REPUBLIC OF KENYA

THE MEDICAL PRACTITIONERS AND DENTISTS BOARD

INQUIRY BY THE

PROFESSIONAL CONDUCT COMMITTEE
(PURSUANT TO THE PROVISIONS OF THE MEDICAL PRACTITIONERS AND DENTISTS ACT, CHAPTER 253 OF THE LAWS OF KENYA AND THE RULES MADE THEREUNDER)

IN

PROFESSIONAL CONDUCT COMMITTEE CASE NO.1 OF 2018

BETWEEN

AMOS KARIUKI WACHIRA
ON BEHALF OFSAMUEL KIMANI WACHIRA…….COMPLAINANT

-AND-

KENYATTA NATIONAL HOSPITAL……..…..…. RESPONDENT

RULING

A. NATURE OF THE COMPLAINT

1. The complaint leading to this inquiry was before the Preliminary Inquiry Committee, herein after referred to as "***the PIC***", of the Medical Practitioners and Dentists Board, hereinafter referred to as **"the Board"**in PIC Case No. 8 of 2018 having been commenced after various media reports and an article that was published on 2nd March, 2018 in the Daily Nation newspaper. The said reports alleged that neurosurgeons working at the Kenyatta National Hospital hereinafter referred to as **"*the Hospital*"**, **"*KNH*"** or "***the Respondent***" had performed an operation on a wrong patient.

2. The PIC undertook an inquiry on the complaint and delivered the ruling dated 16th March 2018 wherein it directed, inter alia, that the Board do constitute a Professional Conduct Committee under the Provisions of **Rule 4A** of the **Medical Practitioners and Dentists (Disciplinary**

Proceedings)(Procedure) Rules within a period of three (3) days to undertake an inquiry on the role played by Kenyatta National Hospital and the doctors involved in the treatment and management of the two patients, John MbuguaNderitu and Samuel Kimani Wachira.

3. Thereafter the Board wrote to the Respondent by the letter dated 19th March 2018 notifying it of the hearing and also requested forthe attendance of the medical personnel involved in the management of the subject patients.

4. The Board consequently constituted the Professional Conduct Committee under provided by Rule 4A of the Medical Practitioners and Dentists (Disciplinary Proceedings) (Procedure) Amendment Rules and it consisted of the following members;

    (i) **Dr. Mubashir M. Qureshi**, Consultant Neurosurgeon, Aga Khan University Hospital- Chair

    (ii) **Dr. David L. Oluoch-Olunya,** Consultant Neurosurgeon The Nairobi Hospital;

    (iii) **Dr. Nilesh Kumar Mohan**, Consultant Neurosurgeon, Moi Teaching and Referral Hospital;

    (iv) **Dr. EllyNyaimOpot**, Consultant General Surgeon, Senior Lecturer University of Nairobi, member Medical Practitioners and Dentists Board;

    (v) **Comm. KagwiriaMbogori**, Chairperson Kenya National Commission on Human Rights;

    (vi) **Mr. Peter Munge**, Legal Advisor; and

(vii) **Mr. Daniel M. Yumbya**, Chief Executive Officer, Medical Practitioners and Dentists Board.

B. INQUIRY BY THE PROFESSIONAL CONDUCT COMMITTEE

5. On 5th April, 2018, the Committee held it's sitting at the offices of Medical Practitioners and Dentists Board located along Lenana Road within Nairobi County. The Complainant did not appear but he was represented by Learned Counsel, Mr. WahomeThuku,whereas the Respondent was presented by its Corporation Secretary, Mr. Calvin Nyachoti. At the commencement of the inquiry, the Respondent's Counsel submitted that they had filed a bundle of documents that included witness statements and documents in response to the complaint.

6. The Respondent's counsel also raised an objection on the locus of the Claimant to lodge the complaint on behalf of the patient, Samuel Kimani Wachira, and he was directed to raise the issue during his final submissions for determination by the Committee.

C. FINDINGS

(I) The Committee considered the objections by the Respondent with regard to its jurisdiction and finds that the Complaint was against Kenyatta National Hospital due to an incident that involved the conduct and acts of hospital staff as well as a post-graduate student undertaking neurosurgical specialist training. The training is carried out in Kenyatta National Hospital which is a designated teaching hospital for the University of Nairobi and involves supervision by consultants from both the University of Nairobi and Kenyatta National Hospital.

(II) In view of the above, the Committee distinguished the facts of the present case from those in the judicial authorities cited by the Respondent, and further considered the provision of Section 5 of the Legal Notice 109/1987 which established Kenyatta National Hospital as a State Corporation and defined its functions to include, among others, to provide facilities for medical education for the University of Nairobi and training in nursing and other health and allied institutions.

(III) The Committee also finds that **Section 11A** of the **Medical Practitioners and Dentists Act**, Chapter 253 of the Laws of Kenya, grants the Board powers to supervise institutions conducting training in medicine and dentistry, and as a consequence thereof, the objection to the Committee's jurisdiction cannot be sustained.

(IV) The Committee considered the submissions by the Respondent that the Committee was seeking to protect individual medical personnel by putting emphasis on general systemic failure at KNH and holds that the said submissions were not supported by any evidence. The Committee notes that the Respondent made general allegations without any evidence to support them and hence the said objection must fail.

(V) Dr. Nyaim recused himself briefly to enable the Committee deliberate the objection raised by the Respondent on his alleged involvement with the University of Nairobi which posed a potential conflict of interest. After deliberations the Committee noted that Respondent received the Notice of Inquiry on 21st March 2018 and thereafter appeared before the Committee on the morning of 5th April 2018. At no time did the Respondent

or its counsel raise such objection until after close of the hearing. Further, no witness gave evidence to support this objection. The Committee further holds that it consists of seven (7) members and there was no evidence of the said member being conflicted or having an upper hand to influence the decision of all other members. Further, the Respondent allowed Dr. Nyaim to sit through the entire Inquiry as a member of the Committee and is thus estopped under the principle of *Estoppel by Conduct*. The Respondent participated in the Inquiry to its conclusion and also cross examined all witnesses without raising any objection. Further, the objection to the Composition of the Committee on grounds that two (2) members were affiliated to COSECSA, was noted to be of no consequence. The counsel was not able to explain why he failed to raise the objection made herein at the Commencement of the hearing but he alleged that he was advised that he would raise it at the time of making the Respondent's submissions. However, a review of the proceedings shows that the Respondent's counsel only raised one preliminary objection on the *locus standi* of the Complainant to lodge a complaint on behalf of his brother. The Committee referred to the Case of ***Moorgate Mercantile Co. Limited – vs- Twitchings (1976) 1QB.225***, wherein it was held, *inter alia*, that:

> ***"estoppel is not a rule of evidence……..it is a principle of justice and equity. It comes to this; when a man, by his words or conduct, has led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or inequitable for him to do so"***

(VI) In view of the above finding the Committee holds that the said objection by the Respondent is an afterthought and thus lacking in merit.

(VII) The Committee further finds that the competencyof Dr. Hudson Ng'ang'aKamau, the Surgeon who undertook the operation on Samuel Kimani Wachira assisted by Dr. MoseFelisterMoraa could not be faulted as they reviewed the documents presented to them, confirmed the identity of the said patient, as presented to them, and thereafter carried out the planned Craniotomy procedure for the management of the patient as would have been expected.

(VIII) The Committee finds that the patient, Samuel Kimani Wachira, was wrongfully operated on as a result of inaccurate patient identification. The Committee further finds that the method of patient identification used at the hospital at the material time was grossly inadequate and not in keeping with recognized international best practice for patients' safety.

(IX) The Committee further finds that global guidelines require that patients are identified at the first point of contact in a Hospital. The identification should include: the name, date of birth/age, sex and Hospital Number. However, the evidence on record shows that while the Hospital had an SOP for Transfer of Patients from A&E Department to Wards, dated 10th July 2017, it lacked an express provision for identification of patients. The Respondent admitted that they have since formulated a specific SOP on Patient management in A&E, dated 16th March 2018, which has a provision for patient identification under clause 6.7.2.

(X) The Committee considered the ***World Health Organisation in collaboration with JCI on patients safety solutions, Vol. 1 of 2007*** found that;-

> ***"Throughout the health care industry the failure to correctly identify patients continues to result in medication errors, transfusion errors, testing errors, wrong person procedures and discharge of infants to the wrong families……..regardless of the technology for approach used for accurate identification of patients careful planning for the processes of care will ensure proper patients identification prior to any medical intervention and provide safer care with significantly fewer errors."***

(XI) The Committee further noted a quote from a medical journal known as ***RevistaGaucha de Enfermagem, version ISSN 1983-1447***, wherein it provided that;

> ***"The patient identification process is essential to ensure safety and quality of assistance in healthcare institutions. The use of wristband for identification is common practice…"***

(XII) The Committee further referred to the **Policy & Procedure of Patient Identification from the Ministry of Health in the Republic of Oman** which provides*, inter alia*, that;-

> ***"Patients unable to provide identifying information, who experience conditions requiring emergency care will receive treatment prior to identification if such care and treatment is necessary to stabilize the patient's condition"***

(XIII) The Committee further finds that the nursing staffing ratios at the Hospital are stretched beyond the World Health Organisation's recommendation. The evidence before the Committee was that the ratio at the Hospital at the material time was between 1:20 and 1:30 against the recommended WHO ratio of 1:4 in a surgical ward.

(XIV) The Committee noted that the management staff of the Hospital testified that the Hospital had tags in its stores whereas the nurses from ward 5A testified that they had not been supplied with tags, for several months, despite repeated requisitions. It was evident that the Hospital had a poor supply chain management system.

(XV) The Committee also noted that there was inadequate equipment as would be reasonably expected in a National Tertiary care Referral Hospital. There was evidence that there were delays in getting follow up CT scan services as well as facilities for intracranial pressure monitoring.

(XVI) The Committee further finds that the neurosurgery patients were spread out in different wards within the Hospital as held by the Preliminary Inquiry Committee in the decision of 16th March, 2018 at paragraph 79 which could lead to a compromise in the management of such patients.

(XVII) The Committee also noted that there was a gap in Clinical Governance as the Medical Advisory Committee (MAC) has not been meeting regularly. Evidence adduced shows that the MAC meets on an *ad hoc* basis to deal mainly with disciplinary issues and hence it does not serve the intended purpose as defined by international best practice. Further,

the existing clinical Committees at the Hospital do not appear to be co-ordinating with the MAC as would be expected.

(XVIII) The Committee further finds that there is lack of a co-ordinated approach between KNH and the School of Medicine of the University of Nairobi, as regards to number of trainees admitted for training at both the undergraduate and post graduate levels. The Committee was of the view that this compromises on the quality of training.

(XIX) The Committee also finds that the manner of handing over between nursing shifts, as described to the Committee, appeared to be impersonal. It was the view of the Committee that this manner of handing over jeopardizes safe patient management.

(XX) The Committee also noted that the hand over between the anaesthetic clinical staff does not conform to international best practice. The Committee considered the publication by Philip M. Jones and others dated January, 9th, 2018 ***"Association Between Handover of Anaesthesia Care and Adverse Postoperative Outcomes among Patients Undergoing Major Surgery"***which indicated that

> ***"handing over of a patient from one anaesthesiologist to another during some surgeries might increase the risk of adverse outcomes"***

(XXI) The Committee further noted that the duty rota provided did not clearly define the responsibilities of the clinical staff included in the rota. It was

noted that patients were prepared for surgical intervention by junior doctors in training without clear involvement of the consultants.

D. ORDERS

In view of the above findings, the Committee makes the following Orders:

(I) The Respondent is directed to ensure continuous monitoring of the implementation of the patient identification Standard Operating Procedures.

(II) The Respondent is hereby directed to ensure the hiring of additional nursing staff in order to improve nurse-patient ratios and strive to comply with the WHO staffing recommendations.

(III) The Committee further recommends that the Hospital put in place a policy for continuous professional development and retention of nursing staff in tandem with the development of specialist clinical services.

(IV) The Hospital should improve the supply chain a management system and ensure proper communication with the user departments.

(V) The Hospital should endeavour to develop a separate dedicated unit for neuro-trauma patients to enhance the effectiveness in the treatment and monitoring of the patients.

(VI) The Hospital should put in place a Clinical Governance Structure that should include a functional MAC that meets regularly and complies with the international best practice. The Committee further

recommends the reestablishment of Clinical Divisions which shall report to the MAC.

(VII) Pursuant to Legal Notice 109/1987 Kenyatta National Hospital Board Order, 1987 there exists an MOU between the Hospital and the University of Nairobi, which details the specific responsibility of both institutions. However, it was clear that the provisions of this MoU were not being implemented and therefore the Committee directs that the MoU be reviewed in light of emerging changes in training, clinical services and research.

(VIII) Kenyatta National Hospital in liaison with the Nursing Council of Kenya should review and ensure adherence to Standard Operating Procedures relating to patient hand over.

(IX) The Office of the Director of Medical Services should work in liaison with the County Governments to strengthen services, ensure an efficient referral system at the County Hospital and thus enable Kenyatta National Hospital to effectively function as a National Tertiary Referral Hospital.

(X) The Respondent should ensure that the duty rota clearly outlines the duties and responsibilities of the various doctors and assigns appropriate roles commensurate with the respective institutional staffing titles; which should be in keeping with the recognition and licensing from the Medical Practitioners and Dentists Board.

(XI) The Respondent do enter into mediation agreement with Samuel Kimani Wachira with a view of compensation and report to the Medical Practitioners and Dentists Board within sixty (60) days from the date hereof.

These are the final orders for **PCC CASE NO 1 OF 2018**.

The Committee stands adjourned.

The full judgement shall be available at the Medical Practitioners and Dentists Board from Monday 9th April, 2018.

Thank you.