

Bills Committee on the Medical Registration (Amendment) Bill 2016

Government's Response to the follow-up actions arising from the discussion at the Bills Committee meeting on 21 March 2016

This note provides the Government's response to the follow-up actions arising from the discussion at the first Bills Committee meeting on 21 March 2016.

(a) Appointment of Nominated Members to the Medical Council of Hong Kong

2. Section 3 of the Medical Registration Ordinance ("MRO") (Cap. 161) establishes the Medical Council of Hong Kong ("MCHK") and determines its composition. Under section 3(2)(c), (d), (da), (db) and (h) of MRO, the Director of Health, the University of Hong Kong, the Chinese University of Hong Kong, the Hospital Authority and the Academy of Medicine ("the bodies concerned") are each required to nominate two registered medical practitioners for appointment by the Chief Executive ("CE").

3. Under the Ordinance, nomination by the bodies concerned is a pre-condition for appointment by CE. In administrative law, there is a well-established principle that if a decision maker takes into account matters irrelevant to his decision, or refuses or fails to take account of matters relevant to his decision, the court may set the decision aside in a judicial review.

4. The fact that MCHK members are nominated by the bodies concerned under sections 3(2)(d), (da), (db) and (h) of MRO is a factor which the Ordinance clearly requires CE to take into account in exercising his power to appoint. Besides, the provisions aforesaid show that the members are to be nominated to represent the bodies concerned, which are in the best position to decide who should represent them. CE is required to give the nomination substantial weight. In the absence of exceptional circumstances, it is unlikely that CE may reasonably refuse to appoint the nominated persons. CE has little discretion not to appoint those registered medical practitioners nominated by the bodies

concerned¹.

5. CE has delegated his authority to the Secretary for Food and Health (“SFH”) to make appointment under Section 3, 3B and 3C of MRO to MCHK since 2007. As a matter of fact, in the past twenty years (i.e. 1996 - 2015), no nominations from the bodies concerned have been rejected by the appointment authority.

(b) (i) Appointment Arrangement of the Proposed Four Additional Lay Members

6. As regards our proposal to add four additional lay members, we intend to appoint persons representing interests of patients and consumers to the Council. To the best of our knowledge, there are about 200 bodies² which are established as patient groups or patient support groups. These bodies are of different scale and structure, serving different target groups. There is not yet a single body that is broad and representative enough to represent all patients in Hong Kong.

7. Subject to deliberations at the Bills Committee, we will, in consultation with patient groups/ patient support groups, explore possible options for nominations to be made from them for appointment under the law. As regards consumer interests, we consider that the Consumer Council could nominate person(s) representing consumer interest for CE’s appointment.

(b)(ii) Appointment Arrangement of the Four Existing Lay Members

8. The Medical Registration (Amendment) Bill 2016 does not touch

¹ Section 3(7) of MRO -

(7) Notwithstanding anything in this section, a person-

(a) against whom an order under section 21 has at any time been made; or

(b) who is-

(i) undergoing a sentence of imprisonment;

(ii) detained in a mental hospital; or

(iii) an undischarged bankrupt, shall not be eligible for appointment, reappointment, election or re-election, as the case may be, as a member of the Council.

² The largest patient group, Hong Kong Alliance of Patients’ Organizations Limited, consists of over 40 organisation members with about 40 000 members. The membership of other patient groups ranges from 5 000 to less than 100.

on the appointment arrangement of the four existing lay members. We consider that the existing arrangement should remain unchanged.

(c)(i) Comparison of the Investigatory and Disciplinary Regimes in Other Jurisdictions

9. The relevant comparison is at **Annex A**.

(c)(ii) Comparison of the Investigatory and Disciplinary Regimes of Various Professions

10. The relevant comparison is at **Annex B**.

(d) Complaints handled by MCHK

11. The outcomes of cases handled in the preliminary investigation stage and inquiry stage are summarised at **Annex C**.

**Food and Health Bureau
Department of Health
April 2016**

Comparison of Disciplinary Inquiry Mechanism for Medical Complaints in Other Jurisdictions

| | Hong Kong | Singapore | United Kingdom | Australia | New Zealand |
|------------------------|---|--|--|--|--|
| Regulatory Body | Medical Council of Hong Kong (MCHK) | Singapore Medical Council (SMC) | General Medical Council (GMC) | Medical Board of Australia (MBA) | Medical Council of New Zealand (MCNZ) |
| Investigation | Initial consideration by the Preliminary Investigation Committee (“PIC”) chairman and deputy chairman in consultation with a lay Council member of PIC to decide whether the complaint is groundless or frivolous, and should not proceed further or that it should be referred to PIC for full | SMC will refer complaint to the chairman of the Complaints Panel. Complaints Panel will appoint a Complaints Committee to look into the complaint. | GMC (the case examiners or the Investigation Committee) will look into the complaint and decides whether to refer the doctor to a medical practitioners tribunal hearing with the Medical Practitioners Tribunal Service (MPTS) ¹ . | Australian Health Practitioner Regulation Agency (AHPRA) ² receives complaints about doctors on behalf of the National Boards. A National Board will appoint an investigator to conduct investigation into the complaint. | Health and Disability Commissioner (HDC) receives complaints about a doctor. HDC will appoint an investigator to conduct investigation into the complaint. |

¹ MPTS is a statutory committee of GMC but fully independent in its decision making and accountability to the UK Parliament. MPTS manages medical practitioners tribunal hearings and interim orders tribunal hearings.

² There are different processes for making complaints in New South Wales and Queensland.

| | Hong Kong | Singapore | United Kingdom | Australia | New Zealand |
|----------------|---|---|---|--|--|
| | consideration. PIC will form a decision on whether or not the complaint should be referred to MCHK for holding of an inquiry. | | | | |
| Inquiry | Inquiry by MCHK to hear the evidence from both the complainant and the defending doctor(s). | SMC may appoint one or more Disciplinary Tribunals to inquire into matter which a Complaints Committee has ordered that a formal inquiry be held. | Medical practitioners tribunal hears evidence and decides whether a doctor's fitness to practise is impaired. | Tribunals are independent of the National Boards and AHPRA. When a National Board has referred a matter to a tribunal, the tribunal is responsible for determining the timeframe of hearings, conducting the hearing and delivering the tribunal's final decision. | The Health Practitioners Disciplinary Tribunal hears and determines disciplinary proceedings brought against health practitioners. |

Comparison of the Investigatory and Disciplinary Regimes of Various Professions in Hong Kong¹

| | Medical Practitioners | Certified Public Accountants | | Barristers | Solicitors | Architects | Engineers | Social Workers | Veterinary Surgeons | |
|---|---|--|--|--|--|---|--|---|---|--|
| | | In relation to auditing and reporting irregularities of listed entities | Other matters | | | | | | | |
| Body Responsible for the Investigation in the Professions | <ul style="list-style-type: none"> Preliminary Investigation Committee (PIC) of the Medical Council of Hong Kong (MCHK) | <ul style="list-style-type: none"> Financial Reporting Council (FRC) | <ul style="list-style-type: none"> Investigation Committees of the Hong Kong Institute of Certified Public Accountants (HKICPA) | <ul style="list-style-type: none"> Special Committee on Discipline of the Hong Kong Bar Association and the Bar Council | <ul style="list-style-type: none"> The Conduct Section of The Law Society of Hong Kong (The Law Society), the Investigation Committee and the Standing Committee on Compliance of The Law Society | <ul style="list-style-type: none"> Inquiry Committees of the Architects Registration Board (ARB) | <ul style="list-style-type: none"> Inquiry Committee of the Engineers Registration Board (the Board or ERB)² | <ul style="list-style-type: none"> Two Members of the Social Workers Registration Board (the Board) under S.25(3) of the Social Workers Registration Ordinance. | <ul style="list-style-type: none"> Preliminary Investigation Committee (PIC) of the Veterinary Surgeons Board (VSB) | |
| Body Responsible for the Disciplinary Actions in the Professions | <ul style="list-style-type: none"> MCHK | <ul style="list-style-type: none"> Disciplinary Committees of HKICPA | | <ul style="list-style-type: none"> Barristers Disciplinary Tribunals | <ul style="list-style-type: none"> Solicitors Disciplinary Tribunals | <ul style="list-style-type: none"> Inquiry Committees of ARB | <ul style="list-style-type: none"> Inquiry Committee of ERB | <ul style="list-style-type: none"> Disciplinary Committee under S.27(2) of the Social Workers Registration Ordinance. | <ul style="list-style-type: none"> Inquiry Committee (IC) of VSB | |
| Remarks | <ul style="list-style-type: none"> PIC makes preliminary investigation into complaints and decides whether the case should be referred to MCHK for inquiry. The disciplinary power rests with MCHK which may make disciplinary orders after due inquiry into the case. | <ul style="list-style-type: none"> FRC is responsible for investigation of the complaint, whereas the Disciplinary Committees (of which a majority are lay people) of HKICPA are vested with the disciplinary powers. | <ul style="list-style-type: none"> Investigation Committees of HKICPA are responsible for investigation of the complaint, whereas the Disciplinary Committees of HKICPA (of which a majority are lay people) are vested with the disciplinary powers. | <ul style="list-style-type: none"> A Barristers Disciplinary Tribunal has statutory inquiry and disciplinary powers on its own. | <ul style="list-style-type: none"> The role of the Conduct Section of The Law Society is to: (i) investigate complaints of professional misconduct against a solicitor and (ii) facilitate the adjudication of complaints by an Investigation Committee and the Standing Committee on Compliance. Investigation Committees are ad-hoc committees of the Standing Committee on Compliance and they consider reports | <ul style="list-style-type: none"> The decision of the Inquiry Committee is subject to review by a Review Committee. | <ul style="list-style-type: none"> The decision of the Inquiry Committee is subject to review by a Review Committee. | <ul style="list-style-type: none"> The two Board Members carry out initial investigation on the complaint. The Disciplinary Committee conducts disciplinary hearing. | Current practice <ul style="list-style-type: none"> PIC makes investigation into complaints and decides whether the case should be referred to VSB for consideration of holding inquiry. VSB may refer any complaint referred to it to an IC to determine whether or not the | Practice after the Cap. 529 Amendment³ <ul style="list-style-type: none"> PIC makes investigation into complaints and makes a unanimous decision on whether the case should be referred to the IC. In case the PIC fails to make a unanimous decision, it must refer the complaint to VSB, which will decide whether or not |

¹ Source: This table is compiled with reference to the relevant legislation, in consultation with the Department of Justice and the relevant bureaux concerned.

² Where the Registrar receives a complaint concerning a disciplinary offence, the Registrar shall submit the facts to two members of the Board appointed by the Board for the purpose, and the members, in consultation with the Registrar, shall determine whether the complaint should be referred to the Board. (Section 20(3) of the Engineers Registration Ordinance)

³ The Veterinary Surgeons Registration (Amendment) Ordinance 2015 was passed by the Legislative Council on March 18, 2015, and will come into operation on a date to be appointed by the Secretary for Food and Health. Among others, the membership of the VSB will be increased and new arrangements will be made for handling complaints.

| | Medical Practitioners | Certified Public Accountants | | Barristers | Solicitors | Architects | Engineers | Social Workers | Veterinary Surgeons | |
|--|-----------------------|---|---------------|------------|---|------------|-----------|----------------|---|--------------------------------------|
| | | In relation to auditing and reporting irregularities of listed entities | Other matters | | | | | | | |
| | | | | | <p>submitted to them by the Conduct Section and decide on complaints.</p> <ul style="list-style-type: none"> ● The Standing Committee on Compliance considers on its own motion or upon recommendations from an Investigation Committee for submission of matters to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel. ● A Solicitors Disciplinary Tribunal shall have power to inquire into and investigate the conduct of any solicitor concerned (s. 10(1) of the LPO). | | | | <p>registered veterinary surgeon against whom the complaint is made has committed a disciplinary offence.</p> <ul style="list-style-type: none"> ● IC determines whether or not the registered veterinary surgeon against whom the complaint is made has committed a disciplinary offence. | <p>to refer the complaint to IC.</p> |

**Complaints received by the Medical Council of Hong Kong
(2011 – 2015)**

(1) Complaint cases considered by the Chairman or Deputy Chairman of the Preliminary Investigation Committee (“PIC”)

| | 2011 | 2012 | 2013 | 2014 | 2015 | Average no. (%) |
|--|-------------|-------------|-------------|-------------|-------------|----------------------------|
| No of cases received in that year | 461 | 480 | 452 | 624 | 493 | 502 |
| Being processed or pending additional information | 291 | 301 | 263 | 409 | 312 | 315.2 (63%) |
| Considered by the Chairman or Deputy Chairman of PIC | 170 | 179 | 189 | 215 | 181 | 186.8 (37%) |
| Considered by the Chairman or Deputy Chairman of PIC | | | | | | |
| (a) Dismissed by the Chairman and the Deputy Chairman of the PIC in consultation with the lay Council member as being frivolous or groundless | 114 | 104 | 146 | 130 | 149 | 128.6 (69%) |
| (b) Referred to the full PIC meeting | 46 | 66 | 34 | 71 | 25 | 48.4 (26%) |
| (c) Could not be pursued further because the complainants failed to provide further information or statutory declaration or the complaints were anonymous or withdrawn | 10 | 9 | 9 | 12 | 7 | 9.4 (5%) |
| (d) Referred to the Health Committee for conducting a hearing | 0 | 0 | 0 | 2 | 0 | 0.4 (0.2%) |
| Total (a) + (b) + (c) + (d) | 170 | 179 | 189 | 215 | 181 | 186.8 |

Note : The figures included those cases received in that particular year

(2) Complaint cases referred to the full PIC meeting

| Referred to the full PIC meeting | | | | | | |
|---|-----------|-----------|-----------|-----------|------------|--------------|
| | 2011 | 2012 | 2013 | 2014 | 2015 | Average no. |
| Referred to the Council for inquiries | 33 | 21 | 32 | 48 | 57 | 38.2 |
| Dismissed / concluded at the full PIC meeting | 66 | 74 | 57 | 47 | 72 | 63.2 |
| Total | 99 | 95 | 89 | 95 | 129 | 101.4 |

Note : The figures included those cases received before that particular year

(3) Complaint cases referred to the Council for inquiries

| Referred to the Council for inquiries | | | | | | |
|---|------|------|------|------|------|-------------|
| | 2011 | 2012 | 2013 | 2014 | 2015 | Average no. |
| Registered medical practitioners concerned were found guilty of a disciplinary offence after an inquiry | 25 | 12 | 28 | 19 | 12 | 19.2 |
| Registered medical practitioners concerned were found not guilty of a disciplinary offence after an inquiry | 2 | 1 | 2 | 3 | 2 | 2 |

Note : The figures included those cases referred by the PIC held in/before that particular year