

立法會
Legislative Council

Ref : CB2/PS/4/00

Panel on Health Services

**Subcommittee on improvements to
the medical complaints mechanism**

Summary of views received

Purpose

This paper provides a summary of the views of organisations which have made submissions to the Subcommittee on improvements to the medical complaints mechanism.

Submissions received

2. On 28 May 2001, 18 organisations including doctors, dentists, nurses and patients associations and the Faculties of Medicine of The University of Hong Kong and The Chinese University of Hong Kong were invited to give their views on the subject and to attend the Subcommittee meeting on 22 June 2001. Representatives of 14 of them attended the meeting and one organisation made a written submission without attending the meeting.

3. Members agreed at the Subcommittee meeting on 27 June 2001 that other health care organisations should be invited to give their views on the subject. Letters were issued to 70 organisations on 4 July 2001. In response to the invitation, six of the organisations made written submissions.

Summary of views

4. The following summaries are attached for members' reference -

- (a) Summary of views of organisations which oppose the setting up of a Complaint Office in the Department of Health (DH) and propose other alternatives (**Appendix I**);

- (b) Summary of views of the Faculty of Medicine, The Chinese University of Hong Kong, which supports the setting up of a Complaint Office in the DH (**Appendix II**);
- (c) Summary of other views and suggestions made by the six organisations mentioned in paragraph 3 above (**Appendix III**); and
- (d) Summary of suggestions as to how the complaints handling mechanism of the Medical Council of Hong Kong may be improved (**Appendix IV**).

Council Business Division 2
Legislative Council Secretariat
21 September 2001

Subcommittee on improvements to the medical complaints mechanism

No.	Name of Organisation	Reasons for opposing the proposed setting up of a Complaint Office in the Department of Health (DH)	Alternative solutions and other suggestions
1.	Hong Kong Public Hospitals, Department of Health and Universities Doctors Association	<p>a) There would be conflict of interests as DH is also a provider of primary health care; and</p> <p>b) It is doubtful whether DH would dare to criticise the Health and Welfare Bureau (HWB), to which it is accountable, on the flawed health care policies and system errors.</p>	<p>Formation of an independent medical complaints office with the following functions -</p> <p>a) Receives complaints;</p> <p>b) Investigates complaints and notifies the complainants of the findings of investigation;</p> <p>c) Mediates between the complainants and the complained where necessary;</p> <p>d) Refers the complaints to appropriate regulatory bodies for follow-up; and</p> <p>e) Educates the public and healthcare providers about rights and responsibilities.</p> <p><u>Advantages</u></p> <p>a) Public perception of impartiality;</p> <p>b) Creation of a buffer zone between healthcare providers and patients; and</p>

			<p>c) Preserves the principle of professional autonomy, i.e. power to deliver verdict and award discipline remained with the regulatory bodies.</p> <p><u>Disadvantage</u></p> <p>a) May encourage indiscriminate use of the complaints office. One way to address the problem was for such office to operate on a self-financing basis, with fixed subvention from the Government.</p>
2.	Patients' Rights Association, Society for Community Organisation	<p>a) Not independent of the Government; and</p> <p>b) Only acts as a facilitator by steering complaints to the appropriate regulatory bodies for follow-up and taking disciplinary action.</p>	<p>Formation of an office of ombudsman to handle medical complaints with the following remits -</p> <p>a) Investigates health care complaints, including cases relating to professional misconduct, substandard medical care, medical mistakes, maladministration in both the public and the private sectors, and other cases not covered by other patients redress systems and professional self-regulatory bodies;</p> <p>b) Power to seize and to require any person to produce any records for investigation;</p> <p>c) Recommends improvement measures and assists in reconciliation between the complainants and the complained if the</p>

			<p>complaints about medical mistakes or maladministration are substantiated;</p> <p>d) Conducts an inquiry with the participation of members of the regulatory body concerned if investigation reveals that a complaint about professional misconduct is substantiated. Although a verdict would be delivered by the inquiry, awarding of discipline would be referred to the regulatory body concerned for action; and</p> <p>e) Presents report on investigation and recommended improvement measures to all concerned parties such as the healthcare personnel and/or organisation being complained, the complainants and the Legislative Council. Apart from the ombudsman, the Government as well as the regulatory bodies concerned also have the responsibility to see that the recommended improvement measures are implemented by the healthcare personnel and/or organisation.</p> <p><u>Other suggestions</u></p> <p>a) The Public Complaints Committee of the Hospital Authority (HA) should be scrapped</p>
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			<p>and its work transferred to the health services ombudsman. In turn, HA should step up publicising to patients and their family members the various patient redress systems in Hong Kong;</p> <p>b) The Hospitals, Nursing Homes and Maternity Homes Registration Ordinance should be amended to strengthen regulation on patient care provided by private hospitals;</p> <p>c) The Administration should consider requiring each hospital in both the public and the private sectors to appoint a patients' rights advocate to advise people, who are about to be hospitalised, on patients' rights and responsibilities, as practises in the United States of America. The Administration should also consider setting up enquiry offices throughout the territory and a complaint hotline service to answer questions from the public on patients' rights and responsibilities; and</p> <p>d) The Legal Aid Department (LAD) should -</p> <p>i) Waive financial eligibility limit for legal aid for the patients seeking redress in order to ensure that all aggrieved patients</p>
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			<p>could seek legal recourse if they so wish;</p> <p>ii) Accept medical cases which might not have a high chance of winning, in order to ensure that aggrieved patients have the opportunity to present their plights in courts;</p> <p>iii) Provide Legal Aid Counsel to represent the complainants at the inquiries of regulatory bodies; and</p> <p>iv) Be made independent of the Government to ensure its impartiality and credibility.</p>
3.	Hong Kong Medical Association	There are ample channels for patients to lodge their complaints against healthcare providers. What is lacking is an independent body to look into errors in the healthcare policies laid down by the Government.	<p>a) Setting up an independent office with the power and expertise to monitor the Government's health care policies, investigate adverse health care outcome resulted from policy errors, and sanction the responsible government departments and officers;</p> <p>b) The Administration, in conjunction with healthcare professionals, to educate the public on the functions and operation of the existing patient redress systems and on the role of an independent judiciary as the final adjudicator of all medical complaints; and</p> <p>c) The Administration should strengthen the</p>

			investigation function of various regulatory bodies concerned by deploying senior doctors from DH to assist these bodies in their investigation work.
4.	Hong Kong Doctors Union Ltd.	<p>a) The proposed office would put pressure on the regulatory bodies to sanction healthcare professionals, having regard to the statement made in the Consultation Document on Health Care Reform that "since substantial work has already been gone into the case, the regulatory body should be able to make a quick decision on whether or not to institute disciplinary proceedings";</p> <p>b) As the proposed office is under DH, it would be reluctant to criticise or to centrally examine the healthcare policies drawn up by HWB; and</p> <p>c) It is not appropriate for a government department to involve itself in the governance of regulatory bodies.</p>	<p>Formation of a central medical complaints office (CMCO) independent of the Government. Suggested model of the CMCO is as follows -</p> <p><u>Functions</u></p> <p>a) Providing one-stop service to complainants;</p> <p>b) Acting as mediator between the complainants and the complained; and</p> <p>c) Cases found to require further actions would be referred to the appropriate regulatory bodies for follow-up.</p> <p><u>Composition</u></p> <p>a) Its governing body should at least comprise experts from various health care professions, lay persons, retired judge or person with legal background, representatives from LegCo and representatives from Consumer Council.</p> <p><u>Finance</u></p>

			<p>a) Funded by the Government.</p> <p><u>Power</u></p> <p>a) Investigation power limited to obtaining prima facie evidence and experts' opinions.</p> <p><u>Advantages of CMOC</u></p> <p>a) Independent of the Government;</p> <p>b) User-friendly; and</p> <p>c) Would help to alleviate the workload of regulatory bodies as its role as a mediator between the complainants and the complained should help to settle complaints arising from misunderstandings or frivolous reasons.</p>
5.	The Practicing Estate Doctors' Association	The proposed Complaint Office would only provide an avenue for patients to use public funds to sue their doctors. If the complaint is malicious, and if there is no penalty for doing so, such an office would only create more lawsuits and disputes. If the fault lies with the policy maker in HWB or HA and not frontline staff, the Complaint Office may not be dare to address the root of the problem.	Would only accept a Complaint Office in DH if it only acts as a "traffic director" by referring the complaint cases to the appropriate regulatory bodies for follow-up.
6.	Faculty of Medicine, The University of	a) There would be conflict of interests as DH is currently still providing some clinical service; and	Supports the establishment of an independent complaint office to advise patients on the proper

	Hong Kong	b) An independent Complaint Office is more credible.	channel and way to file a complaint. Such an office can also assist patients to get experts' opinions from relevant specialists. When the available evidence does not substantiate the complaint, the patients can be advised accordingly. However, it is important that the power of judgment and discipline should rest with the relevant regulatory bodies.
7.	Hong Kong Dental Association	Not specific reason is given.	Adopts an open-minded attitude to any proposals that may improve medical complaints mechanism.
8.	Association of Hong Kong Nursing Staff	<p>a) Conflict of interests, as DH would take on the role of an advocate for health and a regulator to ensure quality; and</p> <p>b) Staff of the Complaint Office may hold back some of its investigation into complaints concerning HA and DH staff, as they could be transferred to take up frontline work in DH or seconded to HA in future.</p>	<p>Setting up an independent office is necessary to ensure the impartiality, transparency and credibility of the medical complaints mechanism. Such an office would conduct investigation into complaint cases and adjudicate where appropriate. However, the power of delivering verdict and awarding discipline should remain with the regulatory bodies. If the verdict of the regulatory body should differ from that of the medical complaints office, it is then for the public to decide whether the decision of the regulatory body is biased.</p> <p>The medical complaints office would also act as a mediator between the complainants and the complained, including assisting the complainants to seek compensation from the complained, educating</p>

			<p>the public about patients' rights, and ensuring that the healthcare professional and/or organisations concerned have taken steps to implement the recommended improvement measures.</p> <p>Like the Consumer Council, the medical complaints office should be set up in easily accessible locations throughout the territory. To ensure efficient handling of complaints, a three-month response time should be set for simple cases, whereas a three to six-month response time for more complicated cases requiring elaborate investigation should be set.</p>
9.	The Rehabilitation Alliance Hong Kong Limited	<p>a) Would not help to improve the existing patient redress system, as the proposal merely creates another channel for patients to lodge complaints because the Complaint Office in DH essentially acts as a facilitator by steering complaint cases to the appropriate regulatory bodies for follow-up; and</p> <p>b) The proposed Complaint Office lacks credibility as it is a government agency and its staff civil servants.</p>	<p>Supports the setting up of an independent medical complaints office. Such an office should have the functions to investigate complaints involving medical procedures, provision of healthcare services, use of resources, professional conduct, and standard of care; and make recommendations to the complained on the basis of the findings of the investigation. To ensure credibility of the medical complaints office, one-third of its Board members should be healthcare professionals, whereas the remaining two-thirds should be lay persons. All of them could be appointed by the Chief Executive or the policy secretary.</p>
10.	Alliance for	No specific reason is given.	Same as the Rehabilitation Alliance Hong Kong

	Patients' Mutual Help Organizations		Limited. Apart from having the power to investigate into complaints, the medical complaints office should set up a legal services division to assist complainants wishing to seek recourse from the courts.
11.	Hong Kong Council of Social Service	The proposed Complaint Office lacks credibility as it is a government agency and its staff civil servants.	An independent medical complaints office should be set up to receive complaints, make referrals and provide legal advice so that complaint cases could be handled in a unified manner.
12.	Consumer Council	No specific reason is given.	Supports the setting up of an independent medical complaints office.
13.	Hong Kong Council on Medical and Health Services and Rev CHU Yin-ming	No specific reason is given.	Supports the setting up of an independent medical complaints office to provide a one-stop service to complainants. Such an office should have the power to require any person to produce documents pertinent to the investigation and also take on the role of an adjudicator. A judge or a person with legal background should chair the inquiry and that a legal officer from the complaints office should represent the complainant at the inquiry. Where the cases being considered involve professional misconduct, the relevant regulatory body should provide guidelines on what constitute professional misconduct and the corresponding sanction. In setting up an independent medical complaints office, due regard must be given to avoid

			duplicating the functions of the existing patient redress systems.
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Appendix II

Subcommittee on improvements to the medical complaints mechanism

Name of Organisation	Reasons for supporting the proposed setting up of a Complaint Office in the Department of Health (DH)
Faculty of Medicine, The Chinese University of Hong Kong	<p>Supports the establishment of an independent body based in DH 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 facts, and seek professional opinions. The role of such a body should not be to draw conclusions, but to act as an advocate for patients and make referrals to the appropriate agencies.</p> <p>The body should only refer cases to the Medical Council for follow-up if there are sufficient prima facie evidence that the complaints involved professional misconduct or a significant lapse in the standards of practice. For cases involving disagreements or disputes between patients and doctors, and where litigation for compensation rather than a problem of professional standards is the issue, advice should be given to the complainants to seek recourse in the civil courts. As for cases relating to service delivery or administration in the public hospitals, referrals should be made to the Public Complaints Committee of the Hospital Authority.</p>

Appendix III

Subcommittee on improvements to the medical complaints mechanism

No.	Name of Organisation	Other views and suggestions
1.	The Hong Kong Association of Speech Therapists	There should be a statutory regulatory body for speech therapists set up in Hong Kong in order to maintain professional standards and discipline in the profession.
2.	Union of Hong Kong Speech Therapists (Medical)	Same suggestion as the Hong Kong Association of Speech Therapists.
3.	Canossa Hospital (Caritas)	Although it is entirely laudable that patients should be treated fairly, complainants should also act responsibly and not impulsively. A method needs to be devised to ensure that the complainant can justify the complaint in some way and to bear some responsibility for the action taken.
4.	Faculty of Health and Social Sciences, the Hong Kong Polytechnic University	<p>The complaint handling procedure should be identical among all professional self-regulatory bodies. Namely, receiving complaints by the preliminary investigation committees of the regulatory bodies should be maintained, although such a process can be made more transparent and more lay persons can be involved in the initial screening of complaints and conduct of investigation into complaints.</p> <p>After a ruling is made by the regulatory body, both the complainant and complained should have the right to appeal the decision to an outside independent body whose membership should include representatives from all healthcare professions and lay persons from different sectors of the community. The decision of this appeal body should be binding and final. The Province of Ontario in Canada practises this procedure.</p>

5.	The Pharmaceutical Society of Hong Kong and The Society of Hospital Pharmacist of Hong Kong	<p>An effective medical complaint mechanism should have the following characteristics -</p> <ul style="list-style-type: none">a) Only a coordinating and monitoring role over the complaint process;b) A fair representation of all healthcare professionals;c) An efficient mechanism to handle complaints against all healthcare professionals;d) A transparent mechanism for the election of membership of the office; ande) A clear and well-defined relationship with respective regulatory bodies. For example, drug-related complaints should involve pharmacists, together with the participation of other relevant healthcare professionals, whilst professionals should maintain their autonomy regarding professional ethics-related matters. <p>A "pharmacovigilance" system for collecting local data on drug use and information on possible adverse effect of drugs should also be set up. Such a system would not only help to alert healthcare providers on the proper use of certain drugs, it could also serve as useful reference to determine whether a particular medical incident is due to misuse of drug or an accepted risk of use. More importantly, with such proven evidence, necessary labelling changes or even withdrawal of the products can be recommended to pharmaceutical manufacturers.</p>
6.	Hong Kong Association of Audiologists	Has only provided a copy of the disciplinary procedure of the Hong Kong Association of Audiologists, which is based on the United Kingdom system.

Appendix IV

Subcommittee on improvements to the medical complaints mechanism

No.	Name of Organisation	Suggestions for improving the handling of complaints by the Medical Council of Hong Kong (the Medical Council)
1.	Patients' Rights Association, Society for Community Organisation	<p>a) The Medical Council should give up receiving complaints, and should instead assist the health services ombudsman in the investigation of complaints, including assessing whether the offences committed by doctors amounted to professional misconduct or professional incompetence and the disciplinary actions which should be awarded;</p> <p>b) Decision on how a doctor should be disciplined should be made by both medical and non-medical members of the Medical Council;</p> <p>c) The Medical Council should set down what acts constitute professional misconduct and the penalties for committing such; and</p> <p>d) The Medical Council should also set down standards of practice and the penalties for not meeting such.</p>
2.	Hong Kong Medical Association	Adopts an open-minded attitude to the reform proposals of the Medical Council to improve its complaint handling process. It, however, is of the view that the Government should strengthen the investigation power of the Medical Council by, say, seconding senior doctors from the Department of Health (DH) to serve as investigation officers for the Preliminary Investigation Committee (PIC) of the Medical Council.
3.	Hong Kong Doctors Union Ltd.	<p><u>PIC</u></p> <p>a) One lay member, in addition to the Chairman and Deputy Chairman, should be involved in the screening of complaint cases;</p>

		<p>b) The number of lay members on the PIC should be increased, provided they do not exceed one-third of its membership; and</p> <p>c) The investigation power of PIC should be increased, but short of search and seizure.</p> <p><u>Disciplinary Inquiry</u></p> <p>a) Panel of inquiry may include more lay persons;</p> <p>b) It is best for an inquiry to be headed by a person with sound legal knowledge such as a judge; and</p> <p>c) The quorum for an inquiry panel should be seven with a person with legal background as chairman, two lay persons, two doctors in private practice and two doctors working in the public sector.</p>
4.	The Practising Estate Doctors' Association	<p>a) The investigation power of the Medical Council should be increased. To complement such, DH should deploy its staff to assist the PIC in its investigation work. Additional resources should be allocated to the Medical Council for the hiring of qualified doctors as full-time staff to explain to the public why the Medical Council had come to a particular decision on a complaint case lodged with it;</p> <p>b) One lay member should be included in the initial screening of complaint cases in addition to the Chairman and Deputy Chairman of the PIC;</p> <p>c) The disciplinary inquiry should be chaired by a person with legal background such as a retired judge;</p> <p>d) Doctors of relevant disciplines, who are not members of the Medical Council, should be invited to take part in the inquiry;</p> <p>e) Members of the Medical Council who have not participated in a particular inquiry should be allowed to initiate a review on the decision of the Medical Council on the case within 14 days after the conclusion of a hearing; and</p>

		f) The Medical Council should advertise in the newspapers results of the inquiry and the reasons for the decisions made.
5.	Faculty of Medicine, The University of Hong Kong	Supports the reform direction taken by the Medical Council, such as the proposal of increasing the number of lay members.
6.	Faculty of Medicine, the Chinese University of Hong Kong	a) Membership of the Medical Council should be re-constituted to comprise four elected members who are doctors and 20 nominated members, of whom 10 are doctors and 10 are non-doctors. Details as follows - <ul style="list-style-type: none">- Four doctors nominated by the two university hospitals;- Two doctors nominated by the Hong Kong Academy of Medicine;- Two doctors nominated by HA;- Two doctors nominated by DH;- Two lay persons nominated by the Secretary for Health and Welfare;- Two senior members of the legal profession;- Two senior members from the allied health profession;- Two senior members from non-medical professions;- Two senior civil servants; and

		<ul style="list-style-type: none">- Four elected doctors;b) Three standing committees, namely, the Qualifications and Registration Committee, the Postgraduate Education Committee and the Disciplinary Committee, should be set up;c) Complaints against doctors should be defined, for example, only cases involving professional misconduct and substandard care should be handled;d) Complaints should, in the first instance, be referred to a body outside the Medical Council where preliminary investigation can take place. Only cases with prima facie evidence of professional misconduct or substandard care should be referred to the Medical Council;e) The Disciplinary Committee should hear cases of professional misconduct formally. Such a Committee should be formally structured, its membership defined, and members appointed on fixed term. A senior member of the legal profession should chair the Committee. Censure in the form of deregistration, reprimand and warning may be imposed in cases where professional misconduct is proven. Cases involving lapse of standards should be dealt with professionally. If confirmed, restraint in practice, compulsory training or obligatory supervision can be imposed; andf) The authority of the Medical Council should be upheld, and its disciplinary decisions should not be overturned by another court other than a judicial review.
7.	Hong Kong Dental Association	Adopts an open-minded attitude to the reform proposals of the Medical Council to improve its complaint handling process.

8.	Hong Kong Council of Social Service	<p>a) The number of members nominated by the two university hospitals, HA, DH, the Hong Kong Academy of Medicine and elected by the Hong Kong Medical Association should be reduced in order to allow more lay persons to serve on the Medical Council;</p> <p>b) A full-time solicitor should be hired to serve the PIC in order to provide a legal perspective in the screening process; and</p> <p>c) A Disciplinary Committee composed of lay members of the Medical Council and non-Medical Council members should be formed to conduct hearings, investigate the complaints and make a recommendation to the Medical Council. The whole Council, or a separately appointed committee, would be responsible for delivering verdict and deciding on the penalty.</p>
9.	Consumer Council	<p>a) 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;</p> <p>b) Half of the membership of the Medical Council should be lay persons; and</p> <p>c) The Chairman should not be a medical professional but a senior and respected legally qualified person in order that the community's perception of the complaints process would be enhanced by removing any real or imaginary conflict of interest.</p>
10.	The Hong Kong Association of Speech Therapists	<p>In order to avoid misunderstanding from the public that the Medical Council is biased in favour of doctors, handling of complaints should be made more transparent. For example, complainants should be apprised of the complaint handling procedures and be given an explanation as to why the Medical Council have come to the decisions on their complaints.</p>

