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Dear Colleagues

The recent issues raised in the ST Forum and media over the Singapore Medical Council (SMC)'s handling of complaints must be of significant concern to all medical practitioners. I would like to take this opportunity to put the various issues in perspective. I hope that each of us will take the time to understand the issues. I write in all sincerity and I will try to be as transparent as is legally possible.

(A) SMC's processes are dictated by the prevailing law

The SMC's Disciplinary Committees (DCs) are appointed as committees which are bound to follow the composition and processes laid down for them by Parliament in the Medical Registration Act (MRA). This Act has been in force for many years and the processes provided were fashioned by legal experts. Over the last several years, we have recognised that changes were needed. You will appreciate, however, that changing the law takes much effort and time and that, in the interim, the old processes apply. For complaints that were made to SMC before the current MRA came into force in December 2010, the DCs are required to conduct their processes as provided for under the MRA prevailing before December 2010 (old MRA).

(B) The CCs and DCs' deliberations

The Complaints Committees' (CCs) deliberations and the DC hearings are conducted independently of the Council. The Council has not actively sought conviction of any doctor who was referred by the CCs to the DCs. Over the last few years, only about 10% to 15% of all complaints handled by the CCs were referred to the DCs. Complaints lodged by MOH constituted about 15% of all complaints and, like the other complaints, the majority were not referred to the DCs. The prosecution in DC cases is handled by lawyers working with the CCs to draft the charges; MOH and SMC have no hand in this. In addition, I do not sit on the CCs

or DCs to avoid any perception of influence. Our peers, who are appointed to sit on the DCs, judge these doctors.

(C) Changes to the law

The Council had recognised shortcomings in the old MRA and proposed for: (a) a more efficient yet robust system for complaints management; (b) the option for the renamed Disciplinary Tribunal (DT) to be made up wholly of non-Council members; and (c) the chair for disciplinary hearings to be a senior lawyer or a retired judge.

As regards (a) (i.e. a more efficient yet robust system of complaints management), the current MRA now allows the CCs greater powers to resolve the complaint through measures which were previously available only to the DCs without having to go through the ordeal of the DT process. These include remediation measures for the doctor and mediation between the doctor and the complainant. We believe that these are progressive changes which will improve the processes for both the doctor and the public and will enable better corrective steps to be taken against the doctor where necessary.

As the SMC clears the backlog of its old cases, we can be happy that the new measures will be available to the CCs for current cases. These new measures are, however, not without effort. The members of the CCs, which will include both doctors and laypersons, will have to be trained and given legal guidance on the new regime and this will inevitably require many hours of voluntary work by them.

As regards (c), with the appointment of a senior lawyer or retired judge as chair, the DT would still be constituted with a majority of doctors so that questions of fact relating to medical issues are fully and justly considered. The legal person appointed to chair would not have a casting vote in the event of a tie and the views of the majority of doctors on the DT would prevail. To a large extent, the Chair's role would be to manage the conduct of the hearing. Feedback from three past Presidents of SMC supported this measure in (c) above.

The revisions were put up for public and professional consultations. One of the main concerns of the Singapore Medical Association (SMA) was with regard to having a senior lawyer chair the DT. SMA, in its feedback on the consultation in 2009, recommended that a Council member should chair the DT. We eventually proposed a Panel of Chairmen comprising doctors who are Council members, doctors who are not Council members and some senior lawyers, from which the Chairman of the DT could be appointed.

The Director of SMA's Centre for Medical Ethics and Professionalism, Dr T Thirumoorthy, has noted justice has to be seen to be done. Dr Thirumoorthy pointed to the example of the Medical Practitioners Tribunal Service (MPTS) in the UK which was launched in 2012. This tribunal is currently chaired by a lawyer and the panels they set up to judge doctors may be chaired by a medical or non-medical person. We believe that the changes we have made to include non-council members and lawyers in our DTs, as members or as the chair, are a step in this direction. MPTS is also evolving and has proposed that the chairperson of the panel hearing the case be legally qualified in some or all hearings.

(D) Recent successful appeals

If I may now come to Dr Low Chai Ling and Dr Georgia Lee's cases - essentially these were cases involving various questions of law. One of these was whether the doctors should be judged according to SMC's Ethical Code and Ethical Guidelines (ECEG), which were the only guidelines that were in existence at the time of the alleged misconduct, or according to the "Guidelines on Aesthetic Practices" which were issued in 2008 after the alleged misconduct, but before the inquiries took place. This is a question of law and our colleagues were guided to use the ECEG. However, the High Court, which heard Dr Low's appeal directed that the "Guidelines on Aesthetic Practices", while issued after the time of the alleged misconduct, articulated the standards that were applicable at that time. It was for such reasons that we had proposed for the current MRA that lawyers chair the DTs to resolve any legal issues which may arise during the course of the inquiry. There are already some jurisdictions which only appoint a lawyer as the chairperson.

(E) DC's Verdicts from 2008 to 2012

During the last 5 years, the DC has handed down 83 verdicts including 3 cases where the doctors were acquitted. In 11 of these cases, the doctors have appealed to the High Court. Most recently, the DC's decision in Dr Low Chai Ling's case was set aside and SMC did not contest the appeal of Dr Georgia Lee for the reasons cited above in Dr Low's case. Of the remaining 9 appeals, the DC's decision was upheld in 5 cases, set aside in 1 case, the doctor withdrew the appeal in 1 case and 2 other appeals are pending. In summary, in 6 of the 9 appeals which have concluded, the DCs' decisions have been upheld. In the remaining 3 appeals, where the DCs' decisions were set aside, I believe the Court's determination was based on legal considerations.

(F) Elections: Should Council members be elected or at least elected members be in the majority?

There is no perfect system for self-regulation. Many jurisdictions no longer have elected members on their medical council, for example, the UK, New South Wales and Victoria in Australia and California and New York in the US where all the members are appointed. For those that have elections, the elected members are often in the minority, for example, New Zealand and Malaysia. Many jurisdictions also have a number of lay persons on the Council including the UK, New Zealand and Hong Kong.

It is thought that if only elected medical members sit on the Council, or where the elected medical members are in the majority, regulatory capture may occur. This risks the profession becoming self-serving and not acting in the interest of the public as it should. Our Parliament, as reflected in the MRA, has allowed only doctors to continue to be represented on the Council with equal numbers of elected and nominated members except for the Director of Medical Services who holds office as Registrar by virtue of his position as provided in the MRA.

While having some elected members is a privilege we enjoy compared to many other developed countries, we must ensure these doctors represent the profession. Compulsory voting is thus practised. Usually, about 98% of our doctors vote and of these, about 80 to 85% vote for one or more candidates. We cannot have a situation where only a handful of doctors vote and then claim that the elected doctors represent the profession.

(G) Costs

One other issue which has been raised concerns the conflicts which may arise because of the costs involved in running the organisation. Cost is an administrative concern of every organisation as it would be even to an independent body if one was to be established. As regards the SMC, the fees collected from doctors are not expected to manage all of our expenditures and costs. We have considerable Government financial assistance to ensure that our processes are not compromised, as we act in the interest of the public.

There is no perfect system for self regulation but the SMC will continue to evolve and make adaptive changes for the good of the public and the profession. We welcome suggestions from colleagues which are made in good faith for the purpose of improvement. Please write directly to the Council or to me.

The SMC has also appointed a Review Committee to optimise processes under the current MRA and to make suggestions for future changes to the MRA. The Council, on its part, will ensure that all complaints are managed in a fair manner.

I trust that, if you are called upon to sit in judgement of your colleagues, you will always act fairly and with a clear conscience.

Yours sincerely

Prof K Satku
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Registrar, Singapore Medical Council