

## SA MEDICAL ASSOCIATION (SAMA)

### GUIDELINE FOR MEDICAL PRACTITIONERS TAKING BLOOD SAMPLES IN DRUNKEN DRIVING CASES

-Medical practitioners are often requested by police officials to take blood samples from persons who were allegedly driving under the influence of alcohol.

Section 37(2) of the Criminal Procedure Act of 1977 (the Act) provides as follows:

#### **Powers in respect of prints and bodily appeared of accused**

*(a) Any medical officer of any prison or any district surgeon or, if requested thereto by any police official, any registered medical practitioner or registered nurse may take such steps, including the taking of a blood sample, as may be deemed necessary in order to ascertain whether the body of any person referred to in paragraph (a) (i) or (ii) of subsection (1)<sup>1</sup> has any mark, characteristic or distinguishing feature or shows any condition or appearance.*

*(b) If any registered medical practitioner attached to any hospital is on reasonable grounds of the opinion that the contents of the blood of any person admitted to such hospital for medical attention or treatment may be relevant at any later criminal proceedings, such medical practitioner may take a blood sample of such person or cause such sample to be taken.*

Doctors have to be certain that the person brought in by the police official is in fact arrested, or charged with, or convicted on a crime, before engaging in any medical procedure or examination requested by the police official.

Prior to any examination or intervention, the medical practitioner should receive from the police a written request for the examination of the arrested person (Form SAP 308(a)). Since the accused is under arrest, his/ her consent is not necessary and the police official/ arresting officer may use a reasonable amount of force in order to assist the doctor in taking the blood sample. However, as with any other medical examination, the patient's welfare is paramount and it is accordingly advisable that the patient's consent be obtained, as far as possible. This consent could be tacit and/or implied.

There is nothing in the Act that condones the presence of a police official during the examination of the accused person. However, it may be necessary for the police official to assist the doctor in restraining the patient.

The arrested person is also entitled, and should be informed as such, to request his/her own doctor to be present at the examination and/or to examine him. However, in exercising this right, the examination should not be delayed beyond a two-hour limit while awaiting the arrival of the medical practitioner. Likewise, an arrested person is entitled to consult his/her legal practitioner but this should not be delayed beyond the two-hour limit. These limitations to patient's rights could be justified in terms of the provisions of Section 36 of the Constitution of the Republic of South Africa, No. 108 of 1996<sup>2</sup>.

Finally, it is important for the doctor to ascertain and record in writing that the impairment of the arrested person is due to alcohol consumption. If, in the professional opinion and experience of the doctor, the reason for the patient's impairment is due to other factors, for example, drugs, hypoglycaemia, head injury or mental illness, it should be recorded as such.

**FOOTNOTES:**

1. For purposes of completeness of this guideline, the following is included:-

Section 37(1) of the Act reads as follows:-

- (1) Any police official may -
  - (a) take the finger-prints, palm-prints or foot-prints or may cause any such prints to be taken-
    - (i) of any person arrested upon any charge;
    - (ii) of any such person released on bail or on warning under section 72;
    - (iii) of any person arrested in respect of any matter referred to in paragraph (n), (o) or (p) of section 40(1);
    - (iv) of any person of whom a summons has been served in respect of any offence referred to in Schedule 1 or any offence with reference to which the suspension, cancellation or endorsement of any licence or permit or the disqualification in respect of any licence or permit is permissible or prescribed, or
    - (v) of any person convicted by a court or deemed under section 57(6) to have been convicted in respect of any offence which the Minister has by notice in the Gazette declared to be an offence for the purposes of this subparagraph;
  - (b) make a person referred to in paragraph (a) (i) or (ii) available or cause such person to be made available for identification in such condition, position or apparel as the police official may determine;

2. Limitation of rights - (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including -

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.