

**LegCo Panel on Health Services
Meeting on 4 February 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) and the establishment of an independent complaint office. 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, which should be supported.

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. 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) also seems 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 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 consider 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, in particular its disciplinary role, in order to avoid a possible role conflict. In this regard, further discussions will be required and further information

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.

Further Discussion with the HKMC

13. During our previous discussions with the Subcommittee on Improvements to the Medical Complaints Mechanism of this Panel (the Subcommittee), Members' had raised the following comments on HKMC's reform recommendations -

- the ratio of lay members of the HKMC should be further increased to about 40 to 50%;
- the lay involvement at the PIC's initial screening of complaints should be enhanced;
- the proportion of lay members of the PIC should be further increased;
- it is not acceptable in principle for an elected medical member of the HKMC to sit as a member of the Disciplinary Committee. Indeed, to ensure the independence of the Disciplinary Committee, none of the medical members of this Committee should be members of the HKMC;
- lay members should constitute 50% of the Disciplinary Committee;
- the complainants and the Secretary should have equal right to be represented legally at disciplinary inquiry;
- continuing medical education should be a mandatory requirement for all registered medical practitioners; and
- the role of mediation should fall outside the remit of the professional regulatory body and it will be inappropriate for HKMC to take up such role.

14. We will take on Members' comments and pursue these with the HKMC in further discussion with the Council on its reform recommendations.

Establishment of an Independent Complaint Office

15. In considering the establishment of an independent complaint

office, we have analysed the existing complaint system and the HKMC's latest reform proposals. It has been revealed that the bulk of the problem comes from complaints against doctors. Among the professional regulatory bodies, statistics showed that the number of complaints against doctors is the highest. (For the year 2000, a total of 227 complaints were received by the HKMC comparing to 87 by the Dental Council, 5 by the Nursing Council, 2 by the Midwives Council, 8 by the Optometrist Board, 2 by the Medical Laboratory Technologist Board, 1 by the Physiotherapists Board and none for the Occupational Therapists and Radiographers Boards.)

16. As discussed, we believe that the reform of the HKMC can improve the credibility, transparency and fairness of its complaint handling mechanism, which plays the most significant role in handling complaints against doctors. In particular, the Disciplinary Committee as currently proposed has already a high degree of independence from the HKMC. If Members' views are further taken on board (see paragraph 13 above), then the Disciplinary Committee will become itself the independent body in the system. In addition, it is our view that other organizations concerned with medical complaints should also enhance communication with the public on the functions and roles of their respective complaint mechanism and handling procedure; and provide necessary support to the complainants including guidance on the appropriate complaint channel. These measures, when implemented properly, are expected to be effective in solving the majority of the problems of the existing system, particularly in respect of complaints against doctors.

17. Against this background, we are of the view that setting up an independent complaint office may not be the best solution to address the problems of the existing system. This may become yet another channel of complaint and further complicate the system. We have the following considerations -

- Firstly, it is difficult to define how independent the office should be. Discussions at previous meetings of the Subcommittee indicate that it is not possible or realistic to make it completely independent from the profession. Whether it needs to be

independent from the government depends very much on the remit and the nature of duty of the office.

- Secondly, there is a wide discrepancy between the expectations of the public, among LegCo members and the health care professionals on the remit and duty of the independent complaint office. While some are asking for a body with power ranging from investigation to adjudication and discipline, in which case the principle of professional self-regulation will be totally abandoned, the majority of the medical professionals opined that the body is not needed or should only take up the role of a clearinghouse leaving the functions of investigation, inquiry, adjudication and discipline to the professional regulatory bodies. Still another proposal is for the independent office to receive and clarify complaints, seek and provide explanation, mediate where appropriate and conduct investigations. The functions of inquiry, adjudication and discipline will then be referred back to the professional regulatory bodies. For the mechanism to function effectively, we believe an agreement should be reached on its set-up and operation. At the moment, there is a wide discrepancy in the community as to how the proposed independent office should be.

- Thirdly, there is no international experience of an independent office with remit and functions similar to the one as proposed. For instance, the Health Service Ombudsman of UK can only investigate complaints on the National Health Services but not those against the private practices and the Department of Health. Besides, it will not handle complaints before the patients go through the local resolution procedures. Only patients who are still dissatisfied after the local resolution procedures can complain to the Health Services Ombudsman. Such a two-tier complaints mechanism for public-funded services is similar to the complaint mechanism of the Hospital Authority, where a second tier of complaint handling body (i.e. the Public Complaints Committee) with members who are independent of the service provider and the Government has already been put in

place. In Australia, both the Health Care Complaints Commission of 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 patient complaints in collaboration with the professional regulatory bodies. In Ontario, Canada, the Ombudsman's power is even more limited and cannot investigate complaints concerning doctor's conduct. Therefore, no overseas reference can be drawn as to the effectiveness of such office and its impact on the health care delivery system.

- Fourthly, there is no reference of a similar independent complaint office in other professions such as lawyers, accountants or architects, which rely on the principle of professional self-regulation.
- Fifthly, setting up an independent office will have serious resource implication. In contrast, our earlier proposal of a complaint office in the Department of Health can achieve more effective use of resources.
- Sixthly, the Department of Health, as a regulator, already has the statutory 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.
- Finally, taking on the role of a regulator, apart from regulating the operation of private hospitals and sales of drugs, the Department of Health will also enhance the regulation of clinics and the use of medical equipment and devices. Since complaints may be reflecting problems in the operation of the medical institutions, there is a need for the Department, 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.

Conclusion and Way Forward

18. We are of the view that the proposed reform of the 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. They should be given time to develop. At this juncture, the Administration has no intention to pursue further the proposal of an independent complaint office. Subject to Members' views, we would discuss further with the HKMC on the recommendations in the light of the comments in paragraph 13.

Advice Sought

19. Members are invited to provide their views on the contents of this paper.

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