

LC Paper No. CB(2)2151/06-07(01)



香港醫務委員會  
The Medical Council of Hong Kong

行公義

Ensuring Justice

守專業

Maintaining Professionalism

護社羣

Protecting the Public

貴處編號：

Your Ref.

本會編號：

Our Ref.

電話：

Tel. No.

二十四小時查詢熱線：2574 4333

24-hour enquiry hotline

8 June 2007

Ms Amy YU  
Clerk to Panel  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong

Dear Ms YU,

**Panel on Health Services  
Meeting on 11 June 2007**

I refer to your letter dated 22 May 2007.

The Medical Council of Hong Kong (the Council) considered the Panel paper on *Regulation of "Health Maintenance Organizations" (HMOs)* and the recommendations of its Ethics Committee (EC) on the paper at the Policy Meeting held on 6 June 2007.

In considering the Medical Director (MD) proposal, the EC noted the following advice of the Legal Adviser to the Council:-

- (a) The MD proposal as described in the paper seems to be on the basis of voluntary application for the HMO to be included in the list maintained by the Department of Health (DH), and there will be no obligation for HMOs to appoint MDs. The operation of the proposed scheme is based on market incentives.
- (b) If the appointment of an MD is merely a qualification for an HMO to be included in the list, the only sanction of an HMO without an MD is disqualification from being listed. Similarly, an MD who fails to perform his prescribed duties will only result in the HMO being de-listed.

秘書處：香港黃竹坑道99號香港醫學專科學院賽馬會大樓4樓

Secretariat: 4/F, Hong Kong Academy of Medicine Jockey Club Building, 99 Wong Chuk Hang Road, Aberdeen, Hong Kong

電話 Tel. No.: 2873 5131/2873 4853 圖文傳真 Fax No.: 2554 0577

註冊辦事處：香港灣仔皇后大道東213號胡忠大廈17樓

Registration Office: 17/F, Wu Chung House, 213 Queen's Road East, Wanohai, Hong Kong

電話 Tel. No.: 2961 8648 圖文傳真 Fax No.: 2891 7946

網址 Website: <http://www.mchk.org.hk>

- (c) The jurisdiction of the Council is prescribed by the Medical Registration Ordinance (MRO). It only applies to registered medical practitioners in respect of their practice of medicine, but not their employment or other private activities including involvement in HMOs. It is questionable whether the Council will have jurisdiction under the MRO to take disciplinary action in respect of a medical practitioner who infringes the requirements governing his employment as an MD. Without such disciplinary jurisdiction, the Council will be powerless in enforcing any provisions of the Professional Code and Conduct (the Code) in respect of requirements of MDs.
- (d) It is also questionable whether the Council has the jurisdiction to make provisions in the Code to govern a doctor's employment as an MD, as the employment is not in connection with his medical practice if he does not practise medicine in the HMO.
- (e) A scheme with legislative backing will be required for effective enforcement of proposed provisions of the Code to govern MDs, and to remove the uncertainty as to the Council's power to make such provisions.
- (f) The idea of the proposal is to hold the MD liable for contravention of professional ethics committed by the HMO. Such liability can be divided into 2 categories: (i) liability for the misconduct of the HMO's panel doctors, and (ii) liability for other activities of the HMO such as business promotion and canvassing for business. In respect of category (i), the MD can be held liable only if he has vicarious liability for the panel doctors. However, the concept of vicarious liability (i.e. liability of an employer for the acts of his employees) only applies in the law of torts but not in the law of professional misconduct.
- (g) In respect of category (ii), if the MD does not provide medical services personally in the HMO, the business promotion activities of the HMO will not be promotion of the MD's practice. Instead, the activities will be promotion of the panel doctors' practice. The MD cannot be held liable for the promotion of other person's practice.

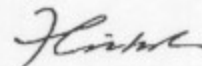
The following recommendations made by the EC were endorsed by the Council at the said meeting:-

- (a) It might be unjust for the Council to sanction MDs for failing to observe any guidelines to be promulgated by the Council in this respect, as MDs are only employees and might not be able to influence the management decisions of the HMOs. Thus the MDs would become scapegoats of the HMOs.
- (b) Although the proposal was not perfect, some Members considered it a step forward in regulating HMOs.
- (c) Insurance companies were not covered by the proposal. The proposal should be extended to cover insurance companies providing health insurance as they could have significant impact on the practice of doctors.

- (d) The proposal would give the public an impression that those HMOs with an MD would be better governed, and that the standard of medical service would be assured. This false sense of security might mislead the public.
- (e) It was understood that the Administration intended to regulate HMOs through a voluntary scheme as a start. However, a legislative timeframe should be firmed up in order to formally regulate HMOs through legislation.
- (f) The definition of "HMOs" is unclear. The Administration should define the term more precisely, in order to determine the scope of the regulatory scheme.

The Council is of the view that there is some urgency to regulate HMOs through legislation. The Council is aware that there are cases of unethical/harmful practices which are not subject to any control. Such practices are harmful to the health of the community.

Yours sincerely,



(Prof. Felice LIEH-MAK CBE JP)  
Chairman, Medical Council of Hong Kong