

We reproduce the following letters from Dr Wilmot R Rasanayagam on the proposed amendments to the Medical Registration Act. Dr Rasanayagam is a Council Member of the Singapore Medical Council, and Past President of SMA. He is a GP in private practice.

9 December 2009

The President and Council
Singapore Medical Association

Dear Colleagues

I am sending you copies of the correspondence I have had with the Ministry of Health on the subject of some of the changes proposed in the new Medical Registration Act.

Many of you will be aware that when a complaint to the Singapore Medical Council (SMC) is acknowledged and then investigated, the whole process can take anything from six months to one year or more. This prolonged period of anxiety even if the doctor is found to be free from blame in the end can have a profound impact on his professional and family life.

The new proposal to allow the complainant to appeal to the High Court, if the complainant is dissatisfied with the SMC's verdict after due inquiry, has to be accepted if it is made out that the complainant must be extended the same privilege that is accorded to the doctor he has complained against.

However, what is terrifying is that this appeal to the High Court will be conducted by the SMC on behalf of the complainant at the expense of the SMC. If such a benefit is held out, nearly every dissatisfied complainant will have no hesitation to appeal. The SMC in pursuing this appeal will be seen to be prosecuting the doctor twice. This will also mean at least one more year of legalistic anxiety and agony for the doctor.

I feel that this great anomaly should be brought to the attention of all your members so that at some future date they do not find us to have been wanting.

Yours sincerely

DR W R RASANAYAGAM

28 October 2009

The Minister
Ministry of Health
Singapore

Dear Minister Sir

I wish to refer to the Medical Registration Bill published in the Singapore Government Gazette on 20 October 2009. I wish to draw your attention to Section 55 dealing with Appeals against orders by the Disciplinary Tribunal.

At present the SMC prosecutes a doctor on perceived violations of ethics as well as questionable medical practice, for which purpose it engages legal counsel. The SMC appoints a Disciplinary Committee which hears the prosecution and the doctor's defence and reaches judgement on the case. Other comparable professions also conduct similar inquiries in which their own professional colleagues participate. The priority consideration has always been the necessity to ensure that judgement is in the hands of persons who are familiar with the work processes of that particular profession. Therefore we are at present doing what other professions are doing.

It is acceptable if the complainant is a member of the public to allow the complainant to appeal against the judgement of the Disciplinary Committee. But to propose that such an appeal should be carried out by the SMC on behalf of the complainant, leads to a situation where the SMC would be seen to be initiating a complaint against the same doctor a second time. Moreover the involvement of the Minister in the process of appointing Review Committees can become an embarrassment.

The Singapore Government has decided to expand its healthcare services as an important component of our economy. Therefore it is essential for the SMC to sustain the competence of the medical profession and generate enthusiasm and inspiration to achieve these goals. Any perception by the profession that the SMC has entered into a new phase of persecution of doctors can only have an undesirable effect.

I wish to propose that the Ministry of Health frames legislation that will enable the complainant to appeal to the law courts on his own behalf. When an appeal case is brought before the law courts, whether by the complainant or the SMC acting on its own behalf, all the facts of the case will have to be laid bare to the judiciary of the courts in full public view. Therefore the desire of either party to keep any details confidential will not arise.

I hope you will be able to consider the proposed amendments enclosed herewith as an annexe.

Thanking you.

Yours sincerely

DR W R RASANAYAGAM

18 November 2009

Dr W R Rasanayagam

RE: LETTER TO MINISTER FOR HEALTH ON PROPOSED AMENDMENTS TO THE MEDICAL REGISTRATION (AMENDMENT) BILL

Dear Dr Rasanayagam

I refer to your letter dated 28 October and 6 November 2009 addressed to the Minister for Health proposing further amendments to the Medical Registration (Amendment) Bill.

In your letter, you expressed concerns that allowing the Singapore Medical Council (SMC) to file an appeal on behalf of the complainant may result in a defendant medical practitioner being prosecuted twice, and the involvement of the Minister in the process of appointing review committees can become an embarrassment. Your letter concluded by proposing to allow a complainant to file a direct appeal to the law courts instead of the SMC.

As you would be aware, under the current Medical Registration Act (MRA), decisions of the Disciplinary Committee (DC) are arrived at independently of and without reference to the SMC. Insofar as appeals to the High Court are concerned, the general position is that parties to a proceeding ordinarily have legal standing to appeal from those proceedings but not non-parties, and complainants fall into the latter category. The current position under the MRA, whereby the defendant medical practitioner has legal standing to appeal but not the SMC, is an anomaly which we intend to rectify in the Bill.

On the other hand, a complainant's lack of standing to appeal accords with the general position at law and we see no grounds

for deviation. In recognition of the complainant's interest in the outcome of the proceedings, we are of the view that it would be appropriate for the complainant to be accorded some avenue for initiating an appeal. Thus, the Bill allows him to apply to the Minister who will appoint a Review Committee to assess if there are sufficient merits to warrant an appeal, after all factors including the public interest are considered. Should the Review Committee conclude that an appeal ought to be filed, the SMC, as mandated by law to uphold professional standards, will be instructed by the Minister to file the appeal. It is unlikely that there will be a significant number of such appeals.

Insofar as the argument goes that SMC lodging an appeal constitutes a second prosecution of the defendant medical practitioner, we would like to point out that an appeal from the DC decision is part and parcel of the same proceeding, and is not a second prosecution.

We appreciate your interest in this Bill and for taking the time to send in your views on the matter.

**A/PROF PATRICK TSENG
FOR PS (HEALTH)**

cc: Prof K Satku – Director of Medical Services

26 November 2009

A/Prof Patrick Tseng
Ministry of Health
Singapore

Dear Professor Patrick Tseng

Thank you for your letter dated 18 November. My late reply is because I was away in Malacca to attend the Medical Alumni reunion which ended on Sunday 22 November.

I wish to refer to parts of paragraph 3 of your letter such as "decisions of the Disciplinary Committee (DC) are arrived at independently of... the SMC" and "the defendant medical practitioner has legal standing to appeal but not the SMC". This argument is a non sequitur – it does not follow from any other existing law, except the present MRA which is of your own making. It was drafted by a previous SMC perhaps almost 10 years ago in its wisdom or lack of it.

All that needs to be done is to legislate in the new MRA that all Disciplinary Tribunals (DTs) will henceforth report their judgement to the full SMC which will then exercise its inherent powers to confirm or reject the findings of the DTs. It is invidious and demeaning for the SMC, which is responsible for defining the ethics and the parameters that regulate professional medical etiquette, to abdicate its authority to

govern the medical profession and appeal to an external body such as the High Court to regulate SMC's internal functions.

The complainant can be given the right to appeal to the SMC stating the grounds of disagreement. If the SMC rejects the judgement of the DT in any particular case then the option for the SMC is to order a re-trial with a reappointed DT using different or more senior doctors and lay persons. If the complainant is still not satisfied with the second verdict then he or she should be advised to pursue their case by initiating an independent action in the Civil Courts at their own expense. Our case notes can be released to their appointed solicitor.

DR W R RASANAYAGAM

cc: Minister
Prof K Satku – DMS and Registrar, SMC
Members of SMC

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