ANNEX A

Changes to the Medical Disciplinary Process

IMPROVING THE QUALITY AND CONSISTENCY OF PROCESSES AND OUTCOMES IN THE SYSTEM

a) Improvements to facilitate consistent and fair Disciplinary Tribunal outcomes

Currently, the SMC must appoint a Disciplinary Tribunal (DT) if a Complaints Commitee (CC) determines that a case should be referred to the DT. There is no room for the SMC to disagree, even if it considers that the referral is unwarranted.

In line with the SMC's regulatory function in prescribing standards for the medical community, it will be the SMC that now determines whether a case should be referred to the DT for a formal inquiry, if a CC makes a recommendation for formal inquiry by a DT. This will allow the SMC to play a more proactive role in ensuring that only appropriate cases reach the DT, drawing on the collective wisdom and experience of the SMC members.

The standard for referrals to the DT for formal inquiry will also be made clear. A case should only be referred to the DT where there is cause of sufficient gravity for a formal inquiry.

In addition, it will now be mandatory for each DT to have a legal professional, who will be able to lend legal and forensic expertise to support the decision-making process. Complex disciplinary cases that require a higher level of legal and forensic expertise may also be chaired by serving Supreme Court Judges or Judicial Commissioners.

b) Improve access to legal resources

There has been feedback that CCs are sometimes unsure of what powers they have, or how these powers may be exercised. Further, some doctors have also expressed concerns that private law firms that the SMC engages to prosecute matters at the DT stage are, due to commercial considerations, sometimes overzealous in aiming to secure a conviction at all costs.

There will be amendments to support the creation of a legal advisory unit to advise the SMC's committees, and the creation of a prosecution unit to conduct prosecutions for the SMC. The creation of an in-house prosecution unit at the SMC will facilitate the gradual phasing out of reliance on private law firms for prosecution.

c) Establish a Disciplinary Commission to professionalise and preserve the independence of the Disciplinary Tribunal

Currently, there is a perception of a lack of independence of the DT from the SMC, with the SMC seen to be playing the role of investigator, prosecutor and judge. The new independent Disciplinary Commission (DC) is separate from the SMC and will oversee matters relating to DTs. These include the appointment of individual DTs, processes and procedures of DTs, and the training of members to be appointed to the various committees in the disciplinary framework. The DC will be headed by a senior doctor as its President, and will receive legal advice and secretariat support from a unit *independent* of the SMC.

REDUCING DELAYS AND FACILITATING THE MORE EXPEDITIOUS RESOLUTION OF COMPLAINTS

d) Establish an Inquiry Committee to sieve complaints

The new Inquiry Committee (IC) will filter out complaints that are frivolous, vexatious, misconceived or lacking in substance at an early stage. It will be able to (a) dismiss a complaint, (b) issue a letter of advice, or (c) refer the complaint to the CC. Where the IC refers the complaint to the CC, the IC will be empowered to direct that investigations commence, ahead of the appointment of the CC. The IC may also refer cases for mediation, prior to making these orders.

The IC and CC will be empowered to make costs orders against a complainant where the complaint is dismissed on the basis that it is frivolous, vexatious, misconceived or lacking in substance.

In making such costs orders, the IC and CC may also take into account the parties' conduct in relation to any attempt at resolving the complaint, whether by mediation or other means of dispute resolution.

e) Timely notification of doctor when complaint is made, and requiring the submission of all relevant documents and information upfront

Doctors will be notified once a complaint has been made against them, and be provided with the complaint or information, unless there are compelling reasons not to do so. This will allow them to respond more quickly to complaints.

There has been feedback that complainants sometimes submit documents and information in a piecemeal fashion, leading to delays in the disciplinary process. Under the amendments, all relevant documents and information must be submitted by the complainant when filing the complaint, and by the doctor when providing his responses to the complaint.

f) Removal of numerical limits on membership of the Complaints Panel and requirement that CC Chairpersons be from the SMC

Currently, there are upper limits on the number of doctors and lay persons who may be members of the Complaints Panel. To increase the pool of persons available to sit on the various disciplinary committees, these upper limits will be removed.

In addition, there is currently a requirement that chairpersons of a CC must be members of the SMC who sit on the Complaints Panel. Given the limited pool of the

SMC members who sit on the Complaints Panel, this often leads to bottlenecks and consequent delays in the appointment of CCs. Under the amendments, this requirement will be removed, and any doctor who is a member of the Complaints Panel may chair a CC.

g) Introduction of a time-bar for the filing of complaints

There is a concern that it may not be fair for doctors to be subject to complaints over matters which occurred a long time ago, when the complaint could have been made earlier. The passage of time may affect the doctor's ability to both recall the relevant events, and retrieve the documents and information relevant to the matter. These would similarly impact potential witnesses in respect of the complaint. Consequently, the doctor may be less able to defend himself against allegations of misconduct.

A time-bar will be introduced for the filing of complaints to ensure fairness for both doctors and patients. Complaints which are submitted more than six years from the date of the act or conduct in question, or from the earliest date the complainant had knowledge of it (or could have discovered it, with reasonable diligence), will not be referred to the Chairman of the Complaints Panel, unless the President of the DC assesses that it is in the public interest to do so.

h) Complaints Committee's decisions to be reviewed by a Review Committee

Currently, if a complaint is dismissed by a CC, an appeal may be made to the Minister for Health. There has been feedback that it is sometimes unclear what the Minister's considerations in assessing the appeal are, and what the basis is for sending complaints back to CCs for further investigations. This may result in delays in the process. To enhance transparency, and reduce possible delays, the current appeal process under the MRA will be replaced with an application for review of a CC's decision, made to a Review Committee. The Review Committee will comprise a doctor, legal professional and layperson.

The Review Committee may only make an order on whether the CC has complied with all procedural requirements under the MRA (and any relevant regulations), or direct a further inquiry or rehearing where the CC did not comply or if any new evidence submitted to the Review Committee is material to the complaint or matter.

i) Introduction of control mechanisms to facilitate the more expeditious resolution of complaints

There is currently no limit to the extensions of time which the disciplinary committees can be granted to complete their inquiries. This can result in liberal extensions of time being granted without accountability, which protracts the disciplinary process and delays the resolution of complaints.

Under the amendments, the ICs, CCs, DTs and Review Committees will be able to seek only one extension of time from the Chairman of the Complaints Panel or the President of DC. Subsequent extensions of time will require the SMC to apply to the High Court, which may impose conditions on any extensions of time granted.

PROTECTING PATIENTS MORE EFFECTIVELY

j) Empower IC and CC to obtain relevant documents and information for the purpose of their inquiries

ICs and CCs will be empowered to obtain relevant documents and information for the purpose of their inquiries, from the complainant, doctor or any third party. The CC may also require persons to attend before it to give evidence. This will enable the ICs and CCs to more comprehensively assess complaints.

k) Providing for the investigator to submit investigation reports to the SMC on other potential wrongdoing uncovered in the course of investigations into a complaint

The amendments will empower investigators to submit investigation reports to the SMC on matters discovered in the course of their investigations that do not relate to the subject matter of the complaint, but may give rise to disciplinary proceedings. These may relate to the same doctor or a different doctor. This will allow the SMC to act more expeditiously in the face of potential wrongdoing. The SMC will, upon receiving such an investigation report, consider whether it should file a fresh complaint against the doctor concerned to kickstart the disciplinary process.

l) Allowing interim orders to be made immediately

Currently, the Interim Orders Committee (IOC) must always convene a hearing before making an interim order, even in cases where there is an imminent danger to patient health and safety.

With the amendments, the IOC will be empowered to issue an immediate interim order, without first convening a hearing, if and only if any conduct alleged in a complaint poses an *imminent* danger to the health or safety of any patient of the doctor concerned.

The doctor will be heard thereafter, within one month, on whether an interim order should be made to replace the immediate interim order, failing which the immediate interim order will lapse. The doctor may appeal to the High Court in respect of the IOC's decision to issue an interim order.

<u>GREATER REPRESENTATION WITHIN THE SMC</u>

m) Changes to the composition of the SMC for wider representation from the medical community

For better representation of the medical community, the composition of the SMC will be changed to include representatives from three key medical professional bodies – Academy of Medicine Singapore, College of Family Physicians, Singapore, and the Singapore Medical Association.

The experience requirement to be eligible to sit on the SMC will also be revised from 10 years of standing, to eight years of standing, to encourage younger doctors to step forward and serve on the SMC.

ENCOURAGING THE AMICABLE RESOLUTION OF COMPLAINTS AND FACILITATING A LESS ADVERSARIAL DISCIPLINARY PROCESS

n) Increasing the use of mediation

Currently, the CC can refer complaints to mediation. Under the amendments, the new IC may also refer a case to mediation. This will allow for referrals to mediation to be made early on at the first line of review in the disciplinary process.

o) Allowing the DT to appoint its own independent expert for more efficient and effective expert evidence

Expert evidence plays an important role in determining whether any departure from the standard of practice is serious enough to constitute professional misconduct. Under the current system, both the SMC and the doctor concerned typically engage their own experts. Given the adversarial nature of proceedings at the DT stage, this sometimes results in unnecessary acrimony in the proceedings. Difficulties in obtaining expert evidence also result in delays.

To mitigate this, the DT will be empowered to appoint its own independent experts after hearing the views of the doctor and the SMC. The DT may also allow parties to appoint their own experts in addition to, or in place of the tribunal-appointed expert.