

July 12th 2001

Dr. Law Chi-kwong
Chairman
Subcommittee on improvements to the
medical complaints mechanism
LegCo Panel on Health Services
Room 602, Citibank Tower
3 Garden Road, Central
Hong Kong

Dear Dr. Law,

I write to submit my views on improvements to the medical complaints mechanism.

The proposed complaints mechanism should be inclusive of all regulated health professions in Hong Kong. The mechanism's name therefore needs to reflect this by changing it to "health complaints mechanism".

The procedure for complaints should be identical among all health professions. Each Council or Board's preliminary investigative committee should receive public complaints against its members directly. The process has been in existence for some time although it has been pointed out repeatedly that the proceedings need to be more transparent and the membership of these bodies in particular should be reviewed with more public participation.

After a ruling is made by the Council/Board in each of these cases, either the practitioner or the patient should have the right to appeal the decision through a separate and independent body made up of members of all regulated health professions and the public. All appeals are to be reviewed by this body and the decision shall be binding and final.

In the Province of Ontario in Canada where 11 million people reside, there has been such an Appeal Board for some time. Its full name is "Health Professions Appeal and Review Board" for complaint matters. There are 21 health regulatory colleges in Ontario governing 24 health professions. Should you be interested in the operation of the Council, your office could get in touch with the Ministry of Health of the Province of Ontario directly.

Thank you again for providing me with an opportunity to put forth my views on this matter.

Yours sincerely,

Prof. George Woo
Dean
Faculty of Health & Social Sciences

c.c. Clerk to Subcommittee
GW/sy

Health Professions Appeal and Review Board, Ontario

Table 1 - Functions of the Health Professions Appeal and Review Board

Authority	Functions
Health Professions Appeal and Review Board	<ul style="list-style-type: none"> ◆ The Health Professions Appeal and Review Board functions as a quasi-judicial adjudicative and regulatory tribunal with jurisdiction respecting the regulatory activities of twenty-two Colleges governing twenty-three regulated (human) health professions and veterinarians (Note A), and practice privilege decisions of the boards of about two hundred public hospitals. ◆ Specifically, the Health Professions Appeal and Review Board is authorized to: <ul style="list-style-type: none"> ~ review the decisions of the College's (Note B) Complaint Committees respecting the conduct of practice of health professionals; ~ hear or review appeals from the orders of the Colleges' Registration Committees (regarding entry to and conditions of practice) and Accreditation Committees (regarding licensing of veterinary facilities); and ~ hear appeals from the decisions of Hospitals' boards of directors respecting physicians' hospital admitting and practice privileges.

Notes:

- A. The regulated health professions are: (1) audiology and speech-language; (2) pathology; (3) chiroprody; (4) chiropractic; (5) dental hygiene; (6) dental technology; (7) dentistry; (8) denturism; (9) dietetics; (10) massage therapy; (11) medical laboratory technology; (12) medical radiation technology; (13) medicine; (14) midwifery; (15) nursing; (16) occupational therapy; (17) opticianry; (18) optometry; (19) pharmacy; (20) physiotherapy; (21) psychology; (22) respiratory therapy; and (23) veterinarians.
- B. College means the College of a health profession or group of health professions established or continued under a health profession Act.

Table 2 - Constitution of Health Professions Appeal and Review Board

Authority	Constitution
Health Professions Appeal and Review Board	<ul style="list-style-type: none">♦ at least 12 members who shall be appointed by the Lieutenant Governor in Council on the recommendation of the Minister of Health.♦ The Lieutenant Governor in Council designates one member as chair and two members as vice-chairs.♦ The chair may from time to time designate additional members to be vice-chairs.

Note: A person may not be appointed as a member of the Health Professions Appeal and Review Board if the person:

- (1) is employed in the public service of Ontario or by a Crown agency as defined in the Crown Agency Act;
- (2) is or has been a member of a College as defined in the Regulated Health Professions Act, S.O. 1991 or of a Council of such a College; or
- (3) is or has been a member of the College or Council under the Veterinarians Act.

Application For Registration Before the Health Professions Appeal and Review Board

Availability of Review or Hearing:

A hearing or review before the Health Professions Appeal and Review Board is available in any case in which an applicant does not achieve everything he requested (e.g. an immediate unrestricted certificate or the removal or modification of a restriction on an application to vary). The applicant must seek a review or hearing, within 30 days of the panel of the Health Professions Appeal and Review Board notifying the applicant of its order, by giving written notice to the Health Professions Appeal and Review Board and the registration committee of the corresponding College, specifying whether a review or a hearing is sought. The Health Professions Appeal and Review Board may extend the time limit for such notice.

Procedure for Both Review or Hearing:

The College and the applicant are parties to a review or hearing.

Upon receiving a notice that the applicant is seeking a review or hearing, the registration committee must send to the Health Professions Appeal and Review Board within 15 days a copy of its order, its written reasons and the documents upon which the decision was based.

Procedural provisions that apply to both reviews and hearings are:

- (1) The Health Professions Appeal and Review Board may retain independent experts or advisors, although any advice given to the Health Professions Appeal and Review Board must be disclosed so that the parties can make submissions with respect to the advice.
- (2) The Health Professions Appeal and Review Board is to sit in panels of uneven number of at least three members, at least for the commencement of the proceedings.
- (3) Panel members must not have had prior involvement in the case.
- (4) All communication by the panel with the parties about the case is to be conducted when both parties are present.
- (5) Panel members must be present throughout the entire proceeding in order to participate in the panel's decision.
- (6) Evidence introduced at a proceeding shall be released to the person who produced it, on request, after the proceeding.
- (7) The Health Professions Appeal and Review Board can make rules of procedures under the Statutory Procedures Act.
- (8) The Health Professions Appeal and Review Board can correct minor errors in its decision.

Procedures Specific to Review

A review is described as "a review of the application and the documentary evidence in support of it". No oral evidence is received.

Procedures Specific to Hearing

- (1) Hearings are ordinarily open to the public.
- (2) Sexual misconduct witnesses can prevent their names from being made public.
- (3) The panel must ensure that a transcript of the hearing is kept and made properly available.
- (4) The findings of fact must be based exclusively on the evidence introduced at the hearing (although the formal rules of civil evidence do not apply).
- (5) All of the procedural rules applicable to administrative hearings and rules governed by the Statutory Powers Procedural Act are applicable.

Disposition by the Health Professions Appeal and Review Board

The Health Professions Appeal and Review Board may do one or more of the following:

- (1) Confirm the order of the registration committee.
- (2) Require registration of the applicant if he successfully completes any examination or training specified by the registration committee.
- (3) Require registration of the applicant with terms, conditions or limitations imposed by the Health Professions Appeal and Review Board.
- (4) Refer the matter back to the registration committee for further consideration, possibly with recommendation from the Health Professions Appeal and Review Board.

Review of the Complaints Process by the Health Professions Appeal and Review Board

Availability of Review:

Either the complainant or the member who is the subject of the complaint may request a review before the Health Professions Appeal and Review Board unless the complaints committee's decision is to refer to discipline or to refer to the executive committee for incapacity proceedings.

A request for a review must be made within 30 days of receipt of the decision of the complaints committee and accompanying documents. However, an extension of that time period for a maximum of 60 additional days is possible. If at any time the requesting party withdraws the request, the Health Professions Appeal and Review Board shall discontinue the review.

The Health Professions Appeal and Review Board has a discretion to refuse to review a decision if it is satisfied that the request is frivolous, vexatious, made in bad faith or otherwise an abuse of process.

Procedure for Review:

The parties on a review are the complainant and the member, but not the College.

The Health Professions Appeal and Review Board can request the record of investigation and the documents and other things upon which the complaints committee based on its decisions. The Health Professions Appeal and Review Board must disclose the record to the parties unless the disclosure involves matters of public security; undermines the integrity of the complaints or review process; unduly disclosed private matters; prejudices a person involved in a criminal or civil proceedings; or jeopardizes the safety of any person. In those circumstances, the Health Professions Appeal and Review Board has a discretion as to whether or not to make the disclosure.

The Health Professions Appeal and Review Board has the power to require the College to send a representative to the review to answer its questions.

The parties and representative of the College are not permitted to question each other. The only role of the College is to answer questions.

Other procedural provisions on a review conducted by the Health Professions Appeal and Review Board are:

- (1) All communication by the panel with the parties about the case is to be conducted when the both parties are present.
- (2) Reviews will ordinarily be open to the public.
- (3) Sexual misconduct witnesses can prevent their names from being made public.
- (4) Panel members must be present throughout the entire proceeding in order to participate in the decision.
- (5) Evidence introduced at a review shall be released on request to the person who produced it, after the review is completed.

The Health Professions Appeal and Review Board may obtain independent expert or professional advice.

Disposition by the Health Professions Appeal and Review Board

The issues at the review are limited to the adequacy of the complaints committee investigation and the reasonableness of the committee's decision. On these issues, the Health Professions Appeal and Review Board may do one or more of the following:

- (1) Confirm all or part of the complaints committee's decision.
- (2) Make recommendations to the complaints committee; and
- (3) Require the complaints committee to exercise any of its powers other than to request a registrar's investigation. Examples of what the Health Professions Appeal and Review Board can require the complaints committee to do include:
 - (a) referring specified allegations to discipline;
 - (b) referring the matter to the executive committee for incapacity;
 - (c) directing the member to attend before a panel of the committee for a caution;
 - (d) admonishing the member in writing;
 - (e) removing a caution or admonishing of the member from its decision;
 - (f) conducting further investigation, such as obtaining an independent expert opinion or conducting an inspection of records, and issuing a new decision; and
 - (g) addressing issues raised by the complaint that were not adequately addressed in the complaints committee's decision.

Appeals

Re. Registration

A party before the Health Professions Appeal and Review Board may appeal the Health Professions Appeal and Review Board's decision to the Divisional Court. The appeal may be made on questions of law or fact or both.

Re. Complaints Process

The Regulated Health Professions Act does not provide for an appeal of the decision of the Health Professions Appeal and Review Board on a complaints review. Therefore, the only court review would be by way of an application for judicial review. Generally, a judicial review will only be granted where

- (1) a serious procedural error was made by the Health Professions Appeal and Review Board;
- (2) the Health Professions Appeal and Review Board purported to make a decision that was outside its jurisdiction; or,
- (3) the decision of the Health Professions Appeal and Review Board was patently unreasonable.

Re. Discipline Committee

Any party at a hearing before the discipline committee can appeal the discipline committee's decision to the Divisional Court, but not to the Health Professions Appeal and Review Board.

Prepared by
Ms Elyssa Wong
18 July 2001