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MINISTRY OF HEALTH

PRELIMINARY STATEMENT ON THE DEATH OF MR. ALEX MADAGA

Statement requested by Senator George Khaniri, Vihiga County, on October 12, 2015.

Specific information sought:

1. The legal backing which supports the non-admission of critically ill patients to private hospitals;
2. What immediate action has the Government taken to investigate and prosecute all those who might have negligently contributed to the death of Mr. Alex Madaga?
3. Apart from the current Health Bill in the National Assembly, what other measures has the Cabinet Secretary put in place to prevent similar occurrence in the near future in the country, given the responsibility of developing and communicating national health policy rests squarely with the National Government;
4. Given the hype and promises that accompanied the recently gazetted NHIF rates and services, why is the issue of accident or emergency not universally covered?

Answers

1. The legal backing which supports the non-admission of critically ill patients to private hospitals

There is **NO** legal backing which supports the non-admission of critically ill patients to private hospital.

Article 43 (1) (a) of the Constitution provides that;

“Every person has the right to the highest attainable standard of health, which includes the right to health care services...”

Article 43 (2) further provides that;

“A person shall not be denied emergency medical treatment”.

In an emergency situation, a patient has a right to treatment, regardless of ability to pay. An emergency is defined as *a situation which is likely to cause death, serious injury or disability if not attended to promptly.*

Public and private hospitals have a duty to administer medical care to a person experiencing an emergency. Where a hospital has emergency facilities, it is legally required to provide appropriate emergency medical care. Where the hospital is unable to provide emergency medical care, it must provide a referral for appropriate treatment.

2. What immediate action has the Government taken to investigate and prosecute all those who might have negligently contributed to the death of Mr. Alex Madaga?

After the incident involving Mr. Alex Madaga was highlighted by the media, the Kenya Medical Practitioners and Dentists Board commenced investigations on the matter. The Preliminary Inquiry Committee (PIC) of the Board obtained detailed statements and reports from the hospitals involved which included Kenyatta National Hospital, Nairobi Women's Hospital, Coptic Hospital, Ladnan Hospital & PCEA Kikuyu Hospital.

On 16th October, 2015 the PIC of the Board held a hearing to investigate the allegations that Mr. Alex Madaga was denied emergency medical treatment following a road traffic accident on 5th October, 2015.

The Committee after hearing all the parties and reviewing the documents presented made the following findings and orders against the Hospitals:

a) PCEA Kikuyu Hospital

The hospital undertook the required measures and steps after the patient was brought to their facility by a Good Samaritan after a road traffic accident.

However and notwithstanding the good steps undertaken by the Hospital, the Committee found that the hospital did not ensure the availability of a qualified clinician to accompany the patient who was critically ill at the material time.

Orders: There was no evidence to warrant further inquiry against PCEA Kikuyu Hospital. However; the hospital was admonished for referring a patient in an ambulance without ensuring the presence of a qualified clinician.

b) Nairobi Women's Hospital

A doctor and nurse on duty at the facility reviewed the patient upon arrival. Thereafter; they called other facilities as they did not have an ICU bed and then made referral.

Orders: There was no evidence to warrant any further inquiry against Nairobi Women's Hospital.

c) Kenyatta National Hospital

The patient was brought to KNH in an ambulance while in critical condition and was later taken back to the referring facility. The same patient was returned the following day and there is no evidence that the issue was escalated to higher authorities in an effort to seek intervention or assistance. KNH, being a National Referral Hospital should have made an effort to escalate the issue to other authorities, including the Ministry headquarters.

There is no evidence to show that the Hospital undertook all requisite steps to refer the patient to another facility that could have helped under the circumstances of the case.

The Hospital allowed a critically ill patient to be returned to the referring Hospital for oxygen instead of taking appropriate steps to intervene.

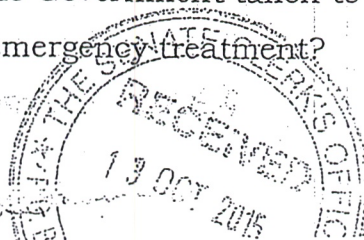
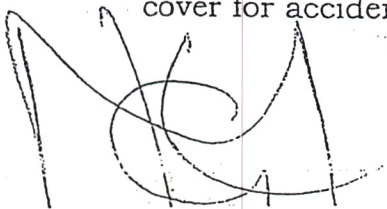
REQUEST FOR STATEMENT FROM THE CHAIRPERSON OF THE
STANDING COMMITTEE ON HEALTH ON THE DEATH OF MR. ALEX
MADAGA

Pursuant to Standing Order 45(2) (b), I wish to seek a Statement from the Chairperson of the Standing Committee on Health regarding the death of Mr. Alex Madaga at the Kenyatta National Hospital (KNH) on Friday, 9th October, 2015.

In the Statement, the Chairperson should address the following issues:-

1. What are the exact circumstances surrounding the death of Mr. Madaga, and can the Chairperson confirm that the deceased spent about 18 hours in an ambulance while waiting for Intensive Care Unit (ICU) services at the Kenyatta National Hospital (KNH)?
2. Can the Chairperson confirm that prior to his death, the deceased was denied admission into several private hospitals for emergency treatment and, if so, could he reveal the identity of the hospitals involved?
3. Can the Chairperson confirm that the act of withholding of emergency treatment amounts to violation or denial of the constitutional right to health care services and emergency medical treatment under Article 43 of the Constitution and, if so, what steps will the Government take against the health institutions which withheld medical treatment to the deceased, and to ensure that the persons responsible for the negligent act are prosecuted and the deceased's next-of-kin are compensated?
4. Aside from the Health Bill, which is currently in the National Assembly, what other measures has the National Government taken to ensure that the state provides appropriate social security for all Kenyans in compliance with Article 43(3) of the Constitution, given that the responsibility of developing national health policy is constitutionally vested in the National Government?
5. In view of the recently gazetted National Hospital Insurance Fund (NHIF) rates, what steps has the Government taken to offer universal insurance cover for accident and emergency treatment?

*Dr. Speaker
You may approve
10/10/15*



*The Clerk
This request is
in order and
may proceed for*

Mr. Amolo

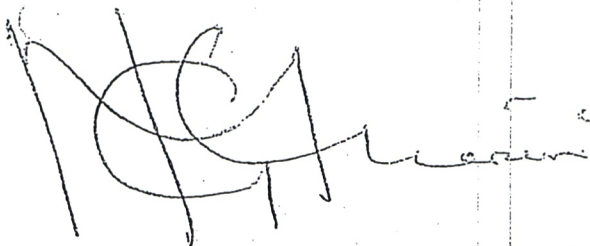
Please clear
12/10/15

REQUEST FOR STATEMENT ON THE DEATH OF MR ALEX MADAGA AT KNH.

Pursuant to the provisions of Standing Order 45(2)(b), I raise to seek a statement from the Chairperson of the Standing Committee on Health concerning the death of Mr Alex Madaga from my county, which occurred at 1;50 Pm on Friday 9th October 2015. This is just an example of the constant constraint the general public continues to face in their quest for public services and especially health care. Life is a fundamental right as contained in our Chapter Four of our Constitution.

In the statement, the Chairperson should explain;

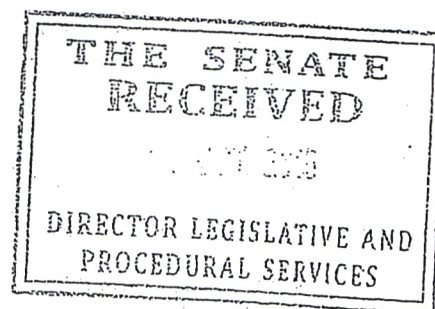
1. The legal backing which supports the none admission of critically ill patients to private hospitals even in critical conditions.
2. What immediate action has the government taken to investigate and prosecute all those who might have negligently contributed to the death of Mr. Alex Madaga.
3. Apart from the current Health Bill in the National Assembly, what other measures has the Cabinet Secretary put in place to prevent similar occurrence in the near future in the country, given the responsibility of developing and communicating national health policy rests squarely with the National government.
4. Given the hype and promises that recently gazetted NHIF rates and services, why is the issue of accident or emergency not universally covered?



Sen George M Khaniri, MGH, MP

Senator – Vihiga County

Dated 12th October 2015



Orders: The complaint against KNH has merit and an appropriate charge sheet be drawn (to be done within the 21 days of the committee's meeting on the matter) and the matter be referred to the Professional Conduct Committee to be constituted by the Medical Practitioners and Dentists Board for further inquiry of the complaint.

d) Coptic Hospital:

The Committee found that; a critically ill patient arrived at the Hospital in an ambulance but was not examined by a clinician nor admitted. Further, there was no documentation to show steps taken by its nurse or staff at the material time.

The staff working at the facility at the material time failed to follow the hospital's ICU admission policy as explained by the Facilities Medical Director in respect to the patient.

Orders: the complaint against Coptic Hospital has merit and an appropriate charge sheet be drawn (to be done within the 21 days of the committee's meeting on the matter) and the matter be referred to the Professional Conduct Committee to be constituted by the Medical Practitioners and Dentists Board for further inquiry of the complaint.

e) Ladnan Hospital:

The Committee found that the paramedics opted to take the patient to Ladnan hospital after Nazareth Hospital was informed of the results of the CT scan from the German Centre. The documents before the Committee confirmed that the ICU beds at the facility were occupied at the material time necessitating referral of the patient.

Orders: That there is no evidence to warrant any further inquiry against Ladnan Hospital.

3. Apart from the current Health Bill in the National Assembly, what other measures has the Cabinet Secretary put in place to prevent similar occurrence in the near future in the country, given the responsibility of developing and communicating national health policy rests squarely with the National Government;

It is correct that the responsibility of developing and communicating national health policy rests with the National Government. In this regard, the Ministry in partnership with sector stakeholders has developed the Kenya Health Policy which upholds the right of citizens to emergency medical care as enshrined in Article 43 (2) of the Constitution of Kenya 2010. The policy is at the finalization stage which among other things involves approval by Parliament.

However, a policy document can only be enforced through an act of Parliament. This is the reason why the Health Bill, which protects the right of patients to emergency care, is now under consideration by the National Assembly.

Apart from the Health Bill currently under consideration by the National Assembly, the only other measures in place to prevent similar occurrences in the future are disciplinary considerations by regulatory bodies in the health sector.

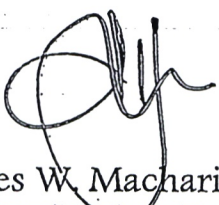
These include the Medical Practitioners and Dentists Board, the Nursing Council, and the Clinic Officers' Council. Such bodies have powers to discipline health personnel who engage in unethical and unconstitutional practices including suspending their practicing licenses.

The Kenya Medical Practitioners and Dentists Board has additional powers of registering private health facilities and can suspend or deny registration to health facilities proven to have engaged in unethical practices or negligence. The Board has already completed preliminary investigations on the death of Alex Madaga and has escalated disciplinary proceedings in respect of two hospitals, namely Kenyatta National Hospital and Coptic Hospital, to the Professional Conduct Committee on grounds of misconduct. The Board is continuing with investigations and a full report will be shared with the National Assembly when the exercise is completed.

4. Given the hype and promises that accompanied the recently gazetted NHIF rates and services, why is the issue of accident or emergency not universally covered?

The National Hospital Insurance Act (NHIF) 1998 mandates the Board to cover both outpatient and inpatient medical care in accredited health facilities for registered members and their eligible dependents. Health providers are at liberty to seek or not to seek accreditation with NHIF to serve the fund's beneficiaries.

The recently revised NHIF contributions provide enhanced benefits for members and their eligible dependents including accident and emergency services from accredited health care providers. The providers can only be expected to provide health services commensurate with their capacity in terms of facilities and competencies.


James W. Macharia
CABINET SECRETARY
October 27, 2015

REPUBLIC OF KENYA



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PARLIAMENT OFFICE OF THE CLERK OF THE SENATE

Our Ref: SEN/SCH/CORR/2015/3 (40)

Date: 15th October, 2015

Mr. James Macharia,

Cabinet Secretary

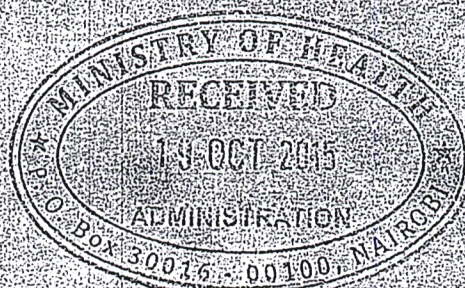
Ministry of Health

Afya House, Cathedral Road

P.O. Box 30016-00100

NAIROBI.

Dear Sir,



RE: REQUEST FOR A STATEMENT ON THE DEATH OF MR. ALEX MADAGA

The above matter refers.

The Senate Standing Committee on Health is established under Standing Order 208 (3) to *consider all matters relating to Medical Services, Public Health and Sanitation*.

Standing Order 45 (2) (b) of the Senate provides that a Senator may request for a statement from a Committee Chairperson relating to matters under the mandate of the Committee.

Pursuant to this provision, at the sitting of the Senate held on Tuesday, 13th October, 2015, Senator George Khaniri requested for a statement from the Chairperson of the Standing Committee of Health regarding the death of Mr. Alex Madaga.

Senator Khaniri specifically requested the Chairperson to explain:

1. The legal backing which supports the non-admission of critically ill patients to private hospitals;
2. What immediate action has the Government taken to investigate and prosecute all those who might have negligently contributed to the death of Mr. Alex Madaga;
3. Apart from the current Health Bill in the National Assembly, what other measures has the Cabinet Secretary put in place to prevent

similar occurrence in the future in the country, given that the responsibility of developing and communicating national health policy rests with the National Government, and

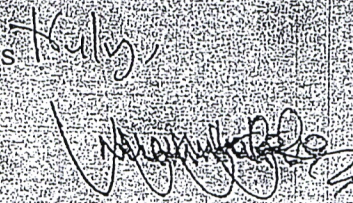
4. Given the hype and promises that accompanied the recently gazetted NHIF rates and services, why are accidents and emergencies not universally covered?

In order to assist the Chairperson to respond to the issues raised, this is to request your office to provide a comprehensive Statement to the Committee on or before **Monday, 26th October, 2015**. A copy of the Hansard of the Senate proceedings on Tuesday, 13th October, 2015 is attached for your reference.

The purpose of this letter is to request your office to respond to the issues raised here above and present the preliminary statement to the Committee by **15th October, 2015** and a comprehensive statement on or before

Ms. Marya Adjibodou, (0722) 716132 is the Clerk to the Committee, and is responsible for arrangements relating to this matter.

Yours


J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.

Dr. Khadija Kassachoon,
Principal Secretary
Ministry of Health
Afya House, Cathedral Road
P.O. Box 30016-00100
NAIROBI.