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Subject: Re: Final 《2016年醫生註冊(修訂)條例草案》 Submission from Dr. Paul Shea

From: Dr. Paul Shea

Sent: Monday, April 11, 2016 12:59 AM

To: bc_54_15@legco.gov.hk

Subject: 《2016年醫生註冊(修訂)條例草案》 Submission from Dr. Paul Shea

致：立法會秘書處

法案委員會秘書

(經辦人：李惠恩小姐)

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《2016年醫生註冊(修訂)條例草案》委員會主席

方剛議員

Submission

Bill Committee on Medical Registration (Amendment) Bill 2016

1. I support the increase of lay members in the Medical Council of Hong Kong (MCHK). However, up to the present moment, i.e. April 2016, the lay members are not representatives of any patients group and they are not transparent enough. I have searched in the google and yahoo website, and found that the present all 4 lay members have spoken nothing on MCHK, nor convey any message to the public. The present 4 lay members are not transparent at all. So, I support the increase of lay members of MCHK and all the lay members should be the representatives of the patients group and should be transparent and would be able to communicate to the media and the public.

2. The increase of 4 lay members in MCHK would not improve its complaint investigation and the disciplinary inquiry system. I support the idea of adding four more elected medical members in MCHK to speed up the complaint management, particularly in adding one more PIC. Currently, the prolonged complaint investigation and disciplinary inquiry are not related to the number of lay members.

3. The delay in the complaint investigation and disciplinary inquiry are due to the fact that all complaints would be a legal procedure, required complainants legal declaration, defendants report, defendant and prosecution expert report, the availability of defend and prosecution legal personnel as well as lawyers. All these every procedure required months if not years to obtain or to be available. The famous Madam Lau delivery case concerning the mortality of the baby, MCHK required less than 6 months for disciplinary inquiry, but the whole case lingered for 9 years ! The current Chairman of MCHK, Professor Lau WY, was the PIC chairman at that period and he is the most suitable person to illustrate reason of the delay of inquiry for more than 8 years. I can tell you that the availability of lay members is not the key factors for the delay. I do think Professor Lau should give his evidence on this case.

4. Medical Protectionism (醫醫相衛) is in reality not valid. I would like to illustrate the following figure for Hong Kong Public Doctors Association to explain.

Medical Council - Figures in brief

	Ratio of laymen to doctors in Council	No of complaints lodged	Inquiry	Convicted	Registration removed
MCHK (HK)	1:6	624	19 (3%)	17 (89%)	15/17 (88%)
GMC (UK)	1:1	9639	237 (2.4%)	190 (80%)	71/190 (37%)
Singapore Medical council*	No layman	378	18/378 (4.7%)	19/23 (83%)	2/23 (9%)

*In 2014, the Medical Council received 213 cases that were filed. A total number of 378 cases, including cases that did not conclude by 2013, were considered and deliberated upon in 2014. A total of 23 disciplinary inquiries were concluded in 2014

PL Ho and Pierre Chan et al 9 April 2016

<http://www.mchk.org.hk/>

<http://www.gmc-uk.org/>

<http://www.healthprofessionals.gov.sg/content/hprof/smc/en.html>

From the above diagram, we can see that the conviction of the MCHK is the highest among other comparable area.

4. The poor and slow complaint system of MCHK is mainly due to the fact that all cases are treated as serious cases and put under legal procedure which inevitably increase the standard of the complaint management but also severely delay the complaint management. To speed up the complaint management, other advanced countries will adopted two mechanism into their complaint management.

6. Mediation and Arbitration are two commonly use mechanism for complaint management. I am regret that these two useful and commonly used mechanism are not included in this bill to speed up the complaint management.

7. In the late 1980s and early 1990s, many people became increasingly concerned that the traditional method of resolving legal disputes in the United States, through conventional litigation, like the current MCHK complaint management, had become too expensive, too slow, and too cumbersome for many civil lawsuits. This concern led to the growing use of ways other than litigation to resolve medical complaints, mainly disputes between doctors and patients. These other methods are commonly known collectively as alternate dispute resolution (ADR), which includes Mediation and Arbitration.

8. Medication is also known as conciliation, is the fastest growing ADR method. Unlike litigation, mediation provides a forum in which parties (patient and doctor) can resolve their own disputes, with the help of a neutral third party. Mediation depends upon the commitment of the disputants to solve their own problems. The mediator, also known as a facilitator, never imposes a decision upon the parties. Rather, the mediator's job is to keep the parties talking and to help move them through the more difficult point of contention. To do this, the mediator typically takes the parties through different stages to achieve the resolution.

9. Arbitration more closely resembles traditional litigation (Current MCHK mechanism) in that a neutral third party hears the disputants' arguments and imposes a final and binding decision that is enforceable by the courts. The difference is that arbitration, the disputants generally agreed to the procedure before the dispute arose; the disputants mutually decided who will hear their case; and the proceedings are typically less formal than in a court of law. One extremely important difference is that, unlike court decisions, arbitration offers almost no effective appeal process. Thus when arbitration decision is issued, the case is ended.

10. Mediation and Arbitration are generally applied to milder cases. From the above diagram, we found that there are 624 cases in a year, and only 19 cases (3%) are put into inquiry. There are 605 cases dismissed, not because of no case, but because some of the cases are not seriously up to professional misconduct, but milder cases such as poor attitudes, poor communication, slightly improper treatment...etc. With the addition of Mediation and Arbitration, the complaint management would be speeded up and some minor cases would also be answered by MCHK. This is the commonly used medical complaint management in western world to meet the demand of the public.

Dr. Shea Tat Ming, Paul

President, the Hong Kong Public Doctors Association 2005-7

Council, the Hong Kong Medical Association 2008- dates

Chairman, Complaint and Mediation Committee, the Hong Kong Medical Association 2015- dates