

25 January 2010

SECTION27 COMMENT ON RELEASE OF REPORT ON INVESTIGATION INTO INFANT DEATHS AT CHARLOTTE MAXEKE ACADEMIC HOSPITAL IN GAUTENG

SECTION27 welcomes the release of the report on the investigation into the tragic deaths of six infants on 18 May 2010 at the Charlotte Maxeke Academic Hospital (“the Hospital”) in Johannesburg. The report, which is available at <http://www.section27.org.za>, raises serious concerns about the extent to which the Gauteng Department of Health and Social Development (“the Department”) adheres to norms and standards related to human resources, and the consequent overcrowding in public health facilities in the province.

The price of overcrowding

The expert medical panel that conducted the investigation found that the neonatal unit at the Hospital “ha[d] been under severe pressure for a long time”. Specifically, the panel found that chronic overcrowding is a common feature in public hospitals across Gauteng. The extreme demand on the neonatal unit, coupled with insufficient space, equipment and staff, led to a breakdown in standard operating procedures and quality control. This, the panel found, “increase[s] the risk of similar tragedies happening again”.

The Hospital was also plagued by significant deficiencies, including a lack of basic supplies and equipment such as thermometers (the sharing of which promotes cross-infection). Other risk

factors for cross-infection included a lack of routine supplies such as roller towels and antiseptic spray. The panel also identified structural design problems such as a lack of proper ventilation systems and hygiene facilities.

According to the report, “the requirements for neonatal care are directly linked to the number of births in a hospital and its referral area”. The neonatal care needs of the Hospital are well known to the Department. Without such care, babies in need are likely to die. In our view, the Department is under a legal duty to ensure that neonatal care in Gauteng is adequately resourced – in line with its obligations arising from section 27(3) of the Constitution, which provides that “no one may be denied emergency medical treatment”.

The right to emergency medical treatment is not subject to the qualifications of progressive realisation and resource constraints that apply to access to health care services more broadly. So although neonatal care may be costly, it must be provided in accordance with recognised norms and standards. Its provision requires the national and provincial departments of health to ensure that appropriate budgets are allocated. In our view, a failure to budget appropriately for the provision of life-saving neonatal care services is a violation of section 27(3) of the Constitution.

Infection control

The report finds that the infants died of a relatively common gastrointestinal virus that is known to be highly infectious. Lapses in standard operating procedures led to the rapid spread of the virus in the neonatal unit. Unless the pervasive challenges of chronic overcrowding, inadequate resources and understaffing are addressed adequately and quickly, this kind of tragedy is bound to happen again in public health facilities.

The absence of infection control is common to many hospitals across South Africa. Failure to deal with it for budgetary reasons is short-sighted, as nosocomial infections significantly add to the cost of care for South Africa. In preparation for the introduction of National Health Insurance, and in

accordance with the government's commitment to public sector strengthening, an audit and plan on infection control is absolutely essential.

Importantly, the report points out that the health care professionals working in the neonatal unit at the Hospital provided a good level of medical care and maintained excellent records in a resource-constrained environment. The report notes that although there are systemic problems in adhering to applicable norms and standards, the clinical response to the outbreak was deemed appropriate. The panel did not find specific cases of medical negligence insofar as the attending staff are concerned. It remains to be seen, however, whether the Department may be found to be liable for having failed to take reasonable steps to avert the risks identified by the panel.

Access to information about health is essential

The public release of the report follows seven months of SECTION27's efforts to obtain it. In June 2010, SECTION27 first requested a copy of the report from the Department. The Department's failure to provide us with a copy of the report was followed by SECTION27's formal request for the document in terms of the Promotion of Access to Information Act 2 of 2000 ("PAIA") on 27 July 2010. Having fully exhausted the procedures contemplated by PAIA, including an internal appeal, SECTION27 gave the Department one final opportunity on 7 December 2010 to avoid unnecessary litigation. Reason eventually prevailed and the Department provided us with a copy of the report on 18 January 2011.

We believe that a report such as this has serious implications for the health system as a whole. It should be made public without delay. We acknowledge that the panel's findings may have required the Department to follow certain internal procedures before making the report public. However, this does not justify a delay of seven months, nor does it justify effectively compelling organisations such as ours to resort to the use of lengthy (and often costly) legal processes.

We call on Ms. Ntombi Mekgwe – the Gauteng MEC for Health and Social Development – to implement the recommendations of the panel as a matter of urgency, including the establishment of an expert Neonatal Advisory Task Team to advise the Department on issues of neonatal care. We also call on Minister Motsoaledi to ensure that the soon-to-be established Office of Health Standard Compliance addresses infection control as a priority and ensures that medical staff have access to sufficient supplies of medical and other equipment necessary to do their jobs.

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