

# Clinical Forensic Medicine: Completing the Form J88 - what to do and what *not* to do.

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## Highlights / Hoogtepunte

- The J88 is a legal form belonging to the Justice Department.
- The more complete, legible and comprehensible the submitted J88 form is, the less the chances are of having to testify in court.
- This article will assist general practitioners to document relevant medical findings for court purposes.
- Die J88-vorm is 'n wettige vorm wat aan die Departement van Justisie behoort.
- Hoe vollediger die vorm ingevul word, des te beter is die kans dat die geneesheer nie getuienis hoef te gee in die hof nie.
- Hierdie artikel bied praktiese riglyne aan die algemene praktisyn om die J88 te voltooi vir hofdoeleindes.

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*"There is a kind of medical knowledge which is not so much concerned with the cure of disease as the detection of error and the conviction of guilt."*

- Samuel Farr 1788

## INTRODUCTION

South Africa is recognised as being one of the countries with the highest incidence of interpersonal violence, including rape and indecent assault, in the world. A large percentage of victims are children - under the age of 18 years. In spite of more recent improved awareness and upgrading of services, the conviction rate of perpetrators is still unacceptably low, compared to other countries. According to SA Police Services data for 2002, a conviction is obtained in less than 10% of cases that eventually are tried in court. There has been an ever-increasing demand and pressure on government agencies and departments to break this crime spiral by ensuring that criminal justice administration is effective and that perpetrators are appropriately punished.

The most important professional role players in the investigation of crime are members of the departments of Safety and Security (Police), Justice and

Welfare departments and health care practitioners: the latter from *both* public and private sector. These professionals must *all* be aware of what is needed in terms of investigation, reporting and documentation of findings – and must understand the meaning and implications of professional terminology used by other role players. Medical evidence is often crucial in proving a case and obtaining a conviction. However, the difference between conventional clinical examination and the *medico-legal examination of a victim*, is often not adequately understood by doctors and other health care professionals, police and justice officials.

The "new" **J88 form** was implemented approximately four years ago and is still not well accepted by many doctors, who tend to refuse completion in the hope of not having to subsequently testify in court. It is important to understand that this document is a *legal form* belonging to the Justice Department, specifically designed to document relevant medical findings for court purposes. A fully completed, legible form with a well-formulated conclusion, will *more often than not obviate* the need for the doctor to testify in person in a court of law. It is thus

imperative that medical practitioners who deal with any form of abuse or violence, will have relevant *current* academic knowledge and clinical skills, *as well as* understanding of the following aspects:

### 1. *Medical:*

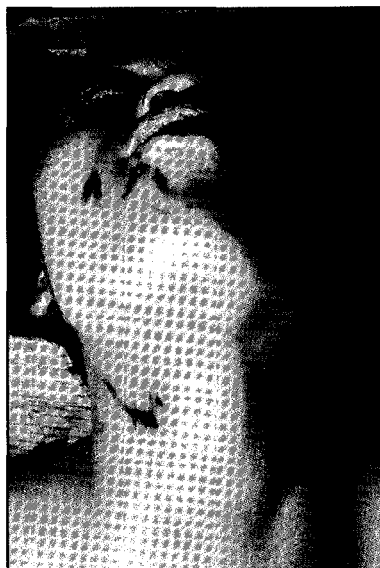
- Pathology, physiology and mechanism of injuries and healing process.
- Medical versus lay terminology (especially with regard to types of injuries, anatomic sites, etc.).
- Anatomy (especially of genitalia, anus and oral cavity).
- Normal sexual response.
- Specific infections and sexually transmitted diseases.
- Medico-legal significance of physiology of puberty, menopause and old age.

### 2. *Legal:*

- Basic working and principles of the SA legal system and relevant sections of statutes.
- Evidence collection and need for accurate clinical recording for legal purposes.
- Implications and interpretation of certain elements in the legal definition of assault and sexual offences.



**Figure 1:** *Patterned contusion / abrasion (gepatroneerde kneus / skaafwond).* This photograph shows a typical imprint or patterned abrasion with contusion, caused by the arrow-shaped tip of a whip.



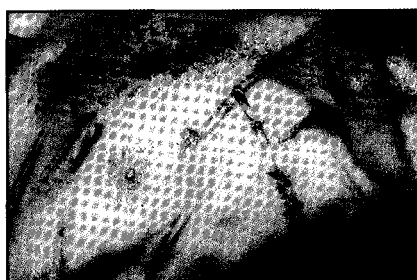
**Figure 2:** *Typical abrasions caused by manual strangulation.* Superficial, irregular abrasions (scratch injury) caused by fingernails, in an attempt to cover the mouth (peri-oral abrasions) and in throttling injury (throat area with single thumbnail injury on left and multiple fingernail injuries on right). The overall pattern and distribution of injury is vital in arriving at validated a conclusion as to the circumstance and cause of injury.



**Figure 3:** *Stab wounds (steekwonde).* Penetrating, linear wounds with cleanly incised edges, measuring 1,5 - 2cm in length. Typically caused by a sharp, bladed instrument, such as a knife.



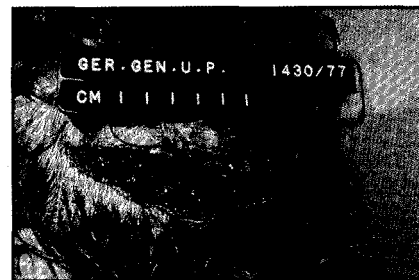
**Figure 4:** *Defense injuries (afweerbeserings).* Typical nature and distribution of injuries sustained in an attempt to defend against an attack (the weapon being a broken bottle, in this case), resulting in irregularly incised and lacerated wounds on the ulnar aspect of the forearm. Also typically seen on the palmar aspects of the hands.



**Figure 5:** *Tram-track contusions (tremspoorkneusings).* Typically caused by a pliable, cord-like instrument (a whip in this instance), which follow the contours/curvature of the body on impact. Rigid, rod-shaped instruments will tend to cause shorter tram-track contusions, which do not follow the contour of the body.



**Figure 6:** *Patterned abrasion (afdruk-skaafwond):* Caused by frictional contact (movement on the skin at the time of impact), resulting in a patterned injury corresponding with the causative instrument. In this case, a length of heavy rope had been used. Measuring the relevant dimensions of patterns may be very useful in subsequent investigations or legal proceedings.



**Fig 7:** *Laceration (skeurwond).* On the scalp, or elsewhere where the skin may be stretched over underlying bone, blunt force impact may result in the skin "splitting", to resemble incised wounds. Close inspection of the wound edges reveals irregular margins and contusion, inconsistent with incised or sharp force causation.

- Legal significance of absence of pathology or injury.
- Report writing skills, knowledge of court proceedings and the ability to confidently and competently testify in court.
- Rights and obligations of professional and expert witnesses.

### 3. **General:**

- Counselling.
- Critical incident stress debriefing skills.
- Understanding of myths and misconceptions in the community.

## COMPLETION OF J88 FORM

**The more complete, legible and comprehensible the submitted form is, the less the chances are of having to testify in court.**

### **General**

- The patient must 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 (confidential medical information) to the police for investigative and court purposes.
- The **whole** report has to be completed in the doctor's own handwriting, as the police are not allowed to write on the J88 form. *Every* page must be signed by the doctor.
- Entering information on a J88 copied or obtained from a clinical report documented by a colleague must *never* be done. If the patient was not examined personally and a report is requested at a later date, a photocopy of the relevant clinical notes in the patient file should be provided instead.
- Do not use unfamiliar abbreviations (to policemen and lawyers) like "NAD", or draw a line through any part or leave empty spaces, as you will be expected to explain the meaning of such entries in court. Sections that are not relevant e.g. male genital examination in a female patient must be declared "not relevant" or "not examined".
- Reports must be written in **duplicate** and the original given to the investigating SAPS officer *only*. The *duplicate is kept by the examining doctor on the patient file*.
- Records and information may be needed by the police or court *long after the normal* acceptable legal period at which "inactive" files are destroyed in a hospital or clinic – it is therefore important to keep this fact in mind before destroying old files. *Never* anticipate that you will rely on your memory – irrespective of how vividly the case may be imprinted on your mind at the time. Cases may take *years* to come to trial. Remember the old adage: "*Scripta manent verba volant*" (paper has a better memory than the keenest brain).

### A. Demographic Information

- The name of the police station, MAS/CAS number, name and service number of the investigating officer must be provided by the police officer on form SAP 308. Write the full number including that of the year, as the case may have been in progress for longer than one year.
- Use 24 hour notation: e.g. 06:10 for time and always use eight blocks: e.g. 06 (day) 12(month) 1988(year) for the date.
- If possible, use a stamp to provide the name, qualifications, address and HPCSA number of the medical practitioner.
- Contact numbers should include home, work, fax and cellular phone as well as e-mail address. Many criminal prosecutions are lost because important (medical) witnesses cannot be traced.
- **Physical practice address** should provide the street name and number for delivery of a subpoena.
- **Place of examination** – state name of clinic, hospital or private rooms.
- **State full name of person examined** as it appears on identity document or birth certificate. Add the name by which person is called in brackets (e.g. "Suzie"). Ensure that this information is the same as on the SAP 308.
- **Age:** Add date of birth, if available, especially in case of children.

### B. General History.

NB: State clearly whether source of information was the complainant himself/herself or a third party (who must be identified by name).

#### 1. *Relevant medical history:*

- Enquire about previous injuries such as fractures, falls or burns. If necessary, find old patient records or request social worker to access National Child Protection Register from the Department of Welfare and Population Development.
  - Pay particular attention to conditions that could lead to non-accidental injuries, that cause or aggravate bruising or that can be transmitted sexually. These include, for example, diabetes, asthma, epilepsy, mental retardation, behavioural disorders, psychoses and HIV infection.
  - In children, ask about bedwetting, encopresis, vaginal burning, vaginal discharge, nappy rash and atopic eczema.
  - Document any medical condition diagnosed during examination, such as common cold or heart murmur.
- #### 2. *Medication and drugs/alcohol*
- Include any medication that could cause or aggravate bruising or bleeding, influence mental awareness or cause acute episodes of hypotension. These include steroids, immunosuppressive medication, anti-convulsants, anti-depressants, anti-histamines, anti-hypertensives and hypnotics.
  - Where appropriate, enquiry should be made as to whether there had been recent use of recreational drugs or alcohol.

### C. General Examination

#### *Condition of clothing.*

- The colour, styling and general cut of the article of clothing are generally not important.
- Describe tears, missing buttons, torn or absent pockets and stains (blood, dirt, grass, mud, semen, urine or vomitus).
- If the person has changed clothing after the alleged incident, this should always be documented.

*General body build (physical stature)*

- State whether body build is within normal limits in terms of age, sex and height.
- State whether there is exceptional muscular development, such as in athletes and bodybuilders or whether there is emaciation or obesity. In order to assess physical powers and development, use the body mass index for adults and the WHO percentile charts for height, weight and head circumference for children under five.
- In case of sexual offences involving children and young women, relate age to Tanner scale as recorded in sections E and H.

*Clinical findings.*

- Document systematically as set out in J88.
- Avoid using highly *technical* or medical anatomical terminology: rather use or add basic terminology and layman's language.
- Wounds and injuries must be described *individually* in terms of locus, type, size and shape, degree of severity and age. Wounds that are clearly of differing ages should be clearly identified. Each of these features may be vital in the criminal investigation and subsequent legal proceedings.
- Technically accurate use of wound terminology is very important for future legal proceedings: the random use of terms like "lacerations" to describe any form of open skin wound is inappropriate. A distinction should be drawn between sharp force injuries (incised wounds – stabs and cuts [*steekwonde*, *snywonde*]) and blunt force injuries (contusions [*kneuswonde*], abrasions [*skaafwonde*], lacerations [*skeurwonde*]). In particular, individualising wound features (which may allow positive identification of a weapon of assault) should be recognised and documented – e.g. patterned abrasions, tram-track contusions, etc. Where possible, photographic documentation of such specific wounds may be of great value.
- In instances of gunshot wounds, specific mention of important features (such as entrance and exit

wound features, as well as probable distance of firing), should be made, where possible. Accurate anatomic notation with reference to fixed anatomic landmarks, may be of great value in subsequent reconstructions for ballistic investigation.

- Although it is preferable for the form J88 to be completed in English, it should be borne in mind that this is primarily a document for legal/court proceedings. A doctor would be free to use his/her language of choice in such proceedings.
- Indicate the extent and position of injuries on sketches provided – preferably in contrasting pen colour, in cases of multiple wounds or wounds of distinctly different nature.
- Care should be taken in making written conclusions. This does not preclude the examiner from doing so, but careful wording may be called for. This may be particularly helpful in certain categories of injuries, such as defence injuries on the forearm, attempted strangulation injuries to the face/neck area, etc. Where relevant, it may be stated that the features/injuries are "typical of ...", or "the findings are consistent with...". Clearly, this requires not only thorough knowledge of wound types and injury patterns, but also objectivity and accountability on the part of the examiner.
- Where, in the opinion of the examiner, wounds/injuries are particularly extensive or severe, typical of certain clinical presentations (e.g. physical child abuse) or have individualising features, photographic recording should take place. A call to the Local Criminal Record Centre (LCRC) of the SAPS will generally ensure that a competent police photographer will be despatched for this purpose. Where the clinician/examiner takes the photographs him/herself, care should be taken to ensure proper identification or marking of the photograph and the use of a ruler (or other measuring device) is advised. Care with regard to the custody of such photographs should also be taken and a note should be made in the report that photographs were taken. Where relevant, photographs should be clearly numbered and correlated

with specific or corresponding injuries noted in the report.

- Number each lesion (1)...(2)...etc. on the sketch and describe on the J88 form as (for example) follows:
  1. 2 cm fresh laceration (tear) still oozing blood, sutured with 4 stitches on left forearm (*not radial aspect, dorsal, ventral, brachial etc.*)
  2. swelling and bruising surrounding left eye (circumorbital) purple-blue in colour, with subconjunctival bleeding (bleeding in white of eye). Vision not impaired.
- *Relevant negative findings* (absence of visible injuries) in relation to history, must be documented – for example: in cases of alleged assault with a sharp object, mention should be made of the absence of injuries to the palmar surfaces of the hands and/or the ulnar aspects of the forearms.
- All existing old scars (injuries and surgical) and anatomical anomalies must be documented as well as tattoos, birthmarks and other identifying characteristics.
- Be vigilant in distinguishing between factual observations and the conclusions based on those observations. Where any doubt exists, be sure to qualify your conclusion and to give an exposition of the parameters/criteria used to arrive at the conclusion – for example, in stating that a particular wound is an *entrance* or *exit* gunshot wound.

*Emotional status*

- Document whether person appears (for example) unusually or inappropriately calm, is distraught, weeping, hysterical or stuporous.

*Mental health*

- If any suspicion of mental retardation exists, relate mental age to chronological age in adults and milestones for age in children.
- Note any discrepancy in gender identification, such as cross dressing and relate any deviation in sexual orientation such as paedophilia or bisexuality.
- Note any abnormal knowledge of sex related language in young children.

- Note any symptoms and signs of psychotic or psychoneurotic behaviour, including mood disorders where the mood does not conform to the existing circumstances of the person involved.

#### *Clinical evidence of drugs or alcohol*

- Document any obvious smell of liquor or dagga: obvious clinical signs include abnormal size of pupils, congested conjunctivae, nystagmus, dry mouth, and slurred speech. However, be particularly aware of the possibilities of other conditions mimicking alcoholic intoxication – including head injuries, medication, epilepsy, etc.
- Inspect injection sites for needle-stick marks (“mainlining” or “spiking”).
- If necessary take blood and urine samples – follow appropriate sampling and preservation procedures and ensure appropriate custody and legal integrity of the evidence.

#### *Conclusions*

- In order to be able to support a conclusion as to whether the clinical findings are compatible with the time and circumstances of the *alleged* incident, a short history is necessary. The history should be very brief and *give only the essential facts necessary for a conclusion*. This can be documented on the J88 as an introduction to the conclusion, on the SAP 308 or on a separate page in the patient file.
- Hearsay evidence obtained as history during the clinical examination, is admissible in court. In order to prevent any harassing cross examination on non-medical issues, detail of the history should never include names of alleged perpetrators, specific addresses, dates or times, unless these are provided in writing on the SAP 308 form. Do not name objects used to inflict injuries, state “sharp object” or “blunt object”, not knife or baseball bat. Where specific patterns appear to be present, describe these in detail and accurately – or have photographs taken, where possible.
- Do not provide any more detailed non-medical information, as it might not be exactly the same as in the

statement given to the police by the complainant. Discrepancies in the two statements will be used by the defence counsel to dispute the evidence in court.

- The incident related history should always start with: “It is alleged ...”, for example:
  - *It is alleged by the complainant that on the 18<sup>th</sup> December 1995 at approximately 20h00 she was assaulted with a belt (or “belt like object”) on her back by a known / unknown adult male. Never give a name of the alleged perpetrator.*
  - *The mother (Mrs. X) alleges that child Y was sexually assaulted by an adult male, sometime during the first 3 months of this year.*
  - *Child Y alleges that before Christmas, during the holidays while visiting family, an adult male known to Y, sexually assaulted her.*
- The examiner must consider the history obtained in terms of time, place and circumstance - as well as the legal charge in relation to the clinical findings, his/her own clinical experience, academic training, scientific facts as well as literature review, when reaching a conclusion.
- Relevant negative findings must always be considered. Vague and inconclusive terminology should not be used. Words and phrases like can, could, may possibly be, “slightly enlarged”, “somewhat swollen”, etc., provide welcome opportunity for defence attorneys to “abuse” the medical expert witness in court.
- The final conclusion should be short, clear, objective and unbiased:
  - *“The injuries are compatible with / not compatible with the time and circumstances of alleged incident”.*
  - *“The injuries are compatible with that which would be caused by a sharp object / blunt object”.* Do not name the object, as the knife mentioned by the patient might actually have been a sharpened screwdriver. In court, counsel for the defence will again attempt to use such discrepancies to the advantage of the accused.

- In a case where the charge is common assault and the clinical examination reveals (for example) superficial incised wounds caused by a sharp object (such as a knife) over the precordium and/or neck, the conclusion should include the fact that the position of the injuries renders the wounds potentially fatal. The criminal charge could thus be changed to attempted murder instead.

#### **FINALLY:**

- The more complete, legible and comprehensible the submitted form is, the less the chances are of having to testify in court.
- Bear in mind that in court you will be required to swear under oath, that the notes reflect a true version of your findings.
- Remember that the burden of proof on the State is particularly heavy in cases of criminal prosecution: the state must prove *beyond reasonable doubt* that the accused is guilty of the said crime. This may be very difficult if defects or substantial uncertainties can be demonstrated in any of the components of the state prosecutor’s case – including poor observations and/or notes made by a medical practitioner.
- Experienced defence attorneys are quick to recognise poor reports and will insist on the doctor attending court to provide oral testimony. Similarly, they will appreciate a thorough and well constructed report – and will strive to keep the compiler thereof *out of court!* □

Please refer to the CPD Questionnaire on page 51.

#### ***Bibliography and further reading:***

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