

**Report No. 133/2560 on right to public health service in case of which it is claimed that a hospital refused to provide medical service because a patient did not have enough deposit money for medical expenses, resulting in the death of that patient.**

**Complainant:** Mr. C

**The accused:** Private hospital A

Referring patient to another hospital as being requested was not useful for medical treatment that was appropriate for physical conditions of a patient who needed emergency help according to an intention of the Emergency Medicine Act B.E. 2551 (2008) as provided in Section 28. In addition, actions by the accused were not consistent with the protection of right to access to appropriate and standardized medical treatment any person should have as guaranteed and protected in Section 4 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014). Moreover, the accused and its personnel were medical professionals who had duties to assess and provide treatment to patients, taking into consideration human living. The accused's negligence of actions was therefore human rights violation. The National Human Rights Commission thus came up with measures to solve the human rights violation problem in accordance with Section 28 Paragraph 1 of the National Human Rights Commission Act B.E. 2542 (1999) and proposed them to Ministry of Public Health and Ministry of Finance to take actions within 90 days.

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A complainant submitted a petition to the National Human Rights Commission, recorded as petition no. 480/2558 dated 5<sup>th</sup> October 2015, to seek fairness and request the commission to check a case of which it was claimed that the accused had refused to provide medical treatment for the complainant's granddaughter who had an accident because her relatives did not have enough deposit money, resulting in her death. The complainant saw that the death of his granddaughter was a mistake of the accused who refused to provide medical treatment, claiming that her relatives could not pay additional medical expenses, even if the accused had many medical staff with specific expertise, and modern equipment and tools, that could treat the complainant's granddaughter giving her opportunities to survive.

The National Human Rights Commission took this case into consideration and saw that any patients have a right to receive good-quality and standardized medical treatment service from infirmary, and infirmaries or medical professionals, whether they are in public or private sector, have to strictly perform in accordance with medical standards and professional ethics, that is to save life of any patient to their fullest capacity. In this case of petition, the patient was at the level of critical emergency, the Red Emergency Level, of which the Emergency Medicine Committee had issued a proclamation of the Emergency Medicine Committee on criteria for assessment to indicate level of emergency and emergency treatment standards B.E. 2554 (2011) of which number 4 (1) states that critical emergency patients must receive medical treatment immediately, otherwise the patients would have high possibility to die or

injuries or illnesses of these emergency patients could become more serious or quickly develop complications. As for emergency actions according to Section 28 of the Emergency Medicine Act B.E. 2551 (2008) in case of this patient, even if she was checked and sorted by level of emergency and arranged to receive preliminary emergency treatment by the accused, Section 28 Paragraph 1 (2) of the Emergency Medicine Act B.E. 2551 (2008) provided that “an emergency patient shall receive emergency operation to the fullest capacity of that operational unit or infirmary before referral”, it was therefore initially heard that the accused did not provide emergency operation to the fullest capacity specified by the law, taking into consideration the fact given by the accused that at that time, the hospital had more than 100 physicians working full-time and more than 100 part-time consulting physicians. The accused revealed facts in the accused’s own website that the hospital was an accident and emergency center in the Eastern Region with complete set of modern medical equipment that could provide correct, accurate and quick diagnosis and could receive referrals from other hospitals. There were evidence from the explanation that the accused’s physicians in the Orthopedics Department and Neurosurgery Department who checked the patient when they admitted her for treatment from emergency medicine physicians and general surgery physicians put their signature on the medical record describing a treatment plan that required surgery by orthopedics physicians and neurosurgery physicians with an order of antiseptics and other medicine together with blood and other blood substitutes for a surgery. This shows that the accused had capacity and was ready to provide medical treatment to this patient, but the accused did not proceed to do so, claiming that relatives of the patient asked to use her right to receive medical treatment at a state hospital she was affiliated to despite the fact that the patient was in red-level critical state. In addition, there was another issue to consider, that is whether the claim by the accused that relatives of the patient asked to use her right at other hospital was against the Emergency Medicine Act B.E. 2551 (2008) or not as Section 28 Paragraph 1 (3) of the Emergency Medicine Act B.E. 2551 (2008) provided that “emergency operations on an emergency patient shall be in accordance with the necessity and emergency medical indication, without considering insurance rights, registration of an infirmary or the capacity to take care of the expenses of the emergency patient or any condition as a ground to deny the emergency patient of prompt emergency operations.” It was therefore concluded that even if the complainant claimed that the accused demanded the complainant to pay 1,000,000 Baht for medical expenses, representatives of the accused, however, testified to the National Human Rights Commission’s Sub-Committee on Rights of Elderly People, Persons with Disabilities, Gender Diverse Persons and Public Health that the expenses were estimated to be around 500,000 Baht, so that the complainant could prepare a financial plan and relatives of the patient withdrew cash from an Automated Teller Machine (ATM) to pay a part of deposit money for medical expenses to the accused. A fact was established with supporting document that the accused returned 20,000 Baht from the deposit back to the complainant. This implies that the accused did really demand for payment and it was at night time around 01.00 to 04.00 am when the complainant went to withdraw money – a circumstance that could be considered as creating a burden for the complainant and being a context that made the complainant understood and realized that the expenses were higher than the complainant’s capacity to pay. This also made relatives of the patient to decide to send the patient to Chonburi Hospital which was 50 km. away from location of the accused. When

the accused was referring the patient to Chonburi Hospital, considering conditions of the patient, the accused's physicians did assessment of the patient's symptom before putting her in an ambulance. When referral was on the way, the accused's staff who was not an expert in neurosurgery took note of symptom of the patient every 15 minutes, stating that the patient was conscious and scored a full 15 marks for her level of consciousness throughout the way. This referral record contradicted with a note by the accused's neurosurgery physicians that the patient had level of consciousness at 12 marks. When the patient arrived at Chonburi Hospital's emergency unit at about 04.45 am, Chonburi Hospital's emergency medicine physicians measured the patient's level of consciousness to be at only 9 marks and immediately provided her with breathing apparatus and blood. Difference in the level of consciousness could be a notice that Ministry of Public Health should check with experts from related agencies. The National Human Rights Commission saw that referral of the patient as requested was not useful for medical treatment that was appropriate for physical conditions of the patient who required emergency help in accordance with intention of Article 28 of the Emergency Medicine Act B.E. 2551 (2008). Moreover, actions of the accused were not consistent with protection of the right to access appropriate and standardized medical treatment every person should have which is guaranteed and protected by Section 4 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014). Moreover, as both the accused and its personnel were medical professionals who had duties to assess and treat patient by taking into consideration human living, actions by the accused was therefore negligence of actions that caused human rights violation. The National Human Rights Commission therefore came up with measures to solve the problem of human rights violation in accordance with Section 28 Paragraph 1 of the National Human Rights Commission Act B.E. 2542 (1999) and proposed them to Department of Health Service Support, National Institute of Emergency Medicine and the Medical Council of Thailand through Ministry of Public Health and to Office of Insurance Commission through Ministry of Finance to consider taking actions within 90 days as follows:

(1) Ministry of Public Health through Department of Health Service Support, National Institute of Emergency Medicine and Medical Council of Thailand check actions of the accused towards this emergency patient who was considered by the Royal College of Surgeons of Thailand to be in the Red Critical Stage whether or not they were in accordance with Section 28 of the Emergency Medicine Act B.E. 2551 (2008) and proclamation of the Emergency Medicine Committee on rules concerning infirmaries B.E. 2554 (2011) and proclamation of the Public Health Ministry about service standards for emergency medicine B.E. 2557 (2014), These agencies as mentioned above take actions with authority given to them in the Emergency Medicine Act B.E. 2551 (2008) and the Infirmaries Act B.E. 2541 (1998) and amendment of the Medical Professional Act B.E. 2525 (1982) and other related law to give fairness to the complainant.

(2) Ministry of Public Health through the Department of Health Service Support made an announcement requiring all infirmaries to place a clear sign at emergency room to inform emergency patients, their relatives and related persons their rights according to Section 28 of the Emergency Medicine Act B.E. 2551 (2008).

(3) Ministry of Public Health through Department of Health Service Support, National Health Security Office, Social Security Office and National Institute of Emergency Medicine carry out public relations and arrange to have a mechanism to check whether or not the rights as mentioned are known to emergency patients and their relatives and related persons with two telephone hotlines, 1669 and 1330, as another channel to guarantee that patients and their relatives know their rights and their right to receive emergency medical service is protected, preventing infirmaries to deny right to emergency service by using capacity to pay medical expenses as an obstacle against access to emergency service at critical stage.

(4) Ministry of Finance through Office of Insurance Commission consider developing a system for reimbursement of compensation money in case of car accident victims to hospitals that take care of emergency patients without creating burden to service providers, service receivers or relatives of emergency patients by paying in advance the deposit for medical expenses to cover medical expenses in emergency case as really occur according to the Motor Insurance Act B.E. 2535 (1992).