

立法會
Legislative Council

LC Paper No. CB(2)615/01-02

Ref : CB2/PS/4/00

LegCo Panel on Health Services

Subcommittee on improvements to the medical complaints mechanism

**Minutes of meeting
held on Friday, 16 November 2001 at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon LAW Chi-kwong, JP (Chairman)
Hon CHAN Kwok-keung
Hon CHAN Yuen-han, JP
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
- Members Absent** : Hon Cyd HO Sau-lan
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Dr Hon YEUNG Sum
- 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
- Deputation by Invitation** : The Medical Council of Hong Kong
Dr LEE Kin-hung, MBE
Chairman, Medical Council

Action

Dr LAW Chi-lim, Robert
Member, Medical Council
Chairman, Preliminary Investigation Committee

Dr LEONG FUNG Ling-yee, Lilian, JP
Member, Medical Council

Prof CHUNG Shueng-chee, Sydney
Member, Medical Council

Dr TSE Hung-hing
Member, Medical Council

Dr YEUNG Chiu-fat, Henry
Member, Medical Council

Mrs CHENG CHO Chi-on, Mariana, JP
Lay Member, Medical Council

Dr SHIH Tai-cho, Louis
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

I. Confirmation of minutes of meetings held on 22 June, 27 June, 3 July and 26 September 2001
(LC Paper Nos. CB(2)2285/00-01 to CB(2)2288/00-01 and CB(2)92/01-02)

The above five sets of minutes were confirmed.

II. Meeting with representatives of the Medical Council of Hong Kong
(LC Paper No. CB(2)370/01-02(01))

2. The Chairman welcomed representatives of the Medical Council of Hong Kong (the Medical Council) and the Administration to the meeting.

3. At the invitation of the Chairman, Dr LEE Kin-hung, Chairman of the Medical Council took members through the Medical Council's paper which detailed the progress of the Medical Council's reform proposals. Major recommendations of the Working Group on the Reform of the Medical Council (the Working Group) that were accepted by the Medical Council were as follows -

- (a) The number of lay members of the Medical Council should be increased from four to eight. As a consequence, the Medical Council would consist of 32 members (eight lay members, 12 directly elected members, two members elected by the Hong Kong Medical Association (HKMA) and 10 appointed members);
- (b) A Complaint Receiving Division should be set up in the Medical Council Secretariat to receive complaints against doctors; assist complainants in filing their complaints, refer complaints to the Preliminary Investigation Committee (PIC) or other organisations and mediate between doctors and complainants in cases not relating to professional conduct, health or competence;
- (c) The number of lay members in the PIC should be increased from one to three. At the initial screening stage, no complaint should be rejected unless there was unanimous agreement between the PIC Chairman, Deputy Chairman and a lay member. Moreover, the PIC should be given additional statutory powers to require the submission of documents and evidence in the course of its investigation;
- (d) A Disciplinary Committee should be set up to conduct disciplinary inquiries. The Disciplinary Committee at each disciplinary inquiry should consist of one medical member of the Medical Council, two lay members (one from the Medical Council and the other from the Panel of Assessors) and three medical members from the Panel of Assessors. The Chairperson of the Disciplinary Committee should be a person with a judiciary background, who should not be a member of the Medical Council;
- (e) The range of disciplinary orders that could be made upon the finding that a disciplinary offence had been committed should be expanded to include the imposition of conditions/restrictions on practice;

Action

- (f) Continuing medical education (CME) should be made a requirement for all doctors three years after the implementation of the voluntary system; and
- (g) A Professional Performance Committee (PPC) should be established to deal with substandard practice.

Dr LEE further said that the Medical Council intended to forward the reform proposals, together with the proposed corresponding amendments to the Medical Registration Ordinance, to the Administration for consideration in December 2001. Dr LEE also said that the Medical Council was currently in discussion with the Department of Justice on how to enable the complainants to have the same right as the defendant doctors to appeal to the Court of Appeal against an order made by the Medical Council within one month from the date of service of the order. On the suggestion that guidelines should be drawn up to provide for the circumstances under which a certain order should be delivered, Dr LEE said that the initial thinking was to refer the matter to the future Disciplinary Committee for follow-up.

4. Mr Michael MAK asked the following questions -

- (a) How the Medical Council had gone about consulting the public, having regard to the facts that it had ignored the public's call for an equal number of lay members on the Medical Council and that the handling of complaints against doctors should be made independent of the Medical Council and the Government;
- (b) Reason for retaining two elected members from HKMA to serve on the Medical Council;
- (c) Whether consideration would be given to making it clear that the chairperson of the Disciplinary Committee must not be a doctor; and
- (d) When CME would be made a requirement for all doctors, and whether any survey had been conducted on the extent of doctors pursuing CME on their own.

5. Dr LEE Kin-hung responded that increasing the number of lay members from four to eight was appropriate, as other spheres of work of the Medical Council, such as registration of doctors, the conduct of Licensing Examination and the maintenance of ethics, professional standards and practice in the profession, required professional input. Although eight lay members would only constitute 25% of the composition of the Medical Council, such a percentage could not be said as low, as the percentage of lay members vis-a-vis doctors in similar organisations abroad generally ranged from

Action

0% to 50%. Mrs Mariana CHENG of the Medical Council supplemented that the concern groups had all asked for an increase in the number of lay members to the Medical Council, but there was no consensus on the number of lay members to be increased.

6. As regards public consultation, Dr LEE said that the Medical Council attached great importance to the views and suggestions of members of the public in drawing up its reform proposals. For this reason, a Functional Group on consultation with the public was formed under the Working Group. Prior to coming up with its proposals on ways to improve the mechanism for handling complaints and the disciplinary inquiry of the Medical Council, the Functional Group on consultation with the public had solicited the views of concern parties such as the patients' rights groups, the Hong Kong Journalists Association and the Hong Kong Council of Social Service. In addition, two public forums on the matter had been held.

7. Dr LEE pointed out that the Medical Council had no strong view as to whether a medical 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. The reason for the proposal of setting up a Complaint Receiving Division in the Medical Council was because no decision had been made on whether a Complaints Office under DH should be set up. Dr LEE further pointed out that no matter how independent a medical complaints office was, it would invariably be linked with the medical profession as input from the profession was required in making a ruling. This view was shared by the Court of Appeal which had mentioned in its rulings on several occasions that only doctors could determine whether other doctors were guilty of professional misconduct.

8. As regards Mr MAK's second question, Dr LEE said that the Medical Council considered having two elected members from HKMA appropriate as the great majority of doctors practising in Hong Kong were members of HKMA. Notwithstanding, Dr LEE pointed out that the number of doctors elected from all doctors practising in Hong Kong would be increased from seven to 10 under the new arrangement. As to Mr MAK's third question, Dr LEE conceded that he could not rule out the possibility that the chairperson of the Disciplinary Committee could be a doctor with a judiciary background.

9. In response to Mr MAK's last question, Dr LEE said that it was the Medical Council's intention to make it a requirement that all practising doctors on the General Register must participate in a CME programme accredited by the Medical Council and acquire a certain number of CME points in order to continue to have their names included in the General Register. The reason for making the aforesaid arrangement voluntary as a start was because the Medical Council considered it necessary to ensure

Action

that the CME programme, which had commenced in October 2001, was effective and acceptable to the doctors affected. As regards why the voluntary system would run for three years, Dr LEE explained that it was estimated that a three-year period would be needed for about 7 000 doctors on the General Register to participate in the CME programme. Dr LEE further said that in order to ensure that the quality of the CME programme was up to the standard required by the Medical Council, the first review would be carried out in six months' time, i.e. 1 April 2002. Dr LEE added that the Medical Council would shortly further explore the mechanism for dealing with doctors who did not fulfill the required CME points.

10. Dr YEUNG Chiu-fat of the Medical Council supplemented that although no study had been made to find out the extent of doctors on the General Register receiving CME, the number of them doing so was, to his knowledge, common. For example, about 2 600 to 2 800 doctors out of the some 6 700 doctors on the General Register worked in public hospitals and clinics and they regularly received CME provided by the Hospital Authority (HA) or DH. The remaining 3 000 to 4 000 doctors in private practice strove to do so the same by actively participating in various CME activities, such as attending medical conferences which were held anytime from Mondays to Sundays from early mornings till midnights, self-studies in medical literature and through CME websites on the Internet and get their knowledge advance through actively applying newly acquired medical knowledge to treat patients in their daily practice.

11. Referring to the Complaint Receiving Division proposed to be set up in the Medical Council Secretariat, Ms LI Fung-ying enquired whether the Medical Council Secretariat had the manpower to cope with the additional workload. Ms LI also enquired whether the Secretariat staff had the expertise to determine whether a complaint involved professional conduct, health or competence, and the skills to mediate between complainants and doctors in cases not relating to such. In her views, mediation did not merely mean consoling the complainants, but also assisting them in pursuing their cases with other organisations such as HA and lodging an appeal to the court.

12. Dr LEE Kin-hung responded that additional staff would be employed to cope with the additional workload arising from the setting up of the Complaint Receiving Division in the Medical Council Secretariat. Dr LEE clarified that Secretariat staff would not be expected to determine whether a complaint involved professional conduct, health or competence, as this was for the PIC to decide. The duty of the Secretariat staff was to ascertain that the complaints received were related to professional conduct, health or competence. If a complaint was found to be related to professional conduct, health or competence upon reviewing all information provided by the complainant, it would be referred to the PIC for follow-up. If a complaint was found not related to professional conduct, health or competence, the Secretariat staff would endeavour to reconcile the differences between the

Action

complainant and the doctor or assist the complainant to file his/her complaint with the appropriate organisation. Dr LEE, however, pointed out that the Secretariat staff would still refer a complaint not related to professional conduct, health or competence to the PIC for follow-up if all mediation efforts to reconcile the differences between the complainant and the doctor failed. Dr LEE further said that the Secretariat staff had the necessary knowledge and skills to carry out the functions of the Complaint Receiving Division mentioned in paragraph 3(b) above, as all of these functions were currently being undertaken by the Secretariat staff, with the exception of the mediating work, which was only carried out in a limited manner. As regards the issue of assisting the complainant to lodge an appeal, Dr LEE explained that such a situation would not arise until a ruling had been delivered by the Medical Council after a disciplinary inquiry.

13. Dr LAW Chi-lim of the Medical Council supplemented that one of the main reasons for setting up a Complaint Receiving Division in the Medical Council Secretariat was to correct the public perception that the Medical Council was biased in favour of doctors because at present a great number of cases received were dismissed by the PIC. It was hoped that such misconception could be corrected by setting up the new Division to screen out complaints not related to professional conduct, health or competence and to undertake mediation work which followed.

14. The Chairman enquired whether the Secretariat staff would mediate between the complainants and doctors if complaints were subsequently dismissed by the PIC. Mrs Mariana CHENG replied that this was currently being done and would continue to be done by the Complaint Receiving Division. Dr Lilian LEONG of the Medical Council pointed out that in the course of collecting views and suggestions from the public on ways to improve the complaint handling mechanism of the Medical Council, it was revealed that the public considered providing assistance in filing their complaints with the right authorities and reconciling their differences with the complained more important than increasing the number of lay members of the Medical Council.

15. Mr Andrew CHENG said that despite the proposed increases in the number of lay members in the Medical Council, the PIC and the Disciplinary Committee, doctors would still be the dominating members, i.e. lay members would only constitute 25% of the Medical Council and 33.3% of the PIC and of the Disciplinary Committee (excluding the chairperson). In view of the fact that the Medical Council was the sole authority having the statutory power to sanction a doctor for professional misconduct, it was of paramount importance that it must be fair and seen to be fair in handling complaints against doctors. In this connection, Mr CHENG urged the Medical Council to further increase the number of lay members in the Medical Council and its committees. For example, the number of lay members taking part in the initial screening stage should be increased from one to two, thereby making even the number of medical members and lay members taking part in this process.

Action

Mr CHENG also expressed concern that the existing three-stage proceedings adopted by the Medical Council in handling complaints, i.e. initial screening, PIC meeting and inquiry, had created too many hurdles for the complainants to get a fair treatment.

16. Dr LAW Chi-lim responded that although the number of medical members outnumbered that of lay member taking part in the initial screening of cases by two to one, there was no question that the decision made by the medical members would veto that made by the lay member. This was because no complaint would be rejected unless there was unanimous agreement between the PIC Chairman, Deputy Chairman and a lay member. Dr LEE Kin-hung supplemented that there was also no question that the lay member would be pressurised into making the same decision as that made by the PIC Chairman and Deputy Chairman, as each of them made their decision on their own and separately. Dr LAW further said that as determining whether a doctor had committed an offence of professional misconduct could only be made by doctors, it was therefore not unreasonable for the PIC to comprise mainly doctors with the lay member primarily performing a monitoring role to see that everything was done in a fair and impartial manner. Dr LAW explained the three-stage proceedings in handling complaints were not intended to block people from getting a fair treatment, as the first two stages served as a filter to take out cases outside the jurisdiction of the Medical Council. Dr LAW hoped that the public would not judge whether the PIC had acted fairly on the basis of the number of cases it dismissed, but on why these cases were dismissed. He referred members to the annual report of the Medical Council which set out in detail the work of the PIC and the reasons for dismissal of cases.

17. Mr Andrew CHENG referred to section 25(2) of the Medical Practitioners (Registration and Disciplinary Procedures) Regulation (the Regulation) which stipulates that at the request of the complainant or his counsel or solicitor, the Medical Council may permit the complainant or his counsel or solicitor to present the case against the defendant if the Medical Council considers it appropriate in the circumstances of the case. Mr CHENG enquired whether consideration would be given to making it clear in the Regulation that the Medical Council would permit the complainant or his/her counsel or solicitor to present the case against the defendant if the Medical Council considered it appropriate in the circumstances of the case. Dr LEE Kin-hung said that the Medical Council considered the present provision adequate and, to his knowledge, the Medical Council had never turned down a request from a complainant to have his/her counsel or solicitor present his/her case at the disciplinary inquiry if it was considered appropriate in the circumstances of the case.

18. Miss CHAN Yuen-han said that although the Medical Council's reform proposals, if adopted, would improve the transparency of its complaint handling mechanism, they still could not fully address the concern that doctors were biased in favour of doctors. To fully address such, Miss CHAN was of the view that an independent medical complaint office should be set up.

Action

19. Dr LEE Kin-hung responded that the Medical Council considered itself an independent body, as it had no link with either the Government, patients' groups or doctors' unions. He, however, reiterated that no matter how independent a medical complaints office was, it would invariably be linked with the medical profession as input from the profession was required in making a ruling. Professor Sydney CHUNG of the Medical Council supplemented that regardless of how a medical complaint office was set up, due regard must be given to striking a right balance between safeguarding patients' interests and ensuring that doctors were not subjected to unfair criticisms. Otherwise the public might tend to lodge groundless or frivolous complaints against doctors. Such a situation would erode the trust between doctors and patients. This would also be to the disadvantage of patients, as some doctors might practise "defensive medicine" and refrain from performing high-risk medical procedures, as had already occurred in some states in the United States of America.

20. Professor CHUNG regarded the view that the Medical Council was biased in favour of doctors as a very serious criticism. To allay public's concern in this regard, the Medical Council had endorsed the Working Group's proposal of setting up a Disciplinary Committee to conduct inquiry. Unlike the present arrangement whereby the quorum for the inquiry was five including 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 doctors, the proposed Disciplinary Committee would have very little link with the Medical Council in the sense that only one out of its seven members would be a medical member of the Medical Council. Moreover, to remedy the deficiency that the Medical Council could only sanction a doctor for professional misconduct, a PPC would be set up to deal with substandard practice. If a doctor was found guilty of substandard practice, he/she would be prohibited from performing certain medical procedures or prescribing certain medicines for a certain period of time and might be required to undergo certain CME to upgrade his/her standard of practice.

21. The Chairman asked the following questions -

- (a) Whether a person would be penalised for failing to submit documents and evidence required by the PIC in the course of its investigation and whether the PIC would need to obtain a court order before entering a person's premises to seize such, in the event that the PIC was given additional statutory powers to require the submission of documents and evidence in the course of its investigation,
- (b) Whether the same Medical Council member could sit on the PIC and the Disciplinary Committee examining the same case;
- (c) Whether a doctor's eligibility to continue practising in Hong Kong would

Action

be judged by whether he/she could meet the standards set by the PPC;
and

- (d) Whether consideration would be given to stating in the legislation the criteria for dismissal of cases.

22. Responding to the first question raised by the Chairman, Dr LEE Kin-hung said that details on how the PIC could exercise its additional statutory powers to require the submission of documents and evidence in the course of its investigation and other related matters were for the Administration to decide when drafting the amendments to the Medical Registration Ordinance. As regards the second question, Dr LEE said that there was no question that the same person would serve on the PIC and the Disciplinary Committee examining the same case. This was in line with the current practice whereby people serving on the PIC and the disciplinary inquiry of the same case were two different sets of people. As to the third question, Dr LEE clarified that a doctor's eligibility to continue practising in Hong Kong would not be judged by the PPC, as the work of the PPC was to examine whether a doctor's practice was substandard and then make the necessary disciplinary order to rectify the problem. On the last question, Dr LEE said that the Medical Council would need to discuss with the Administration on the feasibility of stating the criteria for dismissal of cases in the legislation.

23. Mr Andrew CHENG reiterated his views mentioned in paragraph 15 above, and urged the Medical Council to at least consider involving one more lay member in the initial screening of cases.

24. Mr Michael MAK urged the Medical Council to immediately make it a requirement for all doctors on the General Register to acquire a certain number of CME points in order to be able to continue practising in Hong Kong. Mr MAK further said that apart from posting the attendance of Medical Council members on the website, there should also be measures to ensure a high attendance rate of Medical Council members.

III. Date of next meeting and items for discussion

25. Members agreed to discuss the following two issues with the Administration at the next meeting on 21 November 2001 -

- (a) Key problems of the existing patient complaint system based on the opinions collected in the previous meetings and the proposed direction for improving the patient complaint system; and
- (b) Complaint system of HA and medical institutes regulated by DH.

Action

26. There being no other business, the meeting ended at 10:34 am.

Council Business Division 2
Legislative Council Secretariat
6 December 2001