

**Subcommittee on Improvements to the
Medical Complaints Mechanism
LegCo Panel on Health Services
Subcommittee Meeting on 30 January 2002**

Reform of the Medical Council of Hong Kong

Purpose

This paper sets out our views on the reform recommendations of the Medical Council of Hong Kong (HKMC). In so doing, reference is made to the roles and objectives of professional regulation.

Background

2. In May 2001, the Working Group on the Reform of the Medical Council was set up to review the Council's structure, composition and functions aiming to strengthen its accountability, transparency and fairness; with the ultimate objective of ensuring high standard of medical care. The HKMC has completed its deliberations on the reform and the recommendations were submitted to the Administration in December 2001. (Annex)

Objective of Professional Regulation

3. The primary purpose of professional regulation is to protect the public from poor practice. In the case of the medical profession, this is basically the protection of patients. The essential elements of professional regulation were the determination of standard of practice, the control of entry to the profession through maintaining a register, and the power to remove a doctor from the register in specific defined circumstances. It is through this process that the designated professional body maintain a high standard of care, provides the public with the assurance that registered practitioners are fit to practice, and maintains confidence and trust between doctors and patients. Therefore,

complaints handling and disciplinary actions only constituted part of the main functions of professional regulation, which include setting the standard of practice and education, determining the criteria for registration, vetting qualifications of applications for registration and organising licensing examination.

4. As with other professionals in Hong Kong, the medical profession is characterized by a specialised body of knowledge and skill, which is constantly invigorated by the results of research. This makes non-professionals not well equipped to evaluate or regulate a professional's practice. Both local and overseas experience has indicated that professional self-regulation, with the involvement of lay members, is the most effective way of regulating professional practices in the medical profession.

Views on the Reform Recommendations of HKMC

5. The reform recommendations of the HKMC can be grouped into four main areas as follows –

- (a) Increasing the lay representation in the HKMC and the Preliminary Investigation Committee
- (b) Setting up a separate Disciplinary Committee to conduct disciplinary inquiry
- (c) Putting in place a new requirement for maintenance of standard of practice
- (d) Improving the communication with and support to complainants by setting up a Complaint Receiving Division

6. The Administration's views on each of the above reform areas are summarized in the following paragraphs.

Increasing the lay representation in the HKMC and the Preliminary Investigation Committee

7. The inclusion of lay members in a professional regulatory body is to demonstrate to the public that the profession is not regulated by its professionals alone. This will address the criticism of professionals

protecting the interest of each other and enhance the credibility of the system, thus commanding greater public confidence. Further, lay involvement can also help to make an effective contribution to the regulatory body's governance and operation with the lay members' perspective and expertise. On the other hand, there is a need to ensure an adequate number of professional members to deal with work in connection with professional regulation other than the handling of complaints. In the case of the HKMC, in view of the events that have triggered the reform, an increase in the number of lay members would be a measure to boost public confidence on the system. To double the number of lay members from 4 to 8 is certainly a move in the right direction which should be supported, although the adequacy of the increase can be further deliberated.

8. As to the Preliminary Investigation Committee, increasing the number of lay members from 1 to 3, thus with lay representation accounting for one-third of the size of the PIC, is also a noticeable improvement over the existing arrangement. The requirement that no complaint should be rejected unless there is unanimous agreement between the PIC Chairman, Deputy Chairman and a lay member will also enhance the credibility of the system, although the extent of lay involvement in the initial screening stage can be further discussed. With the proposal to set up a separate mechanism for disciplinary inquiry (see para. 9 below), adequate mechanism to ensure the separation of the functions of investigation and adjudication, and adequate safeguard during the process of initial screening, the credibility of the entire system would be upheld.

Setting up a separate Disciplinary Committee to conduct disciplinary inquiry

9. With the setting up of a Disciplinary Committee to conduct disciplinary inquiry, the separation of the functions of investigation and adjudication will become much more visible. Having a person with judiciary background as Chairperson and the majority of members of the Disciplinary Committee not being members of the HKMC also contribute positively to the independence of the Committee from the HKMC. The only link with the HKMC in the proposed Disciplinary Committee is 1

medical member and 1 lay member. The percentage of lay representation at the inquiry will also increase. The ratio of 4 medical members to 3 lay members (including the Chairperson with judiciary background), seems also to be a great improvement. The proposal that a greater proportion of the Committee should be members of the medical profession seems justified. Similar to other professions with a specialised body of knowledge, doctor would be in an appropriate position to make judgment on the practice and conduct of their peers, as long as there are adequate checks and balances with the involvement of lay members. Besides, it is proposed to formulate written guidelines on the proper procedures and conduct of the disciplinary inquiry. It is considered that these recommendations will greatly improve the transparency, credibility and independence of the disciplinary procedures.

Putting in place a new requirement for maintenance of standard of practice

10. Maintenance of standard is one of the major functions of the HKMC that is essential for protection of patients and maintenance of public confidence. We considered that HKMC is moving in the right direction by recommending the requirement for continuing medical education and establishment of a designated Professional Performance Committee to deal with substandard practice.

Improving the communication with and support to complainants by setting up a Complaint Receiving Division

11. Statistics of the HKMC showed that about 60% of complaints lodged are rejected because they are outside the HKMC's remit. The proposed Complaint Receiving Division, acting as the first contact point of complain and the referral body, can enhance communication with the public on the functions and roles of the HKMC's complaint mechanism and the complaint handling procedures. Besides, the Division can provide guidance on the appropriate channel of lodging complaint and give adequate explanation to the complainants if their complaints are eventually rejected by the PIC. This will help to reduce misunderstanding and make the complaint mechanism more user-friendly.

12. On the proposed mediation role of the Division, it is important to ensure that this function is independent of and separated from the Council's disciplinary inquiry role in order to avoid a possible role conflict. In this regard, further discussions will be required and further information are needed on the set-up and operation of the Division and its relationship with other functions of the Council before we can formulate a view.

Conclusion and Way Forward

13. We are of the view that the proposed reform of HKMC is moving in the right direction, although certain details can be further discussed. The reform recommendations are important for the maintenance of a high standard of practice and improving the credibility and transparency of the system. Subject to Members' views, we would discuss further with the HKMC on the recommendations.

Advice Sought

14. Members are invited to provide their views on the HKMC reform recommendations.

Health and Welfare Bureau
January 2002

(A) Recommendations for Reform of the Medical Council

Throughout its deliberations the Medical Council referred to the experience of medical regulatory bodies in Australia, the United Kingdom, Canada, the USA, New Zealand, South Africa and Malaysia in terms of their membership, complaint handling mechanism and professional standards and the views collected from the public and the medical profession, and recommends the following proposals to reform the Medical Council. These recommendations aim to strike a balance between professional self-regulation and public expectations.

Composition of the Medical Council

2. In considering the number of lay members, the Medical Council took into consideration their valuable contribution and the need to maintain professional self-regulation. In similar overseas organizations the range is from 0% to 50%. The Medical Council is of the opinion that a ratio of one lay member to three doctors strikes an appropriate balance.

3. Having regard to the previous decision of the Medical Council on 3 January 2001 to reduce the number of doctors elected by the Hong Kong Medical Association from the existing seven to two, with the remaining five members to be elected by all registered medical practitioners, **the Medical Council recommends that the number of lay members shall be increased from four to eight. As a consequence, the Medical Council shall consist of 32 members (8 lay members, 12 directly elected members, 2 members elected by the Hong Kong Medical Association and 10 appointed members).**

Complaint Handling Mechanism

Complaint Procedures

4. Dependent on the nature of the complaint, there are in existence many avenues that can be pursued. Consequently, patients and their families are often at a loss as to where they can file their complaints.

5. Based on the Medical Council's statistics for the past ten years, an average of 60% of the complaints lodged are outside its remit and have to be rejected. This has become the source of many misunderstandings and has caused the Council to be perceived as being unhelpful.

6. In this regard, **the Medical Council shall improve its existing procedures for handling complaints by setting up a Complaint Receiving Division with the following functions:-**

- (a) to receive complaints against doctors;**
- (b) to assist complainants in filing their complaints;**
- (c) to refer complaints to the PIC or other organizations; and**
- (d) to mediate between doctors and complainants in cases not relating to professional conduct, health or competence.**

Composition and Operation of the PIC

7. The investigatory function is currently vested in the Medical Council. While at first sight this may appear to overlap with its functions of disciplinary inquiry and sentencing, this is not the case in practice due to the separate membership of the PIC and of the disciplinary inquiry, i.e. members of the PIC, including the lay member, do not sit in the disciplinary inquiry. The Medical Council seeks to strengthen the role of the PIC by recommending the following:-

- (a) the number of lay members in the PIC shall be increased from one to three;**
- (b) at the initial screening stage, no complaint shall be rejected unless there is unanimous agreement between the PIC Chairman, Deputy Chairman and a lay member; and**
- (c) the PIC shall be given additional statutory powers to require the submission of documents and evidence in the course of its investigation.**

8. These recommendations are related to the proposals for the setting up of a Disciplinary Committee which will be dealt with in the next section.

Disciplinary Inquiry

9. Having due regard to the need for separation of functions, the Medical Council recommends the following:-

(a) **There shall be a Disciplinary Committee to conduct disciplinary inquiries.**

(b) **The Disciplinary Committee at each disciplinary inquiry shall consist of a Chairperson and 6 Committee members comprising:-**

- ◆ **1 medical member of the Medical Council;**
- ◆ **2 lay members (1 from the Medical Council and the other from the Panel of Assessors); and**
- ◆ **3 medical members from the Panel of Assessors.**

(c) **Members of the Medical Council and Members of the Panel of Assessors shall serve in this Committee by rotation.**

Membership of the Panel of Assessors

10. **The Panel of Assessors shall consist of forty medical members and sixteen lay members.**

Chairperson of the Disciplinary Committee

11. **The Chairperson of the Disciplinary Committee shall be a person with a judiciary background. This person shall not be a Member of the Medical Council.**

Procedures of disciplinary inquiry

12. The Medical Council recognizes that new members of the disciplinary

inquiry and indeed some members who attend the disciplinary inquiry on rare occasions are not familiar with the procedures of the disciplinary inquiry. For these reasons, **written guidelines shall be formulated on the proper procedures and conduct of the disciplinary inquiry. In addition, members of the Disciplinary Committee shall be fully briefed on the disciplinary procedures before they ever attend such inquiry.**

Legal support for the complainant

13. Section 24 of the Medical Registration Ordinance specifies that a complainant is entitled to be represented by counsel or by a solicitor throughout the inquiry. Section 25(2) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation provides that at the request of the complainant or his counsel or solicitor, the Council may permit the complainant or his counsel or solicitor to present the case against the defendant if the Council thinks it appropriate in the circumstances of the case. In this regard, the Medical Council has no further proposal.

Legal representation for the Secretary

14. To enable the Secretariat to have legal representative which is on par with the legal representative of the defendant doctor, the Medical Council reiterates the proposed amendment to section 21(2) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation as agreed in January 2001 to provide flexibility by appointing legal counsel outside the Department of Justice.

Expansion of disciplinary orders

15. The Medical Council's most important role is to ensure a high standard of medical care. The existing options for sentencing are rather limited and act more as a deterrent rather than helping doctors to improve their practice. **In this regard, the Medical Council recommends that the range of orders that can be made upon the finding that a disciplinary offence has been committed shall be expanded to include the imposition of conditions/restrictions on practice.**

Contents of the judgement

16. To make the judgement of the Disciplinary Committee clearer and more comprehensible for the general public and doctors, **the judgement/decision of the Disciplinary Committee shall consist of the following:-**

- **Charge;**
- **Facts;**
- **Decision with reasons;**
- **Mitigation, if any;**
- **Order of the Disciplinary Committee; and**
- **Reasons for such an order.**

Maintenance of Standards

17. **The Medical Council recommends that CME shall be made a requirement for all doctors 3 years after the implementation of the voluntary system. The Medical Council shall further explore the mechanism for dealing with doctors who do not fulfill the required CME points.**

18. The Medical Council supports the establishment of a Professional Performance Committee (PPC) to deal with substandard practice.

Other Recommendations

Policy meeting of the Medical Council

19. **The Medical Council shall give a press briefing after each policy meeting.**

Public Relations Strategy of the Medical Council

20. **The Medical Council shall develop a public relations strategy to enhance communication with the public.**

Attendance of Council Members

21. To strengthen accountability, the attendance of Council Members shall be posted on the website.

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