

**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 25 April 2016**

**Complaint investigation and disciplinary inquiry mechanism  
of the Medical Council of Hong Kong**

This note provides the Government's response to follow-up actions arising from the discussion at the meeting on 25 April 2016, concerning (a) the complaint investigation and disciplinary inquiry mechanism of the Medical Council of Hong Kong ("MCHK") and (b) its existing mechanism on handling conflict of interest.

**Complaint investigation and disciplinary inquiry mechanism of  
MCHK**

2. In response to Members' concerns on the "nine bottlenecks" faced by MCHK in handling complaints and conducting inquiries, we have prepared a submission to the Bills Committee (vide LegCo Paper No. CB(2)1363/15-16(01)), explaining the current complaint handling procedures of MCHK as well as the expected improvements upon the passage of the Medical Registration (Amendment) Bill 2016 ("the Bill") and implementation of related administrative measures. Members may wish to refer to the Annex of the submission on the caseload and time required at different complaint handling stages.

3. At the Bills Committee meeting held on 25 April 2016, Members further requested that, assuming the Bill was held in abeyance, assessment be made as to whether, and if yes, how long the handling time could be shortened for each "bottleneck" through administrative measures only. Our assessment is summarised in paragraphs 4 to 7 below.

4. Among the "nine bottlenecks", two of them, namely, (i) "criminal proceedings" and (ii) "venue constraints", are not relevant because the former is a prudent and necessary legal step which in reality

affects only two cases out of a total of around 900 cases, and the Medical Council Secretariat (“MC Secretariat”) has confirmed it has not experienced any problem in the availability of venue for conducting meetings and hearings.

5. As regards the remaining seven “bottlenecks”, only two, i.e. (i) “seeking of expert opinions” and (ii) “submission of written explanation to the Preliminary Investigation Committee (“PIC”)”, can be improved through administration measures in the absence of legislative amendments.

6. With the implementation of administrative measures, coupled with the provision of honorarium as a token of appreciation to experts who provide independent expert opinion to the investigation work at the PIC stage (details of the arrangement are now being discussed with MCHK), there is a possibility that the processing time of obtaining an independent expert opinion can be reduced by one to two months. For submission of written explanation by defendant doctors to PIC, provided the PIC chairman is prepared to strictly follow the Practice Directions on Preliminary Investigation of Complaints to require the defendant doctor to submit the written explanation to PIC within one month upon receiving the Notice of PIC meeting, the processing time may be shortened by about one to two months. Altogether the processing time may at best be shortened by two to four months through the above two administrative measures, this means that the average processing time could at best be reduced from the current 58 months to 54 to 56 months in the absence of legislative amendments.

7. All the other five “bottlenecks”, namely (i) information and statutory declaration from the complainant; (ii) medical reports / records; (iii) legal advice from Department of Justice; (iv) PIC meeting; and (v) disciplinary inquiry, can only be improved substantially through the passage of the Bill.

8. The existing backlog of cases at initial consideration by the PIC chairman and deputy chairman, PIC and inquiry stage is about 700, 150 and 80, respectively. MCHK receives about 500 new complaint cases every year. The number of complaint cases received each year has far

exceeded the current capacity of MCHK, in particular at the PIC stage. Without the passage of the Bill, MCHK can only set up a single PIC to process the complaint cases, and thus it would not be possible to materially shorten the processing time of complaint cases.

### **Composition of PIC**

9. According to section 20S of the Medical Registration Ordinance (“MRO”) (Cap. 161), PIC comprises seven members, including three Council members (i.e. a chairman and a deputy chairman elected from among its Council members and a lay Council member) as well as four non-Council members who are registered medical practitioners. The Hong Kong Medical Association, Director of Health, Hospital Authority and a MCHK Council member can each nominate one for appointment by MCHK as PIC members. Currently, MCHK comprises 28 members in total, with 24 registered medical practitioners and four lay members, from whom the PIC chairman and deputy chairman are being elected. There is sufficient number of Council members to form more than one PIC.

### **Statistics in arranging the Policy Meeting and the “Section 25 inquiry” of MCHK**

10. Under Section 4(2) of MRO, the quorum for the meeting of the Council is 13 members. From January 2014 till April 2016, all monthly Policy Meetings of MCHK were convened as scheduled.

11. In accordance with section 25(3) of MRO, any person whose name has been removed from the General Register (“GR”) may apply to the Council for the restoration of his name to the GR<sup>1</sup>. There are established procedures in MCHK for processing applications for restoration to the GR. For applicants with outstanding complaint cases,

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<sup>1</sup>In accordance with section 25(3) of MRO, the Council in its absolute discretion and after such inquiry and subject to the submission of evidence that the applicant has not been convicted in Hong Kong or elsewhere of any offence punishable with imprisonment and has not been guilty of misconduct in a professional respect while practising in Hong Kong or elsewhere and to such conditions, as it may consider desirable, may either allow or refuse the application, and if it allows the same, shall order the Registrar on payment by the applicant of the prescribed fee to restore the name of the applicant to the General Register, and thereupon the Registrar shall restore the name accordingly.

a “Section 25 inquiry” would have to be held to decide whether to allow or refuse such applications of restoration to the GR. The quorum for a “Section 25 inquiry” is 13 members. According to the legal advice from the Legal Adviser of MCHK, Council members who have taken part in the preliminary investigation of the applicant’s outstanding complaint cases shall not take part in the subsequent “Section 25 inquiry”. Under such circumstances, meeting the quorum for “Section 25 inquiry” may take a bit more effort and time than the more straightforward cases.

12. From January 2014 to March 2016, seven “Section 25 inquiries” were arranged with a view to considering applications for restoration to the GR. Out of these seven applications, two “Section 25 inquiries” could not form a quorum at the first attempt. The median time required for arranging these seven inquiries is about four months. To better facilitate the conduct of “Section 25 inquiry”, since September 2015, the MC Secretariat has arranged to hold “Section 25 inquiry” immediately after the monthly Policy Meeting, which could help solve the problem of forming quorum and speed up the handling of applications for restoration.

### **Existing mechanism on handling conflict of interest**

13. MCHK has an established mechanism for handling conflict of interest. Sections 7(1) and 7(2) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation require PIC members to declare their interest upon receipt of a case. A member with conflict of interest must not participate in any deliberation or decision regarding the case.

14. In addition, administrative measures have also been put in place to better ensure that each and every complaint is handled in a fair and impartial manner, including -

- (a) When inviting panel members to sit for a disciplinary inquiry, the Secretariat will provide panel members with the information relating to the disciplinary inquiries, including the identity of the defendant doctor and the case nature in advance and remind panel members to consider if there

might have actual or perceived conflict of interest; and

- (b) The Chairman of the disciplinary inquiry will formally invite panel members to make declaration of interest before the commencement of each inquiry and to ask whether the defendant will have any objection to the panel composition in accordance with the procedural guide of the Medical Council Disciplinary Inquiry.

15. Apart from measures mentioned above on handling conflict of interest when dealing with complaint investigation and disciplinary inquiry, new Council Members will be provided with reference materials on the scope of work of the Council and their particular attention will be drawn to Standing Order No. 6(1) concerning “Interest of members”<sup>2</sup> such that Members will be conversant with the rule in carrying out business of MCHK.

**Food and Health Bureau**  
**May 2016**

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<sup>2</sup> According to Standing Order No. 6(1), if any member has any pecuniary interest direct or indirect in any matter under consideration by the Council, a committee or sub-committee, he shall declare it to the Council, committee or sub-committee as appropriate prior to the discussion of that item, and shall withdraw from discussion, unless being invited to speak by the Chairman, of that item at the meeting.