

**Health Policy Research Team
Of The Hong Kong Council of Social Service**

**Submission to the Health Services Panel of the Legislative Council
on the Review of the Medical Council of Hong Kong
(June 22, 2001)**

Background

1. There has been public concern over the Medical Council's decision on a disciplinary inquiry on April 11, 2001 regarding the allegation made on a doctor for using mobile telephone during a colonoscopy operation. The Medical Council (MC) subsequently formed a working group to review its structure, composition and complaint mechanism.
2. In past few years there were indeed many public criticisms concerning MC's complaint mechanism. Some people consider the low percentage of conviction an indication of the leniency of MC in conducting disciplinary inquiry¹. The Harvard Team also pointed out that "one explanation for the highly variable quality of medical services in Hong Kong is the privilege enjoyed by the medical profession to self-regulate without interference and inadequate oversight from external organization."² The Health Policy Research Team of the HKCSS will in this paper highlight briefly some major issues of concern, other professions' experience and the Team's recommendations for the review.

Issues of Concern in MC's Complaint Mechanism

3. Major concerns about MC's complaint mechanism include:
 - 3.1 *Lack of adequate check and balance mechanism.* In a regulatory and disciplinary organisation such as the Medical Council which is dominant by

¹ Between 1994 and 2000, 93 (6.6%) of the 1,407 complaints were put to hearings by MC, with 62 cases (4.4%) resulting in guilty verdicts. In 1999, 4 of the 230 complaints resulted in guilty verdicts. Reported in 文匯報 (9/5/2001) "病人權協指醫委會不公平建議政府設獨立申訴機制", p. A14.

² The Harvard Team (1999). *Improving Hong Kong's Health Care System – Why and For Whom?* (Report of a government consultancy study on Hong Kong's health care reform.)

its own medical professionals, adequate check and balance mechanisms are important to establish and retain public's trust. But MC's complaint processing procedures do not always give people the necessary confidence, for example:

➤ *Screening decision made by only a few persons.* Under the existing complaint mechanism, the Chairman and the Deputy Chairman of the PIC will determine whether a complaint will be dismissed or referred to the Preliminary Investigation Committee (PIC) meeting. Since the majority of complaints are dismissed (e.g. 145 out of 230 complaints were dismissed in 1999³), the impression of “professional protectionism” is quite prevailing in the society.

➤ In the investigation process, the MC investigates, conducts hearings and adjudicates on the selection of facts, acts as a jury in passing judgments and verdicts, and also determines penalty. The MC serves as the police, the jury and the judge without understanding the role conflicts within the process.

3.2 *Dominance of professional viewpoints.* Adjudication on complaints has to be fair to the complainant and the defendant, and impartiality should be the basic principle. Yet, out of the total 28 members of the Medical Council, there are only four lay members to serve as check-and-balance against the possibility of “professional protectionism”. In many investigations, the proportion of lay members to doctors was, on average, 1:8. It is hardly surprising for the public to query the impartiality of the investigation.

3.3 *Complainants are bewildered by the complexity of the complaint system.* There are, at present, too many channels to address a complaint. The Medical Council, the Hospital Authority, Department of Health, medical professional associations and also civil courts are responsible for different sorts of intake. Complainants who know little about the functions of these channels have to travel a long way to find the relevant body to file their grievances. There is a lack of a unified referral system to help complainants who are already suffering from psychological and emotional stresses due to the damages caused on themselves or their family members.

³ <http://www.mchk.org.hk/newsletter/issue4/content2.htm>

Lessons to learn from other professions

4. Unlike the Medical Council, other professions usually have a disciplinary committee to handle disciplinary complaints, such as the Law Society, Society of Accountants Council and Social Worker Registration Board. The Law Society, for example, has a better division of labor in investigation, adjudication and disciplinary action through the use of different committees. Its disciplinary tribunals are independent and appointed by the Chief Justice⁴. The Social Workers' Registration Board specifically appoints five members of the Disciplinary Committee Panel to form a Disciplinary Committee to inquire into complaints. The committee's function is confined to investigation and to propose recommendation, while the whole Board makes the final decision under certain clearly defined procedures⁵.
5. The proportion of lay members vs professional members in other disciplines are relatively closer. For example, Social Workers' Registration Board appoints one lay member in the 5 member disciplinary committee⁶. While in the Law Society, each complaint is determined by a tribunal of 2 solicitors and 1 lay member. The composition of Disciplinary Committee of Society of Accountants also includes one non-accountants and four accountants⁷.

Recommendations

6. Due to the public concern on MC's impartiality in handling complaints, certain basic principles have to be adopted openly by the Medical Council to reduce public doubts over its function in exercising professional discipline: accountability, transparency and impartiality.
7. We have the following recommendations:

7.1 Change of the composition of the Council

- the proportion of lay members of the Medical Council have to be increase substantially.
- the nomination of 7 representative from the Medical Association into

⁴ <http://www.hklawsoc.org.hk/>

⁵ http://www.swrb.org.hk/html/discip_flow_c.html

⁶ http://www.swrb.org.hk/html/discip_flow_c.html

⁷ <http://www.hksa.org.hk>

the Medical Council does not have any rational ground, therefore the size of this category should be reconsidered.

➤ Furthermore, members from the University of Hong Kong, the Chinese University of Hong Kong, the Hospital Authority, the Academy of Medicine and Department of Health should be also reduced to allow more lay persons to participate in the Medical Council.

- 7.2 In order to simplify the existing complaint mechanism to help complainants address their grievances, an independent medical complaint office should be set up to receive complaints, to make referrals, as well as to provide legal advice so that complaint cases could be managed in a unified manner.
- 7.3 Formally, there should be one solicitor to serve as member of the Preliminary Investigation Committee (PIC) to provide a legal perspective in the screening process.
- 7.4 A Disciplinary Committee composed of laypersons and non-MC members should be formed to conduct hearings and investigate the complaints to make a recommendation back to MC. The whole Council, or a separately appointed committee, is responsible for making the verdict and decide on the penalty. Such a division of labor serves as a check-and-balance system in maintaining impartiality in the investigation and adjudication processes.

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