立法會
Legislative Council

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LegCo Panel on Health Services

Minutes of special meeting
held on Monday, 23 April 2001 at 8:30 am
in the Chamber of the Legislative Council Building

Members Present	:	Hon LAW Chi-kwong, JP (Chairman at the meeting) Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP (Chairman) Dr Hon LO Wing-lok (Deputy Chairman) Hon Cyd HO Sau-lan Hon CHAN Yuen-han Hon Bernard CHAN Dr Hon YEUNG Sum Hon Andrew CHENG Kar-foo Dr Hon TANG Siu-tong, JP Hon LI Fung-ying, JP Hon Michael MAK Kwok-fung
Members Attending	:	Hon David CHU Yu-lin Hon CHEUNG Man-kwong Hon Emily LAU Wai-hing, JP Hon Audrey EU Yuet-mee, SC, JP
Public Officers Attending	:	Mr Thomas YIU Deputy Secretary for Health and Welfare Miss Angela LUK Principal Assistant Secretary for Health and Welfare 1

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Mr Eddie POON
Principal Assistant Secretary for Health and Welfare 3

Miss Winsome AU
Assistant Secretary for Health and Welfare

Dr S P MAK, JP
Deputy Director of Health

Dr W M KO
Deputy Director, (Operations & Public Affairs)
Hospital Authority

Deputation by Invitation : The Medical Council of Hong Kong

Dr LEE Kin-hung, MBE
Chairman

Dr David FANG, SBS, JP

Mr LAM Kan-ming, Mark

Dr LAW Chi-lim, Robert

Dr SHIH Tai-cho, Louis

Prof CHUNG Sheung-chee, Sydney

Prof LEUNG Ping-chung, OBE, JP

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

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

Miss Mary SO
Senior Assistant Secretary (2) 8

The Chairman said that the meeting was called to discuss the Medical Council of Hong Kong (the Medical Council)'s decision made on 11 April 2001 regarding a doctor using his mobile phone while performing an operation in Queen Mary Hospital. As she was the chairman of the Hospital Governing Committee of Queen Mary Hospital and the Deputy Chairman was a member of the Medical Council, the Chairman nominated Mr LAW Chi-kwong to preside at the meeting. The nomination was accepted by all members present at the meeting. Mr LAW Chi-kwong then took the chair.

2. The Chairman advised members to refrain from asking questions about the particulars of the case, as there might be legal actions taken by the parties concerned in future.

I. Meeting with representatives of the Medical Council of Hong Kong
(LC Paper Nos. CB(2)1339/00-01(01) - (03) and (05))

3. At the invitation of the Chairman, Dr LEE Kin-hung of the Medical Council briefed members on the legal powers of the Medical Council in taking disciplinary action against a registered medical practitioner and the procedures adopted by the Medical Council in handling complaints. In respect of the former, Dr LEE said that the Medical Council's jurisdiction over the professional conduct of registered medical practitioners was laid down in the Medical Registration Ordinance and the Medical Practitioners (Registration and Disciplinary) Regulation. The situations that could give rise to disciplinary proceedings included where a registered medical practitioner had been convicted in Hong Kong or elsewhere of an offence punishable by imprisonment or where there was evidence that a registered medical practitioner had committed misconduct in a professional respect. In accordance with the Professional Code and Conduct for the Guidance of Registered Medical Practitioners, "professional misconduct" could be broadly defined as follows -

> "If a medical practitioner in the pursuit of his profession has done something which will be reasonably regarded as disgraceful, unethical or dishonourable by his professional colleagues of good repute and competence, then it is open to the Medical Council, if that be shown, to say that he has been guilty of professional misconduct".

Based on the above, an inquiry of the Medical Council could only look into whether a registered medical practitioner was guilty or not of professional misconduct according to the charge. If a registered medical practitioner was found guilty of a disciplinary offence, he/she would face one of the following disciplinary sanctions -

(a) Removal from the General or Specialist Register;

(b) Removal from the General or Specialist Register for such period as the Medical Council might think fit;

(c) Reprimand;

(d) Suspended application of any of the above for a period not exceeding three years, subject to any conditions the Medical Council deemed fit; and

(e) Warning letter.

4. As regards the procedures adopted by the Medical Council in handling complaints, they were depicted as follows -

(a) Secretary to the Medical Council would receive information or complaint and inform the complainant of the procedures for handling complaint;

(b) The complaint would then be assessed by the Chairman of the Preliminary Investigation Committee (PIC), in consultation with the Deputy Chairman of PIC, both of whom were elected by the Medical Council from among its 28 members;

(c) If the complaint was found to be groundless or the complainant failed to submit a statutory declaration, the case would be dismissed. The complainant would be notified of the dismissal together with the reasons for the decision, where possible. A complaint would never be rejected at the initial screening stage unless both the Chairman and the Deputy Chairman of PIC agreed that no action should be taken;

(d) If the complaint was found to be not groundless, the case would be referred to the PIC, which would always include a lay (non-medical) member. The PIC would review all the papers including medical records and medical reports on the case. After considering the evidence, the PIC could do one of the followings -

(i) Decide that the case should have a public hearing before the Medical Council;

(ii) Send the doctor a letter of advice;

(iii) Refer the case for investigation of the doctor's health; or

(iv) Decide no further action should be taken; and

(e) If the PIC recommended an inquiry, the case would be referred to the Medical Council for disciplinary inquiry, which would decide whether the complaint had been proved. Inquiry by the Medical Council would comprise a panel of at least five members, including a lay member, to hear the evidence from both the complainant and the defending registered medical practitioner.

5. Dr LEE pointed out that in order to ensure the fairness and impartiality of the disciplinary inquiry, PIC members were prohibited from taking part in the inquiry of a case which they had previously considered at the PIC meeting. Moreover, members taking part in the inquiry would not be advised of the particulars of the charge, including the identity of the defendant doctor, until the commencement of the inquiry. In short, throughout the process when a case was being considered by the PIC to the case being referred to the Medical Council for inquiry, the Chairman of the Medical Council was the only member, apart from the PIC members who had considered the case, who was aware of the existence of the case and the identity of the accused.

6. Dr LEE further said that it was the established practice that the Secretary to the Medical Council represented the complainant in an inquiry and was responsible for presenting evidence to substantiate the charge, including the calling of the complainant as the prosecution's witness. A Government Counsel from the Department of Justice was normally assigned to be the counsel of the Secretary, whose tasks would include drafting the charge against the defendant doctor, interviewing witnesses to gather evidence and meeting with the counsel of the defendant doctor to agree on the evidence for submission to the Medical Council. When all the preparation works for the disciplinary inquiry had been completed by both parties, a date to hold the disciplinary inquiry would be fixed by the Medical Council. Almost all hearings were held in public. In appropriate cases, the Medical Council would exercise its power to order any or all the information relating to the inquiry not to be disclosed. Although the inquiry was not a legal proceeding per se, people giving evidence in an inquiry were required to be under oath. To deal with any legal issues raised at the disciplinary inquiry, the Medical Council would be assisted throughout the hearing by its own legal adviser.

7. The Chairman asked Dr LEE Kin-hung whether he had anything to add to

the case concerning a public doctor using his mobile phone while performing colonoscopic polypectomy to his patient. Dr LEE responded that prior to the commencement of the disciplinary inquiry on the case, the counsel representing the Secretary to the Medical Council made a statement, the content of which was agreed in advance by the opposite party. The statement contained the following three main points -

(a) The case did not involve professional negligence;

(b) The perforation of the colon did not result from the telephone conversation by the defendant doctor during the colonoscopy; and

(c) The mobile phone carried by the defendant doctor had not caused any disruption to the electronic equipment inside the operating theatre where the colonoscopic polypectomy was performed to his patient.

Dr LEE added that the prosecution's witnesses included the complainant and a specialist in medicine, whereas those of the defendant included the defendant doctor, the nurses who were present at the time of the colonoscopic polypectomy, the person with whom the doctor had conversed over the mobile phone during the operation, and expert witnesses such as an anesthetist.

8. Mr Michael MAK said that the Medical Council's decision to clear the doctor concerned had gravely damaged the credibility of the Medical Council in maintaining a good standard of practice and care of doctors and safeguarding patients' lives. Mr MAK pointed out that public reaction was so strong that even the Secretary for Health and Welfare (SHW) had recently come out to say that doctors should not use mobile phones when performing operations and that the existing arrangement of the Medical Council having the powers to investigate, prosecute and deliver verdict on a complaint lodged against a doctor for professional misconduct was undesirable and should be reviewed. In this connection, Mr MAK asked whether the Medical Council had formulated any strategy to regain public confidence.

9. Dr LEE Kin-hung responded that although the Medical Council performed the functions of investigation, prosecution and delivering verdict on complaints lodged against doctors for professional misconduct, there was no question that the fairness and impartiality of the Medical Council in handling complaints would be compromised as people taking part in the aforesaid three functions were different groups of people. However, an area which needed improvement was to increase the investigation power of the PIC. Dr LEE agreed that the operations of the Medical Council could be further improved to increase its accountability and

transparency. To this end, the Medical Council had started discussions with SHW on the reforms of the Medical Council prior to publication of the Consultation Document on Health Care Reform in December 2000. The issues discussed included the composition of the Medical Council, quality assurance of doctors and improvement of the complaint mechanism. Dr LEE further said that the Medical Council had no strong objection to the setting up of a Complaint Office in the Department of Health (DH), so long as the power to deliver verdict and award disciplinary action rested with the Medical Council. The Medical Council could collaborate with the proposed Complaint Office in handling complaints against doctors for professional misconduct in several ways. One possibility was that the Complaint Office in DH could take up the investigation work and forward its findings to the PIC for follow-up. Another possibility was that the Complaint Office could act as a facilitator by steering the complainants to the appropriate channel, and investigation into cases involving professional misconduct of doctors could continue to be undertaken by the PIC. To improve the effectiveness and efficiency of the work of the PIC, the investigation power of the PIC should be increased and that doctors from the Complaints Office in DH should be deployed to assist the PIC.

10. Professor Sydney CHUNG of the Medical Council agreed that it was timely for the Medical Council to review its operation to see how best it should change to meet the changing public expectations and societal needs.

11. Mr Mark LAM of the Medical Council said that the reason for the negative public reaction over the Medical Council's decision on the case in question was largely due to the fact that the media had misinterpreted the verdict to mean that the Medical Council condoned doctors for using mobile phone during operations. He clarified that the Medical Council would only accept the use of mobile phone during operation with due justification, and that in doing so attention to the patients and the patients' condition must not be compromised in any way.

12. Dr David FANG of the Medical Council explained that the reason why the use of mobile phone during operation could not be entirely banned was because there were circumstances when the use of such was necessary and which, if administered properly, should not compromise attention to the patients and the patients' condition. Operations doubled as a medium of teaching and doctors requiring immediate advice from another doctor during operation were two examples where the use of mobile phone was necessary. Dr FANG further said that to address the concern about the use of mobile phone causing interference to medical equipment, manufacturers of medical equipment were presently experimenting materials which could insulate medical equipment against interference from the frequency emitted from mobile phones.

13. Dr Robert LAW of the Medical Council supplemented that the fact that a telephone was always installed inside the operating theatre did not necessarily obviate the need for doctors to use mobile phone to seek advice from another doctor, as the cord of the telephone inside the operating theatre might not be long enough to reach the doctor at the operating table. Although nurses could be asked to make the call, most doctors preferred to make the call themselves to ensure that there was no misunderstanding.

14. Mr Andrew CHENG said that if the Medical Council considered that there were circumstances where the use of mobile phone during an operation was acceptable, it should state them clearly in its Professional Code and Conduct to avoid any misunderstanding. Mr CHENG further said that if this was not done, the Medical Council would affirm the public perception that the Medical Council was always biased in favour of doctors.

15. Mr Mark LAM responded that it was very difficult to put down all possible circumstances in writing. Dr LEE Kin-hung said that the Ethics Committee under the Medical Council would consider how this could be taken forward. He, however, pointed out that implementation of any new guidelines for doctors to follow could not be achieved overnight. This was because the Ethics Committee would need to consult all registered medical practitioners on any draft guidelines, and the feedback would then be considered by the Medical Council before finalising them for inclusion in the Professional Code and Conduct. Professor LEUNG Ping-chung, who was the chairman of the Ethics Committee of the Medical Council, said that the stance of the Ethics Committee was that doctors had the responsibility to provide the best medical services to their patients under all circumstances. He believed that this overriding principle was well understood by all doctors, and they did not need to be told that chatting about personal matters on the mobile phone when performing an operation was wrong.

16. Miss CHAN Yuen-han said that there was an urgent need for the Medical Council to do something to salvage the damage done to doctor-patient relationship. Despite the justifications given by the Medical Council for doctors to use mobile phone during operation, she believed that the public, including some doctors, would still view the Medical Council's decision not to take disciplinary action against the doctor concerned for the aforesaid act as wrong, as such an act showed a total lack of respect for patients. Miss CHAN pointed out that one of the main reasons why the public was so angry over the Medical Council's decision was because there were notices requiring visitors to switch off their mobile phones inside the hospitals, but doctors could talk on such phones when performing an operation without being penalised by the Medical Council.

17. Professor LEUNG Ping-chung explained that the fact that the Medical

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Council did not take disciplinary action against the doctor concerned did not mean that the Medical Council condoned such an act without due justifications. As the mistakes committed by the doctor in question did not amount to professional misconduct, the Medical Council could not take disciplinary action against the doctor under the existing provisions in the relevant legislation. In view of the rising public expectation over services provided by doctors, Professor LEUNG was of the view that there was a need to expand the remit of the Medical Council to enable it to take disciplinary action against a doctor found guilty of neglecting his/her professional responsibility which did not amount to professional misconduct.

18. Dr Louis SHIH of the Medical Council concurred with Miss CHAN that the Medical Council should act promptly to regain public confidence. To this end, Dr SHIH said that a working group to reform the Medical Council had been set up to review the structure, composition and functions of the Medical Council to strengthen accountability, transparency and fairness and to ensure a high standard of medical care. The working group would meet next month to consider a package of reform proposals, including adding more lay members to the composition of the Medical Council. Dr SHIH, however, pointed out that some reform proposals might take more time to implement, as amendments to the Medical Registration Ordinance would be needed to give effect to some improvements, such as the composition of the Medical Council. To better meet the needs and expectations of the public, consideration would be given to the setting up of a functional group on consultation with the public under the working group to collect opinions and suggestions from members of the public on the future reforms of the Medical Council.

19. Ms Emily LAU said that the Medical Council's decision to clear the doctor concerned had been reported in overseas countries such as the United States of America and Japan. She intended to raise the issue of medical complaints mechanism at the hearing of the United Nations Committee on Economic, Social and Cultural Rights to be held in Geneva later this month. Noting that the charge contained the words "or otherwise neglected his professional duty in that he, without due justification, engaged in mobile phone conversations while he was performing colonoscopic polypectomy to his patient", Ms LAU asked Dr LEE Kin-hung why he said that the opening statement made by the counsel to the Secretary at the inquiry that the case did not involve professional negligence.

20. In response, Dr LEE Kin-hung read the opening statement made by the counsel to the Secretary to the Medical Council at the inquiry, which was as follows -

"The cases brought by the Secretary really in this case are not on the

evidence of any negligence, and there is no evidence which the Secretary will call in relation to whether the conduct of the defendant in treating the complainant in the case of Mr CHUNG were in any way being negligent or having caused whatever complication that ensued subsequently. That is not the case for the Secretary. Nor is the Secretary bringing the charge on the basis of the fact that the use of the mobile phone might cause interference of some sort to the facility or apparatus in the facility of area where the complainant, Mr CHUNG, was treated on the material day."

21. Ms LAU further enquired why the Medical Council did not consider that the act of the doctor engaging in conversation over the mobile phone during the operation amounted to professional misconduct, having regard to the fact that its press statement issued on 18 April 2001 conceded that the doctor did make a mistake of forgetting to switch off his mobile phone before the operation. Moreover, the doctor did engage in telephone conversation during the operation.

22. Dr David FANG responded that although the doctor did make a mistake of failing to switch off his mobile phone before the operation, such an act did not amount to professional misconduct as the doctor did take immediate steps to end the conversation and, as agreed by both parties and supported by expert witnesses, the perforation of the colon was not a result of the telephone conversation during the colonoscopy. Dr FANG further said that the Medical Council had to be very careful in determining whether a doctor was guilty of professional misconduct, as even a warning letter to the doctor would permanently wreck his/her reputation in Hong Kong as well as overseas. Ms LAU disagreed that taking immediate steps to end the conservation was a valid excuse for exonerating the doctor, as the doctor should not have answered the incoming call in the first place. Dr FANG explained that this was not possible because the mobile phone used by the doctor was of a type that if it was switched on, a telephone call would come in automatically. Dr FANG further said that when the mobile phone first rang during the operation, the doctor immediately told the caller that he was performing an operation and could not talk to her. The caller replied that she would wait for him as she was not busy. The doctor then repeated to the caller that he could not talk to her because he was performing an operation. After that, the doctor did not make any further telephone conversation. Ms LAU asked why the doctor did not switch off his mobile phone after telling the caller that he was busy the first time. Dr FANG explained that the doctor could not do so because both of his hands were tied up in the operation at that time. The doctor did subsequently switch off his mobile phone once one of his hands was free.

23. Ms Emily LAU suggested that, in order to address the double standards used in governing the use of mobile phone inside the hospital premises, consideration could be given to displaying notices inside the hospital premises

stating under what circumstances doctors might use mobile phone during operation.

24. Dr Robert LAW responded that requiring visitors to the hospitals to switch off their mobile phones and allowing doctors to use mobile phone during operation were two different matters. In respect of the former, Dr LAW said that this was a necessary precautionary measure because disruptions to sensitive medical equipment or apparatus might be caused if people using the mobile phones were standing in close proximity, say, less than six inches, from these medical equipment or apparatus. As regards doctors, Dr LAW said that they were well aware of the fact that they should not use mobile phone without due justification and that, in doing so, they had the responsibility to ensure that the use of mobile phone would not compromise their patients' condition in any way. Dr David FANG said that the seemingly double standards used in governing the use of mobile phone inside the hospital premises perceived by the public stemmed from their mistrust of doctors. He hoped that the future reforms of the Medical Council would help to address such problem.

25. Dr YEUNG Sum shared the views and concerns expressed by members. He considered that the practice of adopting the standard of proof beyond reasonable doubt compromised the chance of the complainant winning the case. To strengthen the accountability, transparency and fairness of the Medical Council, Dr YEUNG suggested that half of the composition of the Medical Council should be lay members and that the Chairman of the Medical Council should not be a registered medical practitioner. Dr YEUNG shared Professor LEUNG's view that there was a need to expand the remit of the Medical Council to enable it to take disciplinary action against a doctor found guilty of neglecting his/her professional responsibility which did not amount to professional misconduct. Dr YEUNG further said that although the Medical Council could not take action against the doctor for using the mobile phone during operation under the existing legislation, it should at least make a statement condemning the doctor for his wrongdoing.

26. Dr Louis SHIH responded that the Medical Council would consider Dr YEUNG's suggestions concerning the composition of the Medical Council. In the meantime, a Professional Performance Committee would shortly be set up by the Medical Council to deal with substandard practice. As regards the issue of standard of proof, Dr SHIH clarified that, depending on the gravity of guilt, the standard of proof could range from balance of probability to beyond reasonable doubt. Responding to the comments that the Medical Council should at least make a statement condemning the doctor for using his mobile phone during operation, Dr SHIH said that much of the misunderstanding could be avoided if the verdict had stated that the Medical Council would not accept the use of mobile

phone during operations unless there was due justification. He hoped that the press release issued on 18 April 2001 and clarifications given by the Medical Council at this meeting could help resolve misunderstanding by the public that the Medical Council condoned the use of mobile phone during operations.

27. Responding to Ms Cyd HO's enquiry as to whether the Hospital Authority (HA) would allocate resources to improve the telecommunication system in all its operating theatres so that doctors would no longer need to use mobile phone to seek external advice and participate in video conference, Deputy Director, Hospital Authority said that HA constantly reviewed its operations to see what improvements could be made to its facilities, including the operating theatres.

28. Dr LO Wing-lok asked the Medical Council whether it would give an assurance that it would continue to ensure a high standard of practice and care by doctors and that it would not accept the use of mobile phone during operation without due justification. Dr LEE Kin-hung confirmed that these were the stance of the Medical Council.

II. Any other business

(LC Paper No. CB(2)1339/00-01(04))

29. Ms Cyd HO proposed the setting up of a subcommittee to work with the Administration and the Medical Council, and to consider public views, on what improvements should be made to the medical complaints mechanism. Members expressed support. As discussions on the medical complaints mechanism would inevitably involve deliberating the principle of self-regulation, members agreed that the subcommittee should preferably be formed under the House Committee, instead of under the Panel, so that other Members of the Legislative Council could join the subcommittee. Mrs Sophie LEUNG agreed to seek the views of the House Committee on the proposal at its next meeting on 27 April 2001.

30. Dr LEE Kin-hung welcomed the proposal and said that the Medical Council would be happy to participate in the discussions of the subcommittee. Deputy Secretary for Health and Welfare also expressed support for the proposal, and further said that the Administration was presently under discussion with the Medical Council and other interested parties on the same subject.

31. There being no other business, the meeting ended at 10:48 a.m.

Legislative Council Secretariat
25 September 2001