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The current malaise affecting the Hong Kong Medical Council

The current HKMC, constituted on the principle of professional self-regulation, has lost the confidence of a large proportion of the public. There is an urgent need to redress the situation.

Currently, the HKMC consists of 28 members and only 4 of these are not doctors. Of the 24 doctors, the majority (7 nominated by the Hong Kong Medical Association and 7 directly elected) directly represent the interests of doctors. Of the remaining 10, 4 represent the interests of the Government and the Hospital Authority, and only 6 (4 from the universities and 2 from the HK Academy of Medicine) are from learned institutions that represent expertise in education, training, examinations, and the setting of standards. The credibility of the HKMC as an arbiter in disputes between the profession and the community is therefore questionable.

The Council appoints all of the committees and subcommittees, and their compositions are not defined by qualifications, expertise, or experience, but by popular approval of Councillors. Sometimes, the same few individuals sit on a number of committees, and validate their own decisions in Council.

Given that the functions of the HKMC are to set and regulate standards and to hear disputes, the conclusions and decisions made are often controversial. Unless the HKMC is seen to be objective and fair, it will lack the credibility necessary to defend its decisions. Without this credibility, the HKMC cannot set or impose standards, protect the public against the wrong doings of doctors or exonerate doctors against unjustified complaints.

It is our opinion that much of the current criticism levelled against the HKMC has not resulted so much from wrong decisions or lack of competence of Councillors, but rather is symptomatic of the loss of credibility and increasing impotence of the Council. We trace this loss of authority to events in the late 1990's, when in the belief that the profession should regulate itself, a large number of Councillors elected by the profession were added to the HKMC.

Approaches to reform

The continuing criticism of the medical profession by the media, and the progressive loss of credibility of the HKMC, signals the necessity for reform. The current situation also represents an opportunity where reforms may be supported by the profession.

This opportunity should not be squandered by the imposition of minor changes to address the existing controversies, as these are only symptomatic of deep underlying structural dysfunction. A fundamental review of the role and structure of the HKMC is necessary.

Should the HKMC continue to exist? There is a body of opinion which asserts that a government appointed body or ombudsman should replace the HKMC. However, Medical Councils exist in comparable communities, and on the whole, they successfully serve a wide range of useful functions including setting and regulating standards of medical practice.

Acceptance of defined standards by the profession is likely only where the profession itself is involved in their formulation. We also feel that, on the whole, doctors in Hong Kong are competent, honourable, and are intent on doing a good job, and they should participate in the regulation of their own profession. Finally, we feel that the current problems are the result of a loss of credibility due to the structure of the HKMC rather than a lack of competence or good faith on the part of the Councillors. We therefore recommend that the HKMC should continue to exist.

What is the job of the HKMC? Legislation currently defines the composition and functions of the HKMC, but the role that it serves has not been defined. This has led to misunderstandings both amongst doctors and the public. Effective reform requires that this role be clearly defined, as any changes must be assessed according to the job it has to do.

It is our opinion that the primary purpose of the HKMC should be to safeguard the welfare of those in the community who are in need of, or are seeking, medical care. It should perform this function by setting and auditing standards for registration and practice, investigating cases where the standard is suspected to have been inadequate, and where necessary, take remedial or disciplinary action. The HKMC has a secondary role in maintaining the welfare of the medical profession by maintaining high professional standards, thus enhancing the status of the profession and the respect with which the community views the profession.

What should be the composition of HKMC?

To maintain the principle of professional autonomy, doctors should have a slight majority on the Council. So that the decisions made will have greater credibility with the general public, the number of lay members on the Council should be radically increased. It is our opinion that the current membership of 28 be reduced to 24. There should be 10 appointed doctors, according to current practice. The 4 nominated from the 2 universities and from the Hong Kong Academy of Medicine represent expertise in medical education, examinations, the setting of standards. The 4 from the Hospital Authority and Department of Health represent expertise in medical administration and management. Although they could be nominated from their respective institutions, their qualifications should be vetted and the appointments be made by the Chief Executive.

There should be 4 doctors directly elected from the profession. Their role would be to represent their medical colleagues, and they would be expected to act as advocates for the profession.

The other 10 appointments should represent expertise in the setting of standards from a non-medical perspective. As an example, there could be 2 nominees from SHW, representing medical policy, 2 senior members of the legal profession, 2 senior

members of the Allied Health professions (Nursing, Physiotherapy), 2 from non-medical professions (teachers, engineers), and 2 senior civil servants. They should assist in resolving controversial issues, and they should be appointed by the Chief Executive on the advice of the Secretary of Health and Welfare.

Council and Committees

The complexities of modern medicine are such that some of the committee structures effective in the past are no longer adequate. The membership of committees also needs to reflect the task at hand, and the manner of appointment should be made transparent.

Although the HKMC should be allowed to form whatever committees as necessary, some committees of these deal with highly technical and contentious issues. It may be useful for these to be formally structured and their membership and duties defined.

There should be a **Qualifications and Registration Committee**. Its main functions would be to vet applicants for registration, and ensure that the qualifications are compatible with requirements before registration is approved. Additional functions may be to vet qualifications, and determine whether their standards are comparable with those already accepted in Hong Kong.

Although many of these functions are established and routine, it is nevertheless important that the membership of this committee be clearly defined, with a majority representation from the academic institutions that have experience in educational assessment. It is particularly important that this committee not be dominated by those elected by their colleagues.

There should also be a **Postgraduate Education Committee**. This will be particularly important if Continuing Medical Education and Professional Development become compulsory. In addition to auditing and validating such efforts, the committee will also need to further develop postgraduate programs, and to evaluate and validate programs from diverse sources.

Such a committee should have members that are involved in technology development and training, usually senior specialists in the Hospital Authority, and be subjected to the leadership and supervision from representatives of the HK Academy of Medicine.

The **Disciplinary Committee** should handle cases of suspected unprofessional conduct and inadequate standards. In order to maintain credibility, the Disciplinary Committee must be formally structured, and its membership not subjected to popular decisions from Council. We recommend that the chairman of this committee be a senior member of the legal profession, perhaps one of the two on Council. The number of doctors and lay persons should be defined, and members be appointed by the Secretary for Health and Welfare for a defined period rather than on an ad hoc basis. Elected members should not sit on the disciplinary committee.

Besides making recommendations for censures such as deregistration, reprimand and warning letters, the Disciplinary Committee may also make recommendations that the doctors should be restrained from carrying out certain procedures or practices,

undergo compulsory training, or be subjected to supervision under certain circumstances.

To maintain the authority of the HKMC, it would be helpful if penalties imposed following such a rigorous set of procedures not be overturned by another court. Appeals should be directly for a judicial review.

Although these committees should be chaired by members of the HKMC and be answerable to it, the majority of members can be appointed from outside of the HKMC, based on the expertise that is required and available.

Handling of complaints against doctors

While errant doctors must be disciplined and harm done to patients be redressed, an avalanche of litigation against doctors is not in the best interests of the community. Such legal action erodes the trust between doctors and patients, increases legal costs and encourages doctors to practice defensive medicine. There are many causes for the current high numbers of complaints against doctors, and for the dissatisfaction towards the way cases are being handled. Amongst these are increasing community expectation, the anticipation of financial compensation, and the encouragement of lawyers, politicians, and the media who pursue their own agendas. Some of these causes cannot be remedied by any reform to the HKMC, and so are beyond the current discussion. What follows are issues that may be altered by reform.

One area of reform may be the clarification of the type of cases that the HKMC should hear, and this can be based on an understanding of the role of the HKMC.

The HKMC is required to investigate and hear complaints against doctors for unprofessional behaviour. Complaints against doctors regarding drug abuse, criminal and dishonest behaviour, advertising, and a host of other misdemeanors are currently handled relatively well. It is the complaints by patients aggrieved by allegedly substandard treatment that have been most common and contentious, and dissatisfaction over the handling of these cases overshadows all discussion regarding the relationship between doctors and the community, and about the functions of the Medical Council. Some of the complaints lodged are related to adverse events, some related more to claims of medical negligence, and only a small proportion of cases relate to incompetence or unethical behavior. There are, however, other cases where the complaint is related to inadequate standard of practice and if proven, these doctors are more in need of additional training and supervision than punishment. The current disciplinary procedures contain no adequate provision to handle these cases fairly or to remedy the inadequacy.

Patients in general have little medical knowledge and even less understanding of the avenues of complaint that are open to them. When a medical incident occurs, it is often far from clear, either from the patients or the relatives perspective, whether it was an adverse event that is an inherent risk of the procedure, an error of judgement by the doctor, the result of medical negligence or a failure of the system. When patients suffer personal injury or relatives experience the loss of a loved one, they may be confronted by a less than helpful or non-transparent complaints system. Under these circumstances, it is understandable that their frustration may turn into anger.

The current mechanism for handling complaints was established when the level of distrust between the profession and the community was lower and there were fewer cases. Such a mechanism has become increasingly inadequate. Few complainants feel that they are vindicated at the conclusion of proceedings by the Medical Council.

The situation cannot be improved unless the reform process adequately addresses the role of complaint handling, as well as making the procedures more user-friendly, unambiguous and transparent.

We support the establishment of an independent body based in the Department of Health as a clearing house for complaints related to the medical system. Complaints should, in the first instance, be directed to this independent body, and it should be empowered to make the initial investigation, gather data, and seek a professional opinion. The role of such a body should not be to draw conclusions, but to act as an advocate for the patient and make referrals to the appropriate agencies.

The body should identify only two types of cases for referral to the HKMC, both of which concern professional behaviour and maintenance of standards. The first involves cases where *prima facie* evidence exists for unprofessional conduct, and some form of censure is indicated if this is proven. The second involves cases where it is judged that a significant lapse in the standard of practice has occurred, and some form of formal restraint, training, or supervision should be instituted if this is confirmed.

Cases involving disagreements or disputes between patients and doctors, and where litigation for compensation rather than a problem of professional standards is the issue, should be identified at this point, and not be referred to the HKMC. In such cases the complainant should proceed to the civil courts. In other cases where the issue relates to service delivery or administration of the Hospital Authority, referrals should be made to the Public Complaints Committee of the Hospital Authority.

Summary of recommendations

1. The HKMC should continue to exist, but its composition, roles, and procedures be extensively revised.
2. The primary role of the HKMC should be to safeguard the welfare of patients. The HKMC has a secondary role in maintaining the welfare of the medical profession, by maintaining high professional standards, enhancing the status of the profession and increasing the respect of the community for the profession.
3. The HKMC should have 24 members. There should be 4 elected doctors. There should be 20 appointed members, 10 doctors and 10 non-doctors. The 10 appointed doctors should be 4 from the 2 Universities, 2 from the Hong Kong Academy of Medicine, and 2 each from the Hospital Authority and Department of Health. The other 10 should be 2 nominated by SHW, 2 senior members of the legal profession, 2 senior members from the Allied Health profession, 2 senior members from non-medical professions, and 2 senior civil servants.

4. There should be 3 standing Committees and the structure and memberships of these committees should be defined. These are the Qualifications and Registration Committee, the Postgraduate Education Committee, and the Disciplinary Committee.
5. Complaints against doctors that HKMC should hear should be defined. These should include only those involving professional misconduct, and those where the care provided has been substandard.
6. Complaints should, in the first instance, be referred to a body outside of HKMC, where preliminary investigations can take place. Only cases with *prima facie* evidence of professional misconduct, or where a lapse in the standard of practice can be reasonably concluded, should be referred to HKMC.
7. The Disciplinary Committee should hear cases of professional misconduct formally. Such a committee should be formally structured, its membership defined, and members appointed for fixed terms. A senior member of the legal profession should head the Committee. Censure in the form of deregistration, reprimand and warning may be imposed in cases where professional misconduct is proven. Cases involving lapses of standards should be dealt with professionally. If confirmed, restraint in practice, compulsory training or obligatory supervision can be imposed.
8. The authority of HKMC should be upheld, and its disciplinary decisions should not be overturned by another court other than a judicial review.