SMC Disciplinary Processes: Time for a Redesign? (Part 1)

By Dr Bertha Woon

This article is the first instalment of a three-part series.

1. Introduction

Recently, while we are heartened that the Singapore Medical Council (SMC) announced the setting up of a review committee to "look into the administrative processes and develop more efficient and better ways to manage the disciplinary process and also mitigate the increase in time and expense for disciplinary proceedings", the composition of this committee has not yet been made public. In an earlier letter to the *Straits Times* (ST) Forum, SMA had hoped that "for transparency and objectivity, the committee members should not consist of current or past members and administrators of SMC. The review should be comprehensive enough to regain the confidence of the patients, the public and the profession in the disciplinary justice system of the SMC."[1]

Some of you may wonder why there is such a need for a review committee at this point in time.

The mainstream media reported the recent Court of Appeal ruling in the Low Chai Ling case[2] as the trigger. In this case, VK Rajah JA said, and I quote,

"Our perusal of the record of proceedings suggests that because the SMC adopted an equivocal approach about the case which it sought to establish against the applicant, the DC construed the various elements of each charge as cumulative and not as alternatives. We must add that it is not at all clear to us if this cumulative approach was indeed the intended thrust of the charges. If it was,

then why were the various limbs of each charge listed as possible alternatives? These unsolvable doubts make the charges legally embarrassing."[2]

In fact, this was not the only case that was disconcerting, but it is the most famous case thanks to ST's reporting. Examples of other recent cases which raised eyebrows among both the medical and legal communities were Dr Eric Gan Keng Seng's case, Dr Eu Kong Weng's case and Dr Gobinathan Devathasan's case.

To put things in context, let me introduce the concept of "natural justice". In common law, natural justice is a technical terminology for the rule against bias and the right to a fair hearing. While the term "natural justice" is often retained as a general concept, it has largely been replaced and extended by the more general "duty to act fairly".

2. The current process at SMC when a complaint is received

Under Section 39(1) of the Medical Registration Act (MRA), Cap 174, "any complaint (…) shall be made or referred to the Medical Council in writing and supported by such statutory declaration as the Medical Council may require, except that no statutory declaration shall be required if the complaint or information is made or referred by any public officer or by the Medical Council." One must question why there are differing standards. Should not the public officer make a statutory declaration as well? It is not difficult to do and costs next to nothing.

The Complaints Panel at SMC is appointed by statute.[3] The Chairman of the Complaints Panel, assisted by his panel members, vets all the complaints submitted to SMC. For efficiency, similar complaints are aggregated by themes and dealt with together. A preliminary panel consisting of the Chairman, one doctor and one layperson goes through the complaints to decide unanimously which ones can be dismissed.[4] If the unanimous decision of the panel is that no investigation is necessary, which happens most of the time, the Complaints Committee (CC) shall have a choice of whether to issue a warning letter or **refer the matter for mediation between the registered medical practitioner (doctor) and the complainant** (emphasis mine).[5] In the event that the CC refers a case for mediation under Section 42(4)(b)(ii), then Section 43 of the MRA will apply, where "the CC may order the personal attendance of the complainant and the registered medical practitioner before a mediator specified by the CC".

If the decision of the CC is not unanimous, the complaint has to be investigated under Section 48 of the MRA. The CC has to determine a specific list of items to investigate, that include asking the doctor for his exculpatory statements, asking for independent expert opinions, and gathering all relevant facts and evidence. This process takes time and can be delayed by non-cooperation by the relevant doctor, the complainant or both, or even the time needed to gather evidence. Although the CC is bound to start investigating within two weeks and complete the investigations within three months,[6] it can ask for extensions. Once the investigations are completed, the CC will proceed as per Section 49 of the MRA, which contains a long list of options, including an option to refer the case for mediation at Section 49(1)(h). Often, delays arise due to difficulties in getting the common dates for the CC members to come together.

Once a case is referred to the Disciplinary Tribunal (DT), mediation is no longer an option under current legislation. A doctor found guilty by the DT will be punished according to Section 53(2) to Section 53(8) of the MRA. The punitive measures are mostly in terms of money, which are paid to SMC.

Note that mediation is not an option when the complainant is the Ministry of Health. There is a problem of conflict of interest when the roles of complainant, mediator, judge and regulator are not clearly separated. SMA

References

1. Chan T, Thirumoorthy T, Wong CY. SMC elections and disciplinary process: SMA replies. The Straits Times 29 January 2013.

2. Low Chai Ling v SMC [2012] SGHC 191.

3. Attorney-General's Chambers. Medical Registration Act (Chapter 174), Section 38. Available at: http://goo.gl/5DXAM (URL is case-sensitive). Accessed 15 February 2013.

4. Attorney-General's Chambers. Medical Registration Act (Chapter 174), Section 42(4)(a). Available at: http://goo.gl/5DXAM (URL is case-sensitive). Accessed 15 February 2013.

5. Attorney-General's Chambers. Medical Registration Act (Chapter 174), Section 42(4)(b)(i) and (ii). Available at: http://goo.gl/5DXAM (URL is case-sensitive). Accessed 15 February 2013.

6. Attorney-General's Chambers. Medical Registration Act (Chapter 174), Section 42(1). Available at: http://goo.gl/5DXAM (URL is case-sensitive). Accessed 15 February 2013.

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