

**Submission by Dr Hon Pierre CHAN
on the Operation of the Medical Council of Hong Kong**

Supplementary Information

Dr Hon Pierre CHAN has provided a submission to the Tripartite Platform, seeking more information about the operation of the Medical Council of Hong Kong (MCHK). This paper provides the relevant supplementary information for members' reference.

A. Missions of MCHK

2. Operated under the principle of professional autonomy, the MCHK is an independent statutory body established under the Medical Registration Ordinance (MRO) for handling matters relating to the registration and regulation of doctors in Hong Kong. Article 142 of the Basic Law stipulates that the Government of the Hong Kong Special Administrative Region shall, on the basis of maintaining the previous systems concerning the professions, formulate provisions on its own for assessing the qualifications for practice in the various professions. Persons with professional qualifications or qualifications for professional practice obtained prior to the establishment of the Hong Kong Special Administrative Region may retain their previous qualifications in accordance with the relevant regulations and codes of practice. The Government of the Hong Kong Special Administrative Region shall continue to recognize the professions and the professional organizations recognized prior to the establishment of the Region, and these organizations may, on their own, assess and confer professional qualifications. The Government of the Hong Kong Special Administrative Region may, as required by developments in society and in consultation with the parties concerned, recognize new professions and professional organizations.

3. In 2005, MCHK laid down its missions of “Ensuring Justice, Maintaining Professionalism, Protecting the Public”.

B. Roles of MCHK and the two medical schools in setting the standards of medical training and the Licensing Examination

4. Under section 20I of MRO, one of the statutory functions of the Education and Accreditation Committee (EAC) of MCHK is to recommend and review the standard and structure of undergraduate medical education and medical training required for a person to become a registered medical practitioner. Since 1998, MCHK and under its aegis, EAC have been conducting an “Accreditation Exercise of the Medical Education and Training of the Chinese University of Hong Kong (CUHK) and the University of Hong Kong (HKU)” once every five years. Review of individual courses will also be conducted as and when necessary in order to maintain the professional standard of local medical graduates.

5. The Licentiate Committee (LC) of MCHK is responsible for administering and running the Licensing Examination for non-locally trained medical graduates. It is also responsible for assessing the performance of resident trainees during the period of supervised assessment. The five sub-committees established under LC, namely the Credentials Sub-Committee, Examination Sub-Committee, Internship Sub-Committee, Exemptions Sub-Committee and Review Sub-Committee, help oversee the overall operation of the Licensing Examination. To ensure that those receiving medical training outside Hong Kong have attained a professional standard comparable to that of local medical graduates, MCHK has been commissioning HKU and CUHK to assist in conducting the Licensing Examination to safeguard the quality of our medical services. The teaching staff nominated by the two universities currently serve as the chief examiners of various subjects of the Licensing Examination and they are responsible for drafting examination questions to be considered by the Examination Sub-Committee. The two universities will also assist in arranging the clinical examination. In addition, MCHK will invite overseas/external

examiners for the clinical examination to ensure the quality and standard of the examination.

C. Figures on complaints received by MCHK from 2013 to 2015

6. According to the record of the MCHK Secretariat, the breakdown of complaints received by MCHK from 2013 to 2015 is as follows -

	2013	2014	2015
Total no. of complaint cases received during that year	452	624	493
No. of cases being processed or pending more information	263	409	312
No. of cases having been initially considered by the Preliminary Investigation Committee i.e. Pre-PIC	189	215	181
Cases considered at Pre-PIC (if applicable)			
(a) Dismissed by chairman and deputy chairman of PIC in consultation with a lay member as being frivolous or groundless	146	130	149
(b) Referred to PIC	34	71	25
(c) Could not be pursued further because the complainants failed to provide further information or were unwilling to testify or the complaints were anonymous or withdrawn, etc.	9	12	7
(d) Referred to the Health Committee	0	2	0
PIC chairman	Dr CHOI Kin, Gabriel		
PIC deputy chairman	Prof FOK Tai-fai, SBS JP		

Note: Figures only include complaints received during that year and the status of those cases during the year

D. Arrangement for handling conflicts of interest

7. MCHK has an established mechanism on handling conflicts of interest. Sections 7(1) and 7(2) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation require PIC members to declare interest upon receipt of a case. In general, a

member with conflict of interest will not participate in any deliberation or decision regarding the case.

8. According to the record of the MCHK Secretariat, PIC had handled a total of 313 cases from 2013 to 2015, among which PIC members had declared interest on 40 cases (PIC chairman had made such declaration for eight cases). All PIC members concerned did not participate in the discussion of relevant cases.

E. Participation of lay members

9. At its Policy Meeting held in November 2001, MCHK discussed the arrangement on consulting a lay member during the Pre-PIC stage. Members agreed that all cases considered frivolous or groundless by the chairman and the deputy chairman of PIC should only be dismissed after consulting a lay member. From 2013 to 2015, the number of cases handled by lay members at Pre-PIC stage was as follow -

	2013	2014	2015
Cases handled by lay members at Pre-PIC stage	146	130	149

Note: Figures only include the complaints received during the year

F. According priority to cases involving major public interests

10. MCHK notes that the public has raised concern over its processing time of handling complaints and considers that there is a need to speed up its complaint handling process and increase the frequency of conducting inquiries. MCHK has also reached a consensus that priority should be accorded to those cases involving sensitive matters and major public interests. MCHK will arrange additional inquiry to handle these cases provided that the scheduled inquiries will not be affected. From 2013 to 2015, MCHK had fast-tracked the conducting of inquiries for three cases involving sex crimes. It took an average of 25 months to

complete these three cases¹. The judgments of the two conviction cases can be found at the following links. Another case had been dismissed.

http://www.mchk.org.hk/english/complaint/PDF/Judgments_20151207.pdf

http://www.mchk.org.hk/english/complaint/PDF/Judgments_20151030.pdf

G. Processing time required for complaint cases

11. Regarding Dr Hon Chan's questions about the time required for processing complaints, the estimated time provided by the MCHK Secretariat is an average figure based on the 1 556 cases handled by MCHK during the three years from 2012 to 2014.

12. Complainants are required to provide information such as statutory declaration and medical reports for MCHK to consider the complaint cases. MCHK may seek advice from various independent experts or even legal advice as necessary so that it can consider the cases comprehensively in an objective and fair manner. Processing time of complaints varies as each complaint is different in terms of nature and complexity, as well as the availability of information provided by the complainant. For example, among the cases handled in 2013 to 2015, there was a case that the legal officer representing the Secretariat considered that there was a need to change the expert witness and rewrite the expert report and the relevant defendant doctor had changed legal representation. It took eight years for MCHK to complete that complaint². Paragraphs 13 to 18 below provide supplementary information on the time required by MCHK to handle complaints at different stages.

Pre-PIC Stage

13. According to section 8(1) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation, the chairman or

¹ From receipt of complaint to conducting of inquiry

² From receipt of complaint to conducting of inquiry

deputy chairman of PIC may require the complainant to provide further information and/or statutory declaration. The time required for this procedure depends on the complexity of the case and how long it takes for the complainant to provide the information. Based on past experience, some complainants could provide the information within several weeks, while some might take more than three months, especially cases for which further submission of information was required after the first submission. At present, there are five offices (including MCHK Secretariat) under the Department of Health providing free-of-charge declaration service to complainants. Complainants may also make declaration at District Offices

14. Under reasonable circumstances, the chairman or deputy chairman of PIC has general power to conduct investigation and inspect the information so as to decide whether the case is frivolous or groundless, or should be referred to PIC for consideration. Upon receipt of instructions from the chairman or deputy chairman of PIC for obtaining medical reports/records, the MCHK Secretariat will contact the complainant for consent before approaching the relevant hospital/clinic for such reports/records. The medical reports/records so obtained will then be sent to the chairman or deputy chairman of PIC for consideration or submitted for consideration at the PIC meeting. The time required for this procedure depends on the complexity of the case and how long it takes for the relevant hospital/clinic to provide the information required. Based on past experience, some hospitals/clinics could provide records/reports within one month, while some might take more than three months, especially for cases with a long medical history involving a large number of hospitals/clinics.

15. The chairman or deputy chairman of PIC may seek assistance from outside experts for him or her to decide whether the case is frivolous or groundless, or should be referred to the PIC for consideration. The time required for this process depends on the complexity of the case. Starting from October 2016, honorarium is provided to experts providing expert advice at Pre-PIC stage. It is expected that this arrangement will help reduce the time required for obtaining advice from independent experts.

PIC Stage

16. It is observed that the cases handled by MCHK are becoming more complex. In particular, the number of cases involving “disregard of professional responsibility to patients” is on the rise. In view of the nature and complexity of such complaints, MCHK needs to seek independent expert advice or even legal advice in considering these cases. As a result, the processing time may become longer. The average time required for drafting PIC notices containing charges against the doctor concerned and preparing case bundles is three months and two months respectively. In October 2016, the Government provided additional resources to MCHK, with a view to shortening the time required for the above work.

17. According to the latest policy of MCHK, PIC is responsible for formulating and considering the draft charge³ for cases referred to PIC for consideration. In general, if PIC considers that there is a need to formulate and consider the draft charge for a case, PIC needs to meet for at least three times i.e. (a) consider the case and formulate draft charge, (b) consider legal advice of the Department of Justice (DoJ) on the draft charge, and (c) consider the case when all relevant evidence is ready. Constrained by the existing capacity of PIC, the expected waiting time for a new case to be considered by PIC is about 12 months⁴.

Disciplinary Inquiry Stage

18. At present, MCHK can only hold one inquiry meeting at any one time. It is, therefore, not possible for it to clear the existing backlog of inquiry cases. Most of the savings in processing time will also be offset by the waiting time for inquiry. As it is not possible to convene inquiry hearings more frequently and given the increasing backlog of cases at inquiry stage, the waiting time for a new case to be heard upon referral by PIC has increased to about 3 years. As at February 2017, the latest case referred by PIC for inquiry will only be heard in November 2019.

³ With reference to the judgment of the High Court case HCAL 46/2015, MCHK decides that PIC, instead of PIC chairman, should formulate and consider the draft charge.

⁴ MC Secretariat and DoJ will work concurrently while on the wait.

(H) Duties of the Legal Adviser

19. As stipulated under section 3B of the Medical Registration Ordinance, only one Legal Adviser can be appointed to MCHK. The duties of the Legal Adviser are to facilitate MCHK and its committees or working groups to discharge their statutory functions, including -

- (a) attending and providing legal advice on matters relating to disciplinary inquiries / appeal hearings / restoration hearings of MCHK, and drafting the judgments on the basis of the Council's decision, findings and reasoning for its consideration; and advising on court appeal and judicial review cases where necessary;
- (b) attending meetings of MCHK and its committees or working groups on regular and/or ad hoc basis, advising on the legal implications of the policies and issues raised at the meetings, and providing comments on the relevant discussion papers, minutes of meeting and follow-up actions as necessary; and
- (c) providing legal advice on other matters as necessary such as registration of doctors, legislative amendment, election of MCHK, publications of the Council, and correspondence received and/or issued by MCHK.

20. As stipulated under section 6 of the Medical Registration (Miscellaneous Provisions) Regulation, the Legal Adviser shall be present at every inquiry and appeal hearing held by the Council, Council meeting held for the purpose of making an order upon recommendation of the Education and Accreditation Committee and the Health Committee or for the purpose of reviewing an order of the Council, and Council meeting held pursuant to an election petition. The Legal Adviser will provide legal advice to the Council for other meetings mentioned above so as to facilitate the Council to make informed decisions and discharge its statutory functions.

21. From 2013/14 to 2015/16, the number of hours that the Legal Adviser had spent in the work as mentioned in paragraph 19 above are as follows -

No. of hours	(a)	(b)	(c)	Total
2013/14*	1 209 (65.6%)	599 (32.5%)	35 (1.9%)	1 843 (100%)
2014/15	917 (55.2%)	645 (38.9%)	97 (5.9%)	1 659 (100%)
2015/16	968 (58.5%)	552 (33.4%)	133 (8.1%)	1 653 (100%)

*The current Legal Adviser came on board in mid-November 2013

**Tripartite Platform Secretariat
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