

立法會衛生事務委員會  
改善醫療投訴機制小組委員會  
二零零二年一月三十日會議

香港醫務委員會改革

目的

本文件旨在闡述我們對香港醫務委員會(下稱醫委會)的改革建議的看法。在研究醫委會的建議時，我們亦參照專業規管的作用和目的。

背景

2. 二零零一年五月，改革醫務委員會工作小組成立，負責檢討委員會的架構、組成和職能，藉此加強其問責、提高透明度及令委員會的工作能更加公正，以至最終能達到確保為市民提供高水準的醫護服務的目標。醫委會已完成對改革的探討工作，並在二零零一年十二月向政府提交改革建議(見附件)。

專業規管的目的

3. 專業規管的首要目的，是保障公眾不會受到差劣執業行為的影響。對醫療專業而言，基本上是保障病人。專業規管的要素包括釐定執業標準；藉備存一份名冊以控制加入醫生行列的人選；以及在特別指定情況下有權把醫生自該名冊上除名。指定的專業組織就是透過這

個制度，來保持高水準的醫護服務，向公眾保證註冊醫生適宜執業，以及保持病人對醫生的信心和雙方互信。因此，處理投訴和紀律處分只屬專業規管的部分主要功能。專業規管的主要功能還包括制定執業標準和教育、釐定註冊準則、審核註冊申請的資格，以及舉辦執業資格試等。

4. 醫療專業與本港其他專業都具有同一特點，就是擁有專門知識和技能，而且這些知識和技能是隨着新的研究結果而不斷革新。因此，非專業人員欠缺足夠的裝備以評估或規管專業人員的執業。本地和海外經驗均顯示，有業外人士參與的專業自我規管是規管專業行為的最有效方法。

#### 對醫委會改革建議的意見

5. 醫委會的改革建議可歸納為下列四大範疇：

(a) 增加醫委會和初步偵訊委員會的業外委員人數

(b) 另設紀律委員會進行紀律研訊

(c) 設立新規定以維持執業水準

(d) 設立申訴處理部，以加強與投訴人的溝通和對投訴人的支援

6. 現於下文撮述政府對上述各個改革範疇的意見。

## 增加醫委會和初步偵訊委員會的業外委員人數

7. 於專業規管組織中設置業外委員，是向公眾表明該專業並非只由業內人士規管。這不但可處理「醫醫相衛」的批評，亦能加強規管系統的公信力，並增加公眾的信心。再者，透過業外人士的參與，便能運用他們的觀點及專長，以令規管組織的治理及運作更為有效。另一方面，規管組織有需要保持足夠的業內委員，以執行有關處理投訴以外的專業規管工作。鑑於引發醫委會改革的事件，增加業外委員是一項提升公眾信心的措施。醫委會所建議將業外委員加倍（即由四名增至八名），無疑是朝着正確的方向邁進，並應得獲支持。然而，增加業外委員的數量是否足夠，仍可作進一步商議。

8. 建議中，將初步偵訊委員會的業外委員由一名增加至三名（即業外委員佔全部委員的三分之一），是較現時安排一個顯著的進步。至於規定除非在獲得初步偵訊委員會的主席、副主席及一名業外委員一致同意，否則不能拒絕任可投訴，亦有助加強投訴系統的公信力。然而，業外人士在這初步篩選階段中的比重可再作討論。此外，建議另設一個紀律研訊機制（見下文第 9 段），能確保分割醫委會調查及仲裁的功能，加上於初步篩選的程序中，設立足夠的措施以保障投訴者，整個投訴系統的公信力將得到保持。

## 另設紀律委員會進行紀律研訊

9. 成立紀律委員會進行紀律研訊，會把調查和仲裁這兩種職能更明顯分開。由於擔任主席一職的人士須具司法背景，而紀律委員會大部

分成員又非醫委會委員，因此有助委員會獨立運作。醫委會的一名業內及一名業外委員將是醫委會及紀律委員會的唯一聯系。此外，參與研訊的業外人士比例也會增加。包括該名具司法背景的主席，業內與業外委員比例為 4 比 3，這似乎亦是一大進步。跟其他擁有專門知識的專業一樣，在有足夠業外人士參與及制衡的機制下，醫生是評斷同業工作及操守的適當人選。另一方面，委員會建議就紀律研訊的適當程序和進行方式制訂書面指引。我們認為這些建議將大大提高紀律研訊程序的透明度、公信力和獨立性。

#### 設立新規定以維持執業水準

10. 維持執業水準是醫委會其中一個主要職能，這對保障病人和維持公眾的信心都十分重要。我們認為醫委會建議規定醫生作持續醫學進修，以及設立一個指定的專業表現委員會以處理不符合水準的執業行為，是朝着正確的方向邁進。

#### 設立申訴處理部，以加強與投訴人的溝通和對投訴人的支援

11. 據醫委會的統計數字顯示，約有 60% 的投訴被拒，是因為這些投訴並不屬醫委會的職權範圍。擬設的申訴處理部，作為提出投訴的首個接觸點及轉介組織，可加深投訴人明白醫委會投訴機制的職能和作用，以及處理投訴的程序。此外，申訴處理部亦可指導投訴人採用適當的投訴途徑，並在初步偵訊委員會拒絕投訴時，向投訴人充分解釋

他們投訴被拒的理由。這樣當有助減少誤解，並令投訴機制更方便易用。

12. 至於申訴處理部同時擔任調解角色的建議，我們認為，為要避免角色衝突，確保這項功能的獨立性，以及與醫委會的紀律研訊角色分隔，是十分重要。在這方面，我們需要掌握更多有關該部的組成和運作的資料，及部門與醫委會其他功能的關係，才可作進一步的討論及提出意見。

### 結論和未來路向

13. 雖然，我們仍可就改革細節再作商討，我們認為醫委會的改革建議方向正確。這些建議，對維持醫生高度的執業水準，提高整個制度的公信力和透明度，均發揮重要的作用。在獲得委員的意見後，我們會進一步與醫委會磋商其建議。

### 徵詢意見

14. 請委員就醫委會的改革建議提出意見。

衛生福利局

二零零二年一月

## **(A) Recommendations for Reform of the Medical Council**

Throughout its deliberations the Medical Council referred to the experience of medical regulatory bodies in Australia, the United Kingdom, Canada, the USA, New Zealand, South Africa and Malaysia in terms of their membership, complaint handling mechanism and professional standards and the views collected from the public and the medical profession, and recommends the following proposals to reform the Medical Council. These recommendations aim to strike a balance between professional self-regulation and public expectations.

### **Composition of the Medical Council**

2. In considering the number of lay members, the Medical Council took into consideration their valuable contribution and the need to maintain professional self-regulation. In similar overseas organizations the range is from 0% to 50%. The Medical Council is of the opinion that a ratio of one lay member to three doctors strikes an appropriate balance.

3. Having regard to the previous decision of the Medical Council on 3 January 2001 to reduce the number of doctors elected by the Hong Kong Medical Association from the existing seven to two, with the remaining five members to be elected by all registered medical practitioners, **the Medical Council recommends that the number of lay members shall be increased from four to eight. As a consequence, the Medical Council shall consist of 32 members (8 lay members, 12 directly elected members, 2 members elected by the Hong Kong Medical Association and 10 appointed members).**

### **Complaint Handling Mechanism**

#### *Complaint Procedures*

4. Dependent on the nature of the complaint, there are in existence many avenues that can be pursued. Consequently, patients and their families are often at a loss as to where they can file their complaints.

5. Based on the Medical Council's statistics for the past ten years, an average of 60% of the complaints lodged are outside its remit and have to be rejected. This has become the source of many misunderstandings and has caused the Council to be perceived as being unhelpful.

6. In this regard, **the Medical Council shall improve its existing procedures for handling complaints by setting up a Complaint Receiving Division with the following functions:-**

- (a) to receive complaints against doctors;**
- (b) to assist complainants in filing their complaints;**
- (c) to refer complaints to the PIC or other organizations; and**
- (d) to mediate between doctors and complainants in cases not relating to professional conduct, health or competence.**

*Composition and Operation of the PIC*

7. The investigatory function is currently vested in the Medical Council. While at first sight this may appear to overlap with its functions of disciplinary inquiry and sentencing, this is not the case in practice due to the separate membership of the PIC and of the disciplinary inquiry, i.e. members of the PIC, including the lay member, do not sit in the disciplinary inquiry. The Medical Council seeks to strengthen the role of the PIC by recommending the following:-

- (a) the number of lay members in the PIC shall be increased from one to three;**
- (b) at the initial screening stage, no complaint shall be rejected unless there is unanimous agreement between the PIC Chairman, Deputy Chairman and a lay member; and**
- (c) the PIC shall be given additional statutory powers to require the submission of documents and evidence in the course of its investigation.**

8. These recommendations are related to the proposals for the setting up of a Disciplinary Committee which will be dealt with in the next section.

### **Disciplinary Inquiry**

9. Having due regard to the need for separation of functions, the Medical Council recommends the following:-

- (a) **There shall be a Disciplinary Committee to conduct disciplinary inquiries.**
- (b) **The Disciplinary Committee at each disciplinary inquiry shall consist of a Chairperson and 6 Committee members comprising:-**
  - ◆ **1 medical member of the Medical Council;**
  - ◆ **2 lay members (1 from the Medical Council and the other from the Panel of Assessors); and**
  - ◆ **3 medical members from the Panel of Assessors.**
- (c) **Members of the Medical Council and Members of the Panel of Assessors shall serve in this Committee by rotation.**

### **Membership of the Panel of Assessors**

10. **The Panel of Assessors shall consist of forty medical members and sixteen lay members.**

### **Chairperson of the Disciplinary Committee**

11. **The Chairperson of the Disciplinary Committee shall be a person with a judiciary background. This person shall not be a Member of the Medical Council.**

### **Procedures of disciplinary inquiry**

12. The Medical Council recognizes that new members of the disciplinary



inquiry and indeed some members who attend the disciplinary inquiry on rare occasions are not familiar with the procedures of the disciplinary inquiry. For these reasons, **written guidelines shall be formulated on the proper procedures and conduct of the disciplinary inquiry. In addition, members of the Disciplinary Committee shall be fully briefed on the disciplinary procedures before they ever attend such inquiry.**

*Legal support for the complainant*

13. Section 24 of the Medical Registration Ordinance specifies that a complainant is entitled to be represented by counsel or by a solicitor throughout the inquiry. Section 25(2) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation provides that at the request of the complainant or his counsel or solicitor, the Council may permit the complainant or his counsel or solicitor to present the case against the defendant if the Council thinks it appropriate in the circumstances of the case. In this regard, the Medical Council has no further proposal.

*Legal representation for the Secretary*

14. To enable the Secretariat to have legal representative which is on par with the legal representative of the defendant doctor, the Medical Council reiterates the proposed amendment to section 21(2) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation as agreed in January 2001 to provide flexibility by appointing legal counsel outside the Department of Justice.

*Expansion of disciplinary orders*

15. The Medical Council's most important role is to ensure a high standard of medical care. The existing options for sentencing are rather limited and act more as a deterrent rather than helping doctors to improve their practice. **In this regard, the Medical Council recommends that the range of orders that can be made upon the finding that a disciplinary offence has been committed shall be expanded to include the imposition of conditions/restrictions on practice.**

Contents of the judgement

16. To make the judgement of the Disciplinary Committee clearer and more comprehensible for the general public and doctors, **the judgement/decision of the Disciplinary Committee shall consist of the following:-**

- Charge;
- Facts;
- Decision with reasons;
- Mitigation, if any;
- Order of the Disciplinary Committee; and
- Reasons for such an order.

Maintenance of Standards

17. The Medical Council recommends that CME shall be made a requirement for all doctors 3 years after the implementation of the voluntary system. The Medical Council shall further explore the mechanism for dealing with doctors who do not fulfill the required CME points.

18. The Medical Council supports the establishment of a Professional Performance Committee (PPC) to deal with substandard practice.

Other Recommendations

Policy meeting of the Medical Council

19. The Medical Council shall give a press briefing after each policy meeting.

Public Relations Strategy of the Medical Council

20. The Medical Council shall develop a public relations strategy to enhance communication with the public.

Attendance of Council Members

21. **To strengthen accountability, the attendance of Council Members shall be posted on the website.**

- END -