# *立法會*
# *Legislative Council*

LC Paper No. CB(2)1181/01-02
(These minutes have been
seen by the Administration)

Ref : CB2/PS/4/00

**LegCo Panel on Health Services**

**Subcommittee on improvements to the medical complaints mechanism**

**Minutes of meeting**
**held on Wednesday, 30 January 2002 at 8:30 am**
**in Conference Room A of the Legislative Council Building**

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| **Members Present** | **:** | Hon LAW Chi-kwong, JP (Chairman)<br>Hon Andrew CHENG Kar-foo<br>Dr Hon TANG Siu-tong, JP<br>Hon LI Fung-ying, JP<br>Hon Michael MAK Kwok-fung<br>Dr Hon LO Wing-lok |
| **Members Absent** | **:** | Hon Cyd HO Sau-lan<br>Hon CHAN Kwok-keung<br>Hon CHAN Yuen-han, JP<br>Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP<br>Dr Hon YEUNG Sum |
| **Public Officers Attending** | **:** | Mr Thomas YIU<br>Deputy Secretary for Health and Welfare<br><br>Mr Eddie POON<br>Principal Assistant Secretary for Health and Welfare<br><br>Dr Sarah CHOI<br>Principal Medical and Health Officer<br>Health and Welfare Bureau |

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| **Clerk in Attendance** | **:** | Ms Doris CHAN<br>Chief Assistant Secretary (2) 4 |
| **Staff in Attendance** | **:** | Miss Mary SO<br>Senior Assistant Secretary (2) 8 |

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**I. Meeting with the Administration**
(LC Paper Nos. CB(2)990/01-02(01) and (02))

At the invitation of the Chairman, Deputy Secretary for Health and Welfare (DSHW) took members through the Administration's paper (LC Paper No. CB(2)990/01-02(01)) which set out it views on the reform recommendations of the Medical Council of Hong Kong (HKMC).

2. Mr Michael MAK expressed dissatisfaction with the Administration for not taking heed of the motion passed by the Subcommittee at its last meeting held on 21 November 2001 that the Administration should report its directions and measures for improving the patient complaints mechanism to the Subcommittee within one month. Mr MAK further expressed regret at the Administration's total disregard of the public call for an independent complaint office, as its paper did not give any response to such a proposal and instead stated that the proposed reform of HKMC was moving in the right direction. In this connection, Mr MAK requested the Administration to give its stance on the setting up of an independent complaint office.

3. On the reform recommendations of HKMC, Mr MAK said that the proposed ratio of one lay member to three doctors was inadequate and should be further increased to a ratio of one lay member to one doctor. Given the importance of continuing professional education and development in ensuring the quality of medical care, Mr MAK expressed concern that HKMC only proposed to make continuing medical education (CME) a requirement for all doctors three years after the implementation of the voluntary system. In his view, all health care professionals, including doctors, must undertake continuing professional education and development before their practising certificate might be renewed.

4. DSHW apologised for the delay in presenting the Administration's views on the reform recommendations of HKMC, as the recommendations of HKMC were only received by the Administration in December 2001 and time was needed to study them in detail. DSHW further said that the Administration would take note of Mr MAK's views that the ratio of lay members of HKMC should be further increased to 50% and

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that CME should be made a compulsory requirement for all doctors and pursue these with HKMC in further discussion with the Council on its reform proposals. DSHW added that requiring all health care professionals to undertake continuing professional education and development was in fact one of the proposals contained in the Consultation Document on Health Care Reform. He pointed out that the medical, dental and nursing professions were receptive to such a proposal and were pursuing the issue within their respective professions. Other health care professions had also been encouraged to do the same.

5. On the establishment of an independent patient complaints office, DSHW said that the Administration had no intention to pursue the proposal at this stage. This was because the Administration believed that with the proper implementation of the proposed reform of HKMC and improvement measures to be adopted by other organisations concerned with medical complaints, such as the Public Complaints Committee (PCC) of the Hospital Authority (HA), the majority of the problems of the existing complaint system, particularly in respect of complaints against doctors could be solved. DSHW pointed out that in considering the establishment of an independent complaint office, the Administration had analysed the existing complaint system and found that the bulk of the problem came from complaints against doctors. Statistics showed that among the professional regulatory bodies, the number of complaints against doctors was the highest. For the year 2000, a total of 227 complaints were received by HKMC comparing to 87 by the Dental Council, five by the Nursing Council, two by the Midwives Council, eight by the Optometrist Board, two by the Medical Laboratory Technologist Board, one by the Physiotherapists Board and none for the Occupational Therapists and Radiographers Boards.

6. DSHW then gave the following reasons for not setting up an independent complaint office -

(a) It was difficult to define how independent the office should be. Discussions at previous meetings of the Subcommittee indicated that it was not possible or realistic to make it completely independent from the profession. Whether it needed to be independent from the Government would very much depend on the remit and the nature of duty of the office;

(b) There was a wide discrepancy between the expectations of the public, among Members of the Legislative Council and the health care professionals on the remit and duty of the independent complaint office. While some were asking for a body with powers ranging from investigation to adjudication and discipline, in which case the principle of professional self-regulation would be totally abandoned, the majority of the medical professionals opined that the body was not needed or should only take up the role of a clearing house leaving the functions of

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investigation, inquiry, adjudication and discipline to the professional regulatory bodies. Still another proposal was for the independent office to receive and clarify complaints, seek and provide explanation, mediate where appropriate and conduct investigations. Cases would then be referred back to the professional regulatory bodies, the functions of which would perform inquiry, adjudication and discipline. For the mechanism to function effectively, the Administration believed that an agreement should be reached on its set-up and operation. At the moment, there was a wide discrepancy in the community as to how the proposed independent office should operate;

(c) There was no international experience of an independent office with remit and functions similar to the one proposed. For instance, the Health Service Ombudsman of UK could only investigate complaints against the National Health Service but not those against private practices and the Department of Health. Besides, it would not handle complaints before the patients went through the local resolution procedures. Only patients who were still dissatisfied after the local resolution procedures could complain to the Health Service Ombudsman. Such a two-tier complaints mechanism for public-funded services was similar to the complaint mechanism of HA, where a second tier of complaint handling body (i.e. the PCC) with members who were independent of the service provider and the Government had already been put in place. In Australia, both the Health Care Complaints Commission of New South Wales and the Health Services Commission of Victoria were essentially housed under the Department of Health, which provided the executive arm and handled patient complaints in collaboration with the professional regulatory bodies. In Ontario, Canada, the Ombudsman's power was even more limited and could not investigate complaints concerning doctor's conduct. Therefore, no overseas reference could be drawn as to the effectiveness of such office and its impact on the health care delivery system;

(d) There was no similar independent complaint office for other professions such as lawyers, accountants or architects, which relied on the principle of professional self-regulation;

(e) Setting up an independent office would have serious resource implication. In contrast, the Administration's earlier proposal of a complaint office in the Department of Health (DH) could achieve more effective use of resources;

(f) DH, as a regulator, already had the statutory power to regulate various health services delivery institutions. Time was required to put in place

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a new piece of legislation and thus could not solve the problem in a timely manner; and

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(g) Since complaints might be reflecting problems in the operation of the private hospitals and clinics, there was a need for DH, as the regulatory and licensing authority, to investigate into such cases. Having an independent office might duplicate such functions and add confusion to the already complex system and create even greater problem in the interface between the various complaint channels.

7. Ms LI Fung-ying said that it was futile to discuss further with the Administration on measures to improve the existing medical complaint system, as the Administration had completely ignored public calls for an independent complaint office and instead accepted all of the reform recommendations of HKMC in stride without regard to members' views on the proposed reform, such as the appropriateness for the proposed Complaint Receiving Division under HKMC to take up a mediation role between doctors and complainants.

8. DSHW responded that the reason why the Administration supported the reform direction of HKMC was because it believed the proposals could improve the credibility, transparency and fairness of its complaint handling mechanism, which played a significant role in handling complaints against doctors. However, the details of the recommendations would require further discussion taking into account into members' views. Besides, as mentioned in paragraph 12 of its paper, the Administration considered it important that the proposed mediation role of the Complaint Receiving Division should be independent of and separated from HKMC's disciplinary role in order to avoid a possible role conflict. In this regard, further discussion and information would be required on the set-up and operation of the Division and its relationship with other functions of HKMC before the Administration could formulate a view on the desirability of HKMC taking up a mediation role between doctors and complainants.

9. Dr LO Wing-lok declared that he was a member of HKMC and had taken part in the drawing up of the reform proposals. Dr LO was of the view that it should be for the respective professional regulatory bodies to decide how and when to implement a system requiring their members to undertake continuing education and development. Dr LO was also of the view that the use of the word "mandatory" was more appropriate than the word "compulsory" in requiring health care professionals to undertake continuing education and development. DSHW concurred with Dr LO that the use of word "mandatory" was more appropriate and agreed to reflect such in its discussion with HKMC on the reform recommendations.

10. The Chairman made the following comments on the reform recommendations of HKMC -

(a) It was not acceptable in principle for an elected medical member to sit as a member of the Disciplinary Committee, as this at variance with the

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universal practice that no judges should be elected; and

(b) It was inappropriate for HKMC to take up a mediation role, as such a role should in principle fall outside the remit of a professional regulation body.

DSHW agreed to reflect the Chairman's views in the Administration's discussion with HKMC on its reform recommendations.

11. The Chairman further said that he could not accept the explanations given by the Administration for not setting up an independent complaint office. For example, one of the reasons given for ruling out the setting up of an independent complaint office was because there was a lack of consensus in the community about the remit and duty of such an office. Such an argument could not hold, as it had never been the Administration's practice to introduce policy only if there was consensus in the community. A case in point was that the Administration had insisted on its plan to charge fees for HA's Accident and Emergency services despite a lack of consensus in the community. The Chairman pointed out that saying that there was a wide discrepancy in the views of the community about the remit and duty of an independent complaint office was also misleading, as this ignored the majority view of the community in support of an independent office to receive and clarify complaints, seek and provide explanation, mediate where appropriate and conduct investigations. Another reason given for not setting up an independent complaint office because such an office might duplicate the functions of DH, add confusion to the already complex system and create even greater problem in the interface between the various complaint channels was also unconvincing. This was because all of the problems cited could be sorted out through delineation of functions and duties among DH and the various complaint channels.

12. DSHW explained that a lack of consensus on the remit and duty of the independent complaint office was only one of the reasons why the Administration was not in favour of setting up such an office. DHSW reiterated the reason mentioned in paragraph 6(g) above as to why the Administration considered that the setting up of an independent complaint office might in result in duplication of functions with other complaint mechanisms, and emphasised that it was always best for the complainants to lodge their complaints with the service providers. For the same reason, the Administration had reservation about the setting up of an independent complaint office proposed by the Democratic Party in its submission (LC Paper No. CB(2)990/01-02(02)) tabled at the meeting. DSHW pointed out that, for example, if an HA patient lodged a complaint, say, about hospital services, with the independent office, the ombudsman, having studied the case, would then refer the case back to the hospital concerned for follow-up. If the complainant was dissatisfied with the hospital's response on his complaints, he would then go back to the ombudsman for further assistance. The ombudsman would then refer the case back to HA's PCC for follow-

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up. As illustrated, this patient would need to go through four instead of two steps as at present to reach the PCC. Moreover, the efforts made by the ombudsman, say, in collecting information and conducting investigation, would invariably duplicate the works of the various complaint channels. DSHW added that notwithstanding the need to safeguard patients' interests, it was equally important to ensure the system to be convenient to the complainants and user-friendly and that health care professionals perceived the complaint system as fair to them.

13. Mr Andrew CHENG said that he was very disheartened by the Administration's stance. He shared the view expressed by Ms LI that it would be meaningless to discuss further with the Administration on ways to improve the existing complaint system, having regard to the fact that the Administration had vetoed the establishment of an independent complaint office and instead relied on the proposed reform of HKMC. Notwithstanding, Mr CHENG hoped that public confidence in HKMC's complaint handling mechanism would be restored as a result of the implementation of its reform proposals. Mr CHENG further said that duplication of work with the various complaint channels should not be a valid reason for not setting up an independent office, as it was more important for a patient complaint system to be perceived by the public to be fair. The Chairman added that that if the reason for ruling out the setting up of an independent complaint office on the ground of duplication of work with the various complaint channels was valid, then there would be no need for the establishment of the Office of the Ombudsman and the Consumer Council.

14. Dr LO Wing-lok said that HKMC would strive to re-build and maintain public confidence in its complaint handling mechanism. Dr LO further said that HKMC was grateful to members for their views on ways to improve the complaint handling mechanism of HKMC and hoped that members and the public would allow time for HKMC for putting the reform proposals into practice to see how effective they were in addressing the concern that HKMC was biased in favour of doctors.

15. In concluding the discussion, the Chairman said that members generally agreed that there was no need to discuss further with the Administration ways to improve the patient complaint system as the Administration had accepted the reform recommendations of HKMC as the best solution to address the problems of the existing complaint system. In the light of this, the Chairman suggested to dissolve the Subcommittee and submit a report to the Panel on Health Services in March 2002. In the meantime, he would make a verbal report to the Panel on Health Services at its next meeting to be held on 4 February 2002. Members agreed. Mr Andrew CHENG hoped the report would bring out the strong call of the majority of the members and deputations for setting up an independent complaint office.

16. DSHW said that, as stated in the Administration's paper, the Administration had not accepted all of the reform recommendations of HKMC in full. The

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Administration would take on members' views and pursue them with HKMC in its future discussion with the Council on the proposed reform. Mr Andrew CHENG hoped that the Administration would provide a response to members' views expressed at this meeting in the discussion of the reform of HKMC by the Panel on Health Services on 4 February 2002.

17. There being no other business, the meeting ended at 9:45 am.

Council Business Division 2
Legislative Council Secretariat
22 February 2002