

AMBULANCE ETHICS

Report on an investigation into allegations of violation of the Executive Ethics Code by the KwaZulu-Natal Health MEC, Dr Sibongiseni Dhlomo

Report No: 12 of 2014/15



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PUBLIC PROTECTOR
SOUTH AFRICA

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**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1)
OF THE PUBLIC PROTECTOR ACT, 1994 AND THE EXECUTIVE MEMBERS'
ETHICS ACT, 1998**



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EXECUTIVE ETHICS CODE BY THE KWAZULU-NATAL HEALTH MEC, DR
SIBONGISENI DHLOMO**

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EXECUTIVE SUMMARY

- (i) "Ambulance Ethics" is my report as the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 section 3 of the Executive Members' Ethics Act, 1998 read with section 8(1) of the Public Protector Act, 1994 .
- (ii) The report communicates my findings and the appropriate remedial action to correct the situation, as envisaged in section 182(1)(c) of the Constitution, following an investigation into a complaint lodged by Mr Sizwe Mchunu, a Member of the KwaZulu-Natal (KZN) Provincial Legislature representing the DA (the Complainant), on 14 December 2012, alleging a breach of the Executive Ethics Code by Dr Sibongiseni Dhlomo, KZN Member of Executive Council (hereinafter referred to as MEC) for Health, involving improper use of an emergency medical helicopter (medical helicopter) to attend to a private political event that was not a medical emergency thus extraneous to the purposes of the medical helicopter. The complaint included an allegation that the unavailability of the said medical helicopter for a child injured in an accident that occurred while it was flying MEC Dhlomob may have caused the death of that child.
- (iii) In the main, the complaint was that 1) MEC Dhlomo utilized an emergency medical helicopter of the Department of Health to attend a funeral 2) MEC Dhlomo's usage of the emergency medical helicopter on the day in question resulted in the Department being unable to utilise it to attend to an accident resulting in the death of a minor.
- (iv) The Complainant alleged that on 3 November 2012, MEC Dhlomo used the South African Air Mercy Red Cross Trust (the Red Cross Trust) an only available emergency medical helicopter based in the Ethekwini Metro, to fly to



Hlabisa community on 3 November 2012, purposes not related to its intended use.

- (v) Given that the purpose of the medical helicopter is to attend to medical emergencies in a responsive way, the 750km round trip to Hlabisa was in conflict with this public healthcare service being responsive to the needs of the public, and thereby in conflict with good governance and, more specifically, in violation of his duties under the Executive Ethics Code. MEC Dhlomo commandeered the medical helicopter for reasons that appear not to be justifiable.
- (vi) The use of the medical helicopter resulted in the failure by emergency medical services to save the life of a minor child who died in a car accident on the same day and during the same period that the helicopter was being used by the MEC.
- (vii) MEC Dhlomo did not lodge a flight plan with relevant authorities. He used the emergency medical helicopter to attend to his "private interests" which may have included campaigning for his political party ahead of the Hlabisa Municipal by-elections which were to be held on 5 December 2012, and/or attending a funeral of Hlabisa Hospital Head, Dawn Zungu's relative.
- (viii) While MEC Dhlomo did not dispute that he indeed used the emergency medical helicopter to attend a funeral, he submitted that he was not exclusively attending the funeral. He maintained that his main reason was to address the community of Hlabisa on issues that had been raised by the community.
- (ix) In investigating the matter, I had to consider the probity of the usage of the emergency medical helicopter by the MEC.
- (x) On analysis of the complaint and information sourced, the following issues were identified and investigated:



1. Did MEC Dhlomo improperly use an emergency medical helicopter of the Department of Health to attend a funeral in violation of the Executive Ethics Code?
 2. Did the utilisation of the emergency medical helicopter by MEC Dhlomo result in the failure of the emergency services to provide emergency medical care to a child resulting in his death?
- (xi) The investigation process included the gathering of correspondence and analysis of relevant documents, interviews and meetings. Applicable legislation, Treasury Regulations, policies, internal prescripts of the KZN Health and sector benchmarks were also sourced and considered.
- (xii) Key laws and policies taken into account to help me determine if there was any improper conduct on the part of the MEC, were principally those regulating the ethical standards expected of members of the Executive, including MECs as provided for in section 2 of the Executive Members' Ethics Act no 82 of 1998, section 136 of the Constitution regulating ethical conduct for MECs section 237 requiring constitutional obligations to be given priority and performed with diligence and the Executive Ethics Code of 2000 setting out minimum ethical standards for all members of the Executive.
- (xiii) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:
1. Regarding whether MEC Dhlomo improperly used an emergency medical helicopter of the Department of Health to attend a funeral in violation of the Executive Ethics Code, I find that:



- (aa) MEC Dhlomo did use the emergency medical helicopter to fly to Hlabisa on 03 November 2012 but he was not exclusively attending a funeral. His main mission was to address the community of Hlabisa at the funeral about an incident that took place in Hlabisa hospital which due to the vastness of distance and bad roads, would have been impossible to achieve in one day.
- (bb) The use of the emergency medical helicopter for activities that do not constitute a medical emergency is improper for various reasons including feeding perceptions of using public emergency services for personal comfort at the expense of the public.
- (cc) However, I have accepted that MEC Dhlomo *bona fide* believed it was not wrong to use the emergency medical helicopter as this was part of a long standing agreement between the Department and the Red Cross Trust. The contract was also captured in an internal Standard Operating Procedure regarding circumstances under which the emergency medical helicopter could be used.
- (dd) Although making financial sense with regard to optimal use of available ambulance hours, the contract was ill-conceived because, among other things, while executing an administrative mission the ambulance would not be readily available for medical emergencies.
- (ee) The MEC Dhlomo's conduct was not in violation of the Executive Ethics Code.
2. Regarding whether the utilisation of the emergency medical helicopter by MEC Dhlomo resulted in the failure of the emergency services to provide emergency medical care to a child resulting in his death, I find that:



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- (aa) The Department did respond expeditiously to the accident using ground vehicles.
- (bb) There is no evidence that indicates that the emergency medical helicopter that was used by the MEC on the day in question was required for that emergency or any other.
- (cc) However, the policy is inappropriate as there is a real risk of a person dying because of the emergency medical ambulance being unavailable while being used for administrative purposes. The arrangement also feeds negative perceptions regarding competing needs of patients and departmental management.
- (dd) The MEC has accepted that the policy presents uncomfortable practical and ethical risks and to have it reviewed as soon as possible.
3. Given the distance between Durban and Hlabisa. Had MEC Dhlomo travelled by road, he would not have been on time to reach Hlabisa in time to address the community. A Google Map search indicates that the distance between Hlabisa and Durban is 268km, which is approximately some 3 hours 36 minutes' drive
4. According to the MEC, his itinerary was such that his last meeting was at 11h30; he would have reached Hlabisa at around 15h00. A study of the AMS Captains Log show that the helicopter trip from Durban to Hlabisa took 47 minutes and the MEC used his vehicle to return to Durban

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5. Though not investigated, it has been brought to my attention that other provinces have similar arrangements with their helicopter ambulances.
 6. Appropriate remedial action I take in terms of section 182(1)(c) of the Constitution is to call on:
 - (a) **The Head of Department, Dr Zungu** to take immediate action to review the contract between the Department and the Red Cross Trust to make provision for a separate helicopter to cater for non-medical emergencies.
 - (b) **The Minister of Health and MECs**, acting under the auspices of MinMECs, to consider reviewing arrangements pertaining to helicopter ambulance services to establish if other provinces have similar arrangements and to correct the situation if that is the case.



A REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF VIOLATION OF THE EXECUTIVE ETHICS CODE BY THE KWAZULU-NATAL HEALTH MEC, DR SIBONGISENI DHLOMO, MPL

1. INTRODUCTION

- 1.1. "Ambulance Ethics" is my report as the Public Protector issued in terms of 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), section 3(2)(b) of the Executive Members' Ethics Act, 1998 (EMEA) read with section 8(1) of the Public Protector Act, following a complaint lodged with my office on 14 December 2012, by Honourable Mr Sizwe Mchunu MP, a Democratic Alliance (DA) Member of the KwaZulu Natal Legislature.
- 1.2. The report is submitted to the Premier of KwaZulu-Natal (KZN), Honourable Mr Senzo Mchunu.
- 1.3. Copies of the report are also provided in terms of sections 8(1) of the Public Protector Act to:
 - 1.3.1. The Speaker of the KZN Provincial Legislature, Honourable Lydia Johnson MPL;
 - 1.3.2. The KZN MEC for Health, Dr S Dhlomo, MPL;
 - 1.3.3. The Head of the Department of Health, KZN, Dr S Zungu and
 - 1.3.4. The Complainant, Honourable Sizwe Mchunu, MPL.
- 1.4. The report relates to the investigation into allegations of a breach of the Executive Ethics Code by the KZN MEC for Health, Dr Dhlomo.



2. THE COMPLAINT

- 2.1. Honourable Mr Sizwe Mchunu, a representative of the Democratic Alliance in the KZN Provincial Legislature, (the Complainant) lodged a complaint with my office in terms of section 4(1)(b) of the Executive Members' Ethics Act (EMEA) On 14 December 2012.
- 2.2. The Complainant alleged that MEC Dhlomo had acted in violation of section 136(2) of the Constitution and the Executive Ethics Code in that:
 - 2.2.1. MEC Dhlomo used the South African Air Mercy Red Cross Trust (the Red Cross Trust) emergency medical helicopter to fly to Hlabisa community on 3 November 2012;
 - 2.2.2. It was the only emergency medical helicopter based in the Ethekewini Metro;
 - 2.2.3. He used the said emergency medical helicopter for purposes not related to its intended use by using it to travel to the area of Hlabisa;
 - 2.2.4. Given that the purpose of the medical helicopter is to attend to medical emergencies in a responsive way, the 750km round trip to Hlabisa was in conflict with this public healthcare service being responsive to the needs of the public, and thereby in conflict with good governance;
 - 2.2.5. MEC Dhlomo commandeered the medical helicopter for reasons that appear not to be justifiable;
 - 2.2.6. The use of the medical helicopter resulted in the failure by emergency services to save the life of a minor child who died in a car accident on the



same day and during the same period that the helicopter was being used by the MEC.

2.2.7. MEC Dhlomo did not lodge a flight plan with relevant authorities;

2.2.8. MEC Dhlomo used the emergency medical helicopter to attend to his "private interests" which may have included; campaigning for his political party ahead of the Hlabisa Municipal by-elections which were to be held on 5 December 2012, and/or attending a funeral of a relative to the Head of the Hlabisa Hospital.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1. Mandate of the Public Protector

3.1.1. The Public Protector was established under section 181(1)(b) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.1.2. Section 182 of the Constitution provides that:

"(1)The Public Protector has the power as regulated by legislation-

(a) 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;

(b) to report on that conduct; and

(c) to take appropriate remedial action.

3.1.3. Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.





- 3.1.4. The Public Protector is given additional power by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector Act further mandates him or her to resolve, at his or her discretion, related disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.
- 3.1.5. Sections 3(2)(b) and 4(1)(b) of the Executive Members' Ethics Act provide that the Public Protector must investigate any alleged breach of the Executive Ethics Code on receipt of a complaint by a Member of a Provincial Legislature against an MEC.
- 3.1.6. When investigating an alleged breach of the Executive Ethics Code, I, by virtue of section 3(4) of this Act, have all the powers vested in terms of the Public Protector Act. Section 4 of the Executive Members' Ethics Act further states that nothing in this Act may prevent me from investigating any complaint by a member of the public in accordance with the Public Protector Act.
- 3.1.7. The complaint lodged against the MEC relates to allegations of improper conduct in state affairs and unethical conduct by the MEC, and accordingly falls within the remit of the Public Protector.
- 3.1.8. Jurisdiction and investigative powers were not disputed by any of the parties.

4. THE INVESTIGATION

4.1. Methodology

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- 4.1.1. The investigation was conducted in terms of section 182 of the Constitution, sections 3 and 4 of the Executive Members' Ethics Act and sections 6 and 7 of the Public Protector Act.
- 4.2. Approach to the investigation
- 4.2.1. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:
- What happened?
 - What should have happened?
 - Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?
 - In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?
- 4.2.2. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation, through interviews, meetings and documents. In this particular case, the factual enquiry principally focused on whether or not the MEC acted improperly in relation to the usage of the emergency medical helicopter as there was no dispute that the trip in question was undertaken.
- 4.2.3. The enquiry regarding what should have happened, focused on the law or rules that regulate the ethical standard that should have been met by the MEC as regulated by the Executive Ethics Code and other regulatory frameworks with implications for applicable ethical standards.
- 4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing injustice or prejudice suffered or damage caused as a

consequence of improper conduct involving maladministration, unethical conduct or any other impropriety. Where a Complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had the Department or organ of state complied with the regulatory framework setting the applicable standards for good administration. The same is done where the wrongful conduct negatively affects the general populace. However, in appropriate circumstances, the remedial or corrective action primarily seeks to prevent a recurrence.

- 4.3. On analysis of the complaint, the following issues were considered and investigated:
 - 4.3.1. Did MEC Dhlomo improperly use an emergency medical helicopter of the Department of Health to attend a funeral in violation of the Executive Ethics Code?
 - 4.3.2. Did the utilisation of the emergency medical helicopter by MEC Dhlomo result in the failure of the emergency services to provide emergency medical care to a child resulting in his death?
- 4.4. The Key Sources of information
 - 4.4.1. *Documents*
 - 4.4.1.1. Executive statement on the use of the helicopter by MEC for Health, Dr Dhlomo to Provincial Legislature dated 28 November 2012 (including extracts of SMS conversations between MEC Dhlomo, VIP Protector and the Pilot);
 - 4.4.1.2. MEC Dhlomo's statement to the Public Protector on the use of the emergency medical helicopter dated 18 February 2013;



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- 4.4.1.3. Agreement entered into between The KZN Provincial Department of Health and the South African Red Cross Air Mercy Service Trust dated 6 November 2003;
- 4.4.1.4. National Treasury Contract Management Regulations: Special Requirements and Conditions of Contract: rendering of a National Aero-Medical Service to the State for the period of 01 April 2012 to 31 March 2015;
- 4.4.1.5. Administration Flight: Standing Operational Procedure (FSOP): KZN Operations;
- 4.4.1.6. Copy of the flight plan dated 03 November 2012; and
- 4.4.1.7. A google map search.
- 4.4.2. *Interviews Conducted*
- 4.4.2.1. Interview with the investigation team and the Director-General of the KZN Department of Health, Mr N. Sithole on 08 February 2013 held at the KZN Department of Health, Pietermaritzburg.
- 4.4.2.2. Interview conducted with the investigation team and the Head of KZN Department of Health, Dr Zungu on 08 February 2013 held at the KZN Department of Health, Pietermaritzburg, and
- 4.4.2.3. Interview with the investigation team and MEC Dhlomo on 11 February 2013.
- 4.4.2.4. My Interview with MEC Dhlomo on 06 June 2013 held at my office.
- 4.4.3. *Correspondence sent and received*





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- 4.4.3.1. Letter from Mr Sizwe Mchunu to the Public Protector dated 11 December 2012;
 - 4.4.3.2. Letter from the Public Protector to Dr Z Mkhize dated 14 December 2012;
 - 4.4.3.3. Letter from the Public Protector to Dr Dhlomo dated 14 December 2012;
 - 4.4.3.4. Letter from the Public Protector to Mr Sizwe Mchunu dated 30 January 2013;
 - 4.4.3.5. Letter from the Public Protector to Dr Dhlomo dated 23 June 2014;
 - 4.4.3.6. Letter from Dr Dhlomo to the Public Protector dated 26 September 2014;
 - 4.4.3.7. Letter from the Public Protector to Dr Dhlomo dated 01 October 2014.
 - 4.4.3.8. Numerous emails to and from the Public Protector and the KZN Department of Health dated 05 February 2013;
 - 4.4.3.9. An email from the Public Protector to Mr Sizwe Mchunu dated 05 February 2013;
 - 4.4.3.10. An email from the Public Protector to Councilor VF Hlabisa dated 05 February 2013;
 - 4.4.3.11. An email from KZN Department of Health to the Public Protector dated 06 February 2013; and
 - 4.4.3.12. An email from KZN Department of Health to the Public Protector dated 14 February 2013;
 - 4.4.4. *Legislation and other prescripts*
 - 4.4.4.1. The Constitution of the Republic of South Africa, 1996;





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- 4.4.4.2. The Public Protector Act 23 of 1994;
 - 4.4.4.3. The Executive Members' Ethics Act 82 of 1998;
 - 4.4.4.4. The Executive Ethics Code of 2000 and;
 - 4.4.4.5. National Treasury Regulation 16 gazetted on 28 November 2003.

5. THE STANDARD THAT SHOULD HAVE BEEN COMPLIED WITH

5.1. Ethical Standards Set by the Constitution

5.1.1. Section 136 of the Constitution provides that Members of the Executive Council of a province must act in accordance with a Code of Ethics prescribed by National Legislation.

5.1.2. In terms of section 136, Members of the Executive Council may not:

"(a).....

(b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests;

(c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

5.1.3. Section 195 of the Constitution provides the basic values and principles governing public administration. It provides that:

"(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:



- (a) *A high standard of professional ethics must be promoted and maintained.*
- (b) *Efficient, economic and effective use of resources must be promoted.*
- (c) *People's needs must be responded to...*

5.1.4 Section 237 of the Constitution provides that:

"All constitutional obligations must be performed diligently and without delay"

5.2. The Executive Ethics Code

5.2.1. The conduct of Cabinet, Deputy Ministers and members of the Provincial Executive Council is regulated by the Executive Ethics Code. MECs are members of the provincial executive.

5.2.2. Paragraph 2.1 of the Executive Ethics Code provides that:

"General Standards

- (1) *Members of the Executive must to the satisfaction of the President or the Premier [the latter being applicable in this instance]*
 - (a) *perform their duties and exercise their powers diligently and honestly;*
 - (b) *fulfil all the obligations imposed upon them by the Constitution and law; and*
 - (c) *act in good faith and in the best interest of good governance; and*
 - (d) *act in all respects in a manner that is consistent with integrity of their office or the government*
- (2) *in deciding whether members complied with the provisions of clause 2.1,... the Premier,...must take into account the promotion of an open, democratic and accountable government.*
- (3) *Members of the Executive may not:*



- (a) *wilfully mislead the legislature to which they are accountable;*
- (b) *wilfully mislead the President or the Premier or, as the case may be;*
- (c) *act in a way that is inconsistent with their position;*
- (d) *use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;*
- (e) *use information received in confidence in the course of their duties otherwise than in connection with the discharge of their duties;*
- (f) *expose themselves to a situation involving the risk of a conflict between their official responsibilities and their private interests;*
- (g) *receive remuneration for any work or service other than for the performance of their functions and members of the Executive or*
- (h) *make improper use of any allowance or payment properly made to them, disregard the administrative rules, which apply to such allowances or payments."*

6. EVIDENCE AND INFORMATION OBTAINED

Regarding alleged improper use an emergency medical helicopter of the Department of Health to attend a funeral in violation of the Executive Ethics Code?

6.1.1. Complainant's case

6.1.1.1. The Complainant submitted a statement alleging that MEC Dhlomo had violated a number of the provisions of the Executive Ethics Code. He alleged the following particular sections of the code were violated:

- (i) Section 2.1(c): "[Members of the Executive must] *Act in good faith and in the interest of good governance.*" The submission by the



Complainant is that given that the purpose of the medical helicopter is to attend to medical emergencies in a responsive way, the 750km round-trip to Hlabisa was in conflict with good governance.

- (ii) Section 2.1(d): "[Members of the Executive must] *Act in all respect in a manner that is consistent with the integrity of their office or the government.*" In this regard the Complainant lamented the MEC's alleged failure to provide full details of the flight as requested by the media and the Democratic Alliance following the incident. The Parliament Questions posed to the MEC as well as his answers thereto were provided to me by the Complainant.
- (iii) Section 2.3(a): "*Members of the Executive may not wilfully mislead the legislature...*" In this regard, the Complainant pointed out to what he believes are discrepancies in the explanation provided by the MEC to the legislature and the explanation as reported in the Sunday Tribune.
- (iv) Section 2.3(f): "*Members of the Executive may not expose themselves to any situation involving the risk of a conflict of interest between their official responsibilities and private interests.*" In this regard the Complainant avers that the reasons provided by the MEC to justify the visit to Hlabisa as a partially medically related emergency may well be false as there were other private interests at play in using the helicopter. The Complainant submitted that a potential reason could be for campaigning purposes ahead of the Hlabisa Municipal by-elections which were due for elections

6.1.2. The Response from the Department



- 6.1.2.1. The Department and MEC Dhlomo did not deny that MEC Dhlomo used the helicopter on the day in question. The only difference between the Complainant's allegations the version resented by the Department and MEC Dhlomo is that the Department and MEC Dhlomo argued and provided evidence showing that the trip was for an administrative purpose involving the MEC addressing the community of Hlabisa.
- 6.1.2.2. The Department further argued that the trip was in line with its longstanding contract with the Red Cross Trust, entered into on 1 April 2003 to 31 March 2012, for helicopters to provide emergency ambulance services, the contract allowed overflow hours to be used by management for administrative emergencies.
- 6.1.2.3. A new contract on essentially the same terms and conditions was entered into between the Department and the Red Cross Trust for a further period from 1 April 2012 until 31 March 2015.
- 6.1.2.4. The pricing structure as per the agreement was for a basic operating fee which is a fixed monthly charge which included cost elements such as aircraft, pilot salaries and training infrastructure (hanger space, insurance, general overheads and other fixed costs). The basic operating fee was a fixed fee per month that included thirty (30) free flying hours per month.
- 6.1.2.5. The payment of the Air Ambulance Services is a fixed monthly service availability fee of R1 000 000.00 per rotary wing air craft, and direct operating cost payment of R6 008.66 per flight hour for the aircraft based at Durban International Airport or King Shaka International Airport.
- 6.1.3. During interviews conducted on 8 February 2013 with the HOD of the KZN Department of Health, Dr Zungu and the Director General of the KZN



Department of Health, Mr Sithole, Dr Zungu confirmed the written submission and added, among other things that:

6.1.3.1. The Department is offered 30 free hours to use per month (just like cellphone airtime), in respect of which it may use the helicopter as it deems fit. But any trip or trips undertaken by staff and the MEC had to be cleared first with the administration office; and

6.1.3.2. The authorisation and regulations of the flight schedules and usage was to be administered by the Joint Committee and currently trips were approved by the Operations Manager.

6.1.4. Information submitted to the Public Protector by the Department

6.1.4.1. Further evidence obtained during the investigation included a document titled *Standing Operational Procedure (SOP) KZN Operation* submitted to my office by the Department.

6.1.4.2. The SOP contains regulations and administration of flight services undertaken by the Department. The provisions of the SOP relevant to this investigation are:

"Flight Request Procedure

Administration Flight Requests is usually received from the DOH for Health related matters and is channelled through the DOH Senior Management and Authorising System. Some Principles that can help guide the process are:

- *Requests for an Administration Flight must be made in writing by the requesting person/Department.*



- *If the request is verbally communicated to AMS it should be followed-up with a written request at least 24 hours before the scheduled flight date for planning purposes.*
- *The written application must then be authorised by the DOH HOD or designate before the request can be undertaken. AMS will only act on a letter if Authority and/or Authorisation Number to service an Administration Flight as per agreement with DOH.*
- *The document of request for the Administration Flight should include the passenger Names, Contact Details of each passenger, ID numbers and Weight of Passenger...*
- *The flight request should also include the time and location of pick-up and destination."*

6.1.5. Interview conducted with MEC Dhlomo

- 6.1.5.1. The investigation team met with MEC Dhlomo on 11 February 2013 and I met him on 06 June 2013. The purpose was to provide MEC Dhlomo with an opportunity to engage with the investigation team and to obtain clarity and information relevant to the investigation.
- 6.1.5.2. During the interview and meeting, MEC Dhlomo confirmed the statement he made on 28 November 2012 at the Provincial Legislature. The contents of the statement, albeit more detailed, are essentially the same as the statement presented to me by MEC Dhlomo.
- 6.1.5.3. Following an interview with the investigation team, MEC Dhlomo further addressed a written statement to me on 18 February 2013. In his statement, MEC Dhlomo, *inter alia*, stated:

A handwritten signature or set of initials, possibly "T.M.", enclosed in a circular scribble.



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- 6.1.6. That on 26 October 2012, he received a call from the Mayor of Hlabisa Municipality, Councillor V.F. Hlabisa. MEC Dhlomo then met with the hospital management, Mayor, councillors of Hlabisa municipality, members of the hospital Board and the South African Police Service on 29 October 2012.
- 6.1.7. That the community was concerned about a variety of issues affecting them and the meeting was meant to address the issues.
- 6.1.8. He was informed that on Saturday, 3 November 2012, a community gathering (in form of a funeral) would be held which would go on until 13h00 on the day and that many residents would attend. Having already planned meetings on that morning, the latest he could be out of Durban after the second meeting would be 10h30. MEC Dhlomo then stated that it was for this reason that the Department arranged for the helicopter to fly him to Hlabisa.
- 6.1.9. That he was of the view that the community was getting very agitated about the incident that took place at Hlabisa Hospital and since this very same community was going to be present at the funeral venue, it was opportune to address the community at this venue. Further he addressed the community on that matter after the funeral.
- 6.1.10. MEC Dhlomo further advised that, following this meeting there were no cases reported of any unrest, attacks or community uprising at Hlabisa Municipality and this can be attributed to, among other interventions, this meeting and addressing of the community on 3 November 2012.
- 6.2. *Evaluation of evidence and factual findings on whether MEC Dhlomo improperly used an emergency medical helicopter of the Department of Health to attend a funeral in violation of the Executive Ethics Code:*

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- 6.2.1. MEC Dhlomo and his Department conceded upfront that the helicopter had been used for a non-medical emergency on the date in question and that he and his team had flown on it to Hlabisa on 3 November 2012.
- 6.2.2. The agreement signed between the Department and the Red Cross Trust, MEC Dhlomo shows that MEC Dhlomo was authorised to use the helicopter to travel to whichever area where he needed to undertake his official duties as the MEC.
- 6.2.3. When asked why he could not use the vehicle to go to Hlabisa, MEC Dhlomo stated that he had other administrative meetings which included, a community meeting which he had to preside over as chairperson, and a lecture at the University of KZN and therefore he would not have made it on time for the funeral. He stated that he used the helicopter to go Hlabisa but used his vehicle to return to Durban.
- 6.2.4. MEC Dhlomo further stated that he did not know about the flight plans and/or arrangements because that was taken care of by the administrative staff. MEC Dhlomo stated that his understanding was that there was free flying time and therefore there were no costs to be incurred when the flight was undertaken within the free flying time.
- 6.2.5. In his response to the issue regarding the booking of the helicopter, MEC Dhlomo advised that the booking of the helicopter had to be made the day prior to it being used. However, he said that the administrative staff was responsible for the bookings and/or flight arrangements. The MEC further stated that he would have used a helicopter anyway, either that of the Red Cross Trust or a hired one in the light of the number of meetings and time involved.



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- 6.2.6. According to MEC Dhlomo's response the last meeting he attended adjourned at around 11h45. He pointed out that it would have been practically impossible for him to be at the funeral on time had he travelled by road.
- 6.2.7. According to the MEC, his itinerary was such that his last meeting was at 11h30, he would have reached Hlabisa at around 15h00. A Google Map search indicates that the distance between Hlabisa and Durban is 268km, which is approximately some 3 hours 36 minutes' drive. A study of the AMS Captains Log show that the helicopter trip from Durban to Hlabisa took 47 minutes and the MEC used his vehicle to return to Durban.
- 6.2.8. Furthermore, an SMS sent to the MEC by VIP Buhle Dlangisa at 10h56 informing MEC Dhlomo that the chopper had landed. A further SMS was sent two minutes later (10h58) by Capt. K Donnellan to VIP Buhle Dlangisa informing him that he (the pilot) could wait for MEC Dhlomo for another hour and that should an emergency arise, the plan to fly MEC Dhlomo to Hlabisa would be aborted.
- 6.2.9. Independent Evidence Obtained
- 6.2.10. A google map search shows the distance between Hlabisa and Durban as 268km.
- 6.3. **Regarding whether the utilisation of the emergency medical helicopter by MEC Dhlomo resulted in the failure of the emergency services to provide emergency medical care to a child resulting in his death.**
- 6.3.1. The Department's response



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- 6.3.1.1. Dr Zungu stated that there are two emergency medical helicopters contracted to the Department. One is stationed in Richards Bay and the other at King Shaka International Airport.
- 6.3.1.2. On the day of the flight and the accident, the helicopter stationed in Richards Bay was called to the accident scene; however, the helicopter was subsequently withdrawn before it could take off.
- 6.3.1.3. Dr Zungu informed us that MEC Dhlomo was never made aware of the need for the helicopter to attend to an emergency.
- 6.3.2. MEC Dhlomo's response
- 6.3.2.1. In the same statement issued by MEC Dhlomo, he further stated that at no time during the flight did the pilot get information or an instruction that the helicopter was requested to attend to an emergency.
- 6.3.2.2. On the use of the helicopter to transport a patient, MEC Dhlomo stated that the helicopter was reserved for areas in the KZN province which pose a topographic challenge, namely:
- a) If there are difficulties to access the scene by road thus causing delays (*which according to the MEC, was not the case in this instance*);
 - b) If the accident is too far from the most appropriate medical facility (*which according to the MEC, was not the case in this instance*);
 - c) In urban environment with short distances to medical facilities, the use of the helicopter is considered if there is heavy traffic that might delay the ambulance (*this did not pose any challenge for the transporting of the patient by road*).

- 6.3.2.3. In addition to his reply to me as stated above, MEC Dhlomo included SMS communication between his VIP Protector, Mr Dlangisa and pilot Capt. K. Donnellan.
- 6.3.2.4. The SMS communication was adduced as evidence by MEC Dhlomo to show that the helicopter was always available for usage for emergency medical services at the request of the EMRS, and to further corroborate his statement that he informed the pilot that they could leave him (MEC Dhlomo) at Hlabisa, should a medical emergency arise.
- 6.3.2.5. This, according to Dr Dhlomo clearly demonstrated that the pilot was aware of his duties and although he was waiting for the MEC, the MEC would have to be left should an emergency arose.
- 6.3.2.6. An extract from the aforesaid SMS reads:
- Sms sent from VIP Buhle Dlangisa to the MEC on 3 November 2012 at 10:56: *"Chopa has landed"*
- Sms sent from the Capt. K Donnellan relayed via VIP Buhle Dlangisa to MEC Dhlomo on 3 November 2012 at 10:58: *"The pilot can wait 4 the next hour but if there's an emergency call coming through the pilot will leave the M.E.C & attend to that emergency"*
- 6.3.2.7. There is no evidence to suggest that the helicopter was called in to attend to an emergency whilst being under the MEC's use.

- 6.3.2.8. The distance between the scene of the accident (Shongweni) and the nearest hospital (Hillcrest Hospital) is 2.78 km. Other hospitals in the vicinity were:
- (a) Crompton Hospital situated 16.81 km from the scene of the accident;
 - (b) Westville Hospital situated 23.32 km from the scene of the accident and;
 - (c) Inkosi Albert Luthuli Hospital. Situated 28.54 km from the scene of the accident.
- 6.4. *Evaluation of evidence and factual findings regarding whether the utilisation of the emergency medical helicopter by MEC Dhlomo resulted in the failure of the emergency services to provide emergency medical care to a child resulting in his death:*
- 6.4.1. According to MEC Dhlomo and the HOD, the Department responded to the accident and provided the required emergency assistance to the victim. This was in the form of ground ambulance equipped with Advanced Life Support personnel.
- 6.4.2. There was no evidence which indicated that the helicopter used by MEC Dhlomo was required to attend to an emergency at the time when he utilised it to take him to Hlabisa. Neither was there evidence that showed the pilot was informed of an emergency which he needed to attend to at that time.
- 6.4.3. The extracts of SMS evidence obtained from the MEC clearly stated that; should an emergency arise and the services of the helicopter be required, the pilot should leave MEC Dhlomo at Hlabisa and attend to that emergency.



- 6.4.4. Given the distance between the scene of accident and medical facilities, a helicopter would not have been utilised.

7. MEASURING CONDUCT AGAINST THE RULES

7.1. Did MEC Dhlomo improperly use an emergency medical helicopter of the Department of Health to attend a funeral in violation of the Executive Ethics Code?

- 7.1.1. As canvassed in the evidence above, the Department had a contract permitting the use of the emergency medical helicopter for official administrative duties. The use of emergency medical helicopter for administrative purposes was not only a practice within the Department but was also catered for in section 1 of the Standard Operational Procedure (SOP): Administration of Flights.
- 7.1.2. The usage of the helicopter by MEC Dhlomo was in line with the agreement entered into between the Department and Red Cross Trust. The use of the helicopter is not only for the transportations of patients but also for the transportation of Department's health staff. However, the agreement states that priority will be given to medical emergencies.
- 7.1.3. The Department was entitled to allocated 30 hours free flying time as per the provisions of the contract. While no confirmation or evidence was obtained from the Department which shows that the trip undertaken by MEC Dhlomo on 03 November 2012 was within the 30 hours free flying time, was not an issue. The ethical question that arises is, is it proper to use a medical helicopter for administrative purposes. A further ethical question that arises is what happens if a medical emergency arises during an administrative trip.

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7.2. Did the utilisation of the emergency medical helicopter by MEC Dhlomo result in the failure of the emergency services to provide emergency medical care to a child resulting in his death?

7.2.1. The Department responded to the accident and provided the required emergency assistance to the victim. This was in the form of a ground ambulance equipped with Advanced Life Support personnel.

7.2.2. Considering the criteria used to determine whether a helicopter is required to transport a patient, there was no need for an emergency medical helicopter to attend to the scene of the accident on 3 November 2012. There were no difficulties to access the scene by road which would have necessitated the emergency medical helicopter. Given the location and distance between the scene of the accident and the hospital, an emergency medical helicopter was not required.

7.2.3. In the absence of evidence suggesting the helicopter used by MEC Dhlomo was required to attend to an emergency at the time when he utilised it to take him to Hlabisa, there appears to be no basis for finding this usage of the facility as improper.

7.2.4. The MEC's trip to Hlabisa lasted 47 minutes.

7.3 General Observations

I must indicate though that I did express some discomfort with the MEC on the arrangement. The reality is that when the emergency medical helicopter is being used for administrative reasons for the MEC or other officials; it will not be readily available for emergencies. This feeds the public perception of using public emergency services for personal comfort at the expense of the



public. This is in line with the spirit of the Constitution that people's needs must be responded to and it is necessary to promote an efficient, economic and effective use of the resources.

8. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

8.1 Regarding whether MEC Dhlomo improperly used an emergency medical helicopter of the Department of Health to attend a funeral in violation of the Executive Ethics Code, I find that:

- (aa) MEC Dhlomo did use the emergency medical helicopter to fly to Hlabisa on 03 November 2012 but he was not exclusively attending a funeral. His main mission was to address the community of Hlabisa at the funeral about an incident that took place in Hlabisa hospital which due to the vastness of distance and bad roads, would have been impossible to achieve in one day.
- (bb) The use of the emergency medical helicopter for activities that do not constitute a medical emergency is improper for various reasons including feeding perceptions of using public emergency services for personal comfort at the expense of the public.
- (cc) However, I have accepted that MEC Dhlomo *bona fide* believed it was not wrong to use the emergency medical helicopter as this was part of a long standing agreement between the Department and the Red Cross Trust. The contract was also captured in an internal

Standard Operating Procedure regarding circumstances under which the emergency medical helicopter could be used.

- (dd) Although making financial sense with regard to optimal use of available ambulance hours, the contract was ill-conceived because, among other things, while executing an administrative mission the ambulance would not be readily available for medical emergencies.
- (ee) The MEC Dhlomo's conduct was not in violation of the Executive Ethics Code.

8.2 Regarding whether the utilisation of the emergency medical helicopter by MEC Dhlomo resulted in the failure of the emergency services to provide emergency medical care to a child resulting in his death, I find that:

- (aa) The Department did respond expeditiously to the accident using ground vehicles.
- (bb) There is no evidence that indicates that the emergency medical helicopter that was used by the MEC on the day in question was required for that emergency or any other.
- (cc) However, the policy is inappropriate as there is a real risk of a person dying because of the emergency medical ambulance being unavailable while being used for administrative purposes. The arrangement also feeds negative perceptions regarding competing needs of patients and departmental management.



- (dd) The MEC has accepted that the policy presents uncomfortable practical and ethical risks and to have it reviewed as soon as possible.

8.3 Given the distance between Durban and Hlabisa. Had MEC Dhlomo travelled by road, he would not have been on time to reach Hlabisa in time to address the community. A Google Map search indicates that the distance between Hlabisa and Durban is 268km, which is approximately some 3 hours 36 minutes' drive

8.4 According to the MEC, his itinerary was such that his last meeting was at 11h30, he would have reached Hlabisa at around 15h00. A study of the AMS Captains Log show that the helicopter trip from Durban to Hlabisa took 47 minutes and the MEC used his vehicle to return to Durban

8.5 Though not investigated, it has been brought to my attention that other provinces have similar arrangements with their helicopter ambulances.

9. REMEDIAL ACTION

Appropriate remedial action I take in terms of section 182(1)(c) of the Constitution is to call on:

9.1 The Head of Department, Dr Zungu to take immediate action to review the contract between the Department and the Red Cross Trust to make provision for a separate helicopter to cater for non-medical emergencies.

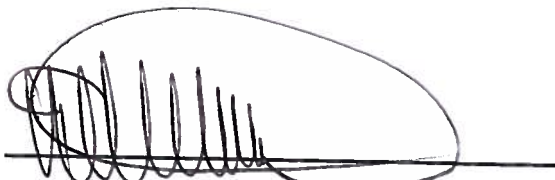
9.2 The Minister of Health and MECs, acting under the auspices of MinMECs, to consider reviewing arrangements pertaining to helicopter ambulance services to

establish if other provinces have similar arrangements and to correct the situation if that is the case.

10. MONITORING AND ACKNOWLEDGEMENTS

In order to monitor and ensure the implementation of my findings indicated above, the following step must be taken:

- 10.1. The Head of Department, Dr Zungu is to submit an implementation plan indicating how the remedial action referred to in paragraphs 9.1 above will be implemented, within 30 days from the date of the final report.
- 10.2. The investigation team extends sincerest gratitude to all the parties, particularly the respondent institution, for their assistance which expedited the investigation.



ADV THULI N MADONSELA

**PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA**

DATE: 30/03/2015

*Assisted by Mr Thembinkosi Sithole, Mr Rodney Mataboge and Adv Nkebe Kanyane:
Good Governance and Integrity.*