

## Proposed Amendments to Medical Registration Act

We reproduce the following letter which was published in the Straits Times Forum on 24 June 2009. We also reproduce on the following pages our letter to MOH dated 20 July 2009 (page 9), in response to its recent letter to all doctors dated 13 July 2009 (pages 10 to 12), regarding the proposed amendments, specifically the change to allow a retired judge, senior lawyer or legal officer to chair a Singapore Medical Council Disciplinary Tribunal.

### Disciplinary tribunals are not law courts

I REFER to the letter by Mr M Lukshumayeh last Saturday, "SMC post: Don't get emotional, docs". The writer has failed to understand the objectives of the Singapore Medical Council's (SMC's) disciplinary tribunals (DTs) and has mistaken the DTs for a law court.

The law courts are responsible for interpreting the law and for enforcing punishment when the law is broken. However, whatever is not prohibited by law remains legal and permissible, but may still be unethical. This is where professional tribunals like SMC's DTs come in.

The law cannot spell out everything but sets an absolute minimum for all to observe, while ethics and professionalism demand higher levels of conduct and behaviour than just obeying the law. This is the essence of professionalism and ethics, be it for doctors or other professions.

As such, SMC's objective is to uphold high standards of professional conduct and ethical behaviour among doctors.

Furthermore, the Singapore Medical Association (SMA) does not object to lay people or lawyers in DTs. Lay people bring with them their own valuable expertise and viewpoints. Lawyers ensure that procedural matters pertaining to principles of fairness and natural justice are not overlooked, which is why lawyers are already present now at SMC disciplinary hearings. But having a lawyer or ex-judge chair a DT may bring about long-term consequences that do not serve public or patient interest, even if the move appears superficially rational.

That is because the role of the DT is to ascertain if professional misconduct has occurred in areas which the law is silent on. Legal training, on the other hand, is aimed at understanding if the law has been broken. The two are very different.

The move to allow lawyers to chair DTs will bring about a technical convergence of law and medical ethics, with DT proceedings probably becoming more legalistic, and a slow deterioration in the higher standards of medical ethics, which is against public interest.

Perhaps it is by the same reasoning that lawyers do not sit on the DTs of other professions in Singapore. Higher standards of medical ethics are not achieved by making DT proceedings more legalistic or having more lawyers if DT proceedings are conducted in a fair manner.

Instead, while it may be expedient to get lawyers to chair SMC's DTs now, what medical ethics really needs is more moral courage and leadership so that public interest can be better served.

**DR CHONG YEH WOEI**  
**PRESIDENT**  
**50<sup>TH</sup> COUNCIL**  
**SINGAPORE MEDICAL ASSOCIATION**

20 July 2009

Prof K Satku  
Director of Medical Services  
Ministry of Health

Dear Prof Satku

**Re: Medical Registration (Amendment) Bill**

- 1 The SMA appreciates your letter dated 13 July 2009, explaining the rationale to allow a retired judge, senior lawyer, or legal officer to chair a Singapore Medical Council (SMC) Disciplinary Tribunal, which is one of the proposed amendments to the Medical Registration Act (MRA).
- 2 We wish to ask on behalf of our members and doctors for a 3-week time extension for doctors to revert with their comments (i.e. 15 August 2009). This is because we are given to understand that many doctors have yet to receive the abovementioned letter, even though the letter was dated 13 July 2009. For example, among the 16 members of SMA's 50<sup>th</sup> Council, about half have yet to receive the said letter as of today. In addition, several of the issues surfaced in the said letter are rather complex and new to the profession and would require careful consideration. As such, it would be quite impractical for doctors to revert by the stated deadline of 25 July 2009 as they would have to send their replies off by this Friday latest.
- 3 Currently, the abovementioned letter only allows for one form of reply, which is by filling up the form given and sending the reply back by the self-addressed envelope that is provided. We would like to suggest that other avenues should be allowed. This could include faxing back the completed form to MOH as well as allowing for online replies via the Internet. As all doctors already have secure accounts with personalised passwords as part of the infrastructure afforded by the SMC Continuing Medical Education (CME) reporting platform, we can leverage on the CME reporting platform to facilitate online replies.
- 4 Finally, we would like to once again reiterate that, similar to the very well-received forums on GP pandemic readiness that DMS graced with his presence, we think face-to-face forums between DMS and interested members of the profession will be beneficial to fomenting a better understanding of the salient issues on the proposed amendments to the MRA. SMA would be glad to help in any way possible to organise them.

Yours sincerely

**DR CHONG YEH WOEI**  
**PRESIDENT**  
**50<sup>TH</sup> COUNCIL**  
**SINGAPORE MEDICAL ASSOCIATION**

cc SMA members  
Master, Academy of Medicine, Singapore  
President, College of Family Physicians Singapore  
Minister for Health

13 July 2009

Dear colleague

**MEDICAL REGISTRATION (AMENDMENT) BILL –  
Proposed amendment to allow a senior lawyer, legal officer or retired judge to be  
appointed as chairperson of a SMC Disciplinary Tribunal**

The Ministry of Health (MOH) and the Singapore Medical Council (SMC) have recently proposed changes to the Medical Registration Act which were intended to further strengthen and streamline existing disciplinary processes and to improve medical registration. One of these, in particular, the provision to allow the Council the option to appoint a senior lawyer, legal officer or retired judge as chairperson of a SMC Disciplinary Tribunal has become a matter of debate in the media, through forum letters, editorials and online discussions.

2 As part of MOH's efforts to keep the channels of communication open, MOH met with key leaders of the Singapore Medical Association, College Of Family Physicians Singapore, the Academy of Medicine and the Singapore Medical Council to seek a better understanding of the medical community's concerns.

**Rationale for the Proposed Amendment**

3 Our purpose in proposing this change is to promote greater transparency and accountability, and thus foster greater public trust in the disciplinary process in the medical profession. In order to uphold public trust in the medical profession, it is necessary to exercise self-regulation with utmost prudence and responsibility.

4 The appointment of a chairperson with a legal background will only be undertaken when it is deemed appropriate or necessary, and will not be the rule. At the meeting with the key leaders, it was emphasized that the Medical Council, which is comprised entirely of doctors, will retain complete discretionary control to appoint the chairperson and members of a Tribunal. The decisions of a Tribunal are based upon majority vote of its members. Should a chairperson with a non-medical background be appointed, there will still be two doctors with voting rights in the Tribunal to decide on the judgement with the chairperson. Further information can be found in the attached Annex.

5 Specifically, allowing a senior lawyer or judge with professional legal or judicial expertise to serve as chairperson adds value to the Disciplinary Tribunal by:

- a. avoiding potential conflicts in the medical community in high profile cases;
- b. contributing authoritative written judgments that are capable of withstanding rigorous judicial scrutiny in complex cases; and,
- c. helping the Tribunal achieve greater parity in legal knowledge and expertise in cases where the prosecution and defence have formidable legal teams

**Invitation to Comment**

6 Self-regulation in a profession is intended primarily for the benefit of the public. In assessing whether the proposed amendment is appropriate, it is therefore pertinent to seriously consider if the proposed change ensures fair outcomes for the public, the complainant and the doctor, and engenders greater public trust in the profession.

7 We invite your comments. Your comments can be sent in the attached reply slip using the pre-paid, self-addressed envelope enclosed. All replies should reach us no later than 25 July 2009. Each comment will be carefully considered in our decision on the matter.

**PROF K SATKU  
DIRECTOR OF MEDICAL SERVICES**

## **ANNEX: FREQUENTLY ASKED QUESTIONS - DISCIPLINE COMMITTEES/TRIBUNALS**

### **1. How is a complaint against a doctor handled by the Singapore Medical Council currently?**

A complaint will have to be written and accompanied by a statutory declaration (unless the complainant is a public officer) before it can be considered by the Singapore Medical Council. The complaint is then referred to the Chairman of the Complaints panel who will, in turn, appoint a Complaints Committee to investigate the complaint. The Complaints Committee comprises 3 doctors and a layperson, and can:

- (a) if it is of the view that no formal inquiry is necessary –
  - (i) order that the registered medical practitioner be issued with a letter of advice;
  - (ii) order that the registered medical practitioner be warned;
  - (iii) order that the complaint or matter be dismissed; or
  - (iv) make such other order as it thinks fit; or
- (b) if it is of the view that a formal inquiry is necessary –
  - (i) order that an inquiry be held by the Health Committee; or
  - (ii) order that an inquiry be held by a Disciplinary Committee.

### **2. Where does the option of appointing a senior lawyer, legal officer or retired judge to chair the Disciplinary Committee (or the proposed Disciplinary Tribunal) come in?**

The option of allowing a senior lawyer, legal officer or retired judge to chair a Disciplinary Committee (or the proposed Disciplinary Tribunal) refers to (b) (ii) above where a complaint is referred by the Complaints Committee to the Disciplinary Committee (which will be renamed as the Disciplinary Tribunal) for a formal inquiry.

For this much smaller number of serious cases referred, the Council appoints a Disciplinary Committee (Tribunal) to hear the case. Currently, a Disciplinary Committee comprises of 3 doctors (2 of whom need to be Council members), and a non-voting 4<sup>th</sup> layperson. The Disciplinary Committee must be chaired by a member of the Medical Council. Under the proposed amendments, the Disciplinary Committee (Tribunal) can be chaired by a senior doctor, or the Medical Council can exercise its

discretion to appoint a senior lawyer, legal officer or retired judge for certain cases. In which case, the Disciplinary Committee (Tribunal) need not have a layperson.

### **3. How does the disciplinary committee arrive at a judgement and sentence?**

Upon completion of the hearing, a Disciplinary Committee would deliberate upon the facts presented, and address any question arising, including judgement, by way of majority vote from the Chairperson and its voting members.

There will be no change in this aspect of the disciplinary procedure with this proposed amendment. If both the medical practitioner members of a 3-member (inclusive of the chairperson) Disciplinary Tribunal votes unanimously on the case, the Chairperson's vote, regardless of whether they are medically or legally trained, would not result in a different outcome.

### **4. If the SMC has a Legal Assessor, why does SMC need to appoint a senior lawyer, legal officer or retired judge as a Chairperson of the Disciplinary Tribunal?**

The Disciplinary Committee currently has a Legal Assessor (who is a lawyer with not less than 10 years standing) in attendance at all times to assist and guide the Disciplinary Committee on any procedural issues or technicalities which may arise during the hearing.

Despite this, disciplinary proceedings can be procedurally demanding. The Disciplinary Committee (Tribunal) must assess the weight of the evidence and pass judgement. The Disciplinary Committee (Tribunal) must be able to provide written decisions that will not only withstand judicial scrutiny but will also provide landmark decisions which can serve as precedents for judgment of future cases. Legal Assessors are not permitted to take on the role of a judge and to weigh the evidence, as this is a function that the law reserves to members of the Disciplinary Committee (Tribunal). Legal Assessors are also not permitted to contribute to the judgement.

If the Chairperson is a senior lawyer, there is no necessity to appoint a Legal Assessor (or a lay person) to the panel. Legal technicalities and the layperson role can now be dealt with by the Chairperson. This saves time and can be more efficient.

**5. What are the scenarios where the option, to have senior lawyer, legal officer or retired judge to preside at a Disciplinary Tribunal, may apply?**

Besides cases where a prominent or senior medical practitioner, or someone known to the entire Council is the subject of the disciplinary proceeding, other scenarios where the discretion to appoint chairpersons with legal backgrounds may be invoked are proceedings involving:

- a. conduct that does not relate to the practice of medicine, such as false or laudatory advertising;
- b. disciplinary proceedings involving circumstantial evidence where due consideration must be given to the weight of the evidence presented in arriving at a judgement;
- c. multiple charges (e.g. inappropriate prescribing to many patients over a period of time); and
- d. different respondents who are separately represented and who raise different defenses and objections (e.g. a patient complaining against several doctors who treated him).

**6. Will a senior lawyer chairing the Disciplinary Committee (Tribunal) result in medical ethics becoming less important in SMC cases?**

The Council need not appoint the lawyer / judge as Chairperson if it is deemed that the case is essentially about medical ethics. It is the duty of the Tribunal's chairperson (and members), regardless of whether they are medically or legally trained, to take reference from the SMC Ethical Code and Ethical Guidelines when considering matters of medical ethics. Ethical conduct is a universal virtue adhered to by all professions and there is practically no conflict between law and ethics. Points of law and ethics are equally important and doctors have the option to appeal to the High Court when a verdict against them is perceived to be unjust even in cases concerning medical ethics.

From past experience, most disciplinary cases do not usually pertain to medical ethics, but to conduct in general, such as not adhering to published guidelines, cases of false or laudatory advertising and prior court convictions (e.g. tax evasion).

**7. What is the importance of law and legal technicalities in SMC's cases?**

In the majority of cases, disciplinary cases are prosecuted and defended by legal teams. Doctors also appeal to the High Court when they perceive that the judgement against them by their own profession is unjust. Thus lawyers already influence the conduct and outcome of a case today by their arguments and points of law.

Proceedings today are already very legalistic and the presence of skilled Legal Assessors is always required to assist the Disciplinary Committee in its deliberations. Higher profile cases have been defended and prosecuted by Senior Counsels. With such intense legal involvement and an increased number of cases being challenged through Judicial Review and by appeals to the High Court, SMC has noted that legal complexities and technicalities are major components in disciplinary cases.

It is therefore inconceivable that the introduction of a senior lawyer, legal officer or retired judge will change the fundamental role of the Disciplinary Committee (Tribunal) and that it will result in an unwanted technical convergence of law and medical ethics leading to proceedings becoming more legalistic.

**8. Was this change prompted by Disciplinary Committees previously falling into error?**

On occasion, Disciplinary Committees have been found to have erred in law in their rulings or in their conduct of disciplinary proceedings. On appeal to the High Court, some Disciplinary Committees have been publicly criticised for their handling of the case and their limited understanding of fundamental legal principles. This does not reflect well on the professionalism of disciplinary committees.

**9. How will the new move contribute to enhancing public perception of doctors?**

There is significant public feedback that doctors may be sympathetic and partial towards their own colleagues in passing judgement. The fact that proceedings are not held in public does not help. Such views if allowed to grow will erode the position and influence of the doctor in society and the trust that our patients have in us. The changes were proposed to contribute to a better perception of doctors and help to maintain public trust in our profession.

**10. What is the practice for Disciplinary Tribunals in other countries?**

The practice of allowing the participation of legal professionals in Disciplinary proceedings involving medical practitioners is not new as many countries have already introduced legislation in which lawyers or retired judges are or may be appointed as chairpersons of Disciplinary Tribunals. These countries include the UK, New Zealand, selected states and provinces in Australia, Canada and USA.