

No. R. 270

1 April 2011

NATIONAL HEALTH ACT, 2003 (ACT NO. 61 OF 2003)**REGULATIONS RELATING TO THE RENDERING OF CLINICAL FORENSIC MEDICINE SERVICES**

The Minister of Health intends, in terms of section 90(1) 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**1. Definitions**

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-

"authorized person" means a forensic pathologist, medical officer or 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 on 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 to;

“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 prescribed training on clinical forensic medical examination in terms of that 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. It can be of various forms such as physical, psychological/emotional, sexual and financial abuse. 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 and or parts thereof;

“forensic medicine” means a specialty 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;

"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 provided to victims of crime and violence;

"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
- f) 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;

“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;

“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); and

"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 police.

Application

1. (a) These regulations are applicable to both victims and injured alleged offenders of crime or violence.
- (b) For purposes of these regulations, the term "injury due to crime and/or violence" includes-
 - i. sexual assault
 - ii. physical assault
 - iii. psychological trauma
 - iv. domestic violence
 - v. substances, drugs and / or alcohol related injuries or violence.
 - vi. drunken driving
 - vii. child abuse
 - viii. abuse of older persons

Clinical Forensic Medicine Service

- 2(1). The Member of the Executive Council responsible for health in a province must ensure-
 - (a) the establishment and/or improvement of facilities for the provision of clinical forensic medicine services within his or her province;
 - (b) the provision of clinical forensic medicine services 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 all victims of violence and alleged offenders are given access to clinical forensic medicine services.

(2) Clinical forensic medical services at such facilities should at least include the following:

- (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 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; 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 attack.

Persons authorised to conduct clinical forensic examinations.

3. Only an authorized person can conduct clinical forensic medicine examinations.

4. 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 authorized person.

Report on medico-legal examinations

5. Information about the completion of medico-legal examinations report must be given to all clients/ victims of crime and violence.
6. Facilities without authorised persons must refer victims of crime and violence to designated facilities for the completion of medico-legal examinations report.
7. All completed medico-legal examinations reports for voluntary presentations must be kept safe in the client's file at the facility.

Additional evidence from a clinical forensic medicine examination

8. Subject to any other law, any authorized 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.
9. Such authorized person is the only health care professional who has the authority to decide on samples that may be collected for special investigations.
10. Forensic health care practitioners who on examination of a child presented at a health establishment finds that the child was sexually assaulted must report the matter to the South African Police.

Protection of Records

11. (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) falsifies any record by adding or changing any information contained in that record;
 - b) creates, changes or destroys a record without authority to do so;
 - c) fails to create or change a record when properly required to do so;

- d) provides false information with the intention that it be included in a record;
- e) without authority, copies any part of the record;
- f) 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;
- g) gains unauthorized 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;
- h) 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; or
- j) 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 are;

commits an offence.

12. 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 authorized to remove such file or any of its part, the purpose, date and time when removed and returned and the information extracted.
13. No person is allowed to make copies of any documentation from the file without prior written approval of the person in charge of a designated facility.

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14. No person may release information or documentation, original or copied, pertaining to any file to any other person unless duly authorized by the person in charge of the designated facility where such clinical forensic examination was conducted.
 15. A register for recording case files and items in storage in order to track files and items must be kept in each designated facility:
 16. When any copy is made or document removed from a file, a record must be made on the cover of the 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; and
 - (f) the date and time the document was copied or removed.
 17. 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 and date when the file is expected to be returned;
 - (d) date and time of return; and
 - (e) name and signature of the person returning the file.

18. A forensic health care practitioner that copies or removes any documentation relating to a clinical forensic examination, must return all such documentation, original or copied, that is no longer required for academic or consultative purposes, to the file immediately.

Accounting and Reporting Requirements

19. 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 a format as set out in Form A to these regulations.

Delegation

20. The Head of Department or the provincial head of clinical forensic medicine may, in writing, and on such conditions as he or she may determine, delegate or assign any power or duty 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.

Offences

Any person who fails to comply with any of the provisions of these regulations is guilty of an offence and on conviction is liable to a fine, or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

DR A MOTSOLEDI

MINISTER OF HEALTH

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