

Bills Committee on the Medical Registration (Amendment) Bill 2016

**Government's response to the follow-up actions arising from the
discussion at the meeting on 3 May 2016**

**Feasibility of handling complaints against registered medical
practitioners not involving professional misconduct
through mediation**

This note provides the Government's response to the follow-up action concerning the feasibility of handling complaints against registered medical practitioners not involving professional misconduct through mediation.

2. Mediation is a dispute resolution process. As defined in the Mediation Ordinance (Cap. 620), mediation is a structured process comprising one or more sessions in which one or more impartial individuals, without adjudicating a dispute or any aspect of it, assist the parties to the dispute to do any or all of the following—

- (a) identify the issues in dispute;
- (b) explore and generate options;
- (c) communicate with one another;
- (d) reach an agreement regarding the resolution of the whole, or part, of the dispute.

3. MCHK handles complaints concerning the professional conduct of registered medical practitioners in accordance with the procedures laid down in the Medical Registration Ordinance ("MRO") (Cap. 161) and the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E). On whether mediation could be used to meet the objectives of the complaint handling and disciplinary inquiry mechanism under Cap. 161 and Cap. 161E, it should be noted that the mechanism under Cap. 161 and Cap. 161E is to protect patients, foster ethical conduct and maintain professional standards by taking disciplinary action against medical practitioners who have been guilty of misconduct in professional respect, while mediation aims to resolve private disputes between medical professionals and patients. It should be noted that, under the provisions of MRO and to uphold professional conduct, once a complaint has been lodged with MCHK, even if a doctor and his/her patient(s) manage to reach an agreement through mediation, MCHK may

continue to carry out its statutory role to conduct investigation into cases which may involve professional conduct of the doctor.

Singapore's experience

4. In Singapore, the Singapore Medical Council (“SMC”) is a statutory board which determines and regulates the conduct and ethics of registered medical practitioners. The Medical Registration Act stipulates the procedures for handling complaints against medical practitioners. In brief, the Complaints Panel¹, appointed by SMC, will appoint a Complaints Committee² to look into the complaint. A Complaints Committee, after looking into the complaint, will —

- (a) if it is unanimously of the opinion that the complaint or information is frivolous, vexatious, misconceived or lacking in substance, dismiss the matter and give the reasons for the dismissal;
- (b) if it is unanimously of the opinion that no investigation is necessary —
 - (i) issue a letter of advice to the registered medical practitioner; or
 - (ii) refer the matter for mediation between the registered medical practitioner and the complainant; or
- (c) in any other case, direct one or more investigators to carry out an investigation and make a report to it.

5. In referring the matter for mediation, the Complaints Committee may order the personal attendance of the complainant and the registered medical practitioner before a mediator specified by the Complaints Committee. The mediator will submit a report to the Complaints Committee on the outcome of the mediation. If the complainant refuses or fails, without reasonable cause, to comply with the order of

¹ The Complaints Panel consists of —

- (a) not less than 10 members of SMC;
- (b) not less than 10 and not more than 100 registered medical practitioners of at least 10 years' standing who are not members of SMC; and
- (c) not less than 6 and not more than 50 lay persons nominated by the Minister.

² A Complaints Committee will comprise —

- (a) a chairman, being a member of the Complaints Panel who is a member of SMC;
- (b) a registered medical practitioner who is a member of the Complaints Panel; and
- (c) a lay person who is a member of the Complaints Panel

Complaints Committee, the Complaints Committee may dismiss the matter. If the registered medical practitioner refuses or fails, without reasonable cause, to comply with the order of Complaints Committee, or if for any reason the mediation does not take place or the matter is not amicably resolved through mediation, the Complaints Committee may proceed to issue a letter of advice to the registered medical practitioner or direct one or more investigators to carry out an investigation.

6. Under SMC's complaint handling mechanism, each and every complaint lodged by the public must be first considered by the Complaints Committee (the equivalent of our Preliminary Investigation Committee ("PIC")). The introduction of a mediation process in MCHK's complaining handling mechanism may help reduce the number of cases requiring full investigation by PIC, but it will not help reduce the workload or the backlog of the Pre-PIC stage (i.e. the PIC chairman and deputy chairman will, in consultation with the lay member of PIC, decide whether the complaint is groundless or frivolous, and should not proceed further or that it should be referred to PIC for full consideration). Furthermore, additional staff resources may need to be allocated to operate the mediation procedure.

7. In 2014, SMC received 213 cases that were filed against 259 medical practitioners. A total number of 378 cases, including cases that did not conclude by 2013, were considered and deliberated upon in 2014. Out of the total cases considered, 18 cases were referred for disciplinary inquiries, with 14 of these being complaints that were referred by Complaints Committees and four cases being direct referrals to the Disciplinary Tribunal following the medical practitioner's conviction in Court. One medical practitioner was referred directly to a Health Committee. Of the remaining complaints, six medical practitioners were issued letters of warning, 40 medical practitioners were issued letters of advice, three complaints were referred for mediation, 100 complaints were dismissed and one complaint was withdrawn.

Way forward

8. The Government is conducting a strategic review on healthcare manpower planning and professional development in Hong Kong ("the Review"). The Review aims to make recommendations that would better enable our society to meet the projected demand for healthcare professionals as well as to foster professional development with a view to ensuring healthy and sustainable development of our healthcare system and the continued provision of quality healthcare services to the public.

9. One of the recommendations being looked at by the Steering Committee is the feasibility of providing an option for MCHK and the public to handle complaints against registered medical practitioners not involving professional misconduct through mediation. However, as explained in paragraph 3 above, mediation cannot substitute the disciplinary procedures in handling complaints against registered medical practitioners involving professional misconduct and it remains necessary to implement the proposals in the Medical Registration (Amendment) Bill 2016 as soon as possible so that MCHK can have the flexibility to set up more than one PIC and conduct investigation and inquiries more frequently and in parallel in order to speed up the processing of complaints and clearing the existing backlog of some 900 cases in MCHK.

10. The Steering Committee is expected to publish its report soon. The Food and Health Bureau and the Department of Justice will discuss with MCHK on how to take forward the recommendations of the Steering Committee, in particular, the introduction of a mediation process in its complaint handling mechanism.

**Food and Health Bureau
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