REPUBLIC OF KENYA

PARLIAMENT OF KENYA

THE SENATE

TWELFTH PARLIAMENT

THIRD SESSION

THE STANDING COMMITTEE ON HEALTH

REPORT ON THE DEATH OF A PATIENT AT THE MP SHAH HOSPITAL ALLEGEDLY DUE TO NEGLIGENCE

Clerk's Chambers,

First Floor,

Parliament Buildings,

NAIROBI.

SEPTEMBER, 2020

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PREFACE

Mr. Speaker Sir,

The Senate Standing Committee on Health is established under standing order 218(3) of the Senate Standing Orders and is mandated to, "*consider all matters relating to medical services, public health and sanitation.*"

Committee Membership

The Membership of the Committee is composed of the following:

1. Sen. (Dr.) Michael Mbito, MP.
2. Sen. Mary Seneta, MP.
3. Sen. Beth Mugo, EGH, MP.
4. Sen. Beatrice Kwamboka, MP.
5. Sen. (Prof.) Samson Ongeri, EGH, MP.
6. Sen. (Dr.) Abdullahi Ali Ibrahim, MP.
7. Sen. Fred Outa, MP.
8. Sen. Millicent Omanga, MP.
9. Sen. Ledama Olekina, MP.

Mr. Speaker,

At the Sitting of the Senate held on Tuesday 9th June, 2020, Sen. Beth Mugo, MP requested a statement from the Senate Standing Committee on Health, regarding the death of Ms. Virginia M. Asaph, allegedly as a result of negligence occasioned by staff at the M.P. Shah Hospital on 26th May, 2020.

The statement sought to have the Standing Committee on Health investigate whether, contrary to Article 43(1)(a) of the Constitution and section 7 of the Health Act, M.P. Shah Hospital caused

the untimely death of the Late Ms. Virginia Asaph by putting commercial interests before her wellbeing.

Mr. Speaker,

In carrying out its investigations, the Standing Committee on Health held meetings with members of the family of the deceased patient, the Ministry of Health (MoH), the Kenya Medical Practitioners and Dentists Council (KMPDC), the management of M.P. Shah Hospital, and the National Hospital Insurance Fund (NHIF).

The meetings were aimed at clarifying the circumstances that led to the death of the patient, as well as understanding the broader legal, policy, regulatory and structural factors that may have contributed to her unfortunate and untimely death.

The Committee's findings, observations and recommendations arising from these meetings are contained in this report.

Mr. Speaker Sir,

The Standing Committee on Health wishes to sincerely condole with the family and friends of the late Ms. Virginia Asaph. The Committee also empathizes with the family and friends of the hundreds of Kenyans who lose their lives every day as a result of being unable to access emergency care.

Mr. Speaker Sir,

The Standing Committee on Health further wishes to thank Sen. Beth Mugo, EGH, for bringing this very important matter to the attention of the House.

Mr. Speaker,

The Committee thanks the Offices of the Speaker and Clerk of the Senate for their support during the process of considering this matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege to present this report of the Standing Committee on Health, for consideration and approval by the House pursuant to Standing Order No. 226(2) of the Senate Standing Orders.

Signed……...

Date……**17TH SEPTEMBER, 2020**……

SEN. MBITO MICHAEL MALING'A, MP

CHAIRPERSON, STANDING COMMITTEE ON HEALTH

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON HEALTH OF THE SENATE

We, the undersigned Members of the Standing Committee on Health of the Senate, do hereby append our signatures to adopt the Report-

1. Sen. (Dr.) Michael Mbito, MP .....
2. Sen. Mary Seneta, MP .....
3. Sen. Beth Mugo, EGH, MP .....
4. Sen. Beatrice Kwamboka, MP .....
5. Sen. (Prof) Samson Ongeri, EGH, MP .....
6. Sen. (Dr) Abdullahi Ali Ibrahim, MP .....
7. Sen. Fred Outa, MP .....
8. Sen. Millicent Omanga, MP .....
9. Sen. Ledama Olekina, MP .....

ABBREVIATIONS

Cath Lab	-	Catheterization Lab
EMKF	-	Emergency Medicine Kenya Foundation
ER	-	Emergency Room
KMPDC	-	Kenya Medical Practitioners and Dentists Council
MoH	-	Ministry of Health
NHIF	-	National Hospital Insurance Fund
PCI	-	Percutaneous Coronary Intervention
STEMI	-	ST Elevation Myocardial Infarction

CHAPTER ONE

A. INTRODUCTION

The Late Ms. Virginia Asaph met her untimely death at the M.P. Shah Hospital on 26th May, 2020, as a result of negligence occasioned by staff and management at the hospital.

According to statements made by family members of the deceased, the Late Ms. Virginia Asaph was taken ill on the night of 26th May, 2020, and rushed to the M.P. Shah Hospital where she was first attended to between 3.00 am and 4.00 am.

Upon being assessed at the Casualty by a doctor, family members were advised that the Late Ms. Virginia Asaph had a heart condition and needed emergency surgery. The hospital is then alleged to have demanded KSHs. 500,000.00 deposit to admit her for purposes of conducting the emergency surgery. According to statements by members of the family, the deceased was then put on oxygen and placed in the trauma room in the A&E Department at the hospital.

Not being in a position to raise the full required amount in the wee hours of the morning, the family members pleaded with the hospital staff to admit her with KSHs. 200,000.00, with a promise to pay the balance during the course of the day. However, they were allegedly advised that the hospital would only admit her upon payment of a minimum amount of KSHs. 300,000.00, funds which the family eventually managed to raise at 6.00 am.

Consent for her emergency surgical procedure was signed at 7.45 am, whereupon the deceased patient was wheeled to theatre. However, at 9.20 am, family members were informed that she had passed away.

Consequently, at the sitting of the Senate held on Tuesday 9th June, 2020, Sen. Beth Mugo, MP, requested a statement from the Senate Standing Committee on Health regarding the death of Ms. Virginia M. Asaph, allegedly as a result of negligence occasioned by staff and management at the M.P. Shah Hospital on 26th May, 2020.

The statement was referred to the Standing Committee on Health to investigate whether contrary to Article 43(1)(a) of the Constitution and section 7 of the Health Act, M.P. Shah Hospital

caused the untimely death of the Late Ms. Virginia Asaph by putting commercial interests before her wellbeing.

B. BACKGROUND

At its sitting held on Monday 15th June, 2020, the Committee considered the statement and resolved to invite various stakeholders including family members of the Late Virginia Asaph, the management of MP Shah Hospital, the Ministry of Health (MoH), the Kenya Medical Practitioners and Dentists Council (KMPDC) and the National Health Insurance Fund (NHIF).

The aforementioned meetings were aimed at clarifying the circumstances that led to the death of the patient, as well as understanding the broader legal, policy, regulatory and structural factors that may have contributed to her unfortunate and untimely death as demonstrated below:

In relation to the unfortunate and untimely death of the Late Ms. Virginia Asaph, the Committee sought a statement from M. P. Shah Hospital that was aimed at establishing:

a) Details of the patients' condition at the time of arrival at the hospital on 26th May, 2020 at 2.00 am up to the point of her death at 9.39 am;
b) Details of the emergency interventions that were undertaken on her behalf prior to her death;
c) Details of the hospitals' policies and guidelines as they relate to the provision of emergency medical treatment;
d) Justification for the patient's bill amounting to KSHs. 740,687.00.

With regard to the broader legal, policy, regulatory and structural factors affecting the provision of emergency care in Kenya, the Committee sought a statement from the MoH whereby it sought to establish:

a) Actions taken by the Ministry of Health to ensure the implementation of rights to health specified in the Bill of Rights, and more particularly the right to emergency treatment as provided for in section 15 (1) (a) and (b) of the Health Act, 2017;
b) Status of the Emergency Medical Treatment Policy;
c) Status of guidelines for the provision of emergency medical care;

d) Status of the rules and regulations pertaining to the provision of emergency medical care in line with section 112 (i) of the Health Act, 2017;

e) Status of the establishment of an emergency medical treatment fund as provided for in section 15 of the Health Act, 2017;

f) Budgetary allocations by the National Government for the facilitation of the provision of emergency medical treatment and care;

g) Relevant information on the gaps, issues and challenges pertaining to the provision and regulation of emergency healthcare services.

The Committee further resolved to refer the case to the Kenya Medical Practitioners and Dentists Council (KMPDC) on 17th June, 2020 with a view towards establishing:

a) the status of the rules and regulations pertaining to the provision of emergency medical care in line with section 112 (i) of the Health Act, 2017;

b) the implications of M.P. Shah's treatment of the Late Ms. Virginia M. Asaph in relation to the current constitutional and legal provisions guiding the provision of emergency care in Kenya; particularly Article 43 (2) of the Constitution and sections 7, 12 (2)(b) and 91(1)(b) of the Health Act, 2017; and

c) relevant information on the gaps, issues and challenges pertaining to the provision and regulation of emergency healthcare services.

The Committee's findings, observations and recommendations arising from the KMPDC ruling, and the aforementioned meetings, are contained in this report.

C. MANDATE OF THE STANDING COMMITTEE ON HEALTH

The Senate Standing Committee on Health is established under standing order 218(3) of the Senate Standing Orders and is mandated to, "*consider all matters relating to medical services, public health and sanitation.*"

D. COMMITTEE MEMBERSHIP

The membership of the Standing Committee on Health is comprised of the following:

1. Sen. (Dr.) Michael Mbito, MP - Chairperson
2. Sen. Mary Seneta, MP
3. Sen. Beth Mugo, EGH, MP
4. Sen. Beatrice Kwamboka, MP
5. Sen. (Dr.) Abdullahi Ali Ibrahim, MP
6. Sen. (Prof.) Samson Ongeri, EGH, MP
7. Sen. Ledama Olekina, MP
8. Sen. Millicent Omanga, MP
9. Sen. Fred Outa, MP

CHAPTER TWO

CONSTITUTIONAL, LEGAL AND POLICY PROVISIONS RELATING TO THE STATEMENT

In executing its mandate over the issues arising from the statement, the Committee was guided by the following constitutional, legal and policy provisions relating to the provision of emergency medical treatment and care:

a) The Constitution of Kenya, 2010

Article 43 (2) of the Constitution provides that "*a person shall not be denied emergency medical treatment*".

b) Health Act, 2017

Section 7 of the Health Act states that —

(1) Every person has the right to emergency medical treatment.

(2) For the purposes of this section, emergency medical treatment shall include—

(a) pre- hospital care;

(b) stabilizing the health status of the individual; or

(c) arranging for referral in cases where the health provider of first call does not have facilities or capability to stabilize the health status of the victim.

(3) Any medical institution that fails to provide emergency medical treatment while having ability to do so commits an offence and is liable upon conviction to a fine not exceeding three million shillings.

Section 15 of the Health Act further provides that the National government shall:

(a) *develop health policies, laws and administrative procedures and programmes in consultation with county governments and health sector stakeholders and the public for*

the progressive realization of the highest attainable standards of health including the right to emergency treatment;

(c) ensure the implementation of rights to health... and more particularly the progressive realization of the right of all to the highest attainable standard of health including...the right to emergency treatment;

(x) establish an emergency medical treatment fund for emergencies to provide for unforeseen situations calling for supplementary finance;

(z) provide policy and training, maintenance of standards and coordination mechanisms for the provision of emergency healthcare.

Section 91 (b) of the Health Act provides that *private institutions and private health workers shall ...provide emergency services in their field of expertise required or requested either by individuals, population groups or institutions, without regard to the prospect or otherwise of direct financial reimbursement.*

Section 112 (i) of the Health Act provides that the Cabinet Secretary in consultation with the Director General *shall make regulations generally for the better carrying out of the provisions of this Act and without limiting the generality of the foregoing, the Cabinet Secretary may make regulations for emergency medical services and emergency medical treatment.*

c) Kenya Health Policy

The Kenya Health Policy defines emergencies as *'health threats that are of a sudden onset in nature, are beyond the capacity of the individual/community to manage, and are life threatening or will lead to irreversible damage to the health of the individual/community if not addressed."*

d) National Patients' Rights Charter

The 2013 MoH National Patients' Rights Charter provides that every patient has a right to receive emergency treatment in any health facility. The Charter further states that, in emergencies, irrespective of the patient's ability to pay, treatment to stabilise the patient's condition should be provided.

e) Emergency Medicine Foundation Kenya Guidelines

The Emergency Medicine Foundation Kenya guidelines on triage of patients recommend that in cases of STEMI (ST Elevation Myocardial Infarction) of more than 12 hours duration, ideally, patients should be taken to the Catheterization Lab for Percutaneous Coronary Intervention (PCI) or angioplasty, within 30 minutes of arrival at the emergency room (ER).

f) Contractual Obligations for NHIF Service Providers

Clause 2.1.12 of the NHIF contracts with service providers stipulates that a provider *"shall not withhold treatment of a beneficiary for financial reasons in cases of accidents and emergencies"*.

Further, with regard to the provision of mandatory services (including emergency care) Clause 2.11 of the contract states that *"the health facility shall not decline or delay to provide mandatory services to a beneficiary for any reason"*.

CHAPTER THREE

COMMITTEE PROCEEDINGS

In relation to the statement sought by Sen. Beth Mugo, the Committee met with various stakeholders on diverse dates as follows:

a) family members of the Late Virginia Asaph;

b) the management of MP Shah Hospital;

c) the Ministry of Health (MoH);

d) the Kenya Medical Practitioners and Dentists Council (KMPDC);

e) the Emergency Medicine Foundation – Kenya; and,

f) the National Hospital Insurance Fund.

The Committees' findings in relation to the aforementioned meetings are summarised below:

1) Meeting with the Family of the Late Ms. Virginia Asaph

The Committee met with Ms. Joan Ngugi and Mr. Samuel Muratha Asaph, the niece and grandson to the late Ms. Virginia Asaph respectively, on Thursday 23rd July 2020 via the Zoom online meeting platform.

According to their statements, the Late Ms. Virginia Asaph was taken ill in the very early hours of 26th May, 2020, and rushed to the M.P. Shah Hospital where she was first attended to between 3.00 am and 4.00 am. Upon being assessed at the Casualty by a doctor, family members were advised that the Late Ms. Virginia Asaph had a heart condition and needed emergency surgery.

As per their submission, the hospital then demanded KSHs. 500,000.00 deposit to admit her for purposes of conducting the emergency surgery. According to statements by members of the family, the deceased was then put on oxygen and placed in the trauma room at the A&E Department at the hospital.

Not being in a position to raise the full required amount in the wee hours of the morning, Ms. Joan Ngugi stated that they pleaded with the hospital staff to admit the Late Ms. Virginia Asaph with KSHs. 200,000.00, with a promise to clear the balance during the course of the day. However, they were allegedly advised by staff working at the Casualty that the hospital would only admit the patient upon payment of a minimum amount of KSHs. 300,000.00.

Ms. Joan Ngugi testified that the family eventually managed to raise the Ksh. 300,000 from a relative at 6.00 am. They then left the hospital to collect the money, and upon returning to the hospital, made the payment at approximately 7:00am.

Consequently, according to Ms. Joan Ngugi, consent for the late Ms. Virginia Asaph's emergency surgical procedure was then requested and duly signed by a family member at 7.45 am, whereupon the patient was wheeled to theatre. However, at 9.20 am, family members were informed that she had passed away.

Further to the above, according to the family's statement, each medical intervention by the hospital on the now deceased patient was only provided following payment as summarised below:

- 3.21am - KShs. 2,000.00 paid in Consultation Fee;
- 4.27am - KShs. 5,014.00 MPESA payment by Maureen Mghoi (granddaughter) for Clexane Injection 80mg and ECG in Casualty.
- 4.51am – Ksh.9,000/= paid via MPESA by the Late Ms. Virginia M Asaph for laboratory tests.
- 7.04am – Ksh.300,000/= paid in cash by Ms. Joan Wangari as hospital deposit.
- 7.45am – Signed consent.

Further to the above, family members confirmed to the Committee that they had presented the patient's NHIF card upon being informed that she required admission. Further, they confirmed that her NHIF cover (Supa Cover) was up to date at the time of admission.

Copies of written submissions by the family members have been attached hereto as Annex 1-FAM.

2) Meeting with the Management of M.P. Shah Hospital

The Committee met with the management of M.P. Shah Hospital, led by Dr. Toseef Din, CEO, and Dr. Vishal R. Patel the Medical Director on Thursday 23rd July, 2020 at 2.00 pm via the Zoom online meeting platform. . The management took the Committee through its chronology of events as summarised below:

- As per the hospital's records, the Late Virginia Asaph presented at the hospital at 3.15 am with epigastric pain. She came in through the outpatient department area and did not immediately report any emergency symptoms.

- She was registered at 3.20 am and proceeded to triage, where she was found to have low levels of oxygen (77%), a high heart rate (126 beats/min) and an elevated respiratory rate (17 breaths/min). She was then immediately started on oxygen.

- She was assessed by the medical officer-on-duty, Dr. Huzefa Ahmedali, who assessed the patient and made an initial differential diagnosis of Congestive Cardiac Failure, myocardial infarction (heart attack), pulmonary embolism or acute asthmatic attack.

- Dr. Huzefa then ordered an urgent electrocardiogram (ECG) at 3.30 am. The ECG indicated that the patient had suffered a myocardial infarction (heart attack).

- At 4.00 am the patient was given the following medication based on the ECG findings and her clinical presentation: aspirin, clopidogrel, atorvastatin, pantoprazole and albuterol-ipratropium nebulization.

- The hospital Cardiologist, Dr. Benard Samia, was consulted and he made a diagnosis of Acute Coronary Syndrome with late presentation. He advised that the patient be admitted to the High Dependency Unit (HDU) for further monitoring and stabilisation before definitive treatment. He further prescribed Enoxaparin, which the patient's family was advised to buy.

- Between 4.00 - 5.00 am, Dr. Samia consulted the hospital interventional cardiologist, Dr. Mohsen Gaballa and a decision to conduct a cardiac angiogram was arrived at, for further workup and definitive treatment.

- Between 4.00 - 5.00 am, the relatives were apprised of the condition of the patient and advised to proceed to the admissions desk, where they were notified of the requirements for a deposit and they reported that they could not raise the full amount.

- Meanwhile, the patient was still under observation at the Trauma Room where she was alleged to have received similar medical care to the HDU.

- At 5.45 am, a female relative of the patient approached the doctor on call regarding the condition of the patient. She also asked the doctor to speak to a senior female relative who requested for the admission to be completed on the promise that the deposit amount would be paid later in the day.

- At 6.30 am, owing to the fact that the patients' condition was deteriorating, the doctor on call asked the cardiac catheterisation lab to prepare as the admission was being processed.

- At 7.35 am, the patient was taken to the cardiac catheterization lab. By this time, her demand for oxygen was reported to have worsened. Informed consent for Coronary Angiography and Angioplasty was obtained by the patient's niece Ms. Joan Ngugi.

- At 7.45 am, a bedside transthoracic echocardiogram was performed, which showed that the patient was desaturating. She was subsequently intubated by the Anaesthesiologist, Dr. David Nguru.

- From 7.45 - 9.00 am, Dr Mohsen Gaballa and Dr. Bernard Samia proceeded to insert a transvenous pacemaker, following which they did a coronary angiography that revealed blockages in the coronary arteries.

- Subsequently, flow to the coronary arteries was established. However, the patient developed arrhythmias and had to be resuscitated on and off throughout the procedure.

- The code blue team was activated, and resuscitation was carried out. It was, however, unsuccessful and at 9.50 am the patient was certified dead.

With regards to the hospital policies and guidelines on the provision of emergency medical treatment, the hospital testified that they followed the Emergency Medicine Kenya Foundation guidelines.

With regards to the patient's bill which amounted to KShs. 740,687.00, the hospital provided a breakdown as follows:

a) Doctors Fees: KShs. 185,000.00

b) Pharmacy Charges: 476,337.00

During the plenary, Members raised several concerns regarding the timing of the procedure (i.e. the coronary angiography and angioplasty). They also raised concerns regarding the fact that the patient did not receive prompt definitive treatment, despite the fact that she had presented her NHIF card. Further, the meeting noted that all treatment interventions by the hospital, including the coronary angiography, coincided with when payments were made.

To note, on questioning, Dr. Bernard Samia, Cardiologist, assumed professional responsibility for the delay in conducting the coronary angiography procedure at 7.45 am as opposed to 4.00 am when it was first indicated.

Copies of written submissions by M. P. Shah Hospital have been attached hereto as Annex 2-MPSHAH.

3) Meeting with Emergency Medicine Kenya Foundation (EMKF)

The Committee met with Prof. Benjamin Wachira, Executive Director, Emergency Medicine Kenya Foundation (EMKF), on Thursday 23rd July, 2020 at 3.30 pm via the Zoom online meeting platform.

In his submissions to the Committee, Prof. Wachira noted that the 2013 Ministry of Health National Patient's Rights Charter protects the right of any person to receive emergency treatment at any health facility and that, regardless of capacity to make payment, patients shall be provided treatment to stabilize their condition. Failure to do so is an offence.

He further confirmed that according to the EMKF guidelines, in cases of a heart attack where a thrombolytic drug cannot be administered due to late presentation of the patient at the health facility, the patient should be taken to a catheterization lab within 90mins.

He recommended that the National Emergency Medical Care Policy (2020-2030) should be enshrined in legislation to address existing gaps in relation to:

- integrating national and county infrastructure to support universal access to emergency medical care;
- establishing mechanisms for financing emergency medical care;
- developing human resource development and management; and
- strengthening monitoring, research, leadership and governance in emergency care.

More specifically, he iterated the need for the Emergency Medical Technicians and Paramedics Bill 2020 to be fast-tracked once tabled in Parliament, in addition to actualizing the emergency medical treatment fund.

He further highlighted the need for a single toll-free ambulance number and integrated emergency system. He also noted the need for stricter enforcement of regulations for ambulance services, owing to a pervasive lack of adherence to minimum standards.

Moreover, he noted that trained Emergency Medical Technicians (EMTs) remain unrecognized as healthcare professionals and should be integrated into the health care system through the aforementioned Emergency Medical Technicians and Paramedics Bill 2020.

Further, he stated that there was a need to upgrade facility standards for emergency medical care, specialist training for emergency care providers, and emergency care treatment guidelines.

Copies of written submissions by EMKF have been attached hereto as Annex 3-EMKF.

4) Meeting with the Ministry of Health

The Committee met with Dr. Patrick Amoth, Director-General, Ministry of Health (MoH) on Thursday 23rd July, 2020 at 3.30 pm via the Zoom online meeting platform. .

In his submissions, he stated that the MoH have developed and finalised the Emergency Medical Care (EMC) Policy, 2020 - 2030 but that it was awaiting Cabinet approval.

He further stated that the MoH had, likewise, developed and finalised the Emergency Medical Care Strategic Plan, 2020-2025 but that it, too, was awaiting endorsement.

With regards to the status of guidelines for Emergency Medical Care (EMC), he noted that they had been developed in accordance with a policy objective to ensure quality service across the EMC system. He further noted that the development of an Emergency Bill and regulations was awaiting completion of the relevant policy.

With regards to the status of the Emergency Medical Fund that was established by section 15(i) of the Health Act, he noted that there were ongoing discussions with the National Treasury (NT) on the inclusion of emergency care in the Universal Health Coverage (UHC) package. As such, budgetary allocations by the National Government for the facilitation of the provision of emergency medical treatment and care were still pending.

He concluded his remarks by identifying the following gaps, issues and challenges that the MoH had faced in the provision and regulation of Emergency Health Care services as follows:

a) Lack of specific policies to guide the delivery of EMC in Kenya;
b) Inadequate mapping of emergency medical care services across the country;
c) Inadequate financing, and/or lack of an Emergency Medical Treatment Fund;
d) A fragmented approach to EMC interventions with lack of integration with other line ministries such as Transport, Security, Education etc.; and
e) Inadequate EMC practitioners at all levels.

Copies of written submissions by the MoH have been attached hereto as Annex 4-MOH.

5) Meeting with the Kenya Medical Practitioners and Dentists Council (KMPDC)

The Committee held two hearings with the KMPDC on Friday 24th July 2020 and Thursday, 27th August, 2020 via the Zoom online meeting platform.

a) Meeting with the KMPDC held on Friday, 24th July, 2020

At the meeting held on Friday 24th July, 2020, led by its Chairperson, Dr. Eva Njenga, the KMPDC confirmed that it had submitted a preliminary report to the Committee outlining the statements of the family of the late Virginia Asaph as well as the statements of the relevant personnel at M.P. Shah Hospital (*see Annex KMPDC-01*). The Council further committed to submitting a comprehensive report on the case on or before 18th August 2020.

During the hearing, KMPDC submitted that in accordance with section 7 of the Health Act, emergency treatment includes: pre-hospital care, stabilization of the patient, and referral in cases where the health provider of first call does not have facilities or capability to stabilize the health status of the victim.

b) Meeting with the KMPDC held on Thursday 27th August, 2020

At the meeting held on Thursday 27th August, 2020, led by its Chief Executive Officer (CEO), Mr. Daniel Yumbya, and the Chairperson of the Disciplinary and Ethics Committee, Dr. Abdi Mohamed, the Council submitted its ruling on the matter as summarised below (*see Annex KMPDC-02*):

According to the CEO, as per the ruling dated 18th August, 2020, in relation to the case between Ms. Joan Wangari Ngugi on behalf of the Estate of Virginia Asaph against M.P. Shah Hospital (DC Case No. 26 of 2020), the Council had identified the following issues for determination:

a) Whether the respondent denied the patient emergency care treatment; and,

b) Whether the patient was denied admission to HDU due to financial motives.

He further stated that against the above-mentioned issues for determination, the Council had made the following determinations:

a) MP Shah was found not culpable of denying the patient emergency treatment; and,

b) MP Shah Hospital was found culpable of delaying the patient's admission to the High Dependency Unit due to financial motives.

In view of the above determinations, the Council had made the following orders in consideration of the Council's mandate as set out in section 20 of the Medical Practitioners and Dentists Act:

i. *The MP Shah Hospital be and is hereby admonished for delaying the patient's admission to the High Dependency Unit due to financial motives;*

ii. *The MP Shah Hospital is hereby directed to put in place and implement an appropriate policy for timely admission of emergency patients where administrative requirements do not override clinical decisions and thereafter confirm compliance with the Council within fourteen (14) days from the date hereof; and,*

iii. *The MP Shah Hospital is hereby directed to issue a formal apology to the family of the Late Virginia M. Asaph within fourteen (14) days from the date hereof.*

However, the Committee challenged the Council on the rationale of using alleged delays in admitting the patient to the HDU, rather than delays in providing the definitive emergency treatment (i.e cardiac angiography and angioplasty) as the basis for making its determinations.

Following extensive discussions, the Council committed to reviewing the case on the condition that the persons aggrieved by its decision i.e. the family members of the Late Ms. Virginia Asaph, lodged an appeal within the stipulated statutory timelines.

Copies of written submissions by KMPDC have been attached hereto as Annex 5-KMPDC.

6) Meeting with the National Hospital Insurance Fund

The Committee met with Dr. Peter Kamunyo (CEO, National Hospital Insurance Fund) on Tuesday 28th July, 2020 via the Zoom online meeting platform. He made submissions to the Committee as summarised below:

According to NHIF, the late beneficiary Ms. Virginia Asaph, NHIF Registration No. 3888941, was a 75-year old female with no declared dependents.

She was covered by NHIF as a voluntary contributor under the National Health Scheme (Supa Cover), and had paid her monthly contributions up to June 2020. She was, therefore, eligible for medical benefits until the end of June 2020.

The CEO confirmed that M.P. Shah had notified NHIF of the admission of the Late Ms. Virginia Asaph on 26th May 2020 (IP No: 10396737). He, however, reported that the hospital had made no further requests for preauthorization, and had not presented any claims for payment for the hospitalization in question.

In relation to the above, the CEO confirmed that NHIF provides access to mandatory services, under which accidents, emergencies and referrals are covered. These mandatory services are provided at all contracted providers with the scope being: triaging; stabilization; rehydration; resuscitation; early interventions and antidotes; basic life support (BLS); and referral for advanced care.

He stated that every healthcare provider contracted by NHIF is required to provide emergency treatment under the current terms of engagement with NHIF, based on the following contractual obligations:

a) Clause 2.1.12 of the NHIF contract on the obligations of the healthcare provider, which specifies that a provider "*shall not withhold treatment of a beneficiary for financial reasons in cases of accidents and emergencies*"; and,

b) Clause 2.11 of the NHIF contract on mandatory services, which states that *"the health facility shall not decline or delay to provide mandatory services to a beneficiary for any reason*".

Based on the foregoing, according to NHIF, M.P. Shah Hospital ought to have provided emergency treatment without delay. Further, it ought not to have withheld emergency treatment owing to pending payment.

He further submitted that while NHIF requires pre-authorization for minor and major procedures in private health facilities, in emergency situations as was the case of the late Virginia Asaph's, treatment should not have been delayed or withheld on the grounds of awaiting pre-authorization.

He concluded his remarks by noting that NHIF payouts with regard to emergency care had been increased up to Ksh. 500,000. Further, he noted that there had been instances where NHIF had paid in excess of KShs. 800,000.00 for a beneficiary.

Copies of written submissions by NHIF have been attached hereto as Annex 6-NHIF.

CHAPTER FOUR

COMMITTEE OBSERVATIONS

The Committee made the following observations:

A. In respect of the Late Ms. Virginia Asaph

1) Article 43(2) of the Constitution and section 7(1) of the Health Act, 2017 guarantee every person the right to emergency medical treatment.

2) Section 91 (b) of the Health Act provides that private institutions and private health workers shall "*...provide emergency services in their field of expertise as required or requested either by individuals, population groups or institutions, without regard to the prospect or otherwise of direct financial reimbursement.*".

3) The 2013 MoH National Patients' Rights Charter further provides that every patient has a right to receive emergency treatment in any health facility. The Charter goes further to state that, in emergencies, irrespective of the patient' ability to pay, treatment to stabilize the patient's condition shall be provided.

4) At the time of presenting at the hospital, the Late Ms. Virginia Asaph was conscious and stable as evidenced by the fact that she could communicate, and that she made a payment of KShs. 9,000.00 for her treatment via MPESA at 4.51 am.

5) The medical officer on-duty who first attended to the patient correctly and promptly diagnosed the patient with Acute ST Elevation Myocardial Infarction (STEMI) with late presentation in consultation with the hospital Cardiologist.

6) According to the Emergency Medicine Kenya Foundation (EMKF) guidelines, in addition to medical treatment (i.e aspirin, clopidogrel and Enoxaprin, pantoprazole), the appropriate definitive emergency treatment for STEMI ought to have been:

    a) Immediate thrombolytic treatment for a STEMI of less than 12 hours; or,

b) Percutaneous Coronary Intervention (PCI)/Coronary Angiogram within 30 minutes of arrival for a STEMI of more than 12 hours.

7) However, in the case of the Late Ms. Virginia Asaph, contrary to Article 43(2) of the Constitution and section 7 of the Health Act, definitive emergency treatment (i.e. PCI/ coronary angiogram/angioplasty) was delayed for an estimated three hours and forty-five minutes due to financial motives. This was evidenced by the fact that, as per the testimony of M.P. Shah Hospital, a decision to conduct a coronary angiogram on the patient was reached at approximately 4.00 am. However, it was not until 7.45 am, that the patient was wheeled to the theatre for the procedure. To note, the timing of the procedure coincided with the payment of a deposit of KShs. 300,000.00 by family members.

8) Further to the above, the Committee observed that according to submissions by the family members of the Late Ms. Virginia Asaph, every medical intervention/treatment conducted on the patient by the hospital was only done upon payment. For example, despite having presented to the hospital at 3.15 am and a diagnosis of STEMI being made at 3.30 am, the patient received the urgent medication she required after 4.00 am, and even then only after family members had made a payment of KShs. 5,014.00.

9) By delaying emergency treatment for the Late Ms. Virginia Asaph until payment had been made, M.P. Shah Hospital was in breach of section 91 (b) of the Health Act which provides that *"...private institutions and private health workers shall ...provide emergency services in their field of expertise required or requested either by individuals, population groups or institutions, without regard to the prospect or otherwise of direct financial reimbursement.."*.

10) Further, noting that the deceased was a beneficiary of the NHIF Supa Cover (NHIF Registration No. 3888941); that her monthly contributions were up to date; that she was therefore eligible for medical benefits until the end of June 2020; and that M.P. Shah Hospital had notified NHIF of her admission on 26th May, 2020 under IP No. 10396737, but had subsequently failed to make any further requests for preauthorization, the Committee found that:

- MP Shah Hospital was in breach of Clause 2.1.12 of its contractual obligations to NHIF which stipulate that a health provider *"shall not withhold treatment of a beneficiary for financial reasons in cases of accidents and emergencies"*.

- Additionally, the hospital was in breach of clause 2.11 of its contractual obligations which specify that a "*...health facility shall not decline or delay to provide mandatory services to a beneficiary for any reason*".

B. In respect of the Ruling by the KMPDC

11) The Committee took note that, in its ruling of '*Joan Wangari Ngugi on behalf of the estate of Virginia Asaph against M.P. Shah Hospital'* (DC Case No. 26 of 2020), the KMPDC ruled that M.P. Shah Hospital was not culpable of denying the patient emergency treatment, but that it was culpable of delaying the patient's admission to the High Dependency Unit (HDU) for financial motives *(see Annex 5)*.

12) However, having reviewed the ruling by KMPDC, the Committee observed that it was flawed from the outset, having been based on the wrong premise of delayed admission to HDU as the key issue for determination, rather than delay in the provision of emergency treatment.

13) The Committee further observed that by seeking to limit its determination to whether the patient was denied admission to HDU due to financial motives, the Council precluded proper inquiry into whether the patient was denied the definitive emergency treatment she required i.e. the Percutaneous Coronary Intervention (PCI)/Angiogram.

14) With regards to whether the patient was denied the definitive emergency treatment, in conducting this inquiry, the Committee made the following further observations:

    a) As per the contents of the ruling, having established that the patient had suffered a STEMI with late presentation, in addition to the medical therapy that the patient received (i.e aspirin, clopidogrel, atorvastatin, Enoxaprin, pantoprazole and albuterol-ipratropium nebulization), the definitive emergency treatment that was required was a Percutaneous Coronary Intervention (PCI)/Angiogram.

b) This was supported by statements made by the family which indicated that, having been informed that the Late Virginia had had a heart attack, they were informed that they needed to raise KShs. 500,000.00 deposit for an 'emergency procedure'.

c) As per the EMKF guidelines on triage of patients, (which M.P. Shah Hospital submitted that they follow) cases of STEMI (ST Elevation Myocardial Infarction) of more than 12 hours duration should be taken to the Cath Lab for PCI within 30 minutes of arrival. Further, according to submissions made by EMKF, the maximum time allowable for such a patient to be taken to the Cath Lab is 90 minutes, or one and a half hours.

d) A review of the KMPDC ruling revealed that while the Council was forthright about the timings that the medical treatment was provided to the patient, it was deliberately ambiguous about the timings relating to the Cath Lab/Angiogram procedure.

e) As per other evidence before the Committee, the decision to conduct the PCI/Angiogram was made by the hospital Cardiologist at approximately 4.00 am. However, it was not until at 7.45 am (three hours and forty-five minutes later, and immediately following the payment of a deposit of KShs. 300,000.00) that the patient was taken to theatre for the procedure.

f) Further to the above, the Committee found that even for the medical interventions that the patient received, upfront payment was first required by the hospital.

g) With regards to the issue of admission to HDU, the Committee noted that by the hospitals' own testimony, the trauma room in which the Late Ms. Virginia was held prior to her death had the same capabilities as a HDU. This implies that for purposes of '*monitoring and stabilisation*' of the patient, the trauma room served the same purpose as a HDU. Neither option was however, the definitive emergency treatment that the patient required.

15) Based on the foregoing, the Committee noted that, from the outset, the key issue for determination by the KMPDC ought to have been the delay in conducting the emergency procedure i.e. the Cath Lab/PCI/Angiogram - not alleged delays in admission to the HDU.

16) Having started off on the wrong premise, the Committee observed that the KMPDC then proceeded to make the wrong determinations, and thereafter the wrong orders in favor of M. P. Shah Hospital.

17) Further to the above, the Committee observed that the ruling by the KMPDC unduly emphasised on the poor prognosis of the patient - almost as if to suggest that the Late Virginia Asaph would have succumbed whether or not the PCI/Angiogram was done on time.

18) The Committee further observed that the orders made against M. P. Shah Hospital in relation to the case were exceedingly lenient, and not commensurate to the charges made against the hospital. They included a mere admonishment for delaying admission to the HDU, instructions to put in place policy changes, and a directive to issue a formal apology to the family of the Late Ms. Virginia Asaph within fourteen (14) days.

C. In respect of Emergency Medical Treatment and Care in Kenya

19) With respect to the state of emergency medical treatment and care in Kenya, the Committee noted that section 15 of the Health Act assigns critical functions to the national government for the realization of the right to emergency medical treatment as follows:

a) the development of emergency care policies, laws and procedures, in consultation with the county governments and other stakeholders;
b) resource mobilisation for uninterrupted access to all health services, including emergency care;
c) establishment an emergency medical treatment fund; and
d) the provision of training, maintenance of standards and coordination mechanisms for emergency healthcare.

20) In relation to the above, the Committee found that delays by the MoH to develop and publish the Emergency Medical Care policy, regulations and guidelines in accordance with section 15 of the Health Act were a key challenge facing the provision and regulation of Emergency Health Care.

21) Further, the Committee noted that in accordance with section 15 (x) of the Health Act 2017, there was need for the national government to expedite the establishment of an Emergency Medical Treatment Fund for the facilitation of emergency medical treatment and care.

22) The Committee further observed the need for the emergency services benefit package proposed under UHC to be rolled out immediately across the entire healthcare system (both public and private) for purposes of ensuring universal access to emergency medical care services in the country.

23) In addition, the Committee observed the need to establish integrated ambulance services with a single toll-free ambulance access number to ensure every Kenyan has immediate access to an ambulance in case of an emergency.

CHAPTER FIVE

COMMITTEE RECOMMENDATIONS

Based on the foregoing, the Committee made the following recommendations:

A. In respect of the Late Ms. Virginia Asaph

1. The Committee recommends that the KMPDC review its ruling of the conduct of M.P. Shah Hospital in light of its failure to provide the definitive emergency treatment that the Late Ms. Virginia Asaph required in a timely manner i.e. the Percutaneous Coronary Intervention (PCI)/Angiogram, and report back to the Senate within one (1) month of receipt of this report.

2. The Committee further recommends that the conduct of M.P. Shah Hospital in respect of its provision of necessary emergency treatment for the Late Ms. Virginia Asaph be investigated by the KMPDC in light of Article 43 (2) of the Constitution and section 91 (b) of the Health Act.

3. The Committee further recommends that a fine of KSHs. 3 million be surcharged against M. P. Shah Hospital in accordance with section 7 (3) of the Health Act, 2017 and section 20 (6) (e) of the Medical Practitioners and Dentists Act, for negligently failing to conduct a life-saving Percutaneous Coronary Intervention (PCI)/Angiogram) in a timely manner as per recommended clinical practice and guidelines.

4. Additionally, the Committee recommends that the conduct of M.P. Shah Hospital in respect of its delay in providing emergency treatment for the Late Ms. Virginia Asaph be investigated by the National Hospital Insurance Fund in light of clauses 2.1.12 and 2.11 of its contract, and that necessary actions be taken.

B. In respect of Emergency Medical Care and Treatment in Kenya

5. The Committee recommends that the MoH expedite the passage and publication of the Emergency Medical Policy, 2020-2030, the Emergency Medical Care Strategic Plan,

2020-2025, and the Emergency Medical Care Regulations in accordance with sections 15 and 112 of the Health Act respectively.

6. The Committee further recommends that the National Treasury and the MoH act expeditiously to establish the emergency medical treatment fund as provided for in section 15 of the Health Act, 2017.

7. The Committee further recommends that the National Treasury and the MoH act to expedite the integration of emergency medical treatment and care in the UHC package.

8. Additionally, the Committee recommends that the MoH expedite the development of an Emergency Treatment and Care Bill with a view towards operationalizing the provisions of Article 43(2) of the Constitution and sections 7 and 91 of the Health Act.

9. The Committee also recommends that all public and private healthcare providers develop and implement policies for timely and appropriate emergency medical care and treatment in accordance with Article 43(2) of the Constitution and sections 7 and 91 of the Health Act.

In light of the above, the Committee resolves that:

1. This report be dispatched to the Health Professionals Oversight Authority and the Kenya Medical Practitioners and Dentists Council for the purposes of investigating the conduct of M.P. Shah Hospital in respect of the case of the Late Ms. Virginia Asaph, and recommend appropriate action **within 1 month** of receipt of this report.

2. This report be dispatched to the National Hospital Insurance Fund for the purposes of investigating the conduct of M,P. Shah Hospital in respect of the case of the Late Ms. Virginia Asaph, and recommend appropriate action **within 1 month** of receipt of this report.

3. This report be dispatched to the Ministry of Health and the National Treasury for purposes of expediting the integration of emergency treatment in the UHC package, and the publication of the Emergency Medical Treatment Policy and guidelines, the

Emergency Medical Treatment Strategic Plan, and the Emergency Medical Treatment Rules and Regulations within **3 months** receipt of this report.