

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 9 May 2016**

**Conducting of Disciplinary Inquiry
by the Medical Council of Hong Kong**

This note aims to provide supplementary information to address Members' questions over the arrangement of the Medical Council of Hong Kong ("MCHK") in conducting inquiries.

Existing arrangement on forming quorum for conducting an inquiry

2. At present, the quorum for MCHK to conduct an inquiry is stipulated under section 21B of the Medical Registration Ordinance ("MRO") (Cap. 161). The quorum can either be a panel of **at least** five Council members, or not less than three Council members and two assessors, at least one of whom shall be a lay Council member but subject to the majority being registered medical practitioners.

3. Before 2009, all Council members (except the chairman and deputy chairman of the Preliminary Investigation Committee ("PIC") and the lay Council member who had considered the case in PIC) would be invited to indicate their availability for inquiry hearings. Members were free to join the inquiry or to decline participation. No inquiry hearing could be held if no lay Council member signed up for the hearing. The panel of assessors would be approached when the quorum of five Council members could not be met for conducting the inquiry.

4. In 2008, the Independent Commission Against Corruption ("ICAC"), at the invitation of MCHK, made recommendations relating to the procedures of disciplinary inquiries of MCHK. One of its recommendations was that MCHK should consider implementing a "roster system" for members to serve on the inquiry panels. MCHK accepted ICAC's recommendations and set up a task force to formulate proposals for implementing ICAC's recommendations.

5. In view of ICAC's recommendations, the Task Force proposed that a rota of seven adjudicating members (four Council members who are registered medical practitioners, one lay Council member and two assessors) should be drawn up for each inquiry hearing. Such arrangement helps minimise the chance of an aborted inquiry due to insufficient quorum. MCHK endorsed the proposal of the Task Force in 2009 and has been forming panels to conduct inquiry on the basis of its roster system since then.

Proposed arrangement

6. Given the existing quorum requirement and the tainted-member rule¹, MCHK has genuine difficulty in forming quorum for conducting inquiry. Therefore, we propose to adjust the quorum of an inquiry meeting to allow more flexibility for MCHK to form a quorum to conduct inquiry. Under the Bill, the proposed quorum is a panel of five persons, with at least (i) one Council member who is a registered medical practitioner; (ii) one assessor who is a registered medical practitioner; and (iii) one lay person (who is a lay Council member or lay assessor), but subject to the majority being registered medical practitioners. The refined quorum requirement, accompanied with the proposed increase in the number of lay Council Members and both medical and lay assessors and the increased legal support and flexibility under the Bill (detailed at **Annex**), will facilitate MCHK to conduct inquiry more frequently and in parallel.

¹ Under section 21(4A) of MRO, a PIC member should not attend an inquiry meeting involving the case which he/she has taken part in the preliminary investigation. In November 2012, the Court of Appeal affirmed that Members who had taken part in the disciplinary proceedings (either during preliminary investigation or in the disciplinary inquiry) involving matters which subsequently formed the factual basis of the recommendation of the Education and Accreditation Committee should not take part in the Council's decision on the recommendation (including the appeal under section 200 of MRO), for the reason that such Members would have already formed a view on the underlying facts and therefore have been tainted with apparent bias. As advised by the Legal Adviser to MCHK, according to the above ruling and by way of analogy, overlapping membership among the different proceedings of MCHK and its Committees relating to the same underlying facts is prohibited.

Assessors appointed by MCHK

7. Under the existing MRO, MCHK must appoint a panel of assessors who are non-Council members for the purpose of conducting an inquiry, including -

- (a) Ten “medical assessors” who are registered medical practitioners nominated two each by the -
 - (i) Director of Health (“DH”);
 - (ii) Hospital Authority (“HA”);
 - (iii) Hong Kong Academy of Medicine (“HKAM”);
 - (iv) University of Hong Kong (“HKU”);
 - (v) Chinese University of Hong Kong (“CUHK”); and
- (b) four lay assessors nominated by the Secretary for Food and Health (“SFH”).

8. For the four lay assessors, SFH will consider candidates on an individual merit basis, taking into account his/her expertise, participation in community or public service, etc.

9. To facilitate MCHK to conduct PIC and inquiry meetings more frequently and in parallel, we propose to increase the number of assessors from 14 (i.e. ten medical assessors and four lay assessors) to 34 (i.e. 20 medical assessors nominated four each by DH, HA, HKU, CUHK and HKAM; and 14 lay assessors nominated by SFH).

10. At the last Bills Committee meeting held on 9 May 2016, a member queried why no representatives were drawn from the Hong Kong Medical Association (HKMA). Similar issue had been previously raised in the scrutiny of the Medical Registration (Amendment) (No. 2) Bill 1995, which sought to, among others, introduce a panel of assessors for the purpose of conducting inquiry. The consideration was that, as HKMA already had seven representatives on MCHK, there was no need for HKMA to have representatives on the panel of assessors.

Clause 10 of the Bill

11. At the last Bills Committee meeting held on 9 May 2016, a Member touched upon Clause 10 of the Bill for which we would like to provide more information. Clause 10 is a technical amendment to clarify beyond doubt the meaning of the “Council” under section 21 of the principal Ordinance in response to the ruling of the Court of First Instance in June 2014. Section 21(4B) of MRO provides that within 14 days after the conclusion of an inquiry, the Council may, of its own initiative but not otherwise, review any decision or order made in the inquiry. The question as to whether the Council meant the full Council with all 28 members or only the Council which conducted a particular disciplinary hearing was brought to the Court of First Instance for a ruling. The Court’s ruling was that the Council in that context referred to the Council which heard the disciplinary inquiry (i.e. not the full Council with 28 members). However, the application has raised a matter of public interest in that it sought to clarify the power of review of a decision or order of a disciplinary inquiry and has brought into sharp focus the need for reform of the legislation in order to eliminate any ambiguity or uncertainty in the powers and the functions of the Council in the conduct of disciplinary action against a registered medical practitioner.

12. In response to the judgment of the judicial review case, clause 10 of the Bill amends section 21 of the principal Ordinance to clarify that only the Council that conducts an inquiry under that section can review a decision or order made in the inquiry.

Food and Health Bureau
May 2016

Proposals under the Medical Registration (Amendment) Bill 2016

A. Disciplinary Inquiry

Existing Arrangement

Pool of members for conducting inquiry (total: 42 persons)

- (a) **28 Council members** (24 Council members who are registered medical practitioners and four lay Council members); and
- (b) **14 assessors** - (10 assessors who are registered medical practitioners i.e. two each nominated by DH, HA, HKU, CUHK and HKAM, and four lay assessors nominated by the Secretary for Food and Health).

Under the Bill

Pool of members for conducting inquiry (total: 66 persons)
(Clauses 4 and 11)

- (a) **32 Council members** (24 Council members who are registered medical practitioners and eight lay Council members); and
- (b) **34 assessors** - (20 assessors who are registered medical practitioners i.e. four each nominated by DH, HA, HKU, CUHK and HKAM, and 14 lay assessors nominated by the Secretary for Food and Health).

Quorum of an inquiry meeting
(5 members)

- (a) at least five Council members, or
 - (b) not less than three Council members and two assessors,
- at least one of whom shall be a lay Council member but subject to the majority being registered medical practitioners.

Quorum of an inquiry meeting
(5 members)
(Clause 11)

- at least five persons, with at least
 - (i) one Council member who is a registered medical practitioner,
 - (ii) one assessor who is a registered medical practitioner, and
 - (iii) one lay person (lay Council member or lay assessor)

but subject to the majority being registered medical practitioners.

B. Legal Support

Existing Arrangement

Legal adviser to MCHK

- MCHK may appoint one legal adviser

Under the Bill

Legal adviser to MCHK *(Clause 5)*

- MCHK may appoint more than one legal advisers

(Note: Under section 6(1) of the Medical Registration (Miscellaneous Provisions) Regulation (Cap. 161D), the Legal Adviser to the Council shall be present at every inquiry held by the Council, and the Council shall not commence an inquiry if the Legal Adviser is not present.)

Provision of legal support for disciplinary inquiries

- The Secretary for Justice may only appoint legal officers of the Department of Justice to carry out the statutory duties of the Secretary of MCHK in inquiries

Provision of legal support for disciplinary inquiries *(Clause 14)*

- The Secretary for Justice may appoint any counsel or solicitor in private practice (besides legal officers of the Department of Justice) to carry out the statutory duties of the Secretary of MCHK in inquiries