release information or documentation, original or copied, pertaining to a file of any other person, unless duly authorised by the person in charge of the designated facility where such clinical forensic examination was conducted.

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- (6) A register for recording case files and all items in storage must be kept in each designated facility in order to track files and such items.
- (7) When any copy is made or document removed from a file, a record must be made on the cover of such file indicating—
- (a) the name and signature of the person who made the copy or removed the document;
  - (b) the name of the document copied or removed;
  - (c) whether the document was copied or removed;
  - (d) the number of copies made;
  - (e) the purpose for which the copies were made, including reference to the letter for any official request;
  - (f) the date and time the document was copied or removed; and
  - (g) whether written approval in terms of regulation 17 was given.
- (8) When any file is removed, whether for court appearance, studying its contents or for any other purpose, a record must be made in a Clinical Forensic Service Register of files indicating the—
- (a) name and signature of the person who removed the file;
  - (b) date and time of removal;
  - (c) purpose of the removal;
  - (d) when the file is returned is to be returned;
  - (d) date and time of the return; and
  - (e) name and signature of the person returning the file.
- (9) A forensic health care practitioner who copies or removes any documentation relating to a clinical forensic examination, must return to the file, all such

documentation, original or copied, that is/are no longer required for academic or consultative purposes, to the file immediately.

### **Establishment and Composition of National Clinical Forensic Medicine Service Committee (NCFMC)**

8. There is hereby established a body to be known as the National Clinical Forensic Medicine Service Committee.

### **Constitution of the Committee**

- 9(1) The committee shall be constituted as follows—

- (a) nine provincial coordinators of clinical forensic medicine nominated by respective provincial department of health;
  - (b) three officials from the National Department of Health;
  - (c) three representatives from academic institutions involved in teaching clinical forensic medicine; and
  - (d) two health care practitioners involved in rendering clinical forensic medicine services.
- (2) The Minister of Health appoints the members of the committee.
- (3) The committee may on an ad hoc basis co-opt any person(s) to advise and assist the committee on any matter in order to achieve the objectives of these regulations.
- (4) The members of the committee shall hold office for a period of five years, but shall be eligible for reappointment.
- (5) Not less than three months prior to the date of expiry of the term of office of the members of the committee, the persons and bodies referred to in sub-regulation (1), must inform the Minister in writing of the names of the persons to be designated by their institutions or organisations in terms of that sub-regulation.

- (6) As soon as possible after the process referred to in sub-regulation (2), the Director-General must inform the outgoing committee of the names of persons appointed by the Minister in terms of sub-regulation (1).
- (7) If any of the persons or bodies referred to in sub-regulation (1), fails to make a designation or an appointment or to inform the Minister in terms of sub-regulation 5 of the names of the persons to be designated by them, the Minister shall make the necessary designation, and any designation so made by the Minister shall be deemed to have been properly made in terms of subregulation (1).

### **Objects of the Committee**

- 10** The objects of the committee are to advise the Minister on—
- (a) any matter that will ensure, promote, improve or maintain clinical forensic medicine services in the Republic;
  - (b) norms, standards and guidelines for rendering clinical forensic medicine services, including health and safety standards and the minimum standards for accreditation of designated facilities; and
  - (c) any technical matter related to clinical forensic medicine services that may have an impact on health policies and strategies.

### **Functions of the Committee**

- 11.** The functions of the Committee are, amongst others, to:
- (a) advise the Minister on matters related to clinical forensic medicine;
  - (b) assess compliance with the provisions of these regulations by health establishments rendering or involved in clinical forensic medicine;
  - (c) perform any other function that may be referred to the Committee by the Minister and/or Director-General; and

- (d) perform such other function as may be requested to further the objects of these regulations.

### **Vacation of Office and Filling of Vacancies**

**12(1)** A member of the committee shall vacate his or her office if he or she—

- (a) has been absent for more than two consecutive ordinary meetings of the committee without the committee's leave;
  - (b) she or he or she ceases to hold any qualification necessary for his or her designation or appointment or tenders his or her resignation in writing to the person or body by whom he or she was designated or appointed and that person or body accepts his or her resignation; and
  - (c) becomes a state patient as defined in section 1 of the Mental Health Act, 2002 (Act 17 of 2002);
- (2) she or he is convicted of an offence in respect whereof he or she is sentenced to imprisonment without the option of a fine; or the Minister in the public interest and for just cause, and after consultation with the person or body by whom the member was designated or appointed, terminates his or her membership.
- (3) Every vacancy on the committee arising from a circumstance referred to in subregulation (1) and every vacancy caused by the death of a member, shall be filled by designation or appointment by the person or body by whom and in the manner in which the vacating member was designated or appointed, and every member so designated or appointed shall hold office for the unexpired portion of the period for which the vacating member was designated or appointed.

## **Chairperson and Deputy-Chairperson**

- 13(1) At the first meeting of every newly constituted committee the members of the committee shall elect the chairperson and a deputy chairperson from among themselves.
- (2) The chairperson and deputy chairperson shall hold office during the term of office as the members of the committee unless the chairperson and the deputy chairperson respectively resigns or ceases to be a member of the committee.
- (3) The deputy chairperson may, if the chairperson is absent or for any reason unable to act as chairperson, perform all the functions and exercise all the powers of the chairperson.
- (4) If both the chairperson and deputy chairperson are absent from any meeting, the members present shall elect one of their members to preside at that meeting and the person so presiding may, during that meeting and until the chairperson and the deputy chairperson resumes duty, perform all the functions and exercise all the powers of the chairperson.
- (5) If both the chairperson and the deputy chairperson have been given leave of absence, the members of the committee shall elect one of their members to act as chairperson until the chairperson and the deputy chairperson resumes duty or vacates office.
- (6) If the office of chairperson and the deputy chairperson becomes vacant, the members of the committee shall, at the first meeting after such vacancy occurs or as soon thereafter as may be convenient, elect from among themselves a new chairperson and the deputy chairperson, as the case may be, and the member so elected shall hold office for the unexpired portion of the period for which his or her predecessor was elected.
- (7) The chairperson and the deputy chairperson may vacate office as such, without such vacation by itself, terminating his or her membership of the committee.

### **Meetings of the Committee**

- 14(1) The committee shall hold at least two meetings in each year at venues to be determined by the committee, and may in addition hold such further meetings as the committee may from time to time determine.
- (2) The chairperson may at any time convene a special meeting of the committee, to be held on such date and at such place as he or she may determine and he or she shall, upon a written request by either the Minister, Director-General or a written request signed by at least six members, convene a special meeting to be held, within thirty days after the date of receipt of the request, on such date and at such place as she or he may determine: Provided that such written request shall state clearly the purpose for which the meeting is to be convened.

### **Quorum and Procedure at Meetings**

- 15(1) The majority of the members of the committee shall constitute a quorum at any meeting of the committee.
- (2) A decision of the majority of the members of the committee present at any meeting shall constitute a decision of the committee: Provided that in the event of an equality of votes the member presiding shall have a casting vote in addition to a deliberative vote.
- (3) No decision taken by the committee or act performed under authority of the committee shall be invalid by reason only of an interim vacancy on the committee or of the fact that a person who is not entitled to sit as a member of the committee sat as a member at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the committee who were present at the time and entitled to sit as members.



## **Accounting and Reporting Requirements**

- 16** The Head of Department of respective provincial departments of health must submit annual returns of statistics for all clinical forensic medical cases to the Director-General in the form of Form A.

## **Delegation**

- 17(1)** The Head of Department or the provincial head of the Clinical Forensic Medicine Service may, in writing, and on such conditions as he or she may determine, delegate or assign any power or duty given to him in terms of these regulations, to an official of the provincial department or staff of the designated facility, as the case may be, unless there is a specific prohibition of such delegation or assignment.
- (2)** A delegation or assignment made under subregulation (1) shall not divest the Head of Department or the provincial head of the Clinical Forensic Medicine Service of the responsibility or accountability concerning the performance of any of his/her functions in terms of these regulations.
- (3)** The Head of Department or the provincial head of the Clinical Forensic Medicine Service may, where applicable, amend or set aside any decision taken by any person in the exercise of any such power so delegated.

## **Offences**

- 18.** Any person who fails to comply with any of the provisions of these regulations shall be guilty of an offence and on conviction shall be liable to a fine, or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.



**Dr A. Motscaledi, MP**  
**Minister of Health**

# FORM A

<b>NAME OF PROVINCE:</b>													
	<b>DISTRICT 1</b>												
	<b>JAN</b>	<b>FEB</b>	<b>MAR</b>	<b>APR</b>	<b>MAY</b>	<b>JUN</b>	<b>JUL</b>	<b>AUG</b>	<b>SEPT</b>	<b>OCT</b>	<b>NOV</b>	<b>DEC</b>	<b>TOTAL</b>
No. of Sexual Assessments													
No of client tested for HIV													
No of client tested HIV +													
No of client on PEP													
No of perpetrators tested for HIV													
No of HIV + perpetrators													
No of DNA testing on perpetrators													
No. of Common Assault													
No. of domestic violence													
No. of drunken driving													
No. of Human Trafficked													
Referrals													
<b>TOTAL</b>													