

**CONSUMER COUNCIL
SUBMISSION TO LEGISLATIVE COUNCIL PANEL ON HEALTH SERVICES
HEALTH SERVICES COMPLAINT HANDLING MECHANISM**

1. The Consumer Council is pleased to provide this submission to the Panel on Health Services on complaint handling mechanisms.

Complaints Handling Mechanism

2. In relation to complaints handling mechanisms, the Consumer Council considers that:

- (a) there should be an independent complaints handling mechanism that will examine complaints against the conduct of medical practitioners; and
- (b) the mechanism should be accessible to the consumer and transparent in operation.

3. The recent 'mobile phone affair' pointed up questions with regard to what constitutes unethical behaviour, as well as the structure of a complaints handling mechanism.

4. The following submission gives the Council's view on those matters which need to be addressed regardless of whether a new complaints mechanism needs to be set up or for the Medical Council to undergo major 'surgery'. The submission also makes recommendations, in boxed text, for LegCo members' consideration.

The definition of ethical behaviour

5. The Medical Council, at present, can take action if a medical practitioner in the pursuit of his profession has done something which will be:

"reasonably regarded as disgraceful, unethical or dishonorable by his professional colleagues of good repute and competency". (The Medical Council of Hong Kong - Professional Code and Conduct, Part III).

6. However, this approach, in the opinion of the Council, is fundamentally skewed towards narrow interests. While members of the profession would undoubtedly be highly qualified to provide advice on medical procedure, the provision of advice on ethical behaviour is one that should be determined by reference to the wider community.

7. The General Medical Council in the UK, for example, notes¹ that the law gives the Council the power to restrict or remove a doctor's right to practice if it finds that a doctor is guilty of:

"serious professional misconduct (conduct which makes us question whether you should be allowed to continue to practice medicine without restrictions)".

¹ See www.gmc-uk.org, 'How we deal with misconduct'.

8. Professional misconduct' would seem to be defined in a much broader way by the UK General Medical Council than the Hong Kong Medical Council. The latter only determines professional misconduct by reference to the "regard of professional colleagues of good repute and competency" whereas the UK Medical Council refers to "us", thereby recognising the views of the lay members on the Medical Council in addition to professionals. Whether conduct will amount to 'professional misconduct' is therefore not solely determined by professional colleagues but subject to the perception of a wider group which comprises both lay and medical members and recognises the views of the wider community. The Council considers that this approach is preferable to the narrow scope of interest that could arise if a person is judged solely by his or her peers.

Our recommendation

9. The Council therefore suggests that the term 'professional misconduct' should be defined by a wider stakeholder interest that takes into account the community's views as to ethical behaviour not just that of professionals within the Medical Council.

Complaints handling procedures

10. At present, in accordance with the Medical Council's investigative procedures, complaints may go through three main stages which are:

- (1) Preliminary fact-finding and evaluation stage;
- (2) Deciding on the appropriate course of action if a prima facie case is established; and
- (3) Disciplinary hearing.

11. At the preliminary stage, initial consideration by the chairman or the deputy chairman of the Preliminary Investigation Committee (PIC) who decides whether or not the complaint should proceed further to the PIC for consideration. The PIC, a 7-member committee which includes a lay member, meets and reviews all the papers on the case. After considering the evidence the PIC may then decide whether or not there is a prima-facie case and refer it to the Medical Council's inquiry panel for a formal inquiry. This panel is comprised of at least 5 members including a lay member.

12. The function of screening complaints has benefits in ensuring that trivial complaints, or those that are irrelevant to the jurisdiction of the Medical Council, can be dealt with quickly dealt with.

13. However, the parties undertaking the screening, i.e. both the Chairman and the Deputy Chairman of the PIC, are medical professionals. Where a decision to dismiss a complaint is made at this level, particularly where it involves the question of 'ethical behavior', the absence of any wider community input to the decision could lead to the perception that the views of the wider community have not been reflected. Where subsequent decisions, that have gone for formal inquiry, are dismissed on the basis of a disputed definition of ethical behaviour, this could raise suspicions on whether similar

complaints on ethical behaviour may have been summarily dismissed at the preliminary screening stage.

14. The General Medical Council of the UK has an arrangement in which a complaint will be first referred to a medically qualified screener who will decide whether any action should be taken. If the screener decides that no action will be taken, the case is then referred to a lay member for consideration and confirmation or otherwise of the preliminary decision.

Appropriate levels of public involvement

15. The Medical Registration Ordinance stipulates that four of the 28 members of the Medical Council be public members, while one of the seven members of the PIC must come from the public. Both of them have 15% of their positions filled by members of the public. For the purpose of inquiry, a panel of 5 members will be formed, including one public member, i.e. 20% public membership.

16. In comparison with other professions in Hong Kong, the professional-layman ratio of the PIC or the Medical Council's inquiry panel is lower than legal and accounting sectors, but higher than dental, architect and engineering (these three professions have no public members in their inquiry committees).

17. Other complaints handling mechanisms in Hong Kong, for example, the Copyright Tribunal, the Independent Police Complaints Council, and the Complaints Panel under Insurance Claims Complaints Bureau, are either structured as an independent body (of either judge or non-industry related members), or consist of over 50% public membership.

18. In December 2000, the UK General Medical Council proposed some changes to its structure and governance. The changes are: increasing the proportion of lay members on the board of the General Medical Council from 25% to 40%, and that the board in addition to its accountability to the Parliament should have clear arrangements for democratic accountability to a new standing conference of the General Medical Council. This proposed new standing conference will consist of 50% lay members and be chaired by a lay member.

19. As noted previously in this submission, assessing medical complaints requires technical knowledge, and medical professionals are in an appropriate position to pass judgment on the practice and conduct of their peers, where matters of technique are concerned. However, this does not necessarily imply that a majority of members on a disciplinary panel should come from the medical profession.

20. Where there is a need for specialist technical knowledge on procedure, for example, specialists can be brought in who are not formal members of the panel. Technical knowledge is, in effect, only required on a needs basis depending on the nature of the complaint.

Our recommendation

21. The Council suggests that to ensure a balance between the profession and the wider community is maintained, the percentage of public membership in the examination of complaints and disciplinary process (both the preliminary inquiry committee and main inquiry panel) should be 50%. In other words the Council believes that half of the membership should be lay members.

Chairing a complaints handling body

22. The Council considers that there are at least two advantages of having a judge or senior lawyer as Chairman of the complaints handling mechanism. One advantage is that the competency, experience and authority of a legally-qualified Chairman would be better placed to rule on procedural issues that arise in the course of proceedings, given the quasi legal nature of the process.

23. Another advantage relates to the perception of fairness of the process. The presence of a legally qualified Chairman who is not a medical professional would command confidence in the wider community and reduce fears that the panel is inappropriately influenced by conflicts of interest, that could arise with a Chairman selected from the profession.

Our recommendation

24. Both the profession and the community would be better served by a Chairman who is not a medical professional, but a senior and respected legally qualified person. By doing so, the profession could rightly point to being sensitive to the community's concerns, while the community's perception of the complaints process would be enhanced by removing any real or imaginary conflict of interest.

Consumer Council
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