

立法會
Legislative Council

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LegCo Panel on Health Services

Subcommittee on improvements to the medical complaints mechanism

Minutes of meeting
held on Wednesday, 27 June 2001 at 8:30 am
in the Chamber of the Legislative Council Building

- Members Present** : Hon LAW Chi-kwong, JP (Chairman)
Dr Hon YEUNG Sum
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, JP
Hon Michael MAK Kwok-fung
- Members Absent** : Hon Cyd HO Sau-lan
Hon CHAN Yuen-han
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Dr Hon TANG Siu-tong, JP
Dr Hon LO Wing-lok
- Public Officers Attending** : Mr Peter KWOK
Principal Assistant Secretary for Health and Welfare
- Dr Sarah CHOI
Principal Medical and Health Officer
Health and Welfare Bureau
- Deputation by Invitation** : The Medical Council of Hong Kong
Dr LEE Kin-hung, MBE
Chairman, Medical Council

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Professor Felice LIEH-MAK, CBE, JP
Chairman, Working Group on Reform of the Medical Council

Dr SHIH Tai-cho, Louis
Member, Medical Council

Mr LAM Kan-ming, Mark
Lay Member, Medical Council

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

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Miss Mary SO
Senior Assistant Secretary (2) 8

Meeting with representatives of the Medical Council of Hong Kong
(LC Paper Nos. CB(2)1921/00-01(01) and (02))

At the invitation of the Chairman, Dr LEE Kin-hung of the Medical Council of Hong Kong (the Medical Council) gave a presentation on the functions, structure and scope of work of the Medical Council as detailed in its submission (LC Paper No. CB(2)1921/00-01(01)).

2. Noting that over 70% of complaints were dismissed by the Preliminary Investigation Committee (PIC) of the Medical Council, Dr YEUNG Sum enquired whether the Medical Council intended to amend the relevant legislation to increase the investigation power of the PIC and to expand the remit of the Medical Council to handle complaints relating to professional competence and minor breaches not amounting to professional misconduct in order to meet rising public expectations on services provided by doctors.

3. Dr LEE Kin-hung replied in the positive to Dr YEUNG's questions. Dr LEE further said that the fact that the PIC did not have the power to require any person to give evidence or produce document in his/her possession had indeed hampered its role in handling complaints. The Court of Appeal in a ruling made in 1993 attested to such deficiency. Dr LEE, however, pointed out that the PIC would refer a case to the

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Medical Council for inquiry if there was sufficient prima facie evidence that the case did relate to professional misconduct. At the inquiry, the Medical Council had the power to summon any person to attend the inquiry to give evidence or produce any document or other thing in his possession and to examine him as a witness or produce any document or other thing in his possession, subject to all just exceptions.

4. Responding to Dr YEUNG's further enquiry on how many cases referred to the PIC for consideration after initial screening were subsequently referred to the Medical Council for inquiry, Dr LEE said that in 2000, 19 out of the 58 cases considered by the PIC were referred to the Medical Council for inquiry. To address the concern that the reason for the small number of cases proceeding to the inquiry stage, a lay member had been included in the initial screening of cases, and consideration would be given to adding more lay members to the PIC.

5. The Chairman enquired whether legal assistance was provided to the Chairman, Deputy Chairman and the lay member in the initial screening stage, and to the seven-member PIC at the PIC meeting. Dr LEE Kin-hung replied that legal assistance was not provided in the initial screening stage. In response to Dr YEUNG Sum's question, Dr LEE said that the Legal Adviser to the Medical Council was not a full-time staff.

6. Ms LI Fung-ying enquired about the duties of lay assessors and who appointed them. The Chairman referred members to section 21B of the Medical Registration Ordinance (the Ordinance) which stated that the Medical Council could appoint the following persons who were not members of the Medical Council to form a panel of assessors for the purpose of conducting an inquiry -

- (a) Two registered medical practitioners nominated by the Director of Health;
- (b) Two registered medical practitioners nominated by the Hospital Authority;
- (c) Two registered medical practitioners nominated by the Academy of Medicine;
- (d) Two registered medical practitioners nominated by the University of Hong Kong;
- (e) Two registered medical practitioners nominated by the Chinese University of Hong Kong; and
- (f) Two lay persons nominated by the Secretary for Health and Welfare.

Dr LEE Kin-hung supplemented that the quorum for the inquiry was five including

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members from a panel of assessors and at least one lay member, subject to not less than three members of the Medical Council and the majority being registered medical practitioners. It was the established practice of the Medical Council for its Secretary to invite lay assessors, by rotation, to take part in an inquiry.

7. Mr Michael MAK said that the practice of the Secretary to the Medical Council representing the complainant in an inquiry was not ideal, as it gave rise to the question of conflict of interests. As lay members were involved in all three stages of the complaints handling process, i.e. initial screening of cases, the PIC meeting and the inquiry but there were only four of them, Mr MAK enquired whether they could cope with the heavy workload. Mr MAK further enquired whether members of the Medical Council had been provided with some legal training, having regard to the fact that the inquiry was conducted like a court proceeding.

8. Dr LEE Kin-hung assured members that the arrangement of the Secretary to the Medical Council representing the complainant in an inquiry would not undermine the fairness of the complaints handling process of the Medical Council, having regard to the fact that the Secretary was primarily tasked to receive complaints and gather information for consideration by the PIC, whereas the actual prosecution work was carried out by a Government Counsel assigned to carry out the duties of the Secretary in respect of the inquiry. Almost all inquiries were held in public and all were adversarial in nature. As regards lay members, Dr LEE agreed that at present they had to devote a lot of their time to the work of the Medical Council. To alleviate the workload of lay members as well as to increase the transparency of the Medical Council, a plan was in hand to increase the number of lay members. As to whether members of the Medical Council had been provided with some legal training, Dr LEE replied in the negative.

9. Mr Mark LAM, a lay member of the Medical Council, assured members that despite the heavy workload imposed on him and other lay members, the quality of complaints handling was not compromised in any way.

10. Responding to Mr MAK's further enquiry about public attendance at the inquiry, Dr LEE Kin-hung said that the media was informed on every occasion about the date of the forthcoming inquiry and notices of the inquiry were displayed outside the Medical Council Secretariat and on the Internet. Starting from two years ago, the Hong Kong Medical Association, patients groups and other interested parties had also been informed of the date of the forthcoming inquiry.

11. The Chairman asked whether a person would commit an offence similar to contempt of court if he/she refused to produce any document requested by the Medical Council. Senior Assistant Legal Adviser advised that according to section 23 of the Ordinance, any person who was summoned to attend as a witness or to produce a book, document or any other thing at an inquiry but failed to do so would commit an offence

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and was liable on summary conviction to a fine at level 3 and to imprisonment for six months.

12. At the invitation of the Chairman, Professor Felice LIEH-MAK, Chairman of the Working Group on Reform of the Medical Council (the Working Group) briefed members on the progress of the Medical Council's reform proposals as detailed in its submission (LC Paper No. CB(2)1921/00-01(02)). In particular, Professor LIEH-MAK said that before coming to a view on the mechanism for handling complaints, the Medical Council had to first decide whether it was a complaints handling body or a disciplinary body. In the case of the former, the Medical Council would then be a clearing house for all complaints lodged against doctors. In the case of the latter, the Medical Council should expand its remit to handle complaints relating to professional competence and minor breaches not amounting to professional misconduct. To effect such, amendments to the Ordinance would be needed. If the handling of complaints were to remain with the Medical Council, several measures would be adopted to strengthen its transparency and credibility. These would include disseminating more information to the public, giving press briefing after each policy meeting and after each inquiry, adding more lay members to the PIC, and acting as a mediator between the complainants and the complained. Professor LIEH-MAK further said that the Medical Council had no strong view as to whether a central complaints office should be set up under the Department of Health (DH) or outside the Government, provided that the composition of the office was balanced, its procedure of receiving and handling complaints was user-friendly and transparent, there was adequate check and balance, and there would be seamless interface with the Medical Council.

13. Responding to Mr Andrew CHENG's enquiry about the stance of the Medical Council on the proposal of setting up a medical complaints office outside the Government, Professor Felice LIEH-MAK reiterated that the Medical Council had no strong view as to whether a central complaints office should be set up under DH or outside the Government. She, however, pointed out that that no matter how independent such as an office was, it would invariably be linked with the medical profession as input from the profession was required in making a ruling. Although there were many "independent" medical complaints office in overseas countries, it was not clear how much investigation power they had or indeed whether they had power equivalent to that possessed by the police or other law enforcement agencies, and to whom they were accountable. Professor LIEH-MAK cautioned that without first sorting out all these questions before deciding on the setting up of an independent medical complaints office was tantamount to a shot gun approach which could be very dangerous.

14. Dr Louis SHIH of the Medical Council supplemented that in countries such as Canada, the United Kingdom, Malaysia, Singapore and South Africa, complaints lodged against doctors were handled by the medical councils concerned. Although an independent commission was set up in New South Wales (NSW) in Australia to

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handle health care complaints, it should be pointed out that such an office worked in tandem with the NSW Medical Board to investigate into complaints and conduct inquiry. Dr SHIH further said that in setting up a central complaints office, regard must be given to avoid overlapping of work and duplication of authority with the regulatory bodies concerned. Dr SHIH added that there was no question of the Medical Council biased in favour of doctors in handling complaints, as evidenced by the fact that out of the 13 inquiries conducted in 2000, doctors incriminated in 11 inquiries were found guilty of professional misconduct. Mr Michael MAK remarked that a central medical complaints office did not need to be composed of members from the medical profession, as it could always invite experts to give advice where necessary.

15. Mr Michael MAK enquired which of the five Functional Groups set up under the Working Group was tasked to review the complaints handling process of the Medical Council. Mr MAK expressed concern about the small number of lay persons on the five Functional Groups, and enquired how they were constituted. Mr Andrew CHENG echoed Mr MAK's concern, and urged the Working Group to include more lay persons such as representatives from the District Councils.

16. Professor Felice LIEH-MAK explained that as improving the complaints handling process was a complex matter, the Working Group had therefore decided to adopt a vertical matrix approach by setting up five Functional Groups, i.e. the Functional Group on Consultation with the Public, the Functional Group on Consultation with the Profession, the Functional Group on Review of the Functions of Related Organisations Locally and Abroad, the Functional Group on Review of Administrative Procedures of the Medical Council and the Functional Group on Amendment to the Medical Registration Ordinance, to examine and review the areas relating to the complaints mechanism, disciplinary inquiry and composition of the Medical Council and the maintenance of professional standards with a view to making recommendations to the Working Group for reform. Of these areas, priority consideration would be accorded to the mechanism for handling complaints and the disciplinary inquiry of the Medical Council. As regards how the five Functional Groups were constituted, Professor LIEH-MAK said that the Working Group only agreed on who should be the chairmen of the five Functional Groups, and it was up to the respective chairmen to choose individuals to join their respective Functional Groups. Although the Working Group did not set any restrictions on how the membership of the Functional Groups should be composed, it nevertheless considered it prudent and advisable for, say, the Functional Group on Consultation with the Public, to have more lay members and this was done. Out of the 11 members of the Functional Group on Consultation with the Public, seven were lay persons.

17. Mr Mark LAM, Chairman of the Functional Group on Amendments to the Medical Registration Ordinance, explained that the reason why his Functional Group only comprised two lay members was because although many high calibre people he

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approached were interested in the reform of the Medical Council, many of them could not spare the time to do so. Professor Felice LIEH-MAK said that another reasons for the difficulty in recruiting lay persons to join the Functional Groups were that many of them did not wish to involve themselves in such a high-profile job. Moreover, the time constraint for setting up the Functional Groups had precluded the chairmen concerned from recruiting lay persons more widely.

18. Mr Andrew CHENG maintained his view that more lay persons should be involved in the reform, and enquired whether further consideration would be given to recruiting more lay persons to serve on the five Functional Groups. Professor Felice LIEH-MAK agreed to consider Mr CHENG's suggestion. She, however, hoped that members would not dwell on the composition of the Functional Groups for the time being, but to evaluate how effective the Working Group's reform measures were in improving the transparency and credibility of the Medical Council in handling complaints.

19. Responding to Mr MAK's further enquiry as to whether the meetings of the Working Group were open to the public, Professor Felice LIEH-MAK said that although the meetings of the Working Group were not open to the public, press briefing would be arranged after each meeting to inform the public of its initial thinking on certain reform proposals. Such information would also be put on the Internet.

20. Dr YEUNG Sum enquired whether the Medical Council would support the setting up of an independent medical complaints office which had the power to investigate into complaints and conduct an inquiry, whereas the power to award discipline would continue to be rested with the Medical Council.

21. Professor Felice LIEH-MAK reiterated that the Medical Council had no strong views as to whether a central medical complaints office should be set up under DH or outside the Government. She, however, considered that if the responsibility to conduct inquiry was taken away from the Medical Council, it would in effect strip the responsibility of the Medical Council to the bone. Moreover, such an arrangement would run counter to the spirit of professional self-regulation. Given that such a move was unprecedented in Hong Kong as well as overseas and would invariably impact on other regulatory bodies, very careful consideration must be given before embarking on such.

22. Ms LI Fung-ying remarked that although professional self-regulation was important, a right balance must be struck to safeguard the interests of the public.

23. The Chairman enquired about the proportion of lay persons which the Working Group had in mind for the Medical Council. The Chairman considered the existing arrangement of having elected members of the Medical Council serving on an inquiry

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not satisfactory, as no judge in a democratic society was elected. In this connection, the Chairman enquired whether, and if so, what action(s) would be taken by the Medical Council to address this problem.

24. Professor Felice LIEH-MAK responded that the number of lay persons to be added to the Medical Council would be more than two as originally planned in response to the recommendation contained in the Harvard report. As to the second question raised by the Chairman, Professor LIEH-MAK said that one suggestion being considered was adopting the practice of the Bar Association of appointing another group of people for the inquiry.

25. Mr Andrew CHENG enquired about when the Working Group expected to complete its work. Professor Felice LIEH-MAK responded that she could not give an answer to Mr CHENG at this stage. She, however, said that a meeting of the Working Group had been scheduled for 3 July 2001 to discuss the complaints handling mechanism.

26. There being no other business, the meeting ended at 10:31 am.

Legislative Council Secretariat
21 September 2001