

立法會
Legislative Council

LC Paper No. CB(2)2285/00-01

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LegCo Panel on Health Services

Subcommittee on improvements to the medical complaints mechanism

**Minutes of meeting
held on Friday, 22 June 2001 at 8:30 am
in the Chamber of the Legislative Council Building**

- Members Present** : Hon LAW Chi-kwong, JP (Chairman)
Hon Cyd HO Sau-lan
Hon CHAN Yuen-han
Dr Hon YEUNG Sum
Hon Andrew CHENG Kar-foo
Dr Hon TANG Siu-tong, JP
Hon LI Fung-ying, JP
Hon Michael MAK Kwok-fung
Dr Hon LO Wing-lok
- Member Absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Public Officers Attending** : Mr Eddie POON
Principal Assistant Secretary for Health and Welfare

Dr Sarah CHOI
Principal Medical and Health Officer
Health and Welfare Bureau
- Deputations by Invitation** : Hong Kong Public Hospitals, Department of Health and Universities Doctors Association

Dr Benjamin LAU Shun-tung

Dr MO Ka-leung

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Dr LO Kwok-wing

Patients' Rights Association, Society for Community Organisation

Mr HO Hei-wah
Director

Mr PANG Hung-cheong
Community Organizer

Mr LING Chi-cheung
Patient Representative

Mr HAU Ka-po
Patient Representative

Ms MANG Lei
Patient Representative

The Hong Kong Medical Association

Dr LAW Chi-lim
Council member

Dr LEUNG Chi-chiu
Council member

Hong Kong Public Doctors' Association

Dr LEUNG Ka-lau
President

Dr WONG Tak-cheung
Vice-President

Dr SHEA Tat-ming
Treasurer

Hong Kong Doctors Union Ltd.

Dr YEUNG Chiu-fat
President

Dr YUEN Ka-wai
Council member

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Practicing Estate Doctors' Association

Dr CHOI Kin
Chairman

Faculty of Medicine, The University of Hong Kong

Professor P C HO
Associate Dean (Clinical Affairs)

Faculty of Medicine, The Chinese University of Hong Kong

Professor Sydney CHUNG
Dean

Professor FOK Tai-fai
Associate Dean

Hong Kong Dental Association

Dr HO Chi-wai, David
Hon Secretary

Association of Hong Kong Nursing Staff

Mr HO Mun-ka, Michael
Chairman

Ms CHOW Chiu-yin
Public Relation Officer

Mr YEUNG Wing-chiu
Executive Member

The Rehabilitation Alliance Hong Kong Limited

Mr WU Wing-kuen
General Secretary

Ms LAM Fong-ting
Project Officer

Hong Kong Council of Social Service

Mr FUNG Ho-lup

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Member, Health Policy Research Team

Dr HO Po-ying
Member, Health Policy Research Team

Mr CHUA Hoi-wai
Member, Health Policy Research Team

Consumer Council

Mrs CHAN WONG Shui
Chief Executive

Ms Vera TAM
Chief Trade Practices Officer

Hong Kong Council on Medical and Health Services

Rev CHU Yiu-ming
Convenor

Mr CHAN Kin-man
Secretary

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Miss Mary SO
Senior Assistant Secretary (2) 8

I. Confirmation of minutes of meeting held on 21 May 2001
(LC Paper No. CB(2)1856/00-01)

The minutes were confirmed.

II. Meeting with deputations
(LC Paper Nos. CB(2)1868/00-01(01) to (15))

2. The Chairman welcomed deputations to the meeting and invited them to give their views on -

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- (i) Whether a complaint office to handle medical complaints should be set up in the Department of Health (DH) as proposed in the Consultation Document on Health Care Reform or be independent of the Government; and
- (ii) The composition and structure of the Medical Council of Hong Kong (the Medical Council) and its procedures in handling complaints.

3. Views and suggestions given by deputations were summarised in the ensuing paragraphs.

Hong Kong Public Hospitals, Department of Health and Universities Doctors Association (the Association)

4. Dr LO Kwok-wing presented the views of the Association detailed in its submission (LC Paper No. CB(2)1868/00-01(01)). In particular, Dr LO said that the Association opposed the Government's proposal of setting up a Complaint Office in DH to handle medical complaints for the following two reasons. Firstly, there would be conflict of interests as DH was also a provider of primary health care. Secondly, as many medical complaints were due to flaws in the health care system, it was questionable whether a complaint office in DH would dare to criticise the Health and Welfare Bureau to which it would be accountable for the flawed policies set. Under these circumstances, the Association considered it more appropriate for an independent complaint office to be set up outside the Government. Dr LO further said that the Association supported the review currently undertaken by the Medical Council to improve its complaint handling procedures. The Association had no strong views on increasing the lay membership of the Medical Council so long as the whole complaint handling process was made more transparent and the power to deliver verdict and to award discipline remained with the Medical Council.

The Hong Kong Medical Association (HKMA)

5. Dr LAW Chi-lim introduced the HKMA's submission (LC Paper No. CB(2)1868/00-01(03)) which opposed the Government's proposal of setting up a Complaint Office in DH for similar reasons expressed by the Hong Kong Public Hospitals, Department of Health and Universities Doctors Association in paragraph 4 above. Dr LAW pointed out that HKMA considered that there was no need to set up another complaint office for the public to lodge medical complaints as there were already ample channels for the public to do so. What was lacking was an independent body to look into system faults and policy errors. To this end, HKMA proposed the setting up of an independent office with the power and expertise to monitor the Government's health care policies, investigate adverse health care outcome resulting from policy errors and sanction the government departments and public officers concerned for formulating the flawed policies. Dr LAW further said that HKMA adopted an open-minded attitude to the reform proposals of the Medical

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Council to improve its complaint handling process. It, however, was of the view that the Government should strengthen the investigation power of the Medical Council by, say, seconding senior doctors from DH to serve as investigation officers for the Preliminary Investigation Committee (PIC) of the Medical Council.

Hong Kong Public Doctors' Association (HKPDA)

6. Dr LEUNG Ka-lau said that HKPDA would only support the setting up of a Complaint Office in DH if such an office only took on the roles of channelling the complaints to the appropriate regulatory bodies and acting as mediator between the complainant and the complained. Dr LEUNG further said that HKPDA was open-minded to any proposals to improve the transparency and fairness of the Medical Council in handling complaints. It, however, was of the view that consideration should be given to appointing a judge to chair the disciplinary inquiry and recruiting full-time staff to carry out the investigation work.

Hong Kong Doctors Union Ltd. (HKDU)

7. Dr YEUNG Chiu-fat presented the views of HKDU detailed in its submission (LC Paper No. CB(2)1868/00-01(04)). HKDU opposed the Government's proposal of setting up a Complaint Office in DH and supported the appointment of more lay members to the Medical Council to take part in its complaint handling process from the initial screening of complaints to the disciplinary inquiry. Although there were a number of channels for patients to lodge their complaints in Hong Kong, the existing patient complaint system had long been criticised as not user-friendly and non-transparent. To rectify such deficiencies, HKDU proposed the setting up of a centralised medical complaint office (CMOC) to provide a "one stop" service to the public. Funded by the Government, the CMOC would act as a mediator between the complainant and the complained and as a "traffic director" to refer the complaints to the appropriate regulatory bodies for follow-up actions. To uphold the principle of professional self-regulation, the power of CMOC would be limited to assisting the complainants to obtain prima facie evidence and expert advice on the complaints lodged. To ensure credibility of CMOC, it should comprise professionals from various health disciplines, lay persons, a retired judge or legal practitioner, and representatives from the Legislative Council and the Consumer Council.

8. To improve the transparency and credibility of the Medical Council, HKDU proposed the following changes to the composition and power of the PIC and the disciplinary inquiry of the Medical Council -

PIC

- (a) Involving one lay member in the initial screening of complaint cases in addition to the Chairman and the Deputy Chairman of the PIC;
- (b) More lay members should be appointed to serve on PIC, but they should

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not exceed one-third of the total number of PIC members; and

- (c) More investigation power should be given to the PIC, but short of search and seizure of doctors' offices.

Disciplinary inquiry

- (a) More lay members should be included in the inquiry;
- (b) The inquiry should be chaired by a person with sound legal background such as a judge; and
- (c) The number of persons serving on the inquiry should be limited to seven comprising a legal professional as chairman, two lay members, two doctors in private practice and two doctors working in the public sector.

Practicing Estate Doctors' Association (PEDA)

9. Dr CHOI Kin introduced the PEDA's submission (LC Paper No. CB(2)1868/00-01(05)) which disagreed that the setting up a Complaint Office in DH was the best way forward to address the deficiencies in the existing patient complaint system. In the PEDA's views, a better approach would be to improve the complaint system of the Medical Council through the following means -

- (a) The investigation power of the Medical Council should be increased. To complement such, DH should deploy its staff to assist the PIC in its investigation work. Additional resources should be allocated to the Medical Council for the hiring of qualified doctors as full-time staff to explain to the public why the Medical Council had come to a particular decision on a complaint case lodged with it;
- (b) One lay member should be included in the initial screening of complaint cases in addition to the Chairman and Deputy Chairman of the PIC;
- (c) The disciplinary inquiry should be chaired by a person with legal background such as a retired judge;
- (d) Doctors of relevant disciplines, who were not members of the Medical Council, should be invited to take part in the inquiry;
- (e) Members of the Medical Council who did not participate in a particular inquiry should be allowed to initiate a review on the decision of the Medical Council on a particular case within 14 days after the conclusion of a hearing; and
- (f) The Medical Council should advertise in the newspapers results of the

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inquiry and the reasons for the decisions made.

Faculty of Medicine, the University of Hong Kong (HKU)

10. Professor P C HO presented the views of the Faculty of Medicine of HKU Kong as detailed in its submission (LC Paper No. CB(2)1868/00-01(06)). Professor HO pointed out that the Faculty of Medicine of HKU believed that there was a need to establish an independent complaint office to advise complainants of the proper channel and way to file a complaint and also to assist them to obtain expert opinions from relevant specialists. Such an office should, however, not take over the roles of professional regulatory bodies in delivering verdict and awarding disciplinary action. Professor HO further pointed out that the Faculty of Medicine of HKU supported the reform direction taken by the Medical Council, such as the proposal of increasing the number of lay members.

Faculty of Medicine, the Chinese University of Hong Kong (CUHK)

11. Professor Sydney CHUNG presented the views of the Faculty of Medicine of CUHK as set out in its submission (LC Paper No. CB(2)1868/00-01(07)). Notably, the Faculty of Medicine of CUHK supported the Government's proposal of setting up a Complaint Office under DH provided that its roles would be limited to conducting initial investigation, acting as an advocate for patients, making referrals to the appropriate regulatory bodies, but not to draw conclusions. The power of delivering verdict and awarding discipline should continue to be rested with the professional regulatory bodies. Concern about conflict of interests if a Complaint Office was set up under DH should not arise, given that DH would eventually give up its direct health care services.

12. Professor CHUNG further said that the Faculty of Medicine of CUHK supported appointing more lay members to the Medical Council to address the concern that the Medical Council was biased in favour of doctors. It proposed that the number of members on the Medical Council should be decreased from 28 to 24 as follows -

- (a) Two registered medical practitioners nominated by HKU, CUHK, DH, Hospital Authority (HA) and the Hong Kong Academy of Medicine respectively would remain unchanged;
- (b) Seven registered medical practitioners elected by HKMA and seven registered medical practitioners elected by all registered medical practitioners should be reduced to two each; and
- (c) Four lay members appointed by the Chief Executive (CE) should be increased to 10.

13. To deal with complaints relating to seriously deficient performance, the Faculty

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of Medicine of CUHK recommended the formation of a Disciplinary Committee under the Medical Council. If a doctor was found guilty of a significant lapse in the standard of practice, restraint in practice, compulsory training or obligatory supervision could be imposed.

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Hong Kong Dental Association (HKDA)

14. Dr David HO took members through the HKDA's submission (LC Paper No. CB(2)1868/00-01(08)) which opposed the Government's proposal of setting up a Complaint Office in DH. HKDA considered the existing patient complaint system could be improved and would adopt an open mind to any proposals to improve the system.

Association of Hong Kong Nursing Staff (AHKNS)

15. Ms CHOW Chiu-yin took members through the AHKNS's submission (LC Paper No. CB(2)1868/00-01(09)) which called for the setting up of an independent office to handle medical complaints, as practised in the United Kingdom and the Northern Territory of Australia. Similar to the Consumer Council, there should be complaint offices set up throughout the territory to provide convenient access for the public to lodge their complaints. The duties of the complaint office would include conducting investigations into the complaints, acting as mediator between the complainants and the complained, educating the public about the jurisdiction and roles of the professional regulatory bodies concerned in handling complaints, and monitoring the complaint handling works undertaken by the professional regulatory bodies concerned. Although the power to deliver verdict and award discipline should remain with the regulatory bodies, the proposed complaint office would still make a ruling on the complaint cases. If the ruling of the regulatory body concerned was contrary to that made by the complaint office, the public could judge for themselves where justice truly lay. To help the public better understand the operation of the complaint office, consideration could be given to publishing an annual report providing information on the numbers and types of complaint cases handled and how they were dealt with.

16. Mr Michael HO supplemented that there was a need for an independent complaint office to be set up, as the professional regulatory bodies were not set up to handle patients' complaints. Mr HO further said that the legal support provided by the Administration to the professional regulatory bodies was far from adequate and should be strengthened.

The Rehabilitation Alliance Hong Kong Limited (the Alliance)

17. Mr WU Wing-kuen presented the views of the Alliance as detailed in its submission (LC Paper No. CB(2)1868/00-01(10)). Notably, the Alliance proposed the setting up of an independent medical complaint office. Board members of the proposed medical complaint office should be appointed by CE or the policy secretary. One-third of them should come from the medical profession, whereas the remaining two-thirds should be lay persons. The Alliance supported any proposals to improve the transparency and accountability of the Medical Council in handling complaints, such as adding more lay persons to the composition of the Medical Council.

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Hong Kong Council of Social Service (HKCSS)

18. Mr FUNG Ho-lup introduced the HKCSS's submission (LC Paper No. CB(2)1868/00-01(12)). In particular, Mr FUNG said that HKCSS supported the setting up of an independent medical complaint office to receive complaints, make referrals, as well as to provide legal advice to the complainants, including assisting them to seek recourse from the court. HKCSS considered that even with the setting up of an independent medical complaint office, there was still a need to increase the transparency of the Medical Council in handling complaints. To this end, HKCSS recommended that the number of lay members of the Medical Council should be increased substantially, that there should be full-time lawyers to provide legal assistance for the PIC and the disciplinary inquiry, as well as to provide legal advice to the complainants generally. Dr HO Po-ying also said that the Medical Council should draw reference from the built-in check and balance complaint handling mechanism adopted by other professional bodies such as the Law Society, the Society of Accountants Council and the Social Worker Registration Board. For example, the Medical Council should consider setting up a Disciplinary Committee comprising lay members and non-Medical Council members to investigate the complaints, conduct hearings and make a recommendation to the Medical Council. The whole Council, or a separately appointed committee, would then deliver the verdict and decide on the penalty.

Consumer Council

19. Mrs CHAN WONG Shui highlighted the views of the Consumer Council as set out in its submission (LC Paper No. CB(2)1868/00-01(13)). Notably, the Consumer Council considered that there should be an independent complaint handling mechanism and that such mechanism should be user-friendly and transparent. On improving the complaint handling process of the Medical Council, the Consumer Council considered that the definition of the term "professional misconduct" should also take into account the community's views and not just that of the Medical Council, that one-half of the members of the Medical Council should be lay persons, and that the disciplinary inquiry of the Medical Council should be chaired by a senior and well-respected legally qualified person instead of a medical professional.

Hong Kong Council on Medical and Health Services (HKCMHS)

20. Mr CHAN Kin-man presented the views of HKCMHS as detailed in its submission (LC Paper No. CB(2)1868/00-01(14)) which called for the setting up of an independent medical complaint office. Apart from having the power to investigate into complaints, including the power to require any person to produce document, such an office should also take on the role of a medical tribunal. The medical tribunal should be chaired by a judge or a person with legal background. To assist the medical tribunal in considering cases involving professional misconduct, the Medical Council should provide guidelines on the circumstance which constituted professional misconduct and the appropriate penalty for committing such.

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21. Rev CHU Yiu-ming introduced his submission (LC Paper No. CB(2)1868/00-01(15)) and highlighted the following points -

- (a) Complainants would never get a fair treatment if the existing composition and structure of the Medical Council and its complaint handling procedures remained unchanged;
- (b) The way how the Medical Council handled complaints was essentially "rule of man", as there was at present no criteria on what constituted professional misconduct and on the appropriate penalty for committing such; and
- (c) To rectify deficiencies mentioned in (b) above, the Medical Council must lay down clearly defined standards of care and practice for doctors to follow and for patients to know whether they were getting quality services and doctors must always maintain the highest ethical and professional standards.

Patients' Rights Association, Society for Community Organisation (SOCO)

22. Mr HO Hei-wah introduced the SOCO's submission (LC Paper No. CB(2)1868/00-01(02)) which expressed similar views as those of other deputations which supported the setting up of an independent medical complaint office. He pointed out that some patients were unable to get hold of the relevant information and the inquiries were conducted from the angle of the medical profession. Therefore there was a need for an independent medical complaints mechanism even though the power of making verdict could remain with the professional regulatory bodies concerned.

23. Mr HAU Ka-po and Mr LING Chi-cheung, patient representatives, related the difficulties they had experienced in making complaints.

Discussion

24. Dr YEUNG Sum urged the Administration to abort the proposal of setting up a Complaint Office in DH, as the great majority of deputations opposed it in favour of a complaint office independent of the Government. Noting that only HKMA did not state whether it would support the setting up of an independent medical complaint office, Dr YEUNG sought clarification from HKMA in this regard.

25. Dr LAW Chi-lim responded that HKMA was open-minded to the setting up of an independent medical complaint office. The reason why HKMA could not give its support to the setting up of such an office at this stage was because of the lack of information of how such an office would work in practice. Dr LAW, however, pointed out that the overriding condition for supporting the setting up of an

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independent medical complaint office was that the professional self-regulation of the Medical Council could not be compromised in any way.

26. Dr LO Wing-lok opined that, in order to deter abuse of patient complaint system, there might be a need to charge people for lodging complaints.

27. Rev CHU Yiu-ming responded that to consider Dr LO's suggestion at this stage was not meaningful if a patient complaint system, albeit independent of the Government, could not ensure fairness to patients. Rev CHU pointed out that the reason why this was so was because doctors had often put their interests above that of patients. To rectify the situation, Rev CHU was of the view the Medical Council should draw up service standards for all medical services so that patients would know whether they were getting good quality medical services.

28. Professor Sydney CHUNG supported the idea of charging a fee for lodging a complaint with the medical complaint office in order to deter people from making frivolous or groundless complaints. Professor CHUNG further said that a patient complaint system must be fair to both patients and doctors. If this was not the case, doctors would be prone to adopt a "play safe" attitude in treating patients, which in the end might not be in the best interests of patients. Professor CHUNG pointed out that to avoid complaints lodged against them, some doctors in the United States of America (USA) had refused to perform certain high-risk medical procedures. Dr LO Kwok-wing echoed Professor CHUNG's view.

29. Mrs CHAN WONG Shui said that it was too premature to discuss whether a complainant should be charged a fee for lodging a complaint. In her view, the most important task at hand was to make the existing medical complaint system more user-friendly and transparent. Mrs CHAN further said that through educating the public on how and when to file a complaint, abuse of the patient complaint system could be minimised.

30. Mr Michael HO said that abuse was a common phenomenon in any system, and should not be an excuse for not setting up an independent medical complaint office. Regarding the concern about doctors refusing to perform certain high-risk medical procedures so as to avoid complaints against them, Mr HO considered that Hong Kong was still a long way away from such a situation happening here. Mr HO further said that the complaint handling process of the Nursing Council was even worse than that of the Medical Council in that the Chairman of the PIC of the Nursing Council could single-handedly decide whether a case should be dismissed or referred to the Nursing Council for inquiry, whereas a case lodged with the Medical Council could only be dismissed if both the Chairman and the Deputy Chairman of PIC agreed to it. To rectify such, action would be taken to amend the Nursing Ordinance to involve more members, including lay ones, in the initial screening of cases.

31. Dr LAW Chi-lim said that since January 2001, one lay member of the Medical Council had been involved in the initial screening of cases. Dr LAW further said that

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the majority of cases were dismissed because they were found to be groundless, frivolous or the complainant refused to make a statutory declaration.

32. Mr HO Hei-wah said that a lot of patient complaints could be easily avoided if doctors took the time to address the concerns and queries of their patients. Dr YUEN Ka-wai of HKDU agreed with Mr HO, but pointed out that some patients could be very unreasonable. Dr YEUNG Chiu-fat said that there was no dispute that devoting more time to address patients' concern and queries would reduce the number of complaints lodged against doctors, but doctors working in the public sector could ill-afford to do so. Dr SHEA Tat-ming of HKPDA said that due to resource restraints, public doctors could only strive to provide the best possible services to their patients. As such, Dr SHEA considered that the suggestion made by Rev CHU in paragraph 26 above would not be workable in practice. Dr CHOI-Kin echoed similar views, and further said that the fact that only a minority of medical complaint cases were referred for disciplinary inquiry was not unique to Hong Kong. Dr CHOI also disagreed with the saying that one of the main reasons for the very small number of successful complaint cases was because doctors were reluctant to testify against their counterparts. To his understanding, this was not the stance taken by doctors. Moreover, as there were over 10 000 doctors in Hong Kong, there should be no difficulty to find a doctor to testify against another doctor.

33. Professor FOK Tai-fai of the Faculty of Medicine of CUHK said that there was a need to set up a centralised patient complaint office. As to whether such an office should be under DH or independent of the Government, CUHK did not have strong view. Professor FOK further said that much of the public's misconception that the Medical Council was always biased in favour of doctors was because they were not aware of the fact that the Medical Council could only sanction a doctor for professional misconduct. To remedy the situation, more work should be undertaken by the Medical Council to explain to the public the jurisdiction and roles of the Medical Council and its complaint system. In order to meet rising public expectations and societal needs, Professor FOK supported the suggestion of expanding the remit of the Medical Council to enable it to sanction doctors for professional negligence.

34. Mr Andrew CHENG shared Mr HO Hei-wah's view that many complaints could be avoided if doctors were more forthcoming in addressing patients' concerns and queries. To this end, Mr CHENG was of the view that doctors should receive training on how to get on better with their patients.

35. Mr Michael MAK said that concern about the high cost of running an independent medical complaint office should not be an excuse for not setting up such, as this was ultimately for the public to decide whether they were willing to foot the bill. Mr MAK then asked the deputations which supported the setting up of an independent medical complaint office whether they had any come up with some ideas on the establishment and composition of the governing body of such an office.

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36. Noting the suggestion that one-third of the membership of governing body of the independent medical complaint office should comprise healthcare professionals, Ms Cyd HO asked the deputations which supported such a set up to explain why they considered that health professionals would not be biased in favour of their own profession if they were members of the governing body of the independent medical complaint office. On the suggestion that members of the governing body of the independent medical complaint office could be appointed by CE, Ms HO asked the deputations concerned why they considered that such an office would be more independent than a complaint office set up in DH. Ms HO further said that, in view of the growing democratisation in Hong Kong, it was debatable whether the power to deliver verdict and award disciplinary action should rest with the regulatory bodies.

37. Ms LI Fung-ying sought the deputations' views on how to strike a right balance between safeguarding public interest and upholding professional self-regulation, and whether they viewed having more lay members taking part in the regulation of their profession an encroachment on professional self-regulation.

38. Miss CHAN Yuen-han asked the deputations to provide more details on the scope of work of an independent medical complaint office.

39. The Chairman said that due to time constraints, questions raised by members in paragraphs 35-38 above would be addressed at future meetings.

40. There being no other business, the meeting ended at 10:40 am.

Legislative Council Secretariat
21 September 2001