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**Paper for the Panel on Health Services
meeting on 11 March 2002**

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

Purpose

This paper reports on the work of the Subcommittee on improvements to the medical complaint mechanism (the Subcommittee).

Background

2. The Panel on Health Services (the Panel) held a special meeting on 23 April 2001 to discuss with the Medical Council of Hong Kong (HKMC) its decision made on 11 April 2001 regarding a public doctor using his mobile phone while performing an operation. At the conclusion of the meeting, members agreed to set up a subcommittee to work with the Administration and the HKMC, and to consider public views, on what improvements should be made to the medical complaint mechanism.

3. Both the Administration and the HKMC expressed support for the proposal. Members noted that the Administration was already having discussions with the HKMC and other interested parties on the same subject.

The Subcommittee

4. The terms of reference and the membership list of the Subcommittee are in **Appendices I and II** respectively.

5. Under the chairmanship of Hon LAW Chi-kwong, the Subcommittee has held nine meetings with the Administration. Apart from the HKMC, the Subcommittee has also met with representatives of the Hospital Authority (HA)

and over 20 other deputations as listed in **Appendix III**.

Deliberations of the Subcommittee

Existing complaint system and problems

6. At present there are a number of channels for handling health care complaints, including the complaint mechanisms of individual service providers such as hospitals and the professional regulatory bodies. These various channels have different functions and roles in handling complaints. The main problems of the existing system are as follows -

- (a) Although complaint channels are available, patients often find the system complex and the interface between the various channels confusing. Owing to the lack of understanding of the entire system, complainants often lodge their complaints to an inappropriate channel resulting in delay and causing frustration.
- (b) The credibility of the complaint mechanism handling complaints against the practice of doctors has been called into question time and again after recent inquiry decisions made by the HKMC.
- (c) The complaint process is often not user-friendly or transparent.

7. The credibility of the complaint system handling complaints against the practice of doctors has, in particular, been questioned and confidence in the existing mechanism operated by the HKMC is declining. Part of the problem is that members of the public do not understand the role and powers of the HKMC. As set out in section 21(1) of the Medical Registration Ordinance, the HKMC only has disciplinary powers over a registered doctor who commits an offence as defined in the Ordinance. Among the various offences liable to disciplinary action under the Ordinance, professional misconduct is the only one that has direct relation to patient care. Complaints relating to other aspects of patient care, such as the attitude or performance of a doctor, are outside the disciplinary power of the HKMC. Statistics show that about 60% of complaints received by the HKMC have been rejected because they are outside the remit of the HKMC. Owing to the lack of understanding of the roles of the HKMC and what constitutes professional misconduct, patients find it difficult to accept dismissal of cases not related to professional misconduct.

8. Under the existing arrangements, the HKMC assumes the roles of both the prosecutor and the inquiry panel, leading to the criticism of a biased inquiry process. Members of the public have also raised doubts about the composition of the HKMC and have called for stronger representation of lay members to achieve a better balance between the number of medical and lay

members in the HKMC.

Proposal of setting up an independent complaint office

9. The majority of members of the Subcommittee are of the view that an independent complaint office outside the Government should be set up. They have pointed out that public confidence in the HKMC has been seriously eroded by its recent decisions in inquiries and there is a strong public call for an independent complaints office to provide a one-stop service for handling patients' complaints.

10. Most of the depositions which have appeared before the Subcommittee are also in favour of setting up an independent complaints office to receive and investigate complaints, to mediate between the complainants and the doctors concerned where appropriate, and to refer the complaints to the appropriate professional regulatory bodies for follow-up.

11. The Administration has pointed out that there are quite a number of questions that must be addressed in relation to the setting up of such an office. These questions include how independent it should be; how the scope of its functions and powers should be defined; and what its relationship should be with the existing complaint channels. The Administration has also expressed concern that such an office may duplicate the regulatory functions of the DH, add confusion to the already complex system and erode the autonomy of the health care professions. In addition, there will be serious resource implications if the office is going to employ various categories of health care professionals to support its work.

The Administration's proposal to set up a Complaints Office in the DH

12. In the Consultation Document on Health Care Reform, the Administration proposed to set up a Complaints Office within the DH to handle complaints relating to patient care. In an information paper for the Subcommittee, the Administration has pointed out that such an arrangement has many advantages. These advantages include -

- (a) The Complaints Office can assist the complainants by clarifying the nature of their complaints and the objective of the complainants, and steering the complainants to the appropriate complaint channel.
- (b) The Office will be able to provide a user-friendly one-stop service by conducting investigations into complaints, assisting complainants to obtain expert advice and briefing complainants on the facts of the case as known.

- (c) The Office will open up an opportunity for communication between the complainants and the doctors concerned through mediation at an early stage.
- (d) With the DH taking on the role of an advocate for health and a regulator to ensure quality as proposed in the Consultation Document on Health Care Reform, and eventually giving up its direct health care services, it is well positioned to take on the task.

13. The majority of members of the Subcommittee do not support the proposal. They have pointed out that the proposed Complaints Office is essentially a Government office and therefore lacking in independence and impartiality. They maintain the view that an independent complaint office should be set up. Almost all of the deputations have also expressed opposition to the proposal and have indicated their support for an independent complaint office instead.

14. In view of the lack of support for the proposal, the Administration has decided not to pursue the proposal for the time being.

The complaints system of the HA

15. Under section 5(m) of the Hospital Authority Ordinance (Cap. 113), the HA has the power to "establish and maintain a system for providing a proper consideration of complaints from users of hospital services, or of members of the public, in relation to (public) hospital services". Since its establishment in 1991, the HA has set up a two-tier complaints system to manage public complaints.

16. To deal with complaints at source, each hospital has designated a Patient Relations Officer to serve as a convenient focal point to receive complaints from the public. Once a complaint is received, the Hospital Chief Executive is responsible for the proper investigation and handling of the complaint.

17. As the second-tier complaint system within the HA, the Public Complaints Committee (PCC) is established under the HA Board to independently consider and decide on all appeal cases and referred complaints. The PCC comprises eight regular members and one rotating HA member, of whom at least seven are lay members, all being non-executives of the HA. The decision of the PCC is the final decision of the HA on a particular complaint.

18. Following a review of its complaint system, the HA has come up with a number of suggestions to further improve the independence, credibility and effectiveness of the system, including enlarging the membership of the PCC to

enable it to better cope with the increasing heavy workload.

Complaint handling mechanism of private hospitals

19. All private hospitals are required to appoint a patient relations officer to receive, investigate and resolve complaints received by each individual hospital. In addition, the hospitals are required to submit to the DH on a monthly basis, a complaint digest, which provides a summary on the nature of complaints and the outcome of investigations by the hospitals.

20. The DH also undertakes investigation into complaints received from clients of private hospitals and will furnish a reply to the complainant on the findings of the investigation.

Medical complaints mechanism in overseas places

21. At the request of the Subcommittee, the Research and Library Services Division of the Legislative Council Secretariat has made a comparative analysis of the medical complaints mechanism in the United Kingdom, California, Ontario and New South Wales for members' reference. Details of the study are provided in the Research and Library Services Division's research report RP14/00-01 dated 28 June 2001. The Administration has also separately prepared and presented an analysis on the overseas patient complaint systems.

Reform proposals of the HKMC

22. In May 2001, the Working Group on the Reform of the Medical Council was set up to review the structure, composition and functions of the HKMC. The HKMC submitted its reform recommendations to the Administration in December 2001. The main features of the recommendations relating to the complaint handling mechanism are as follows -

Complaint procedures

23. The HKMC proposes to improve its existing procedures for handling complaints by setting up a Complaint Receiving Division. Apart from assisting complainants to file their complaints and referring complaints to the Preliminary Investigation Committee (PIC) or other organisations, it will also mediate between doctors and complainants in cases not relating to professional conduct, health or competence.

Composition and operation of the PIC

24. The number of lay members in the PIC will be increased from one to three, bringing lay representation to one-third of the membership of the PIC.

25. 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.

Disciplinary inquiry

26. A Disciplinary Committee will be set up to conduct inquiries. The Disciplinary Committee at each disciplinary inquiry will consist of a chairperson, who shall be a person with a judiciary background, and six committee members, the majority of whom are not members of the HKMC. The only link with the HKMC in the proposed Disciplinary Committee is one medical member and one lay member. The percentage of lay representation at the inquiry will also increase to a ratio of four medical members to three lay members. It is also proposed to formulate written guidelines on the procedures and conduct of the disciplinary inquiries.

The Administration's stance

27. The Administration is of the view that the proposed reform of the HKMC is moving in the right direction, although certain details can be further discussed. It believes that with the proper implementation of the proposed reform of the HKMC and improvement measures to be adopted by other organisations concerned with medical complaints, the majority of the problems of the existing system, particularly in respect of complaints against doctors, can be solved.

28. As regards the proposed Complaint Receiving Division, the Administration considers that it can enhance communication with the public on the roles and functions of the HKMC's complaint mechanism and the complaint handling procedures. It can also provide guidance on the appropriate channels of lodging complaint and give 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. However, the Administration considers it important that the proposed mediation role of the Division should be independent of and separated from the HKMC's disciplinary role in order to avoid a role conflict. Further information and discussion will be required on the set-up and operation of the Division and its relationship with other functions of the HKMC before it can formulate a view on the desirability of the proposed mediation role.

29. The Administration has given the following reasons for not setting up an independent complaint office -

- (a) It is difficult to define how independent the office should be. It is not possible or realistic to make it completely independent

from the profession. Whether it needs to be independent from the Government will depend very much on the remit and nature of the duty of the office.

- (b) There is a wide discrepancy between the expectations of the public, among Members of the Legislative Council and health care professionals on the remit and duty of the office. Some are asking for a body with powers ranging from investigation to adjudication and discipline, in which case the principle of professional self-regulation would be totally abandoned. Some propose that the independent office should receive and clarify complaints, seek and provide explanations, mediate where appropriate and conduct investigations. Cases will then be referred back to the professional regulatory bodies to perform the functions of inquiry, adjudication and discipline. On the other hand, the majority of the medical professionals opine that such a body is not needed or should only act as a clearing house, leaving the functions of investigation, inquiry, adjudication and discipline to the professional regulatory bodies. For the mechanism to function effectively, the Administration believes that an agreement should be reached on its set-up and operation.
- (c) There is no international experience of an independent office with remit and functions similar to the one proposed. For instance, the Health Service Ombudsman of the United Kingdom can only investigate complaints against the National Health Service but not those against private practice and the Department of Health. Besides, it will not handle complaints before the patients have gone through the local resolution procedures. Only patients who are still dissatisfied after the local resolution procedures can complain to the Health Service Ombudsman. Such a two-tier complaint mechanism for public funded services is similar to the complaint mechanism of the HA. In Australia, both the Health Care Complaints Commission of the New South Wales and the Health Services Commission of Victoria are essentially housed under the Department of Health, which provides the executive arm and handles complaints in collaboration with the professional regulatory bodies. In Ontario, Canada, the Ombudsman cannot investigate complaints concerning a doctor's conduct. Therefore no overseas reference can be drawn as to the effectiveness of such an office and its impact on the health care delivery system.
- (d) There is no similar independent complaint office for other professions such as lawyers, accountants or architects, which rely on the principle of professional self-regulation.

- (e) Setting up an independent office will have serious resource implications. In contrast, the Administration's earlier proposal of a Complaint Office in the DH could achieve more effective use of resources.
- (f) The DH, as a regulator, already has the power to regulate various health services delivery institutions. Time is required to put in place a new piece of legislation and thus cannot solve the problem in a timely manner.
- (g) Since complaints may be reflecting problems in the operation of the private hospitals and clinics, there is a need for the DH, as the regulatory and licensing authority, to investigate into such cases. Having an independent office may duplicate such functions and add confusion to the already complex system and create even greater problem in the interface between the various complaint channels.

Views of members

30. The majority of members do not accept the explanations given by the Administration for not setting up an independent complaint office and have expressed disappointment that the Administration has chosen to rely on the proposed reform of the HKMC.

31. These members share the view that a lack of consensus in the community about the remit and duty of such an office is not a valid argument as it has never been the Administration's practice to introduce policy only if there is consensus in the community. They disagree that there is a wide discrepancy in the views of the community on the issue as the majority view of the community is in support of an independent office to receive and clarify complaints, seek and provide explanation, mediate where appropriate and conduct investigations. Almost all of the deputations have also clearly indicated their support for an independent complaint office.

32. Members consider that duplication of work with the various complaint channels should not be a valid reason for not setting up an independent office as it is important for a patient complaint system to be perceived to be fair by the public. They have pointed out that if the argument based on duplication of work is valid, then there should be no need for the establishment of the Office of the Ombudsman and the Consumer Council.

Conclusion of the Subcommittee

33. Since the Administration is of view that the reform recommendations of the HKMC would solve the majority of the problems of the existing complaint

system, members have concluded that there is no need to further discuss ways to improve the patient complaint mechanism with the Administration. Members have agreed that the Subcommittee should be dissolved and a report on the work of the Subcommittee should be submitted to the Panel.

Advice Sought

34. Members are invited to note the deliberations of the Subcommittee. A verbal report was made by Hon LAW Chi-kwong, Chairman of the Subcommittee, at the Panel meeting on 4 February 2002 when the reform of the HKMC was discussed by the Panel.

Council Business Division 2
Legislative Council Secretariat
6 March 2002

LegCo Panel on Health Services

Subcommittee on improvements to the medical complaints mechanism

Terms of Reference

To discuss with the Administration how to improve the mechanism for handling medical complaints, taking into consideration the views of the Medical Council of Hong Kong, patients and other organisations and the public.

LegCo Panel on Health Services

Subcommittee on improvements to the medical complaints mechanism

Membership list

Chairman	Hon LAW Chi-kwong, JP
Members	Hon Cyd HO Sau-lan
	Hon CHAN Kwok-keung
	Hon CHAN Yuen-han, JP
	Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
	Dr Hon YEUNG Sum
	Hon Andrew CHENG Kar-foo
	Dr Hon TANG Siu-tong, JP
	Hon LI Fung-ying, JP
	Hon Michael MAK Kwok-fung
	Dr Hon LO Wing-lok
	(Total : 11 Members)
Clerk	Ms Doris CHAN
Legal Adviser	Mr LEE Yu-sung
Date	26 October 2001

LegCo Panel on Health Services

Subcommittee on improvements to the medical complaints mechanism

List of deputations

- Association of Hong Kong Nursing Staff
- Consumer Council
- Faculty of Medicine, The Chinese University of Hong Kong
- Faculty of Medicine, The University of Hong Kong
- Hong Kong Council on Medical and Health Services
- Hong Kong Council of Social Service
- Hong Kong Dental Association
- Hong Kong Doctors Union Ltd.
- Hong Kong Public Doctors' Association
- Hong Kong Public Hospitals, Department of Health and Universities
Doctors Association
- Patients' Rights Association, Society for Community Organisation
- Practising Estate Doctors' Association
- The Hong Kong Medical Association
- The Medical Council of Hong Kong
- The Rehabilitation Alliance Hong Kong Limited

Other organisations which have provided written submissions only

- Alliance for Patients' Mutual Help Organisations
- Canossa Hospital (Caritas)
- Democratic Party
- Faculty of Health and Social Sciences, the Hong Kong Polytechnic University
- Hong Kong Association of Audiologists
- Hong Kong Association of Speech Therapists
- Pharmaceutical Society of Hong Kong and The Society of Hospital Pharmacist of Hong Kong
- Union of Hong Kong Speech Therapists (Medical)