

Which changes in the SMC disciplinary process make a practical difference?

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Introduction

1. In December 2019, the Workgroup to Review the Taking of Informed Consent and the Singapore Medical Council's Disciplinary Process made recommendations on *inter alia* changing the disciplinary process for doctors.
2. On 6 October 2020, Parliament passed the Medical Registration (Amendment) Bill that contained many changes to the disciplinary process for doctors.
3. On 1 July 2022, these changes finally came into effect. Some changes are set out in the Medical Registration (Disciplinary Commission and Disciplinary Tribunal) Rules 2022 ("the New Rules"), while other changes are set out in the new Medical Registration Act ("the New MRA").

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The old disciplinary process

4. Before we go into the changes to the disciplinary process, we will briefly set out the old disciplinary process.
5. First, a complaint would be made to the Singapore Medical Council ("the SMC"). The SMC refers the complaint to the chairman of the Complaints Panel, who may appoint a Complaints Committee to look into the complaint. The Complaints Committee will normally send a copy of the complaint to the doctor and ask the doctor to submit a written explanation in response to the complaint. After considering the written explanation, the Complaints Committee will normally dismiss the complaint, issue a letter of advice/warning to the doctor, or order that an inquiry is to be held by a Disciplinary Tribunal.
6. If an inquiry is held by a Disciplinary Tribunal, the doctor will be given the charges, accompanied by an expert report or reports that the SMC will be relying on. The doctor can decide to plead guilty or not guilty to the charges. There will be a hearing that the doctor has to attend.
7. If the Disciplinary Tribunal finds the doctor guilty of the charges, the Disciplinary Tribunal will normally order the doctor to pay a penalty of up to \$100,000, suspend the doctor for a period of at least 3 months but not more than 3 years, or remove the doctor from the appropriate register.

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Changes to the disciplinary process

8. Many changes have been made to the disciplinary process for doctors. We will now highlight 4 of the more important changes, and whether they will, in our view, make a practical difference to doctors who are subject to a complaint.

Change number (1): The SMC's expert report(s) will no longer have to accompany charges

9. Under the old Medical Registration Regulations 2010, if a Complaints Committee decided to order that an inquiry by a Disciplinary Tribunal be held, the doctor would be given the charges accompanied by an expert report or reports that the SMC would be relying on. The SMC would therefore have to "show its hands" at the start of the Disciplinary Tribunal process.
10. The doctor could then consider the charges and the SMC's expert report(s) carefully, then decide whether to plead guilty or not guilty to the charges. The doctor could even engage and consult his own experts to seek their views on the SMC's expert report(s).
11. If the doctor thought that the SMC's expert report(s) were strong, the doctor may decide to plead guilty at an early stage of the Disciplinary Tribunal process.
12. Now, under Rule 10 of the New Rules, the SMC does not have to give a doctor its expert report(s) when it gives charges to the doctors. Without sight of the SMC's expert report(s), a doctor will not be able to gauge the strength of the SMC's case. It could be more difficult for a doctor to make a decision whether to plead guilty to the charges at this early stage of proceedings.
13. Rule 12 of the New Rules states that at a pre-hearing conference, the Disciplinary Tribunal can order that each party may appoint their own respective expert and prescribe the time within which any expert report is to be submitted. It is possible that the Disciplinary Tribunal may order expert reports to be exchanged between the parties at the same time. If this happens, a doctor may have to prepare his own expert report(s) first. The doctor may only make a decision whether to plead guilty after exchanging expert reports.
14. Further, Rule 11 of the New Rules states that a doctor may serve a summary of his defence on the SMC no later than 10 days before the date of the pre-hearing conference. To prepare his defence, a doctor may have to engage and consult his own expert(s) at this early stage of the proceedings.
15. Hence, under the New Rules, the SMC will not have to "show its hands" at the start of the Disciplinary Tribunal process. This could lead to doctors having to do more work in that they will have to prepare their expert report(s). This could also lead to fewer doctors deciding to plead guilty at an early stage of the Disciplinary Tribunal process. In our view, this change will make a practical difference to doctors who have been charged.
16. Interestingly, when it comes to lawsuits in Court, the reverse has happened. In the past, claimants did not have to "show their hands" and disclose their expert report(s) when they commenced their lawsuits against doctors; this was in keeping with other types of lawsuits involving expert evidence. However, in recent years, the Courts have issued new Practice Directions for medical negligence cases, making claimants "show their hands" and disclose their expert report(s) when commencing their lawsuits against doctors.

CLIENT NOTE



Change number (2): A new Inquiry Committee will review the complaint before the Complaints Committee

17. Under section 43 of the New MRA, complaints will first be sent by the SMC to an Inquiry Committee. The Inquiry Committee can require the complainant or the doctor concerned to answer questions.
18. If the Inquiry Committee is unanimously of the opinion that the complaint is frivolous, vexatious, misconceived, or lacking in substance, it can dismiss the complaint. It seems that one purpose of the Inquiry Committee is to filter out such complaints. However, under the old Medical Registration Act ("the Old MRA"), the Complaints Committee also had the power to dismiss a complaint if it was of the opinion that the complaint was frivolous, vexatious, misconceived, or lacking in substance.
19. If the Inquiry Committee is unanimously of the opinion that the complaint is not frivolous, vexatious, misconceived, or lacking in substance, and is unanimously of the opinion that no investigation is necessary, it can issue a letter of advice to the doctor. Again, under the Old MRA, the Complaints Committee had the power to issue a letter of advice to the doctor.
20. If the Inquiry Committee is unanimously of the opinion that an investigation is necessary, it can refer the matter to the chairman of the Complaints Panel to appoint a Complaints Committee to inquire into the matter and direct one or more investigators to investigate the matter.
21. Overall, we are of the view that the introduction of an additional committee, the Inquiry Committee, will not really make a practical difference to doctors. Whatever the Inquiry Committee can do could have already been done by the Complaints Committee under the Old MRA.

Change number (3): Timelines resulting in a faster process

22. The new MRA introduces timelines for the various steps in the SMC disciplinary process which will make the process faster than before. This change will make a big practical difference to doctors in that they will not have complaints hanging over them for a long period of time. There have been cases in the past whereby doctors had to wait for a number of years before their cases were completed.
23. Examples of these timelines are that the Inquiry Committee process should be completed within 5 weeks of the complaint being referred to the chairman of the Complaints Panel, and that the Complaints Committee process should normally be finished within 5 months of the complaint being received by the Complaints Committee.

Change number (4): Introduction of a limitation period

24. Under the old MRA, complaints could be made about doctors in respect of incidents that took place many years ago.
25. Under the new MRA, the SMC must not refer a complaint to the chairman of the Complaints Panel if the complaint is first made: -

- a. after the expiration of the period of 6 years after the date of the act, conduct, or occurrence that is the subject matter of the complaint; or
- b. 6 years after the earliest date on which the complainant had knowledge of the act, conduct, or occurrence, or could with reasonable diligence have discovered it if that period expires later than the period mentioned in paragraph (a) above;

unless the President of the Disciplinary Commission notifies the SMC that he is of the opinion that it is in the public interest to refer the complaint to the chairman of the Complaints Panel.

26. When it comes to lawsuits, there is normally a limitation period of 3 years except in certain situations such as the patient being a minor or lacking mental capacity, or a patient not having the requisite knowledge. The Court is however not given the discretion to extend a limitation period.
27. In our view, the introduction of a limitation period to the disciplinary process will seldom make a practical difference to doctors. In our experience, most patients or their relatives will make complaints within 2 years of the act being complained about. It is rare for a complaint to be made more than 6 years later.

Conclusion

28. In conclusion, many changes have been made to the disciplinary process for doctors. Time will tell how they pan out.
29. In our view, the fact that the SMC no longer has to give their expert report(s) together with the charges, and the introduction of timelines leading to a faster process, will make a practical difference to doctors who are subject to a complaint.
30. On the other hand, we are of the view that the introduction of an Inquiry Committee, and the introduction of a limitation period, will not really make a practical difference to doctors who are subject to a complaint.

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