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Our Ref: LS/84/(PUBCONSULT-GEN)//09/KG
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12 March 2009

Permanent Secretary (Health)
Ministry of Health
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BY E-MAIL AND POST
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No of pages : 7 page(s)
(including this page)

Attn: Mr Desmond Lee
Deputy Director (Legal)

Dear Sir

PROPOSED AMENDMENTS TO THE MEDICAL REGISTRATION ACT

We refer to your letter dated 14 January 2009 inviting the Law Society to give its views on the proposed amendments as set out in the Public Consultation paper and the draft Bill.

The matter was referred to our committee for views. The members of the committee are-

1. Ms Kuah Boon Theng
2. Ms Mak Wei Munn
3. Mr Philip Fong
4. Ms Audrey Chiang
5. Ms Stefanie Yuen
6. Mr Charles Lin

We are pleased to enclose the committee's views on the matter.

Yours faithfully

Kenneth Goh
Director, Representation and Law Reform

Enc.

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PUBLIC CONSULTATION ON THE PROPOSED AMENDMENTS TO THE MEDICAL REGISTRATION ACT

The Law Society has been invited to give its feedback on the amendments to the Medical Registration Act ("MRA") proposed by the Ministry of Health and the Singapore Medical Council. By way of background, the 6-member Committee tasked by the Law Society to discuss and deliberate on the proposed amendments and to submit its views include lawyers who advise healthcare professionals and institutions on a regular basis as part of their professional practice.

The Committee's views on the proposed amendments are set out as follows-

1. Part VII MRA – Disciplinary Proceedings, Healthcare Committee Inquiries and Performance Assessments

1.1 Section 38(5): Composition of the Complaints Committee or Disciplinary Tribunal

This provision provides that an employee of the Ministry of Health may be a member of a Complaints Committee or Disciplinary Tribunal or Health Committee. However the Committee notes that a not insignificant number of complaints made against doctors are in fact filed by the Ministry of Health. Clearly in such cases, no employee of the Ministry of Health should be involved in considering the complaint. This may otherwise offend the Rules of Natural Justice. In any event the Committee is concerned as to whether allowing Ministry of Health employees to be involved in the Complaints Committee, Disciplinary Tribunal or Health Committee may vitiate the peer review mechanism and erode the objective of self-regulation.

1.2 Section 39 (1) (c): Complaints against registered medical practitioners

Section 39 (1) (c) allows a complaint to be made to the Medical Council if the professional services provided by a registered medical practitioner are not of the quality which is reasonable to expect of him.

It is unclear what "quality which is reasonable to expect" entails. The touchstone of what is competent and proper treatment appears to be taken from the perspective of the patient's own expectations, rather than standards of medical practice. Ironically, this would be a departure from the legal test of medical negligence and professional misconduct, with the profession seemingly imposing a different and more difficult standard than that upheld by the Courts. Medical practitioners may be exposed to the uncertainty of such professional complaints as the standard will most likely span a wide range of public opinion. Apart from the uncertainty that it creates, this provision may spawn additional complaints, some of which may be frivolous or lacking in substance.

1.3 Section 42: Extension of time for Inquiry by Complaints Committee

Section 42(1) gives a time limit within which a Complaints Committee has to complete its inquiry, namely:

a. 3 months from the date on which a complaint received by the Singapore Medical Council has been laid before the Complaints Committee or

b. 3 months from the date on which directions are given to an investigator to commence investigations pursuant to a complaint laid before a Complaints Committee,

whichever the case may be.

It is however observed that for Section 42(2), there is no stipulated timeframe within which a Complaints Committee is to give directions to an investigator to carry out the necessary investigations. As such, in theory, at least, the current proposal may allow a Complaints Committee a period of up to 6 months before it is required to seek an extension, e.g. when it gives directions to an investigator toward the end of the 3 month period. A fortiori, there is ambiguity as to whether time runs from the first direction or subsequent directions to an investigator.

It is also observed that it is unclear from Section 42(2) when a request for an extension of time can be or is to be made. There have been some issues raised in relation to this in the past and it would be good if it can be made clear whether the request for extension must be made before the 3 months run out.

It is proposed that in any event, for the purposes of expediency and accountability, that the period of 3 months should run from the time a complaint is laid before a Complaints Committee and that the Complaints Committee should seek an extension should it be unable to complete its inquiry within that time, irrespective of when or if it has given directions to an investigator. In this way, the Chairman of the Complaints Panel will be informed as to the progress of each complaint at regular intervals (of three months), instead of at irregular timings dependent on whether or when investigators are issued directions.

It is also proposed that Section 42(2) be modified to indicate whether an extension of time must be sought before the 3 months period has expired or whether it can be sought even after the period has expired.

1.4 Section 43: Conduct of Investigation

Section 43(1) provides that the investigator shall, if he is of the opinion that the medical practitioner should be called upon to answer any allegation made against him, invite the medical practitioner to give a written explanation. This suggests that whether an explanation should be sought appears to be at the discretion of the investigator, and hence it is possible that a doctor may not be called upon to answer the allegations if the investigator deems this to be unnecessary.

Some members of the Committee welcome this change. There have been cases where the complaints clearly have no merit on the face of the complaint, and the investigator should have the discretion to dismiss such complaints without the need of putting the medical practitioner through the expense, time and stress of formulating a reply. Yet another view offered is that the investigator who exercises his discretion not to seek an explanation may give rise to subsequent allegations that his report was incomplete, or else the medical practitioner may complain of being deprived of his right to be heard or to give his defence to the Complaints Committee. Hence it may be better to stay with the current provisions which stipulate that the medical practitioner should be given a copy of the complaint and to provide his defence or response to the same.

In addition, it is noted that the Complaints Committee has the express right under Clause 47(4) to seek legal advice. It is suggested that the investigator so appointed should also have such right to seek legal advice in the course of his investigations.

1.5 Section 47: Investigation Report

Section 47(3) states that no person shall disclose the contents of the investigation report or any information contained in any document obtained in the course of any investigation.

The aim of this section is to preserve the confidentiality of the findings of the investigator, and restrict the dissemination of such material.

While the Committee fully understands why it is important for the contents of the investigator's report and recommendations to be kept confidential, the section is unclear as to whether the documents or statements of witnesses obtained in the course of any investigation can or cannot be used in a subsequent hearing by the Disciplinary Tribunal. If the material cannot be used, this may lead to duplication in order to re-obtain documents and other evidence for use in the hearing by the Disciplinary Tribunal.

Even if the investigation report is not to be disclosed, it is proposed that consideration be given to allow documents or statements obtained in the course of the investigation to be used in the Disciplinary Tribunal hearing in order to expedite matters and minimise wastage of resources.

1.6 Section 50: Extension of Time for Hearing by Disciplinary Tribunal

Section 50(9) provides that the Disciplinary Tribunal may apply to the Medical Council for an extension of time if it fails to make its finding and order within 6 months from the date of its appointment.

As in the case of the Complaint Committee, it is proposed that a clarification can be made in this clause as to whether such extension should be applied before the expiry of the 6 months period or whether it can be sought at any time.

1.7 Section 52: Costs and expenses ordered against the medical practitioner

Section 52(8) provides that in the event that the Disciplinary Tribunal finds against the medical practitioner, the Disciplinary Tribunal may order him or her to pay the costs and expenses of the hearing.

It is proposed that for avoidance of doubt, specific references should be made to payment for expert witnesses and other costs as presently set out in Section 45 (4) to (7) as this may also be reflected in the legal bills from the advocate and solicitor.

1.8 Section 54: Appeal by Complainant against an order of the Disciplinary Tribunal

Section 54 allows, inter alia, an aggrieved complainant to appeal to the High Court against the Disciplinary Tribunal's decision. This is separate from and independent of the right of civil remedy.

It is however observed that a complainant would have practical difficulties in filing an appeal. For one, he or she is not present throughout the disciplinary hearing. He or she may not have been furnished with any notes of evidence or documents used in the hearing. In this regard, it is not certain as to what is the format of the 'order' which will be served on him or her, upon which he or she may decide to exercise the right of appeal. It is unclear from the proposed changes whether the medical practitioner concerned will be made a party to the appeal or whether he or she has a right to be heard or intervene in the appeal. At the same time, the procedure for such an appeal by a complainant is not set out.

The present Section 41 (7) already provides that a complainant who is unhappy that the Complaints Committee has dismissed a complaint can appeal to the Minister of Health, who can then make various directions to the Complaints Committee including holding a Disciplinary Inquiry. If the complainant is to be given the further right of appeal to the High Court against the Disciplinary Tribunal's decision, the complainant must now be given enough information to make a considered decision whether to exercise such a right. This is especially so in view of the costs consequences that the complainant bears in filing an appeal. At the same time, it must be noted that giving complainants the right of access to documents and evidence available to the Disciplinary Tribunal may encourage complainants to apply for such access, whether or not they have any genuine intention to consider an appeal. And yet if access to full information is not given, then there is little protection for the Singapore Medical Council or the doctor concerned against frivolous or unmeritorious appeals. As such, the Committee is of the view that the amendment to grant the right of appeal to an aggrieved complainant requires further deliberation in view of its extensive implications. It cannot continue to maintain that disciplinary action is within the purview of the profession as an act of self-regulation in professional discipline, and yet extend a right of appeal to the aggrieved complainant that tends to suggest that this is a matter involving the individual's interest. After all, there is nothing

in the disciplinary process that is intended to take away from a complainant any right of legal recourse that he or she may already have.

1.9 Section 66A: Compounding Offences

Clause 66A provides that the Medical Council may, in its discretion, compound any offence under the MRA which is prescribed as a compoundable offence.

The Committee notes that the list of what kind of offences which are compoundable has not been specified. Our view is that certain "technical" offences or offences relating to licensing issues may be appropriate for purposes of compounding.

2. The Committee further proposes the following changes and refinements to the MRA -

2.1 Expediting Disciplinary Proceedings by way of Pre-Trial Conferences

Under the current MRA and Medical Registration Regulations, a Notice of Inquiry ("NOI") has to be sent out to give notice to the medical practitioner of the charges that have been framed against him or her and that the NOI has to state when the charges will be heard at a stipulated date, time and place.

This requirement means that a Disciplinary Committee/Tribunal has to be constituted for the purposes of the hearing at the stipulated date, time and place. The stipulated time and place may not be suitable for the medical practitioner and/or his/her legal representative. Further the medical practitioner will only learn for the first time of the nature of the charges against him when he receives the Notice of Inquiry. He will need time to instruct his lawyers, appoint an expert and to gather the evidence to rebut/defend the allegations. This frequently gives rise to a request for adjournment of the inquiry date and has also led to rescheduling difficulties and delay.

In order to reduce such problems, it is proposed as follows:

a. Powers be given to the Registrar or Assistant/Deputy Registrars (collectively "the Registrar") to give directions in relation to the case management of the disciplinary hearing;

b. Regulation 18 should be amended to remove the requirement for the NOI to state the date, time and venue of the disciplinary hearing.

In this way, the Registrar may call for a Pre-Trial Conference ("PTC") any time after service of the NOI for the prosecution and the defence to attend in order to deal with administration and other issues, without the need to constitute a Disciplinary Committee/Tribunal ahead of time with its attendant scheduling problems.

At the PTC or further PTCs, the defence may inform the Registrar whether it will be calling any experts, what course of action it will take as well as the number of witnesses, etc. The Registrar will then be able to determine the

number of days required as well as fix the schedule for the hearing and give directions for time lines.

It is envisaged that the flexibility provided will enable better case management and this has been seen to be the case in the Courts as well as similar judicial processes such as hearings before the Strata Titles Board.

2.2 *Application to Postpone Effective Date of an Order by the Disciplinary Tribunal*

Currently, there is no provision which expressly empowers the Singapore Medical Council or a Disciplinary Tribunal to postpone a striking off or suspension order after a disciplinary hearing upon an application by a medical practitioner. However, in practice, a suspension will only take place one month after the Order and the Disciplinary Committee does exercise its discretion under the present Section 45 (2), (c). See also Section 46 (9) and (13). However there should be a provision that expressly provides for this.

It is proposed that an express provision be made to give the Singapore Medical Council discretion to postpone an order by the Disciplinary Tribunal upon application of the medical practitioner. This is because applications may be made after the hearing itself when the Disciplinary Tribunal is arguably *functus officio.*

Dated 12 March 2009

Members: Ms Kuah Boon Theng
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Mr Philip Fong
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Ms Stefanie Yuen
Mr Charles Lin