



會 學 醫 港 香
The Hong Kong Medical Association

FOUNDED IN 1920-INCORPORATED IN 1960 AS A COMPANY LIMITED BY GUARANTEE
MEMBER OF WORLD MEDICAL ASSOCIATION AND CONFEDERATION OF MEDICAL ASSOCIATIONS IN ASIA & OCEANIA

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香港軒尼詩道十五號
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To urge the government to regulate the HMOs and Medical Groups through legislation – Submission by the Hong Kong Medical Association

The Hong Kong Medical Association urges the government to regulate the HMOs and Medical groups which provide any form of medical treatment to patients through legislation.

1. All medical practitioners, institutes, clinics, hospitals and even the Hospital Authority which provides medical service to patients are now under some form of statutory regulation for the obvious reason of public health concern.
2. At the present moment, any person can apply for a business registration and can start business to employ medical practitioners to work for them to provide medical services to the public. The only legislation they need to comply with is the Companies Ordinance (Cap 32) which was purposely designed to protect the share holders, not consumers; and the term “ethics” doesn’t even exist.
3. Over the last decade, because of this legislative loophole, more and more medical groups appeared. Some are owned by medical practitioner, some are not and some became listed companies. Complaints against these medical groups had increased over the last few years as shown in the figures provided by the Consumer Council as appeared in the answer from the government. This shows that the public could only file their complaints to the Consumer Council, and no where else. Even estate agents and travel agents are under separate legislation control (Cap 511 and 218), yet companies which provide healthcare services to the public are not. Isn’t public health a major concern?
4. To say that health service is merely a professional relationship between medical practitioners and patients and has nothing to do with the business model of the medical groups reflects either the ignorance or irresponsibility of the government. Numerous examples could be provided that doctors who worked under these groups are being influenced, if not controlled by their employers whose prime target is profit. Doctors may be restricted to use the most appropriate medications because of limited charge; institute unnecessary treatment to patients to generate income; purchase dangerous drugs on behalf of the group which subsequently closed and the drug lost; use unauthorized medicines or vaccine whom the doctor doesn’t even aware. Can anyone belief that the HA administration could not influence the way the HA doctors practice?

Yeas ago, we had written to the Director of Health, Dr Margaret Chan, to ask her to regulate these medical groups according to the Medical Clinics Ordinance (Cap. 161). The reply was that the Medical Clinics Ordinance was not enacted for this purpose. We therefore urge the HKSAR government to regulate these HMOs and medical groups through legislation so that they can follow the same ethical standard as medical practitioners, who are under statutory regulation of the Medical Council and the Medical Registration Ordinance.

Therefore, we submitted that:

1. HMO must be controlled by the same principles controlling individual doctors
2. HMO must bear the legal responsibility of breaching our professional code and conduct
3. HMO must have a legal representative who is a doctor. He will be personally liable for the activities of the HMO, whether or not he is actively practising in their premises.
4. This legal representative has to be final decision maker for the running of the HMO including professional activities, marketing and finances.



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To urge the government to regulate the HMOs and Medical Groups through legislation – Submission by the Hong Kong Medical Association (Part II)

The Hong Kong Medical Association urges the government to regulate the HMOs and Medical groups, which provide any form of medical treatment to patients through legislation.

In considering the various means to regulate the medical groups, we suggest the government to take references from the other professional bodies in Hong Kong.

The Dental profession

Section 12 (Dental Companies) of the Dentists Registration Ordinance (Cap 156), Paragraph (1)(b) provides that “A *body corporate may carry on the business of dentistry if a majority of the directors and all persons practicing dentistry are registered dentists*”. It is quite obvious that the government, during enactment or amendment of the law regarding the Dental profession, had envisaged that the profession might take the form of a corporation to provide professional service and had decided that these corporations should be under the same ordinance and under the jurisdiction of the Dental Council.

The Legal profession

The Legal Practitioners Ordinance (Cap159) has, in its sub-legislation, the Solicitors’ Practice Rules (Cap 159H), very clear-cut rules regarding the firms, which have one or more solicitors as principals. Even the name of a firm is restricted as in rule 2A. Rule 4A (*supervision of office*) provides that:

A solicitor shall ensure that every office where or his firm practice is and can reasonably be seen to be properly supervised in accordance with the following minimum standards-

- (a) *every such office shall be managed by a solicitor holding a current practising certificate who shall normally be in attendance at that office during all the hours when it is open to the public; and*
- (b) *every such office shall be attended on each day when it is open to the public by a solicitor who holds an unconditional practising certificate and has been admitted for at least 2 years (or such other period as the Council may permit), being either a principal of, or a solicitor employed by, the firm and who shall spend sufficient time at such office to ensure adequate control of the staff employed there and afford requisite facilities for consultation with clients.*

And Rule 5 (*Particulars relating to firms*) requires the principal or principals of the firm to advise the Law Society of every details of the firm including even the service company engaged by the firm within 14 days after the commencement of practice.

Accountants

Paragraph (2), section 28A (Registration of firm name) of the Professional Accountants



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Ordinance (Cap 50) clearly stipulates that “A firm of certified public accountants (practising) shall apply to the Council for registration of a firm name under this Ordinance.” Paragraph (5) of the same section further stipulates that “A firm of certified public accountants (practising) shall not be qualified to be registered under subsection (2) unless all partners of the firm are certified public accountants and at least such proportion as the Council may from time to time prescribe of its partners is or are certified public accountant (practising) or certified public accountants (practising)”

Estates Agents

The Estates Agents Ordinance (Cap 511) has provisions to put the estate agent companies under the jurisdiction of the Estate Agents Authority. Section 15(2) of the Estate Agents Ordinance stipulates that:

Subject to this Ordinance, a company shall not-

- (a) exercise or carry on or advertise, notify or state that it exercises or carries on, or is willing to exercise or carry on, the business or doing estate agency work as an agent; or*
- (b) act as an estate agent; or*
- (c) in any way hold itself out to the public as being ready to undertake, whether or not for payment or other remuneration (whether monetary or otherwise), estate agency work as an estate agent,*
unless it is a licensed estate agent.

Our Submission

The above examples clearly illustrate that, unlike the medical profession, any firm or company, which intends to provide the above professional services to the public has to be either directly or indirectly registered or licensed from their respective governing bodies. Obviously these professional bodies had detected the consequence of not governing the corporations would be disastrous to their profession and the public and have very stringent provisions in their respective ordinances to plug the loopholes.

Therefore we suggest the government to consider:

- (1) To amend the Medical Registration Ordinance, taking reference from the other professions to make provisions to regulate these medical groups or companies providing medical services.
- (2) To register all these medical groups by the Department of Health with the purpose of regulation by legislation.

The purpose of legislation is to ensure that these groups are running their business as if they are medical practitioners, in particular to follow the same code of practice in relation to the following including dissemination of service information, transparency of fees, proper financial transactions and proper delegation of medical duties to non-qualified persons.

23 March 2006



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Cases

This submission is part and parcel of other pages prepared by the Council Members of the Hong Kong Medical Association. Over the years, the Hong Kong Medical Association received requests for assistance from our members with regard to their relation with health care / management organizations. A few cases are illustrated hereunder.

Received October 2004

A doctor was required by her employer to perform duties she did not feel capable of performing. She also complained to the association that her employer promoted the clinic in ways likely to contravene the Professional Code and Conduct. She wanted to discontinue the contract with her employer but before doing so, her employer terminated her contract unilaterally. Her salary was held unpaid and she launched a complaint to the Labour Department (November 2004). Dangerous drugs ordered under the name of this doctor were kept inside the clinic and barred from her access. The Hong Kong Medical Association has advised this member doctor to keep in contact with the Labour Department and the Department of Health for disposal of the Dangerous Drugs, as it is required by law.

Received November 2004

A doctor resigned from a clinic in June 2004. A few months later he received two invoices from a pharmaceutical company demanding payment for medications ordered under his name while he was an employee of the clinic. The employer claimed that the doctor has taken the medications with him when he left his job. The doctor maintained he has not taken the medications. The Hong Kong Medical Association has advised this member doctor to report the case to the police.

Received August 2005

A doctor who graduated in 2003 was employed by an HMO with a two-year employment contract. It was the end of the first year when he seek assistance from the Hong Kong Medical Association. He was required to carry out professional duties he considered inappropriate. He learned from the patients that the clinic nurses persuaded them to lodge complaints against him. He found out that medications were not dispensed to patients in accordance to his prescription. He wanted to resign, but his contract required him to compensate the company about HK\$200,000 for a unilateral termination of the contract. He explained to the Hong Kong Medical Association that he was not well off enough to employ a lawyer and bring the case to court. The Hong Kong Medical Association offered to review his employment contract by our Legal Adviser. Among other advices, we also advised him to check the medications himself before handing to the patients. His employer eventually terminated his contract on November 1, 2005 without imposing the penalty terms.



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Received December 2005

A doctor was employed to work in a clinic. He resigned after he found out that his employer more than once added dangerous drugs to his prescription without his knowledge. To the understanding of the Hong Kong Medical Association, his employer was also a doctor. The case was brought to the attention of the Medical Council of Hong Kong. The Hong Kong Medical Association advised him to contact the Medical Protection Society.

Received March 2006

A doctor reported that he attended a patient from April 2005 to August 2005 for a terminal malignant condition. The doctor's professional fee was supposed to be settled through a HMO. At the time of the report, he has not received the payment. The doctor contacted the hospitals where he treated the patient, and was informed that the HMO has repeatedly asked for medical notes for their review.

Received Summer 2005

A doctor who has just finished his internship contacted the Hong Kong Medical Association for assistance. He was employed by an HMO. On the first day of his practice, the management distributed free rice-packets to patients attending the clinic. A long queue lined up. The incident was reported in the press. A photograph of the queue was sent to the Medical Council of Hong Kong together with a complaint. Consequent to this complaint, his registration with the Medical Council of Hong Kong was withheld and he was unable to practice medicine for 3 months. That he was an employee not being able to control the act of his employer was finally accepted as a defense by the Medical Council of Hong Kong. Nonetheless, the present legislation has no power to prevent HMO from repeating such act.