
PUBLIC PROTECTOR
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REPORT ON AN INVESTIGATION INTO ALLEGED UNLAWFUL DISPOSAL OF MEDICAL WASTE AND DISCOURTEOUS CONDUCT OF STAFF AT THE G F JOOSTE HOSPITAL
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Executive Summary

(i) The Public Protector conducted an investigation into a complaint from a member of the public who had been injured by stray medical waste being kicked about by children in a public road of Manenberg, Cape Town. When she subsequently sought medical attention at the G F Jooste Hospital close to where the incident occurred, she was allegedly given the run-around and ridiculed.

(ii) The following findings were made:

(a) The waste management procedures and controls of the Western Cape Department of Health failed in this instance, which led to unlawful disposal of medical waste.

(b) There is a need for training of staff at the Nyanga Junction Clinic on medical waste management.

(c) The facts show that the Complainant was not treated with the required courtesy that is expected from public officials, particularly towards a person who had endured such a traumatic experience.

(d) The Western Cape Health Care Waste Management Act, 2007 provides for a regulatory framework in connection with health care waste, but it has not been put into operation yet. The Western Cape Department of Environmental Affairs and Development Planning (the custodian of this legislation) has to make a submission to the Western Cape Cabinet requesting approval to publish the Amendment Bill for introduction into the Provincial Parliament.
(iii) The following remedial action is to be taken in terms of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act:

(a) The Department should extend an apology to the Complainant regarding the inadequate standard of courtesy that was displayed towards her.

(iv) It is recommended that the Western Cape Department of Health, take urgent steps to:

(a) Ensure that staff of the Nyanga Junction clinic be trained on medical waste management.

(b) Review all medical waste management procedures, services, protocols and controls to assess their adequacy and effectiveness. This includes a review of the collection, transportation, storage and disposal procedures and practices of the relevant service provider and whether contractual obligations of the Service Level Agreement are met.

(c) In addition, to the review, conduct a comprehensive risk assessment to ascertain whether sufficient controls are in place to mitigate risks in relation medical waste management.

(v) It is further recommended that the Western Cape Department of Environmental Affairs and Development Planning as custodian of the Western Cape Health Care Waste Management Act, 2007 take urgent steps to expedite the commencement of this Act together with the enactment of the Western Cape Health Care Waste Management Amendment Bill. This Department should also refer this matter to its Directorate of Law Enforcement and Administration to consider further action.
REPORT ON AN INVESTIGATION INTO ALLEGED UNLAWFUL DISPOSAL OF MEDICAL WASTE AND DISCOURTEOUS CONDUCT OF STAFF AT THE G F JOOSTE HOSPITAL

1. INTRODUCTION

1.1 This report is submitted to the Head of the Departments of Health and of Environmental Affairs and Development Planning in the Western Cape, as well as Ms G Ely (the Complainant) in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994 (Public Protector Act).

1.2 The report pertains to an investigation of a complaint from the Complainant regarding the Department of Health's (the Department) alleged failure to properly dispose of used medical waste and the alleged discourteous conduct of staff at the G F Jooste Hospital.

2. BACKGROUND

2.1 The Public Protector received a complaint on 22 September 2008 concerning alleged improper disposal of medical waste and discourteous conduct of staff at the G F Jooste Hospital.

2.2 GF Jooste Hospital is located in the area of Manenberg.

2.3 A short distance from G F Jooste Hospital is Nyanga maternity clinic which also serves the same community.

2.4 Both health facilities fall under the Western Cape Department of Health.
3. THE COMPLAINT

The Complainant made the following allegations:

3.1 On 7 April 2008 whilst walking in the suburb of Manenberg a box was kicked against the Complainant by a group of children playing with it.

3.2 She felt a sting on her right leg; she could not move the leg which was followed by a feeling of "lameness".

3.3 She looked down and noticed a syringe stuck in her leg.

3.4 She pulled out the needle and checked the box that was kicked towards her.

3.5 In the box she found hospital documents, small bottles with medical fluid, dirty swabbing, used syringes, HIV tests, surgical gloves and other medical waste.

3.6 She searched the area and found other hospital documents scattered along houses, not far from G F Jooste Hospital.

3.7 She went to G F Jooste Hospital at about 19:50 the same evening.

3.8 She was attended to by a Dr Van Der Merwe who referred her to Dr Milford. Dr Milford, in turn sent her to the Thuthuzela Centre, on the other side of the Hospital.

3.9 The nurses at the Thuthuzela sent her back to Dr Van Der Merwe advising that it was not a rape case and that there was no counsellor available.

3.10 From the Thuthuzela she was given the run-around by various Hospital officials eventually ending up with Dr Daude.
3.11 Dr Daude apparently refused to render any kind of assistance, ridiculed her by laughing at her and advised her to lodge as many complaints as she wished. Dr Daude allegedly also informed her that she does not care.

3.12 She was eventually put on antiretroviral drugs.

4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE MATTER

4.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution and its additional operational requirements are governed by the Public Protector Act. It was established to strengthen constitutional democracy.

4.2 In terms of Section 182(1) of the Constitution the Public Protector has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice. Following an investigation, the Public Protector can report on that conduct and take appropriate remedial action.

4.3 The complaint accordingly falls within the mandate of the Public Protector.

5. THE INVESTIGATION

5.1 The investigation was conducted in terms of section 6 and 7 of the Public Protector Act and comprised:

5.1.1 Assessment of the complaint;

5.1.2 Interviewing the complainant and witnesses;
5.1.3 Inspection of the medical waste as well as a site inspection;

5.1.4 Correspondence with the Department;

5.1.5 Consideration of responses from the Department; and

5.1.6 Research.

5.2 Regulatory framework

5.2.1 The Constitution makes provision in section 27 that everyone has the right to health care services and that no one may be refused emergency medical treatment. The latter Constitutional imperative is confirmed by the National Health Act, 2003, which stipulates in section 5 that nobody may be refused emergency treatment. Further, in terms of section 24 of the Constitution everyone has the right to an environment that is not harmful to their health or well-being.

5.2.2 The Western Cape Health Care Waste Management Act, 2007 provides as follows:

5.2.2.1 Section 1 defines health care waste as-

"(1) any waste—

(a) generated by or derived from medical care or medical research; or

(b) that has been in contact with blood, bodily fluids or tissues from humans, or infected animals from veterinary practices;"
any waste under subparagraph (a), including but not limited to, the following categories of waste:

Infectious waste: Waste that is suspected to contain pathogens in a sufficient concentration or quantity to cause disease in susceptible hosts. This category includes cultures and stocks of infectious agents from laboratory work; waste from surgery and autopsies on corpses with infectious diseases; waste from infected patients in isolation wards; waste that has been in contact with infected patients undergoing haemodialysis; infected animals from laboratories; sanitary waste materials and tissues (including swabs) and any other instruments or materials that have been in contact with infected persons or materials.

Sharp waste: Includes items that could cause cuts or puncture wounds and includes, but is not limited to, needles, hypodermic needles, scalpels and other blades, knives, infusion sets, saws, broken glass and nails, and the word “sharp” has a corresponding meaning.”

5.2.2.2 Section 6(1) of this Act provides that-

“A generator, transporter, treater or disposer of health care risk waste has a duty of care to implement reasonable measures to ensure, in accordance with this Act and any other relevant legislation, that all health care risk waste is minimised, separated at source, packaged, stored, transported, treated and disposed of, where applicable, in a safe manner that poses no threat to human health or the environment.”

5.2.2.3 However, even though officials confirmed that the Departments of Health and Environmental Affairs are guided by this Act enacted on 18 December 2009, the date of commencement of this Act is still to be proclaimed. The Department of the Premier indicated that the reason for this is because, soon after this provincial Act was enacted, National Government enacted the
National Environmental Management: Waste Act, 2009, which amended and repealed certain of the provisions to which the provincial Act referred. This necessitated various amendments to the provincial Act. The Draft Western Cape Health Care Waste Management Amendment Bill was published for comments on 5 October 2009. The Western Cape Department of Environmental Affairs and Development Planning (the custodian of this legislation) is currently drafting a Cabinet submission requesting approval from the Provincial Cabinet to publish the Amendment Bill for introduction into the Provincial Parliament. After this, the Standing Committee will consider the Amendment Bill and then send it to the Provincial Parliament for adoption, following which the Premier will assent to the Amendment Bill and determine the date when it will come into operation.

5.2.2.4 Furthermore, the Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste of the Department of Water Affairs and Forestry (Second Edition 1998) stipulates that the generator is responsible for the management of hazardous waste from its inception until its final disposal.

5.2.3 Rule 27A of the Ethical Rules of Conduct for Practitioners registered under the Health Professions Act, 1974 issued under Government Notice No 717 of 4 August 2006, in terms of section 49 of the latter Act, provides:

"A practitioner shall at all times-

(a) act in the best interests of his or her patients;

(b) respect patient confidentiality, privacy, choices and dignity;

(c) maintain the highest standards of personal conduct and integrity;"
(d) provide adequate information about the patient's diagnosis, treatment options and alternatives, costs associated with each such alternative and any other pertinent information to enable the patient to exercise a choice in terms of treatment and informed decision-making pertaining to his or her health and that of others;

(e) keep his or her professional knowledge and skills up to date;

(f) maintain proper and effective communication with his or her patients and other professionals; ...

5.2.4 Regulation 2 issued under Government Notice No 102 of 6 February 2009 in terms of section 61(1)(h) of the Health Professions Act, 1974 provides that a complaint regarding alleged unprofessional conduct by a person registered under that Act may be lodged in writing to the Registrar, council or a professions board of the Health Professions Council of South Africa.

5.3 Information gathered and responses from the Department

5.3.1 On 24 October 2008 a site inspection was conducted and the Complainant was interviewed again. In addition to the information she had already furnished to the Public Protector, she produced evidence of medical waste. Photos of the aforesaid were also taken. Some of the labels indicated that the waste might have emanated from the Nyanga Junction Clinic and others reflected that of the Gugulethu Community Health Centre.

5.3.2 Mrs Solly, a supervisor at Proudly Manenberg, a cleaning company in Manenberg was interviewed. She advised that cleaners come into contact with medical waste on a regular basis in that area. Mrs Solly pointed another area out where used syringes were scattered. It was further established that
there is a family planning clinic in Nyanga junction, about 100 metres from the area where the Complainant was allegedly injured by the syringe.

5.3.3 The complaint was raised in writing with the Department and the following (first) response was received on 12 February 2009:

5.3.3.1 It was conceded that on the basis of preponderance of circumstantial evidence the needle that injured the Complainant “probably” emanated originally from the Nyanga Junction Clinic.

5.3.3.2 The Department confirmed that needles and their attached syringes together with other sharp instruments are supposed to be separated out from medical waste stream and placed in “sharps” containers that are puncture proof. If the syringe and attached needle were found in a box that had other hospital waste in it, it was not according to Departmental regulations and practices.

5.3.3.3 It was stated that medical waste should be gathered at points within institutions that are not open to the general public and kept in areas that are staffed 24/7 by health workers. The medical waste should be collected from various points within institutions by trained health care workers and transported to a secure place (usually locked and out of reach of patients and visitors and general public). Thereafter a certified medical waste contractor frequently removes it in bulk for final disposal.

5.3.3.4 As far as the possible reasons for the stray medical waste are concerned the Department indicated that it “employs people who are not always 100% reliable and that it is not out of realms of possibility that there were one or more slip-ups that allowed an unguarded needle into a public area”.

5.3.3.5 Another possible lapse in the medical waste management control systems could apparently be attributed to the fact that the Nyanga Junction clinic is a former City of Cape Town Council Clinic and was taken over by the Provincial
Government of the Western Cape. As a result it had to adopt to the standards, procurement procedures, work methods, staff training and staff discipline of the latter.

5.3.3.6 Furthermore, the Department indicated that new protocols require that a needle be disposed of together with the attached syringe. The needle/syringe has to be disposed of as a unit, thus sharps volumes have significantly increased and this might have brought about shortage of empty “sharps” containers.

5.3.3.7 The Department stated that there is good evidence that the offending medical waste did not originate from G F Jooste Hospital and an inspection on more than one occasion has confirmed that the custodianship of their medical waste is satisfactory.

5.3.3.8 With regard to the allegation that the Complainant was given the run-around, the Department stated that part of the annoyance of the Complainant was caused by the unavailability of the mandatory counsellor when an HIV test is performed. According to the G F Jooste Hospital records, the Complainant was “agitated” so much that it was noted on her file. The remark is made that the medical staff probably had much better grasp than the Complainant had of “her chances of contracting HIV” and were apparently doing their professional duty of administering their care appropriately under the circumstances. Given the agitated state of the Complainant and the often stressful work at the G F Jooste Hospital, the Department conceded that it is possible that one or more of the staff were provoked into less than courteous response. However, this is not condoned by the Department and had been addressed as an internal matter by the head of that institution.

5.3.4 In view of the above-mentioned response, a letter was sent to the Head of the Department in terms of section 7(9) of the Public Protector Act to afford him the opportunity to comment on possible adverse findings. The following
response was received from the Head of the Department on 22 September 2009.

5.3.4.1 It is stated that the responsibility for collection and disposal of medical waste from Nyanga Junction Clinic is outsourced to Hlumani Wasteman and a record is kept in connection with the waste management contract detailing volumes, weights and type of medical waste collected, stored, transported to, disposed of in undertaking this service. The Head of Department asserts that the contractor has the duty of care set out in relevant legislation.

5.3.4.2 Each Clinic/Hospital (facility) in the Department has a designated internal storage point for medical waste that adheres to minimum precautionary or legislative measures for safe storage, and labelling is used with the name of the facility, responsible person and telephone number. Each staff member who disposes of medical waste is responsible for its safe segregation and handling to the designated internal points.

5.3.4.3 The Head of Department further advised that the Department regrets that the Complainant suffered this particular sharps injury, which should not have happened. Apparently the Department is not able to establish whether the presence of the medical waste emanated from an act or omission on the part of its own staff or an act or omission on the part of the appointed contractor.

5.3.4.4 It was repeated that the medical waste management services are outsourced. It has, following the identification of a problem with the room intended for the safety storage of medical waste at Gugulethu Community Health Centre, upgraded and secured the room with a lockable door and screened off the window opening to prevent illegal access; increased the frequency of routine cleansing of the floor area and called the medical waste contractor on a case by case basis to deal with any specific waste concerns.
5.3.4.5 With regard to the issue whether or not sufficient sharps containers for needles and syringes are available, the Department reiterated that medical waste services are outsourced. The contractor shall apparently provide all receptacles, storage containers, consumables and equipment for the provision of the service. With the exception of equipment, the contractor shall ensure each facility has sufficient stock of such items to meet the normal demand of waste production.

5.3.4.6 As far as the non-availability of an HIV counsellor to the Complainant is concerned, it is stated that in December 2008, the Department implemented a revised work procedure for HIV post exposure prophylaxis (PEP). The procedure includes access to voluntary HIV testing and counselling services for all staff and clients during office hours via two AIDS Counsellors from an NGO. The immediate management of PEP includes administering the first dose of zidivudine (AZT) 300mg and lamivudine (3TC) 150mg immediately, unless PEP is definitely not indicated. It is important to note that thorough, confidential pre-test counselling is performed before HIV testing can be conducted by a doctor, particularly after hours, during consultation to establish the need for PEP.

5.3.4.7 As regards possible contraventions by staff of the Batho Pele principles and Ethical Rules of Conduct, the Head of Department stated that Batho Pele training was done on a routine basis and forms part of compulsory training in all wards and clinical areas at G F Jooste Hospital. Batho Pele Principles are publically displayed throughout the hospital and in the patient records on the wards using A4 size flyers. Courtesy is apparently proactively encouraged with induction and in monitoring the implementation of changes directly suggested by complaints and the investigation of them. Further, ostensibly conflict was identified as a risk in the last annual risk assessment and staff members have and is being trained for conflict management.
6. EVALUATION OF EVIDENCE

6.1 The investigation revealed that there was clearly improper and unlawful disposal of medical waste and that the Department's waste management procedures and controls failed in this instance. Whether the waste originated from the Nyanga Junction Clinic or the Gugulethu Community Health Centre is neither here nor there. The Department oversees these health facilities and is ultimately responsible and accountable.

6.2 Further, the Head of Department was at pains to explain that it was not able to establish whether the medical waste emanated from an act/omission on the part of its own staff or an act/omission on the part of the appointed contractor. Similarly, the fact that the Department's health facilities at some point passes the custody of medical waste to other authorised handlers, does not abrogate the Department to ensure its ultimate safe disposal.

6.3 The Department conceded that staff at the Nyanga Junction Clinic had to adapt to standards, procurement procedures and work methods. The Department did not contest the observation that in particular this staff should be trained including on medical waste management.

6.4 The investigation further revealed that there was indeed an altercation between the Complainant and staff at the G F Jooste Hospital. It appears that this might, amongst other things, have been caused by unavailability of mandatory HIV counsellors and also the apparent stressful work at G F Jooste Hospital. The Complainant maintained that she was given the run-around, a fact not disputed by the Department. The Department also admitted "less than perfectly courteous responses" were uttered to the Complainant. This is disconcerting, particularly when health care practitioners are involved. However, the Department advised that the specific staff member involved is no longer in the employ of the Department and that certain remedial and preventative measures were taken by the Department.
In this regard the Complainant is further at liberty to lodge a complaint with the Health Professions Council of South Africa regarding the alleged unprofessional conduct of the health care worker. It is also noteworthy that shortly after lodging the complaint with the Public Protector, the Complainant advised that she was being assisted by an attorney on a pro bono basis to consider instituting any civil claims.

6.5 To its credit, the Department is commended for its cooperation during this investigation as well as the steps that it has already taken to address the situation, e.g. in relation to the storage of medical waste at the Gugulethu Community Health Centre, the revised work procedure for HIV post exposure prophylaxis as well as Batho Pele and conflict management training.

6.6 Finally, Dr E Palmer, Director of Law Enforcement and Administration (Green Scorpions) of the Department of Environmental Affairs and Development Planning indicated that he was unaware of this incident, but it falls within their ambit.

7. FINDINGS

7.1 It is found that that the Department’s waste management procedures and controls failed in this instance, which led to unlawful disposal of medical waste.

7.2 There is a need for training of staff at the Nyanga Junction Clinic on medical waste management.

7.3 The facts show that the Complainant was not treated with the required courtesy that is expected from public officials, particularly towards a person who had endured such a traumatic experience.
7.4 The Western Cape Health Care Waste Management Act, 2007 provides for a regulatory framework in connection with health care waste, but it has not been put into operation yet. The Western Cape Department of Environmental Affairs and Development Planning (the custodian of this legislation) has to make a submission to the Western Cape Cabinet requesting approval to publish the Amendment Bill for introduction into the Provincial Parliament.

8. RESOLUTION

8.1 Remedial Action:

In terms of the provisions of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, the remedial action to be taken is as follows:

8.1.1 The Department should extend an apology to the Complainant regarding the inadequate standard of courtesy that was displayed towards her.

8.2 Recommendations

8.2.1 It is recommended that:

(a) The Western Cape Department of Health should ensure that staff of the Nyanga Junction Clinic be trained on medical waste management.

(b) The Department of Health must also review all medical waste management procedures, services, protocols and controls to assess their adequacy and effectiveness. This includes a review of the collection, transportation, storage and disposal procedures and practices of the relevant service provider and whether contractual obligations of the Service Level Agreement are met.
(c) In addition to the review, the Department of Health should conduct a comprehensive risk assessment to ascertain whether sufficient controls are in place to mitigate risks in relation to medical waste management.

(d) The Western Cape Department of Environmental Affairs and Development Planning as custodian of the Western Cape Health Care Waste Management Act, 2007 should expedite the commencement of this Act together with the enactment of the Western Cape Health Care Waste Management Amendment Bill. This Department should also refer this matter to its Directorate of Law Enforcement and Administration to consider further action.

9. CONCLUSION

9.1 The Public Protector will monitor the implementation of these recommendations on a quarterly basis.

ADV T N MADONSELA
PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA
DATE: 31/03/2010
Assisted by W Kamsela, Investigator: Western Cape, File no: 7/2-8394/08WC