

J88 – Are you allowed to refuse?

Introduction

The J88 form is generated by the Department of Justice and is the accepted document in terms of our legislation to be utilised in the South African Courts as the preferred method of adducing evidence in a criminal matter with regard to the injuries a complainant sustained in for example a rape, assault or attempted murder case.

It serves as a crucial piece of medical evidence in cases where interpersonal violence has taken place.

The Schedule 5-7 Offences as contained in the Criminal Procedure Act¹ include indecent assault of children, rape and assault with the infliction of grievous bodily harm.

In order for these offences to be correctly investigated and the offenders brought to justice, the State requires that a J88 form be completed in accordance with the relevant legislative requirements which will see these offenders identified through correct forensic procedure and ultimately ensure that they are put in jail.

It is imperative that all doctors understand and acknowledge their responsibility in this regard.

The one question always asked is whether a medical practitioner is allowed to refuse to fill out the J88 form.

This is difficult to answer, especially when considering the person who requires the assistance of the medical practitioner when coming to the practice with a J88 form – this is usually someone who has been through a very humiliating and painful experience – on both an emotional and physical level.

Director-General of Health on completing the J88 form

The following extract was taken from communication received by SAMA some time ago:

“The Department of Health has received complaints that doctors in the private sector, mainly general practitioners assess and treat patients that have been assaulted– physically, sexually or otherwise – and then refuse to complete a J88 form to allow victims to institute prosecution.

The Department of Health appreciates the support to these victims by the private sector but wants to bring to their attention the following:

- *The Charter for Victims of Crime in South Africa (legal consolidation) which clearly describes the rights of victims of crime.*
- *The Minimum Standards on Services for Victims of Crime. Although these documents mainly refer to public health services, it also refers to “other service providers”.*

You are also referred to the National Health Act, 2003 (Act No 61 of 2003) specifically sections 5, 10 and 13.

¹ Act No 51 of 1977 (as amended).

If doctors do not want to fill in the J88 if a patient attends a private facility, with Police Company or police referral, when doctors are obliged to complete the J88, they must stabilise the patient and refer to a centre, health establishment or service provider that will complete the J88.

If not, the service provider is denying the victim his/ her right to access the judicial system and is defeating the ends of justice. If a J88 is not completed, then the victim cannot lay charges.”

Applicable legislation

The South African Constitution² provide every person the right to Equality³, Human Dignity⁴, Freedom and Security of the Person⁵ and Health Care⁶ - last mentioned clearly confirming that no person may be refused emergency medical treatment.

The National Health Act⁷ further refers to the fact that no health care provider may refuse a person emergency medical treatment⁸ and that the obligation to keep record⁹ is subject to National Archives of South Africa Act¹⁰, as well as the PAIA¹¹ Act, which indicate the right of every patient to have access to their own health records.

Are medical practitioners allowed to refuse?

How do we place these rights in context with the situations which medical practitioners are sometimes faced with when being approached by patients to complete a J88 form?

There are instances where a medical practitioner can refuse to examine a patient and subsequently fill out a J88 form, this would include circumstances where the medical practitioner is dealing with a medical emergency and is not able to examine the patient accordingly, or where the medical practitioner is of the view that they do not have the relevant and necessary experience or expertise to assist the patient accordingly.

There is a thin line between right and wrong. What is clear, is that the content of the form should be of the highest quality in terms of accuracy and thoroughness¹².

The more legible, complete and comprehensible the submitted J88 form is, the less likely the chances would be of having to testify in court¹³.

² Act No 108 of 1996.

³ Section 9.

⁴ Section 10.

⁵ Section 12.

⁶ Section 27(1)(1) & (3).

⁷ Act No 61 of 2003.

⁸ Section 5.

⁹ Section 13.

¹⁰ Act No 43 of 1996.

¹¹ Promotion of Access to Information Act, No 2 of 2000.

¹² Rowe K, Botha H. Justice through the J88: The doctor's role in the criminal justice system.2013. SAMJ: Vol 103 ,No 7(2013).

¹³ Muller K, Saayman G. Clinical Forensic Medicine: Completing the Form J88 – what to do and what not to do. SA Fam Pract 2003;45(8):39.

The principles for correct completion of the J88 form includes that the patient should give informed consent by means of a signed and witnessed form SAP 308, which must be *retained by the doctor on the patient file*. This consent is both for the examination and permission to hand the completed J88 form (which is confidential medical information) to the police for investigative and court purposes¹⁴. The whole report must also be completed in the doctor's own handwriting and every page must be signed by the doctor¹⁵.

The exhaustive requirements for specific details and accurate descriptions of what the medical practitioner observed and found during the full medical examination, has the result that most practitioners shy away from becoming involved in the process.

At no time can a medical practitioner refuse emergency medical care to a patient, but they are allowed to refer the patient – if clinically stable and in no imminent danger of medical collapse - to another practitioner or treating facility if they are of the view that the patient's rights in this regard will be best served by another practitioner and facility with the necessary experience and equipment etc.

Conclusion

The ultimate reason for refusal to complete the J88 form or become involved in the process, directly links with the fact that the medical practitioner not only has to fill out the form which takes a lot of time and requires substantial and specific information, but also the fact that they will be required to testify in court on their findings at the time of doing the medical examination and completing the form.

This can result in a person not receiving the protection from and before the law, which is also a fundamental human right in terms of the South African Constitution¹⁶.

According to the information the Director-General provided, a medical practitioner in private practice is allowed to refer the patient to a health establishment or service provider that will complete the form (e.g. Public Hospital) – the prerequisite for this referral is that the patient must be stabilised. We do however encourage all medical practitioners to assist with filling out the J88 form as far as possible.

¹⁴ Muller K, Saayman G. Clinical Forensic Medicine: Completing the Form J88 – what to do and what not to do. SA Fam Pract 2003;45(8):41.

¹⁵ Muller K, Saayman G. Clinical Forensic Medicine: Completing the Form J88 – what to do and what not to do. SA Fam Pract 2003;45(8):41.

¹⁶ Section 9.