

Report No. 317/2560 on right and liberty to life and body related to right to receive public health service in case of a claim that a hospital did not allow a patient who had been cured to leave hospital, claiming that medical expenses had not been paid.

Complainant: Miss N

The accused: Private hospital W

Actions of the accused made people involved in this case believe that a patient had been retarded from leaving a hospital, claiming that medical expenses had not been paid, by creating an environment that the patient felt being under control without rights and liberties, such as having hospital staff to keep watching closely and having policemen presented when the patient was informed about medical expenses. These actions were unfair treatment against a person. The National Human Rights Commission thus came up with measures to solve this problem of unfair practice in accordance with Section 28 Paragraph 3 of the National Human Rights Commission Act B.E. 2542 (1999) for related government agencies to take actions.

A complainant submitted a petition, recorded as petition no. 261/2559 dated 19th April 2016, to the National Human Rights Commission, requesting the commission to check and protect human rights, claiming that the complainant's older brother was admitted to receive emergency treatment for acute heart attack in the accused's Intensive Care Unit (ICU). While the patient was being treated, the accused's financial staff informed the patient's family and relatives about medical expenses and asked them to pay. They had paid 244,000 Baht to the accused but about 1.5 million Baht still remained to be paid as they could not immediately pay all the expenses. They tried to negotiate with the accused, asking them to spare and some properties would be used as guarantor. However, the accused insisted that 70 per cent of the remaining medical expenses must be paid first, otherwise the patient would not be allowed to leave the hospital even if the patient's health was already improved. The complainant saw that disallowing a patient who had already been cured to leave a hospital, using unpaid medical expenses as the reason, was unfair.

The National Human Rights Commission took this case into consideration and saw that any person had a right to receive public health service that is effective and up to standards. When he firstly admitted, the complainant's older brother was in the red critical stage; he needed emergency treatment to the fullest capacity according to Section 28 of the Emergency Medicine Act B.E. 2551 (2008). The accused provided service completely according to Article 36 of the Infirmary Act B.E. 2541 (1998) and Ministry of Public Health's proclamation on infirmary's standards for emergency medicine service B.E. 2557 (2014) which were standards for service in emergency medicine in order to treat patients, bringing them out of emergency stage, including putting them in Intensive Care Unit to make them ready while waiting for a bypass operation. It was therefore seen that concerning access to

right to receive public health service, the accused had done appropriately and up to the standards as guaranteed and protected by the Constitution of the Kingdom of Thailand.

However, as for medical expenses that led to this petition, although the accused had a process to inform the patient's relatives from time to time, the complainant's older brother who was the patient might not be informed directly and the fact that the patient had to stay in the hospital while it might not be necessary to treat illness in the hospital anymore, even if there were records in a medical report, giving details about medicine and medical supplies that had been used, there was a reason to suspect that the accused delayed the time, retarding the patient, in order to get the patient's relatives or family to fully pay the remaining unpaid medical expenses before the patient was allowed to leave the hospital. Longer time in the hospital led to more expenses additional to medical expenses. Another fact was that instead of the accused's own security guards, policemen were chosen to accompany hospital staff to give information about medical expenses. Even if the accused claimed that they did so to protect hospital staff from any unexpected incidence because the patient's behavior changed to become aggressive, it was a decision that was inappropriate considering the principle of necessity and proportionality. Even if the patient did escape without paying the remaining unpaid medical expenses to the accused, it could not be used as an excuse that the accused used to retard the patient from leaving the hospital because another fact revealed that the patient's wife, who had not legally registered her marriage with him, did sign a contract agreeing to pay medical expenses to the accused. It was therefore considered that the accused's discretion to have policemen accompanying hospital staff to inform the patient and relatives about medical expenses was inappropriate and immoderate. This action also created more expenses than it was necessary. This was consistent with a fact from the accused's own explanation that after operation, physicians concluded that the patient could leave the hospital on 22nd April 2016, but the patient still had to stay at a patient room in the hospital from 23rd to 27th April 2016, resulting in an additional expense of 29,013 Baht the patient had to pay. Moreover, medical expenses for the bypass operation on three coronary arteries of which the accused charged the patient about 1.5 million Baht were too high, too much burden for any middle-class people in general to pay, even if private hospital is just an alternative from state hospitals of which patients have a right to receive medical treatment. The National Human Rights Commission thus saw that actions taken by the accused made concerned people believed that the patient was retarded from leaving the hospital by using unpaid medical expenses as an excuse, and were considered to be an unfair practice towards the people and subsequently violation of human rights. The commission then came up with guidelines for actions to solve the problem in accordance with Section 28 of the National Human Rights Commission Act B.E. 2542 (1999) and proposed them to Ministry of Public Health, Ministry of Commerce, Prime Minister Office and the Medical Council of Thailand to take actions within 90 days as follows:

- (1) The Medical Council of Thailand should consider checking medical treatment by the accused's physicians to see whether or not it was up to standards for medical treatment and the Medical Council of Thailand's rules concerning ethics of the medical profession B.E. 2526 (1983) and amendments.

(2) Ministry of Public Health through Department of Medical Service Support take actions to check service standards of infirmaries, especially methods that the accused used to request for payment of medical expenses, using authority of the Infirmery Act B.E. 2541 (1998) and its amendments.

(3) Ministry of Public Health through Department of Medical Service Support, Ministry of Commerce through Department of Internal Trade, and Prime Minister Office through Office of the Consumer Protection Board cooperate with each other and integrate their related works as follows:

(3.1) Develop measures to prevent such incidence as in this case to occur again and measures to build good relationships between patients, relatives of patients, and public health service providers.

(3.2) Develop measures to solve problems related to medical expenses charged by private hospitals, considering that it is an important agenda that needs cooperation to solve problems and continuously evaluate subsequent results together with related multidisciplinary public health personnel/agencies in order to prevent service receivers from bearing unnecessary burden in term of medical expenses.

(3.3) Discuss with related agencies to look for ways to issue proclamation making all kinds of medical service in private hospitals controlled service, except costs of medicine of which the Central Committee on Prices of Goods and Services had already declared to be controlled goods in order that there would be measures to control prices of medical service which is a service that is not consumer product and not total competition according to market principle because service providers could determine service demand while service receivers do not have enough information to judge whether to receive that service or not, using authority given by the Price of Goods and Services Act B.E. 2542 (1999).

(3.4) Fix the process for informing their rights to patients and their relatives, giving details of medical expenses, costs of medicine or medical supplies in order to solve the problem of conflicts between service receivers and service providers whether medical expenses are too high or not by cooperating with all agencies that have authorities according to acts and legislatives related to infirmery's way to give notice about details of medical expenses in order to define appropriate measures in the process to give notice about medical expenses, taking into consideration when to give notice and who would give notice to whom and how.