

TO: THE REGISTRAR, P O BOX 205, Pretoria, 0001

553 Madiba Street, Arcadia 0083; Legalmed@hpcsa.co.za; Tel: 012 338 9300; Fax: 012 328 4895

COMPLAINT FORM	
1. DETAILS OF COMPLAINANT / REPRESENTATIVE	
Title & Full names of complainant	Nigel Branken and Sharon Ekambaram This complaint is supported organisationally by the following organisations: <ul style="list-style-type: none">• Kopanang Africa Against Xenophobia (KAAX)• Lawyers for Human Rights (LHR)• Neighbours NPO• Treatment Action Campaign (TAC) and• Section 27• Socio-Economic Rights Institute (SERI)• Health Justice Initiative• Progressive Health Forum• Helen Suzman Foundation
Identity / Passport number	[REDACTED] [REDACTED]
Postal Address	[REDACTED]
Physical Address	[REDACTED] [REDACTED]
Cellphone number	[REDACTED] [REDACTED]
Landline number	[REDACTED]
Fax number	[REDACTED]
E-mail address	[REDACTED] [REDACTED]

Power of Attorney must be attached if complainant is a representative.	
2. DETAILS OF THE PATIENT IF THE PATIENT IS NOT THE COMPLAINANT	
Title & Full names of the patient	Patient is not shown in the video but is a patient from Zimbabwe who is receiving medical treatment at a hospital in Bela Bela, Limpopo
Identity number / birth date / Passport number	
Postal Address	
Physical Address	
Cellphone number	
Landline number	
Fax number	
E-mail address	
3. DETAILS OF PRACTITIONER	
Name of Practitioner	Dr Phophi Constance Ramathuba - MEC for Health, Limpopo Province (as well as other medical practitioners, some of whom are shown in the video, who stood by and watched the MEC violate the patient's rights and dignity).
Physical Address (not PO Box)	
HPCSA Registration Number	MP 0529001
Practice Number	
Cellphone number	
Telephone Number	015 293 6006
Fax Number	
E-mail address	Mmetja.Pale@dhsd.limpopo.gov.za mec.support@dhsd.limpopo.gov.za
4. DETAILS OF COMPLAINT (or attach to this form)	

Dr Phophi Constance Ramathuba, a medical doctor and MEC for health of the Limpopo province Executive Committee (MEC), was visiting a patient in a hospital in Bela Bela around 22 to 23 August 2022. A video was taken of her interaction which has been circulating in the media and on Social Media.

Dr Phophi Constance Ramathuba asked a patient on camera in front of others whether she was ok in Xhosa. The patient replied "I speak Shona" in a very sickly voice. The MEC replied "You speak Shona. Then how do you find yourself in Bela Bela when you are supposed to be with Mnangagwa [President of Zimbabwe]? You know he doesn't give money to me to operate you guys and I am operating you with my limited budget."

The patient is heard responding, again in a sickly voice, saying "thank you so much, I appreciate..." She replies "Ah, you can't appreciate, you are killing my health system, you are killing my health system. When you guys are sick I hear you just say these days let's cross Limpopo, there is an MEC there who is running a charity department but this is not a charity department. It is not... I am going to tell you something that is truthful and painful, You know Stats SA goes and count people during census and tell me that in Limpopo you have got 5,7 million people, and tell me that out of 5,7 million 91 % do not have medical aid, they are dependent on the State and only nine percent depend on private doctors. 9%, they will say they have medical aid and they are dependent on private hospital.... Then they go and give national treasury. When national treasury allocates it's budget they said Limpopo has 5.7 million people and they subtract the 9% and they give me the budget of the 91 to do all these operations. Now I am here instead of using the budget for what it is meant for I am operating for what Mnangagwa is supposed to do. That is why when my people of Limpopo want health services, they can't get it and that is angering the community. Because you are coming here... I was here in George Masebe – we are busy operating with Mocambiquan nationals everywhere and you are not even registered anyway, you are not counted. You are even illegal and you are abusing me. This is unfair. It's unfair. I can't go to Zimbabwe and get health treatment. Do you think they can allow to operate me. It is for their own people. I went to Canada recently. You know before I entered the country, before they gave me a visa, I must show them proof that indeed if I fall sick I can cater for myself. It is only in South Africa where people just come in and people have problems with Minister Motsoaledi. You know why he is like this. It is because he was working in health and he knows the pain. People are calling him Xenophobic to say he is anti-Zimbabwean. He is not anti anybody. I used to go with him to Musina to see the problem there. So Sissi, you won't be discharged until you settle your bill." She then says to officials "You must charge him" pointing to the patient.

See (<https://www.youtube.com/watch?v=YX6R1NjPU0> for the video)

The following are our complaints:

1. The above actions are not consistent with the HPCSA professional code of ethics, contained in the "Ethical Guidelines for good practice in the health care professions" specifically:
 - a. S 2.3.1 - "**Respect for persons:** Health care practitioners should respect patients as persons, and acknowledge their intrinsic worth, dignity, and sense of value."
 - i. the MEC's comments were extremely disrespectful. Not only her tone and content but also her making the statement publicly on camera in front of the other medical professionals. The staff who stood by while she made the comments also showed disrespect for the patient by standing by and at times even laughing with the MEC while she made the statements.

- b. S 2.3.2 - “**Best interests or well-being**: Non-maleficence: Health care practitioners should not harm or act against the best interests of patients, even when the interests of the latter conflict with their own self-interest.” ... and “Best interest or well-being: Beneficence: Health care practitioners should act in the best interests of patients even when the interests of the latter conflict with their own personal self-interest.”

- i. the MEC was not only acting in a way to discourage health seeking by foreign nationals but by publicly doing so encouraging other Health Care professionals to do the same. This is not only not in the best interests of this particular patient but of all patients in the province and potentially in South Africa. When other health care professionals stood by, laughed and agreed with her, they provided their consent to this discriminatory and xenophobic behaviour.

The MEC abused her position of power over patients and staff by publicly using the opportunity to make her Xenophobic statements and her policy positions known to the media in the presence of a patient who was sick and needing to recover.

- c. S 2.3.4 - “**Human rights**: Health care practitioners should recognise the human rights of all individuals.”
- i. Section 27 of the Bill of Rights in the South African Constitution provides the following right:
- “1. Everyone has the right to have access to -
- a. health care services, including reproductive health care;
- b. sufficient food and water;” ... and states that :
- “2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.” It also states that:
- “3. No one may be refused emergency medical treatment.”

The MEC’s statements as a public government official are directly opposing the right to medical care of foreign nationals, and the responsibility of the state to achieve the progressive realisation of this right.

The MEC’s statement could be interpreted as a call to medical professionals not to respect the constitution and bill of rights.

Additionally, the MEC’s statements and the consent provided to them as other medical professionals stood by, were an infringement of Section 10 of the Bill of Rights which states: “Everyone has inherent dignity and the right to have their dignity respected and protected.” The MEC and health care professionals who stood by infringed on the dignity by publicly shaming this patient and by refusing to protect this patient from the public shaming.

Furthermore, her demand that the person not be discharged before paying the bill when she said “So Sissi, you won’t be discharged until you settle your bill”, then says to officials “You must charge him” pointing to

the patient. is a clear violation of the right to freedom of movement. She is providing her staff with an unlawful order.

- d. S 2.3.7 - “**Truthfulness**: Health care practitioners should regard the truth and truthfulness as the basis of trust in their professional relationships with patients.”
 - i. The narrative of the MEC that foreigners are to blame for poor health care service delivery and that foreigners are overburdening the health care system is factually incorrect and been repeatedly debunked by fact checkers.

Limpopo has a population of 5.9 million according to Mid year estimates of 2022 (not 5,7) with 8,2 % enjoying medical aid (the lowest in the country according to the 2021 General Household Survey)

However, her claim that the 5,7m are based on a register by Stats SA is false since Stats SA keeps no register of such sorts. This number is based on a demographic model but is driven to a large extent by the Census (as she indicated). As it is driven by Census and not a register of sorts the number is INCLUSIVE of migrants, even irregular ones.

In terms of process, NT gives money based on the Provincial Equitable Share process to the Limpopo provincial government and this is then allocated to the Department of Health as it sees fit. Whilst what she says is partially true, that the health component is based on the uninsured population, this is then adjusted based on health conditions/risk of the population in the province. It must be noted that the health component only makes up 27% of the allocation from NT and population size makes up 16% and as such is not driven by population of the uninsured only. But since it is inclusive of irregular migrants as well one can say that she does receive money for health services to migrants.

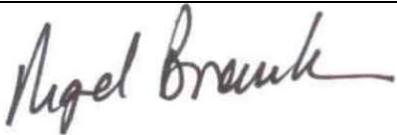
The MEC therefore misled with her statement claiming foreign nationals and undocumented migrants are not catered for in her budget allocation as they are both counted in the allocation based on population and the allocation based on population only forms a small percentage of how the budget is allocated in any effect.

Additionally, while not relevant to this particular patient who was apparently there as a result of a car accident, in respect to Access to health care for lactating women and children, the Sustainable Development Goal (SDG) 3.1 target is to reduce the global maternal mortality ratio (MMR) to less than 70 maternal deaths per 100 000 live births by 2030. As such the. UNFPA provides technical and financial support to the government through the Ministry of Health and Child Care (MoHCC) towards the reduction of maternal and neonatal mortality. Maternal mortality in Zimbabwe currently stands at 614 deaths per 100,000 live births, one of the highest maternal mortality rates

worldwide. In 2017, maternal mortality ratio for South Africa was 119 deaths per 100,000 live births. Maternal mortality ratio of South Africa fell gradually from 186 deaths per 100,000 live births in 2003 to 119 deaths per 100,000 live births in 2017. The government of South Africa is receiving additional money from the UNFPA to in particular care for these groups of foreign nationals contrary to her general statements about not receiving money for Zimbabwean immigrants in particular seeking health care in South Africa.

- e. S 2.3.9 - "**Compassion:** Health care practitioners should be sensitive to, and empathise with, the individual and social needs of their patients and seek to create mechanisms for providing comfort and support where appropriate and possible." – The MEC and those standing by most certainly did not act with compassion towards the woman.
- f. S 2.3.11 - "**Justice:** Health care practitioners should treat all individuals and groups in an impartial, fair and just manner." ... "Health care practitioners should be aware of the rights and laws concerning unfair discrimination in the management of patients or their families on the basis of race, culture, ethnicity, social status, lifestyle, perceived economic worth, age, gender, disability, communicable disease status, sexual orientation, religious or spiritual beliefs, or any condition vulnerability."
 - i. The MEC's statements also are contrary to her duty to protect vulnerable people as a medical practitioner and in particular her obligations in terms of section 27 A of the Ethical Rules of Conduct for Practitioners registered under the Health Professions Act, 1974 which states "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;
 - ii. Furthermore as a practitioner she has a duty to be aware of her obligations as reflected in our Constitution, International law, South African law, and in our bilateral agreements. In summary:
 - Primary healthcare is free for ALL
 - Emergency care is free AT THE POINT OF USE for ALL
 - Pregnant women, women who are breastfeeding, children under 6: ALL services, at ALL levels, free for ALL
 - Higher levels of care involve a means-tested co-payment for ALL.Individual will be classified as
 - HO (FREE SERVICE, NO Co-payment);
 - H1; H2 or H3 (FULL FEE-PAYING)For HIGHER LEVELS OF CARE i.e. beyond primary healthcare:
 - TOURISTS and those on VISITORS VISAS: should be classified as FOREIGN and FULL FEE-PAYING
 - Documented refugees (section 24 permit) and documented asylum seekers (section 22 permit): should be means-tested in the same way as South African citizens
 - Permanent residents and temporary residents (e.g. work permit, study permit): should be means-tested in the same way as South African citizens

	<p>- Undocumented SADC nationals: should be means-tested in the same way as South African citizens</p> <p>Dr Phophi's statements are in direct conflict with the above laws and policies of the South African government.</p> <p>In the entire interaction, Dr Phophi Constance Ramathuba and those medical practitioners standing by, humiliated and shamed the patient publicly. A patient in hospital, whether foreign or national, should never be treated in this manner.</p> <p>We request the HPCSA to use their powers under S41 of the HPC Act to institute an inquiry into unprofessional conduct in terms of the Act against Dr Ramathuba and those who are registered with the council who stood by without intervening to protect the patient.</p> <p>Should Dr Ramathuba be found guilty of the charges we have set out in this complaint, we request that her name is removed from the register (s.42(1)(c)) that she is issued with a prescribed fine (s.42(1)(d)) and that she is charged with the payment of costs (s.42(1)(f)).</p> <p>Furthermore, we request an investigation to determine those who stood by to determine which of them were resisted with the HPCSA. Once this is established, we too request an inquiry into Unprofessional conduct and that should they be found guilty, appropriate sanctions be given to them.</p> <p>We believe that the sanctions against the MEC and those health care professionals who stood by needs to serve as a deterrent against similar actions by other politicians and health care professionals from acting in this detrimental and unethical manner against patients.</p>
5. List of documents relevant to complaint attached to this form (if any)	<p>We submit the following statements made by organisations in the media that we believe are also relevant to the complaint:</p> <ul style="list-style-type: none"> - Progressive Health Forum Statement - SA Medical Association (SAMA) Statement
E.g. Medical reports, x-rays, hospital records, statement of account, affidavit/ confirmatory statement of patient above 12 years of age, etc.	
6. What outcome do you expect for this complaint? (Acknowledgment letter will be sent within 7 days. Financial compensation is through Courts, not HPCSA)	<p>We request the HPCSA to use their powers under S41 of the HPC Act to institute an inquiry into unprofessional conduct in terms of the Act against Dr Ramathuba and those who are registered with the council who stood by without intervening to protect the patient.</p> <p>Should Dr Ramathuba be found guilty of the charges we</p>

	<p>have set out in this complaint, we request that her name is removed from the register (s.42(1)(c)) that she is issued with a prescribed fine (s.42(1)(d)) and that she is charged with the payment of costs (s.42(1)(f)).</p> <p>Furthermore, we request an investigation to determine those who stood by to determine which of them were resisted with the HPCSA. Once this is established, we too request an inquiry into Unprofessional conduct and that should they be found guilty, appropriate sanctions be given to them.</p> <p>We believe that the sanctions against the MEC and those health care professionals who stood by needs to serve as a deterrent against similar actions by other politicians and health care professionals from acting in this detrimental and unethical manner against patients.</p>
7. Date	31 August 2022
8. Place	Johannesburg
9. Signature of complainant	 <hr/> Nigel Branken: 31 August 2022  <hr/> Sharon Ekambaram: 31 August 2022
10.	CONSENT BY PATIENT (compulsory if above 12 years old on date of Complaint)
I hereby grant consent to my treating practitioner to disclose my confidential medical information to the HPCSA and/or to my treating practitioner's legal representative in the course of addressing my complaint lodged with the HPCSA if necessary.	
Signature.....	
Date	
11.	CONSENT BY NEXT OF KIN (if patient is deceased or cannot consent)

I hereby grant consent to the practitioner who treated the patient to disclose the patient's confidential medical information to the HPCSA and/or to the treating practitioner's legal representative in the course of addressing my complaint lodged with the HPCSA if necessary.

Signature.....

Date.....

LETTER OF CONSENT FOR HOSPITAL RECORDS (IF APPLICABLE)

I, the undersigned,

do hereby grant the Health Professions Council of South Africa and/or their authorised agent(s), the treating practitioners and their legal representatives **consent** to inspect and/or request and/or obtain copies of the medical records, bed-letters and/or x-rays, clinical reports from the doctors, relating to the treatment received by (**patient's name, not doctor's name**):

at..... **HOSPITAL** during the period

Hospital file number:

Address of Hospital:

Tel Number of Hospital: Fax Number

Identity / Passport Number of the person who was admitted at the hospital:

(PLEASE ATTACH PATIENT'S COPY OF ID / PASSPORT / BIRTH CERTIFICATE)

ID No of person responsible for payment of the hospital account:

.....

Medical Aid No:

SIGNATURE

Date:.....



Statement on the Unprofessional Conduct of the Health MEC of Limpopo.

In a stunning display of hubris, the MEC for Health in Limpopo, Dr Phophi Ramathuba, has been filmed berating an obviously terrified young woman admitted to a Bela Bela hospital for being Zimbabwean and not deserving of obligatory care.

This is deeply offensive on many levels, not least in her conduct as a health professional sworn to uphold her oath. The MEC appears to also wrongly believe that her oath of political office trumps her ethical undertaking.

In the video, the degrading and humiliating verbal assault on the patient was cheered on by her entourage. If there were any health workers among them, they stand to be equally condemned and disciplined for abetting such unprofessional conduct.

The MEC's reprehensible utterances are now filtering through to other facilities, where there are reports of undocumented foreigners being denied urgent care, which is unconstitutional and contradicts ethical norms. Unlike politicians, health professionals may not make a discriminatory distinction based on a person's origin, circumstances or behaviour.

All this in August, Women's Month, when a woman politician turns on and abrogates the dignity of another woman in an imperious display of political arrogance. The MEC's disdain for the harrowing journey that most poor migrants, especially women, make in a desperate search for healthcare is simply appalling.

The reason there are undocumented foreigners entering the country to seek healthcare is easy to understand. Collapsed public health facilities in Zimbabwe and an utterly dysfunctional immigration infrastructure in SA make the influx of migrants a certainty.

The MEC also conveniently ignores the uncomfortable truth that up to half of the health budget is stolen or otherwise misappropriated on her watch. There is much, therefore, for the government to account for and fix before scapegoating migrants for its shortcomings.

The Limpopo Health MEC has brought the medical profession into disrepute and scandalised millions for whom national life is rooted in human rights. Both the Health Professions Council of SA and the SA Human Rights Commission must take an urgent and pointed interest in this matter.

The MEC's failure to resign or to be shown the door after this disgraceful conduct will mark the government's tolerance of prejudice and its embrace of populism.

**Issued by Progressive Health Forum
(Enquiries info@progressivehealthforum.net)**

August 24, 2022

ENDS//



Media Statement – MEC Ramathuba Viral Video

24 August 2022

Attention has been brought to the SA Medical Association (SAMA) of the healthcare concerns in Limpopo raised by the province's MEC of Health Dr Ramathuba in a viral video that is circulating throughout the country. Despite there being a need for a national dialogue to address the matters highlighted, SAMA deplores the manner of addressing this issue by the MEC Ramathuba to a patient at a Bela Bela hospital. The MEC as a leader in the province is aware of the appropriate channels where such matters ought to be raised. Additionally, the MEC has a duty and responsibility to comply with the ethical conduct befitting a healthcare professional who took an oath which clearly states "first do no harm". The Health Professions Council of South Africa's (HPCSA) ethical guidelines and the SAMA Pledge solemnise all doctors to a duty of care, respecting the dignity of the patient and fostering the noble traditions of the medical profession without prejudice which in this instance appear to have been contravened.

SAMA believes that healthcare is a fundamental human right. Foreign nationals such as refugees and migrants are one of the most vulnerable members of society. When people are marginalised or face stigma or discrimination, their physical and mental health suffers. Discrimination of any kind in the healthcare sector is unacceptable and is a major barrier to global socio-economic development. It is contrary to the central principle of the United Nations (UN) 2030 Agenda for Sustainable Development which is to ensure that no one is left behind.

In addition, the World Health Organisation (WHO) calls on all countries to respect and protect human rights in health – in their laws, their health policies and programmes. WHO maintains that all countries must work together to combat inequalities and discriminatory practices so that everyone can enjoy the benefits of good health, no matter their age, sex, race, religion, health status, disability, sexual orientation, gender identity or migration status.

WHO also states that every human being has the right to "*the enjoyment of the highest attainable standard of health, (it) is one of the fundamental rights of every human being without distinction of race, religion, political belief and economic or social condition*"¹. This is contained in the organisation's draft publication titled Promoting the health of refugees and migrants 2019–23. In 2020 WHO also established the Health and Migration Programme (PHM) to provide global leadership in health and migration issues emphasising the importance of this matter.

Section 27 of the South African Constitution states that no one may be refused emergency medical treatment. The Refugees Act of South Africa sets out rights for asylum-seekers and refugees in South Africa. It states that, refugees in South Africa have the same rights to access healthcare as South African citizens. This right is widely interpreted to include asylum-seekers, as well.

SAMA notes that Canada (mentioned in the video by the MEC) has Interim Federal Health Policy (IFHP) programme for different levels of foreign nationals that is available temporarily and/or as a last resort².

¹ <https://www.who.int/news-room/commentaries/detail/health-is-a-fundamental-human-right>

² Government of Canada: Interim federal health program policy

In the USA, under the Healthy Environment for All (HEAL) Act, the country would allow undocumented immigrants access to health care through formalised payment contributions and to be eligible for subsidies to offset the cost of this coverage.³

Ultimately, SAMA believes that clinicians provide health care services when people are in their time of need. The organisation acknowledges that the health care sector is collapsing due to a lack of resources and demands for health care from both its citizens and foreign nationals, thus resulting in high levels of stress on clinicians. However, SAMA believes that other sectors of government are mandated to address the issue of foreign nationals – the Department of Home Affairs and the Department of International Relations and Cooperation being central to addressing issues on migration.

SAMA wants to emphasise that South Africa's health care system has a number of critical challenges which require urgent attention from all spheres of government. These have been highlighted numerous times by the association and include shortages of medical professionals in hospitals, placement of junior doctors, safety of clinicians, ageing infrastructure and access to high quality care. The organisation's vision continues to be uniting doctors for the health of the nation and clinicians are urged to focus on their oath in delivering healthcare services without prejudice.

[ENDS]

Notes to Editors

About SAMA: The South African Medical Association ("SAMA") was established in 1927 and became known as it is today through the unification of a variety of doctors' groups on 21 May 1998 that had represented a diversity of interests. SAMA is a non-statutory, professional association for public and private sector medical practitioners. SAMA is registered a non-profit company in terms of the Companies Act. SAMA is a voluntary membership association, existing to serve the best interests and needs of its members in any and all healthcare-related matters.

Contact
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³ The USA House of Congress: HEAL for Immigrant Families Act 2021