

立法會
Legislative Council

LC Paper No. CB(2)1599/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/PL/HS

LegCo Panel on Health Services

Minutes of meeting
held on Monday, 13 December 1999 at 8:30 am
in the Chamber of the Legislative Council Building

Members Present : Hon Michael HO Mun-ka (Chairman)
Dr Hon LEONG Che-hung, JP (Deputy Chairman)
Hon HO Sai-chu, JP
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon Mrs Sophie LEUNG LAU Yau-fun, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung
Hon LAW Chi-kwong, JP
Dr Hon TANG Siu-tong, JP

Member Absent : Hon Cyd HO Sau-lan

Member Attending : Hon LEE Kai-ming, SBS, JP

Public Officers Attending : All items

Ms Jennifer CHAN
Acting Deputy Secretary for Health and Welfare

Miss Angela LUK
Principal Assistant Secretary for Health and Welfare (Medical) 1

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Mr Fletch CHAN
Assistant Secretary for Health and Welfare

Miss Linda SO
Assistant Secretary for Health and Welfare

Dr S P MAK
Acting Deputy Director of Health

Item IV

Miss CHOW Yan-yan
Secretary, Radiation Board

Mr CHENG Kit-man
Senior Physicist in-charge, Department of Health

Item V

Mr Eddie POON
Principal Assistant Secretary for Health and Welfare (Medical) 3

Miss Kinnie WONG
Assistant Secretary for Health and Welfare

**Deputations
by invitation**

: Item IV

Hong Kong Radiographers Association

Mr Edward CHAN

Mr Anthony CHAN

Mr Paul CHAN

Mr Mike LAI

Mr Edward WONG

Item V

Pharmacy and Poisons Board

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Mr Anthony CHAN
Miss CHOW Yan-yan

Nursing Council of Hong Kong

Dr Athena LIU Nga-chee

Miss MAN Bo-lin

Mr HO Wing-kai

Medical Council of Hong Kong

Dr LEE Kin-hung, MBE

Miss YAU Ho-chun, Nora, MH, JP

Mrs CHENG CHO Chi-on, Mariana, JP

Consumer Council

Mrs CHAN WONG Shui, BBS, JP

Mr CHAN Wing-kai

Dental Council of Hong Kong

Dr TSUI Fuk-sun, Michael

Alliance for Patients' Mutual Help Organizations

Miss Iris CHAN Sui-ching

Supplementary Medical Professions Council

Miss CHOW Yan-yan

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Ms Joanne MAK
Senior Assistant Secretary (2) 4

I. Confirmation of minutes of the special meeting on 11 June 1999
(LC Paper No. CB(2)582/99-00)

The minutes of the special meeting on 11 June 1999 were confirmed.

II. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)578/99-00(01) - (02))

2. Members agreed to discuss the following items at the next meeting to be held on 10 January 2000 at 8:30 am -

- (a) The role of optometrists in Hong Kong's health care system;
- (b) Future mechanism for handling medical complaints; and
- (c) Control of unregistered pharmaceutical products.

3. At the request of the Panel, the Administration agreed to provide an information paper on the provision of a new hospital in Lantau.

(Post-meeting note : the information paper was issued under LC Paper No. CB(2)787/99-00(10) dated 7 January 2000.)

III. Registration of ancillary dental personnel
(LC Paper No. CB(2)578/99-00(03))

4. With reference to the Administration's paper, Acting Deputy Secretary for Health and Welfare (Atg DSHW) invited members to consider the Administration's initial recommendations on the regulatory systems to be introduced for the four types of ancillary dental personnel (ADP) taking into account their different scopes of work and training background. She said that the views of the sector on these proposals would be sought before finalizing the Administration's proposal.

5. The Chairman pointed out that since the subject had dragged on for a long time

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and the relevant professions had been consulted many times already, the Administration should finalize its proposal expeditiously. He considered that similar to dental hygienists (DHs) who could now be employed by the private sector, it should also be possible for dental therapists (DTs) to be employed by the private sector in the future. He therefore suggested that the Government should consider introducing a regulatory system for DTs. Principal Assistant Secretary for Health and Welfare (Medical) 1 (PASHW(M)1) said that there did not appear to be such a need at the moment as all DTs worked in the Department of Health which was responsible for regulating their work. Nevertheless, she agreed to take into consideration the Chairman's views in finalizing the Administration's proposal.

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6. Dr LEONG Che-hung was concerned whether the training provided to DTs was adequate to enable them to get enrolled if an enrolment system were introduced for them. PASHW(M)1 said that the Department of Health was responsible for providing training to DTs and she undertook to confirm with the department on this point. The Chairman remarked that since DHs and DTs were directly engaged in clinical work while dental technicians (DTechs) were not, there was greater need for the introduction of a regulatory system for DTs. He further pointed out under the school dental service scheme, school children were looked after by DHs and DTs. As they worked quite independently and had direct contact with patients, he considered that proper training and a registration or enrolment system were necessary.

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7. Dr TANG Siu-tong asked whether DHs and DTs were subject to legal liabilities in case they caused any injuries or damages to patients in the course of their work. PASHW(M)1 replied that since DHs worked under the supervision of dentists, the dentist concerned would be responsible for any negligence or faults committed by the DH who assisted him. As DTs were all employed by the Department of Health now, the department had legal liability for their work. Senior Assistant Legal Adviser supplemented that when legal proceedings were instituted against a DH/DT for damages or injuries caused by him to a patient, both the DH/DT and his employer could be sued. In law, the employer was vicariously liable for the acts of his employee. Where damages were awarded, both employer and employee were liable to pay.

8. As regards Dental Surgery Assistants (DSAs), Atg DSHW said that the Administration initially considered that it was unnecessary and impracticable to introduce a statutory regulatory system for them since they only performed tasks under the supervision of dentists. However, she agreed with the Chairman that improvements should be made to the training provided to DSAs. She undertook to follow this up with the relevant parties. The Chairman stressed the need for proper training as DSAs performed the important task of sterilizing dental equipment, which if not properly carried out, would have serious effect on the patients. He considered that the training being provided by dentists to DSAs should be made more systematic with records of the training kept in log books. He also suggested that the

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Administration should explore ways to enhance the cost-effectiveness of the training provided for DSAs by the Prince Philip Dental Hospital. On the other hand, he considered that it would be pointless if the Administration only improved the training of DSAs without introducing any regulatory system for them and continued to allow dentists to employ untrained DSAs.

9. Referring to paragraph 10 of the Administration's paper, Dr LEONG Che-hung expressed reservations about the need to extend the enrolment system for DHs to DTechs as he considered that the proposed arrangement could not achieve any effect from the public health's perspective. As to DSAs, he agreed that it was important that proper on-the-job training should be provided for them. As the Panel had already discussed the matter on several occasions, he considered that the Administration should not waste any more time and must make a decision on the matter within the next two or three months.

Adm 10. The Chairman requested the Administration to finalize its proposal expeditiously and provide the full details to the Panel two months later. Atg DSHW agreed.

IV. Proposed amendments to the Radiation (Control of Irradiating Apparatus) Regulations

(LC Paper Nos. CB(2)578/99-00(04) - (05))

11. Atg DSHW briefed members on the salient points of the Administration's paper setting out the Radiation Board's proposed amendments to Regulation 26(1) of the Radiation (Control of Irradiating Apparatus) Regulations. Referring to the paper, the Chairman requested the Administration to explain how it was going to tighten up the level of supervision required. Miss CHOW Yan-yan, Secretary of the Radiation Board, replied that the Board proposed that when an irradiating apparatus was used by health care staff other than a medical practitioner (or dentist) to examine the human body, the registered medical practitioner/dentist must be present to supervise the operation of the apparatus.

12. Mr Anthony CHAN of the Hong Kong Radiographers' Association pointed out that the Radiation Board's proposed amendments to Regulation 26(1) only sought to explain more clearly what was meant by the "personal supervision" of a registered medical practitioner in the said Regulation. The Regulation would still allow any person acting under the personal supervision of a registered medical practitioner to operate an irradiating apparatus. Mr CHAN considered that although it was proposed to specify that a registered medical practitioner had to be present to supervise the operation, this was not safe enough because many registered medical practitioners actually did not know much about the operation of an irradiating apparatus. Mr Paul CHAN of the Association pointed out that since there was no shortage of

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radiographers, the best way to protect the public health was by restricting the operation of an irradiating apparatus to registered radiographers.

13. In response to Dr YEUNG Sum's questions, the Senior Physicist in-charge (SP i/c) of the Department of Health said that a licence to use an irradiating apparatus for medical purposes would be granted only to a registered medical practitioner or a registered radiographer. Furthermore, in diagnostic radiography for example, only those radiographers who were registered in Part I of the Radiographer Register were entitled to operate an irradiating apparatus independently and only for the purpose of taking plain radiographs on patients. For other radiographic techniques, the personal supervision of a registered medical practitioner was always required. Therefore, the responsibility of supervision always rested with the medical practitioner. It was the medical practitioner to be held responsible for the health care and safety of patients when using an irradiating apparatus on the patients. Restricting the operation of irradiating apparatus only to radiographers could hamper the operational need of medical practitioners in practical clinical situations. However, Dr YEUNG Sum considered that allowing such an arrangement would make it difficult for the Radiation Board to control the operation of irradiating apparatus and to protect public health. Miss CHOW Yan-yan pointed out that the responsibility for the well being of the affected patient rested with the attending medical practitioner and so far no problems concerning the operation of such apparatus had been reported. She reiterated that the flexibility as explained by SP i/c should be retained to cater for some urgent clinical situations but it should be used only in exceptional cases with genuine need.

14. Referring to Miss CHOW's statement that no problems had been reported, the Chairman pointed out that as it would take time for damages caused by exposure to excessive radiation to surface, problems might have occurred without the patients being aware of them. Therefore it did not mean that there were no problems even if the Board had not received any complaints so far.

15. Dr LEONG Che-hung criticized that the Administration's paper was confusing and failed to provide a clear picture of how the Administration would proceed with the amendment work. Regarding the Radiation Board's proposed amendments, he considered that the Administration should clarify the meaning of "operate". He further suggested that the Administration should take into account the situation of trainee radiographers in considering the views supporting that the operation of an irradiating apparatus should be restricted to registered radiographers. In response, PASHW(M)1 said that the Hong Kong Radiographers' Association had been consulted about the proposed amendments. However, after listening to the views of the Association, the Radiation Board remained of the view that the proposed amendments were appropriate for the reasons explained earlier. In this connection, Dr LEONG Che-hung requested the Administration to consult the Hong Kong College of Radiologists on the proposed amendments.

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16. Mr YEUNG Yiu-chung and Miss CHAN Yuen-han both considered that it was necessary to tighten up the control of the operation of irradiating apparatus to safeguard public health. They did not support that Regulation 26(1) should continue to allow doctors the flexibility of finding any staff instead of a registered radiographer to operate irradiating apparatus for them.

17. Dr TANG Siu-tong supported the proposed amendments as he considered that the flexibility allowed was necessary in practical clinical situations. It was also beneficial to patients as diagnosis or treatment processes would be more efficient. In response to the Chairman's question, Atg DSHW explained that it was difficult to precisely define and specify in law which kinds of operation of irradiating apparatus, based on the level of complexity, could be performed by other health care staff under the supervision of a registered doctor. For the benefit of the patient, the doctor should exercise his clinical judgment by weighing the relative risks to the patient between that arising from a disruption of diagnosis or treatment and from an operation of irradiating apparatus by his assistant. He would be held responsible for his judgment.

Adm 18. In concluding the discussion, the Chairman pointed out that members had strong views on the issue of flexibility. In view of the divergent views on the proposed amendments, the Health and Welfare Bureau should further discuss the matter with the Hong Kong Radiographers Association and the Radiation Board. He urged the Administration to consider the views expressed at the meeting and make an early decision on whether flexibility should be allowed based on the interests of patients and to revert to the Panel with the reasons for such decision.

V. Future mechanism for handling medical complaints
(LC Paper Nos. CB(2)578/99-00(06) - (09))

19. Mr Anthony CHAN of the Pharmacy and Poisons Board introduced the Board's mechanism for handling complaint cases concerning the sale of pharmaceutical products. He said that the Board was also responsible for taking disciplinary action against members of the pharmaceutical trade, including the manufacturers, importers, wholesalers and retailers. Mr CHAN said that the Board had also put in place a mechanism to conduct detailed investigations into complaint cases against pharmacists.

20. Miss MAN Bo-lin of the Nursing Council of Hong Kong introduced the Nursing Council's mechanism for handling complaints against nurses. She said that under the existing system, the findings of investigations would be provided to the complainant concerned. To enhance the credibility of the Preliminary Investigation Committee under the Nursing Council, Miss MAN said that the Council had decided to revise the composition of the Committee so that there were equal numbers of nurses

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and lay persons. In response to the Chairman's question, Miss MAN said that the Nursing Council had not yet discussed the proposal of establishing an independent patient complaint system.

21. Dr LEE Kin-hung of the Medical Council of Hong Kong (HKMC) said that following a series of seminars to discuss with representatives of the Hong Kong Council of Social Service and members of the public on how to improve the mechanism, HKMC was considering to introduce the following new measures to enhance the transparency and credibility of its redress mechanism -

- (a) Two additional layman members would be appointed to HKMC;
- (b) Under the existing system, a complaint case would be rejected if both the chairman and deputy chairman of the Preliminary Investigation Committee of HKMC agreed that the case was unfounded, frivolous or groundless. In the future, it was proposed that in addition to the chairman and deputy chairman, the consent of a lay member was required for the dismissal of a complaint case;
- (c) HKMC would give more detailed explanations for its decisions to dismiss any complaint cases;
- (d) HKMC would step up publicity on the functions of HKMC and the procedures for lodging a complaint case to HKMC;
- (e) consideration would be given to setting up a Committee on Professional Performance under HKMC to look into complaint cases against seriously sub-standard performance of registered medical practitioners.

22. Dr LEE Kin-hung considered that as HKMC was the statutory regulatory body of registered medical practitioners, it could not be replaced by any other organizations in handling complaint cases against registered doctors regarding their professional conduct. Furthermore, he considered that the existing mechanism under HKMC possessed all the elements of an effective redress mechanism advocated by the Consumer Council.

23. Mrs CHAN WONG Shui of the Consumer Council expressed support for the establishment of an independent Ombudsman Office for handling all health care complaint cases as well as medical insurance complaint cases. She considered that such an office would enhance the cost-effectiveness in the use of resources for handling such complaint cases. She felt that the public would also have greater confidence in the credibility and impartiality of an independent medical Ombudsman.

24. Dr TSUI Fuk-sun of the Dental Council of Hong Kong pointed out that the

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Council would make improvements to enhance the credibility of its redress mechanism and briefly introduced some of the proposed improvements.

25. Miss Iris CHAN Sui-ching of the Alliance for Patients' Mutual Help Organizations referred to the criticisms of the existing complaint mechanism in the Harvard Report and pointed out that the general feedback from patients was that the credibility and transparency of the existing mechanisms for handling medical complaints should be improved. Patients had also reflected that they suffered from the lack of legal support in pursuing their complaint cases. Miss CHAN said that the Alliance was in support of setting up an independent medical complaints office to deal with all complaints against health care service providers. The proposed office should provide legal support and medical expertise that might be required by patients in pursuing their cases.

26. Miss CHOW Yan-yan, Head (Boards & Councils), said that the Supplementary Medical Professions Council regulated the professional conduct of occupational therapists, optometrists, medical laboratory technologists, radiographers and physiotherapists. She outlined the Council's mechanism for handling complaint cases against these professionals and pointed out that the inquiries held by the Council were open to the public.

27. Miss CHAN Yuen-han said that the Hong Kong Federation of Trade Unions was in support of an independent medical Ombudsman. She requested HKMC to explain more clearly why it objected to the establishment of such an Office. In response, Dr LEE Kin-hung explained that as medical service was very specialized in nature, persons other than members of the profession did not have enough knowledge to judge whether there was any professional negligence or misconduct had been committed in complaint cases against registered medical practitioners. He pointed out that there were four lay members on HKMC to monitor the operation of Council and to ensure that it was implementing its work fairly and properly. He further said that since HKMC had an independent mechanism for handling medical complaints, it was unnecessary to set up an Ombudsman Office for the purpose. Referring to the first point of Dr LEE's response, Miss CHAN Yuen-han said that an independent complaints body could invite relevant professionals to give expert advice to overcome the problem.

28. Dr LEONG Che-hung requested the Administration to provide a comparison of the redress mechanisms of various health care professional bodies showing the number of layman members involved and whether open hearings were held. He also requested a comparison of the redress mechanism of HKMC with the complaint handling mechanisms of other non-medical professions. Atg DSHW agreed.

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29. Dr LEONG Che-hung pointed out that it was inevitable for HKMC to be dominated by medical professionals as their expertise was required to judge

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allegations against sub-standard performance of doctors or any alleged professional misconduct. However, he supported that it was essential for layman members to be represented on the complaint handling committee of HKMC. Dr LEONG expressed reservations about the need to create an independent patient complaint mechanism as it might only duplicate the work of HKMC. He also considered that it was against the principle of professional self-regulation if the proposed medical Ombudsman Office was made up of representatives appointed by the Government. Dr TANG Siu-tong said he also supported that complaint cases against professional misconduct of medical doctors could only be judged by members of the profession based on their professional expertise.

30. Dr YEUNG Sum expressed support for an independent medical Ombudsman and disagreed that it contravened the principle of professional self-regulation. He felt that a medical Ombudsman would increase the public's confidence in the credibility of the patient complaint mechanism and help mediate and investigate patient complaints. He pointed out that patients often lacked the knowledge to pursue their cases, especially if different medical disciplines were involved in the cases.

31. Miss YAU Ho-chun, a lay member of HKMC, said that it was unfair to say that HKMC only looked after the interests of medical doctors. Based on her experience, she found that the professional members of HKMC had been handling patients' complaints in a conscientious manner.

32. The Chairman concluded the discussion by pointing out that the focuses of the existing patient complaint mechanisms and the proposed medical Ombudsman were different. Instead of focusing on investigations and hearing of cases only, the proposed medical Ombudsman would have more functions such as providing the necessary assistance to help patients to pursue their cases. He requested the Administration to take note of this point in its deliberations.

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33. The meeting ended at 10:40 am.

Legislative Council Secretariat

7 April 2000