

CASE SUMMARY

Complaint against the Health and Welfare Bureau for inadequate consultation on the Medical Registration (Amendments) Ordinance 1995

The Complaint

The complainant, who was a Hong Kong permanent resident studying medicine overseas, complained against the Health and Welfare Bureau (HWB), (whose former title was Health and Welfare Branch) Government Secretariat in February 1997, for failing to consult him on the Medical Registration (Amendments) Ordinance 1995 (MRAO 95) prior to its enactment. He further complained about the failure to inform him through his university of this new law. According to the complainant, the MRAO 95 enacted in August 1995 had resulted in about 600 Hong Kong permanent residents studying medicine in hitherto 'recognised' overseas universities losing their right to return to practise medicine in Hong Kong unhindered upon full qualification. No consideration of grace period was provided for these students who had already started their medical courses overseas.

2. By way of background the MRAO 95 was enacted on 3 August 1995 and came into effect on 1 September 1996. Under the MRAO 95, all medical graduates from overseas institutions, including the United Kingdom (UK) and Commonwealth institutions, are required to pass the Hong Kong Medical Council's (Medical Council) Licensing Examination to qualify for registration and practice as medical practitioners in Hong Kong. Prior to the coming into effect of the MRAO 95, medical graduates from the UK and certain Commonwealth institutions recognised by the UK General Medical Council were permitted to register without examination in Hong Kong.

3. The complainant informed this Office of his wish to withdraw the complaint. The Ombudsman, however, decided to continue with the investigation in the public interest according to Section 11 of The Ombudsman Ordinance.

Findings and Conclusion

4. According to the Secretary for Health and Welfare (SHW), it is government policy to encourage self-regulation among professions. In this case, the medical profession began discussions about introducing a universal licensing requirement for all overseas medical graduates some years ago. Following the approval of the Executive Council of the Medical Registration (Amendment) Bill 1995 (the Bill) Government issued a press release on 17 May 1995 to announce the proposals of the Bill which was also gazetted on 26 May 1995. Following consideration of the Bill by the Medical Council, the Bill was introduced to the then Legislative Council (LegCo) by SHW on 7 June 1995. After the commencement of the Ordinance in September 1996, some medical students studying overseas objected to the above examination requirement. Eventually, the matter was

conclusively dealt with the following the passage of the Medical Registration (Transitional Provisions) Bill 1997 in April 1997, which effectively restored the former recognition of the UK and certain Commonwealth qualifications for medical registration in Hong Kong for those who began their studies in recognized institutions prior to the commencement of the MRAO 95.

5. This Office notes that, notwithstanding the HWB's claim that the amendment proposals were not "government-initiated", the fact remains that the Bill was a government bill. In fact, the HWB was the policy authority which steered the amendment proposals through the legislative process. From the information available, it is apparent that the HWB had not conducted nor made any attempt to mount any consultation other than with the Medical Council and the Hong Kong Medical Association prior to the introduction of the Bill in LegCo. Indisputably, the students studying medicine in universities, including the Hong Kong permanent residents, who prior to the enactment of the MRAO 95 could have been registered automatically as medical practitioners upon graduation, would be the persons most adversely affected by the legislative changes. The HWB, as the policy authority responsible for health and welfare matters, should have assessed the serious implications of the changes on the affected students in the public interest and should be well aware that the Medical Council and the Hong Kong Medical Association could not represent the views of the students who were not yet registered medical practitioners. This being the case, the SHW had a duty to consult the students concerned or their representative before any legislative changes directly affecting them are being introduced, particularly as most of the students were overseas during the legislation process and their access to local press reporting or gazettees would be very limited.

6. This Office further notes that, on SHW' s own admission the MRAO 95 does not provide a grace period for these affected students, and it was not until November 1996 that "administrative measures" were put in place to facilitate the affected students to register in Hong Kong. This reflects a lack of consideration for the persons most affected by the legislative changes when the HWB introduced the Bill to the then LegCo.

7. As regards the complaint about the failure to inform the complainant of the enactment of MRAO 95 through his university, this Office takes the view that the HWB should have information on the overseas universities which were offering "recognised" degrees in medicine and they could be requested to directly notify the students taking such courses of the legislative changes in Hong Kong affecting them which would have been more efficient and effective in terms of information dissemination in the circumstances of the case instead of relying on the overseas medical councils to do so indirectly.

8. All points considered, The Ombudsman concludes that this complaint is substantiated.

Recommendation

9. The Ombudsman recommends that the SHW should consider the need to consult persons particularly those adversely affected by any legislative changes in the process and to inform them of the changes in a more efficient and direct manner in the future. In this connection, The Ombudsman has asked SHW to take into account the yardstick on fair and proper consultation as set out in this

Office' s Administrative Fairness Checklist and the guidelines on public consultation circulated by the Government Secretariat in future consultation exercises.

Response from the Health and Welfare Bureau

10. The SHW accepted The Ombudsman' s recommendation as specified in para. 9. and would take into account the relevant yardstick and guidelines on proper public consultation in future.

Office of The Ombudsman

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