

*Navigating Chaos to Good Governance:  
On becoming a modern health system regulator*  
Case study: *the Afghan private health sector*

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A bread store in Kabul – many things are done in the old fashioned way.



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Michele on her way to work



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A view from the office roof



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## A changing ministry for a changing health sector

- Post-Taliban a national development strategy to increase market economy
- Private health sector rapid growth.
  - >150 private hospitals, 90 private drug producers and importers, and many private diagnostic and other types of health centers.
  - 2011 National Health Accounts, in 2008-2009, 76% of total health spending, \$760 million in the private sector, almost all OOP by individuals.
- Ministry's Strategic Plan 2011-2015, the National Health and Nutrition Policy 2012-2020 and the National Policy for Private Sector 2009-2014.
- MOPH's capacity for effective regulation is understood to be weak

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## MoPH Stewardship Vision: *quantity and quality services*

- Principles: oversight, transparency, accountability and legitimacy
- Strong institutional and organizational capacity: good leadership, administration and management
- An environment conducive for private sector to deliver good *quality* services in sufficient *quantity*
- Effective regulation
  - Information systems,
  - Participatory assessment, motivation and sanction
  - At central and provincial levels

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## Good governance; Decree 45

- Government bound by the law – even the minister!
- Fair and equal application of the law.
- Procedures:
  - Fair
  - Decision makers do not review their decisions! A separate independent body must do so. Set one up.
  - Transparent and organized according to canon, mukararah, tarzal amal, liha, forms  
etc- all transparent, easy to find.
- ZERO tolerance of corruption.



## The Private Health Center Regulation

- Solar calendar date 5/21/1691 *mukararah #1084*
- Passed by Cabinet not Parliament
- Applicable to private health centers (PHC):
  - hospitals, clinics, physical therapy, diagnostic and radiology centers.
- Legal authority to regulate PHC by 3 main mechanisms,
  - (1) how they are licensed and licensure maintained
    - requirement to comply with established or new MOPH standards
  - (2) monitored, and
  - (3) sanctioned for non-compliance with requirements;
- More mechanisms from the national health law and other laws.  
Example: vital statistics

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### Capacity Assessment of the Afghan MoPH to Implement a New Private Health Sector Regulation

- USAID-funded Health Policy Project (HPP)
  - (i) assess the regulatory capacity of the Afghan MoPH to implement the PHCR; and
  - (ii) propose a plan to build this capacity using a legal analysis.
- New methodology:
  - *relate regulatory effectiveness to an underlying law or other legal authority*
  - *What regulatory functions/governance are interrelated with law?*
- Process
  - Collect and review laws, analysis, interviews, conclusions and recommendations
  - Workshops to train and confirm findings
  - Implementation Planning
  - Team Building
  - Mentoring

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### Findings: No Legal Oversight

- **Implementing the PHCR means implementing a law**
  - PHCR not distributed, no meetings, no plans
- **Insufficient legal capacity/ underutilized**
  - One lawyer/500 staff – 2 in a department
- **Insufficient use of good governance principles, lack of respect for rule of law and the role of law and lawyers**
  - Corruption, no review systems, cannot find the laws, not published
  - Duplications/overlaps/ lack of legal authority – eg. LIED/M&E

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### Findings: No Legal Oversight

- **Unclear system when non-compliant conditions**
  - Which department is responsible to monitor
  - No standards on what justifies each penalty and process
    - ? When to refer for sanctions or remediate
    - ? When to advise, warn, \$ penalty, suspend, or close
- **No review system for any MoPH decisions**
  - PHCR dispute commissions: pt/doc, employer/employee
  - License denial
  - Sanctions – process and administrative review
  - Any other MoPh decision

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### Chaotic Licensing Process

- **License: renew 300 existing and issue new 200 licenses In accordance with**
  - Art. 5, 6, 8, 9 PHCR *conditions* for an establishment and owner
  - The *provisions* of regulation itself = license, renew, + MoPH *standards* new and existing
- **Old System**
  - 17 steps - not transparent - oral tradition - variability
  - No application form or instructions
  - Process is manual and active involvement of applicant
- **Plan**
  - Design a rational approach and sequence of steps, coordinate with other departments, One Stop Door
  - Forms, instructions, on line application, redesign licensing department, train staff

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Chaotic environment: Not conducive to a private sector and restrains growth of private health centers!

- Tax rates, business fees
- Limited access to financing
- Corruption and informal payments to officials
- Lack of electricity, poor public infrastructure
- Limited access to land
- Time and difficulty to register a business
- Limited demand for products or services
- Amount of time spent with government regulations and officials (3.5 out of each ten mgt hours!)

Burger NE, Kopf D, Spreng CP, Young J, et al. (2012) Healthy Firms: Constraints to Growth among Private Health Sector Facilities in Ghana and Kenya. PLoS ONE 7(2): e27885. doi:10.1371/journal.pone.0027885  
<http://www.plosone.org/article/info:doi/10.1371/journal.pone.0027885>

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## Recommendations: Sanctions, Disputes, Review

- Institutionalize legal oversight and build capacity
  - Build knowledge of and respect for rule of law and good governance principles
- Establish procedures for discipline and punishment in case of non-compliant conditions
- Establish and develop SOP on Conflict Resolution
- Establish a review system to appeal decisions of MoPH and complaints against MoPH by private health centers
- Legal Matters Team: all lawyers at MoPH, LIED, Policy Unit, Prof Forzley to work

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## Moving from chaos to governance.

- Role of the lawyer does not end with legislative drafting. Lawyers must continue to be engaged
  - to develop the procedures, policies and guidelines based in good governance to support effective regulatory mechanisms and activities and move from chaos to governance.
- Transition: service provider to a regulator requires
  - careful detailed planning, adequate time, political commitment, technical know-how, and perseverance through the errors and capitalizing on the successes.
- The MOPH is a dynamic entity.

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## Questions and Discussion

**Tashakar**  
**Inshallah ashufaq baadeen**  
**Tamanyate Niek!**

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