



FUTCHER & POPPESQOU

ATTORNEYS

Our Ref : MF/ap/MAT2343
Your Ref :

**MEC FOR HEALTH: KZN
NATALIA BUILDING
330 LANGALIBALELE STREET
PIETERMARITZBURG
3201**


PER EMAIL: SANDILE.TSHABALALA@KZNHEALTH.GOV.ZA
SAMANTHA.FOULKES@KZNHEALTH.GOV.ZA

24 May 2021

Dear Madam,

**COMPLAINT REGARDING OVERSIGHT VISITS TO PROVINCIAL HEALTHCARE
FACILITIES**

1. With reference to the above, we are instructed by the Democratic Alliance.
2. Our instructions are that representatives of our client, in their capacities as Members of the KwaZulu-Natal Provincial Legislature have been refused access to healthcare facilities under the jurisdiction of your office where such access has been sought for purposes of exercising the Constitutionally mandated legislative oversight over the functions of executive functions.

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Futcher and Poppesqou Incorporated (2016/167793/21)

Directors: Mark Gavin Futcher B.Soc.Sci (I.R.Hons) LLB (Natal) | Tarryn Bernadette Poppesqou B.Comm LLB LLM (UKZN)

Attorney: Maryke Minnie LLB (UNISA) | Candidate Attorney: Adrian Parker LLB (UKZN) LLM (CANTAB)

Consultant: Juan-Jacques Jordaan B.Comm LLB (UKZN) CIPP/E/C/US CIPM CIPT (IAPP)


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3. We are further instructed that this refusal of access is an ongoing issue and one that has endured for some time. In an effort to clear up any misunderstandings and to ensure that such oversight visits are conducted efficiently and effectively, we are instructed that our client reached out to your office to enquire as to what process you would like our client, and indeed other representatives in the Provincial Legislature, to follow in order to conduct such oversight visits. We are instructed that your office, in response to this engagement, advised of a process to be followed, which process has been followed the instances of refusal of access, which instances will be set out more fully below.
4. Our instructions are that, specifically, on the below dates, attempts were made in order to perform the mandated oversight functions, which attempts were thwarted, apparently on your instruction:
 - 4.1. On 19 November 2019 at the Richmond Clinic
 - 4.2. On 6 February 2020 at Addington Hospital
 - 4.3. On 20 February 2020 at St Mary's Mariannhill Hospital
 - 4.4. On 4 August 2020 at KwaDukuza COVID-19 Field Hospital
 - 4.5. On 4 August 2020 at Mahatma Gandhi Hospital
 - 4.6. On 9 October at Christ the King Hospital
 - 4.7. On 28 April 2021 at Phoenix Community Health Centre

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5. On 28 April 2021 we are instructed that representatives of our client further attended to conducting an oversight visit at the Umkumbaan/Cato Manor Community Health Clinic and were allowed access, however such access was allowed through the eThekweni Health Unit, this facility being co-run by your department and the eThekweni Municipality.
6. Accordingly it is apparent that for some nigh on 18 (EIGHTEEN) months your office, and your department has effectively prevented our client from conducting oversight visits and thus prevented our client from fulfilling its mandate to have oversight of executive functions – such oversight is a core tenet, and a foundational principle, of a constitutional democracy, it being one of the most basic checks on executive power.
7. Monday 17 May 2021 is the beginning of the second phase of the vaccine rollout programme and this process, by design, relies extensively on the use of public funds through facilities such as those referred to above – accordingly it is of vital importance that the use of funds under these circumstances be done in a manner that is transparent and accountable – at present the actions of those in your department appear to be, at best, negligent, and, at worst, evasive.
8. Our client instructs us that it has been reported to their representatives when they have attempted to perform oversight visits, that entry has been refused because our client, allegedly, is using these visits politically, for political gain, and/or that our client is seeking to politicise the vaccine roll out, and/or the provision of healthcare.
9. Without making any admissions with regard to the above allegations – our client acknowledges that it is a political party, and its representatives in the Provincial

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
Legislature are politically elected. In the premises, therefore, the actions taken are political in nature – however, with respect, your position as MEC for Health in KZN is also a political appointment and the functioning of your department is, accordingly, a political tool – in the premises, therefore, even should our client have political motives such motives are a feature of the system of checks and balances as mandated in the constitution and do not constitute reasons for your department to evade oversight.

10. Our client instructs us further that all previous efforts at attaining a productive response from your department have not been successful – accordingly we are instructed, as we hereby do, to demand that your department allow our client access to all provincial healthcare facilities in the province, such access to be arranged as per the existing procedures.

11. Should you fail to respond to this letter favourably within 7 (SEVEN) days of the date of this letter we are instructed to proceed with urgent court application which will include a request for an appropriate order as to costs.

Yours faithfully,

MARK FUTCHER

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