

Exchange of Letters in the ST Forum between SMA and SMC



In his article “Professional Misconduct, Patient-Doctor Dispute Resolution and the Medical Council”, published in the November 2012 issue of *SMA News*, Dr T Thirumoorthy highlighted the merits of setting up an independent body to take over the disciplinary process for doctors, to avoid any possible conflicts of interest. An example is the UK’s General Medical Council, which transferred its adjudication responsibilities to a new independent tribunal service known as the Medical Practitioners Tribunal Service.

Dr Thirumoorthy pointed out that the President and the majority of members of the Singapore Medical Council (SMC) are appointed by the Minister for Health (while the remaining SMC members are elected by doctors working in Singapore). Also, the Director of Medical Services is the registrar of SMC. However, the Ministry of Health has

been “a major complainant” to SMC. In addition, under the present system, SMC receives complaints, appoints the complaints committees and disciplinary tribunals (both of which feature SMC members), appoints the prosecuting counsel, and receives fines paid by doctors found guilty of professional misconduct. Dr Thirumoorthy noted that in effect, SMC was “the investigator; prosecutor; judge and jury in the disciplinary process”.

Salma Khalik made reference to Dr Thirumoorthy’s piece in an article titled “Medical council: prosecutor, judge, jury”, published in the *Straits Times* (ST) on 30 December 2012.¹

This was followed by an exchange of letters in the ST Forum between SMA and SMC. We have reproduced SMA’s letters in full and provided summaries of SMC’s responses.

SMC responds to Ms Khalik’s article

Dr Lau Hong Choon, Executive Secretary, Professional Conduct & Professional Standards Division, SMC, responded to Ms Khalik’s article in a letter to the ST Forum on 9 January 2013.²

In his letter, titled “Disciplinary cases fairly heard: SMC”, Dr Lau noted that SMC’s cases reported in the media recently were dealt with under the old Medical Registration Act (MRA) as the complaints were made before amendments to the MRA came into force on 1 December 2010. He also explained that SMC is now no longer bound by law to appoint its council members to disciplinary tribunals, and that experienced doctors

and lawyers can now be appointed to the tribunals as members or as the chair.

Dr Lau also wrote that Ms Khalik’s article cited Dr Thirumoorthy as pointing out that “it is not in SMC’s interest to lose a case, and if a doctor is acquitted, SMC has to bear its own legal fees”, which suggests that “disciplinary cases may be unfairly heard”. He stated that the tribunals and disciplinary committees (DCs) are formed to determine the truth through fair and independent hearings, and that SMC never directs the outcomes of any hearing, nor has it made the issue of legal fees a factor influencing the DCs’ decisions.

SMA replies

SMA replied to SMC's response in a letter that was published in the ST Forum on 11 January, which is reproduced below.³

Doctors' concerns not frivolous: SMA

POINTING out that there may be a perception of conflict of interest is not tantamount to alleging intentional wrongdoing on anyone's part ("Disciplinary cases fairly heard: SMC" by the Singapore Medical Council; 9 January 2013). The rules of natural justice encourage an absence of conflict of interest such that justice is not just done but has to be seen to be done.

Other than the director of medical services, all SMC members are unpaid volunteers. They make great sacrifices for the public and the profession when they serve on the SMC, and we are grateful to them.

However, we still need to examine how things are done at the administrative and prosecuting levels within the SMC.

We let the following facts speak for themselves:

- The law has always required the majority of SMC members to be appointed by the Government or publicly owned medical schools. As such, the need to guard against perceptions of conflict of interest still remains even though the SMC is now able to appoint non-council members such as senior doctors and lawyers to the disciplinary tribunal.
- Doctors' annual subscriptions were raised on 1 April last year by 33 per cent (from \$300 to \$400), which implies costs are increasing rapidly since the SMC's running costs are largely funded by doctors' subscriptions.
- A disconcerting number of SMC judgements have been overturned by the courts on appeal in recent years. The

drafting of charges in a recently overturned case was described by the courts to be "legally embarrassing".

- In the last SMC election, each of the some 8,000 doctors fully registered with the SMC had to cast three votes. Despite a very respectable slate of candidates, about 10,000 votes, or 40 per cent, were cast for no candidate.

The SMC announced almost three months ago that it would appoint a review committee. If indeed all is well within the SMC, as its letter seems to imply, there would be no need to make this announcement. To date, this committee has not been formed.

We urge the SMC to do so quickly. We suggest that for objectivity:

- The committee should not consist of current or recent SMC members and senior administrative staff. However, they can act as resource persons; and
- The findings of this committee should be reported to the Health Minister and thereafter made public.

The concerns expressed by doctors should be seen as a hope for change and improvement, and not be characterised by the SMC as "frivolous comments".

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SMC's second response

SMC's Dr Lau Hong Choon responded with another letter, "Very few verdicts get overturned: SMC", which was published in the ST Forum on 23 January.⁴

Referring to SMA's 9 January letter, Dr Lau commented that the writers, Dr Thirumoorthy and Dr Wong Chiang Yin's comment on the last SMC election was "erroneous", and went on to clarify that only 20% of voters cast blank votes for all candidates, while the remaining 80% voted for one or more candidates.

With regard to the "disconcerting number of SMC judgements (...) overturned" that Dr Thirumoorthy and Dr Wong mentioned in their letter, Dr Lau explained

that SMC had issued 83 verdicts in the past five years, including three acquittals, which he pointed out was not a "disconcerting number". He also noted that under the MRA, such "appeals serve as checks and balances" in their system.

Dr Lau wrote that the SMC hopes that as the current MRA comes into full play, it will create better remediation and regulation that improve practice and patient care. He concluded that the review committee, which includes senior lawyers and doctors, should also be given the "unbiased opportunity to review the current MRA provisions and disciplinary processes".

SMA's second reply

SMA replied with a second letter to the ST Forum, which was published on 29 January 2013, and reproduced below.⁵

SMC elections and disciplinary process: SMA replies

IN THE response ("Very few verdicts get overturned: SMC" by the Singapore Medical Council; 23 January) to the Singapore Medical Association's letter ("Doctors' concerns not frivolous: SMA"; 11 January), Dr Lau Hong Choon said that only three out of 83 verdicts issued by the SMC were overturned in the last five years, and this was "not a disconcerting number".

In a letter dated 17 January to all doctors, the director of medical services wrote that out of nine appeals in the last five years (2008-2012 inclusive), six were upheld.

This means that a significant one in three doctors who appealed managed to get the SMC verdict overturned.

The number is actually even higher because Dr Georgia Lee's case was counted as one that "the SMC did not contest", when in fact it was fully argued in court before the SMC subsequently reversed its earlier position.

There are other issues that need to be dealt with.

Inordinate delays in the disciplinary process were the subject of a few other cases that went to court.

Some cases have taken as long as four to five years to complete.

On the subject of how costs are awarded, we are aware that at least two doctors were ordered to pay full costs despite being convicted on some but not all charges.

This despite the court having already ruled on this issue in an earlier successful appeal in 2005.

Dr Lau stated that only 20 per cent of doctors cast blank votes in the last SMC elections.

This figure is significant and should not be treated lightly.

It is also a fact that about 40 per cent of all exercisable votes were blank votes, that is, cast for no one.

Whether other countries allow for medical council member elections is irrelevant. What is relevant is the hope and cries from the medical fraternity for honest self-examination, change and improvement in the SMC.

We are glad to note that the review committee has been formed since our last Forum letter.

For transparency and objectivity, its members should not be current or past members and administrators of the SMC.

The review should be comprehensive enough to regain the confidence of patients, the public and the profession in the disciplinary justice system of the SMC.

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References

1. Khalik S. Medical council: prosecutor, judge, jury. *The Straits Times* 30 December 2012.
2. Lau HC. Disciplinary cases fairly heard: SMC. *The Straits Times* 9 January 2013.
3. Thirumoorthy T, Wong CY. Doctors' concerns not frivolous: SMA. *The Straits Times* 11 January 2013.
4. Lau HC. Very few verdicts get overturned: SMC. *The Straits Times* 23 January 2013.
5. Chan T, Wong CY, Thirumoorthy T. SMC elections and disciplinary process: SMA replies. *The Straits Times* 29 January 2013.