

# First aspect of the amendment law constitutional administrative essay

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## **Introduction**

The Medical Act 1971, inter alia, establishes the Malaysian Medical Council ("MMC"). It empowers it with disciplinary jurisdiction over medical practitioners registered under the Act. The MMC will investigate into complaints and information received and disciplinary inquiries will be held if there is evidence to substantiate the allegations. Upon finding a medical practitioner guilty of the complaint and after hearing his plea in mitigation, the MMC will impose punishment, which may include a reprimand, suspension from practice, or deregistration which would disentitle the said medical practitioner from practicing medicine in Malaysia. In exercising its disciplinary function, the MMC is guided by its Code of Professional Conduct and other guidelines that have been issued. The Code of Professional Conduct has four main principles:-Neglect or disregard of professional responsibilities; Abuse of professional privileges and skills; Conduct derogatory to the reputation of the medical profession; andAdvertising, canvassing and related professional offences. The MMC also makes finding of disciplinary misconduct based on ethical guidelines. The ethical guidelines cover a variety of issues including brain death, clinical trials and biomedical research, medical genetics and genetic services, organ transplantation, stem cell research and stem cell therapy. Of late, the medical standards in the country have come under scrutiny in the media with claims of poorly-qualified housemen, medical education not being up to the mark and the problem of overcrowded hospitals. In a bid to address concerns over declining medical standards in Malaysia, the Medical (Amendment) Act 2012 (A1443) has been passed in Parliament. The Amended Act received the Royal

Assent on 5 September 2012 and was published in the Malaysian Gazette on 20 September 2012. However, it has yet to come into force. The aim of amending the Medical Act 1971 is that when the Act was first tabled, there were only 2, 436 registered medical practitioners. Now there are about 35, 000 registered medical practitioners. As such, there is a great necessity to strengthen and regulate the medical profession.[1]The Amended Act contains 42 clauses, amongst others, to clarify in detail the powers of MMC including management of human resources, financial resources and establishment of the Malaysian Medical Council Fund.

### **The Amendments in Brief**

The first aspect of the amendment is on the composition of the Malaysian Medical Council which remains at 33 members. When the Medical Act was first enacted in 1971, it had an elected majority, however, prior to the 2012 amendments it had an elected minority. Under Section 3A subsection (1) (e), (f) and (g), of the amendments to the Medical Act, the Council will have 17 elected members and 16 nominated members so restoring the elected majority albeit by one. The second aspect under Section 4 of the amendments is to provide the Council to operate as a corporate body. Although the Medical Act 1971 states that the Council is a corporate body, there are no legal provisions for the Council to carry out its functions as a corporate body. It depends on the Ministry of Health for its finances and staff. Under the amendments, the Council can now employ its own staff, hire and fire and there are also provisions for Malaysian Medical Council Fund for its finances. Currently the MMC is dependent on the Ministry of Health. All its finances come from the Ministry of Health, all its staff are reimbursed by

Ministry of Health, all monies collected by MMC for registration and Annual Practising Certificate goes to the consolidated fund. With the amendments to the Act, the MMC can function more independently. It can hire and fire its own staff and can manage its own finances. The third aspect under Sections 14A, 14B and 14C of the amendments is to provide changes in registration. Under the amendments, there is now an establishment of a Specialists Register whereas previously there was none in the Medical Act 1971. There are also provisions under Section 13 of the Amended Act which liberalised the granting of Temporary Practising Certificates for foreigners who want to come here for training and educational purposes. There is also provision under Section 16 of the Amended Act for each practitioner to have indemnity coverage before they are issued with an Annual Practising Certificate. Under Section 25 of the Amended Act a new Section 29A has been inserted after Section 29 of the 1971 Act. This section entails changes in the disciplinary functions of the Council. The process is streamlined and there are certain timelines that have to be adhered to upon receipt of a complaint or information by the Council. This provision also provides for an interim order to be instituted in the case of a doctor before a Disciplinary Board who is considered a risk to the health of the public. There is also provision under Section 26 of the Amended Act for rehabilitation for doctors who have been found guilty of offences. Under the 1971 Act, the doctor could be reprimanded, suspended or deregistered. Under the amendments to the Act, there are provisions for the doctor to seek medical treatment, provisions for the doctor to undergo educational courses or programmes specified by the Council. There is also provision for the doctor to report on his medical

practice to such Medical Practitioners as may be specified by the Council. There is also provision for the Council impose any other conditions relating to the doctor's practice as it deems appropriate. It is submitted that the Medical Act 1971 only provides for the Medical Council to register doctors and to carry out its disciplinary function. These functions will put the Council in line with changes in other medical regulatory authorities worldwide so that it will be more in keeping with the times and appropriate for the circumstances. Whilst we celebrate the passage of some progressive amendments to the Medical Act 1971, which was long overdue, critics are questioning whether the amendments have negative implications for the medical profession and medical education in Malaysia. In this paper I will be highlighting three significant changes to the Medical Act 1971 and the potential implications of these changes.

A. RECOGNITION OF MEDICAL DEGREE

The first significant change is the amendment under Section 7. Under the new amendments, Section 7 of the Amended Act, a recognised medical training institution is recognised and accredited by the MMC based on the recommendation of the Joint Technical Committee ("JTC") which is set up under the Qualifying Agency Act. There are some criticisms that these amendment has actually weakened the MMC. According to Dr. Jeyakumar Devaraj,[2]the power of the MMC to recognise and accredit medical training colleges has been taken away and placed under the purview of the Ministry of Higher Education. He says that MMC's function has been reduced to a clerical role to merely recording and documenting the decision to recognise a medical school - decision being made elsewhere. In my opinion this is the a very important change, namely the dilution of the role of the MMC (to a clerical role) in

recognising medical qualifications. This is because it has serious ramifications on the standard of health care in Malaysia. At the outset it must be noted that the body who made the proposals to the Ministry of Health and the Malaysian Government as to what it wanted amended in the Medical Act 1971 is the MMC. The Medical Act provides that doctors report to the Ministry of Health with regard to their functions. Therefore it is the MMC which sets the professional standards. It is submitted that this is as it should rightly be the case because no one else apart from the said profession itself that can set its own standards. The Medical Act rests the recognition of the medical degrees with the MMC. The Medical Act was enacted in 1971. The Malaysian Qualification Agency Act was enacted in 2007. It is responsible for the implementation of the Malaysian Qualifications Framework which consists of qualifications programs and higher education providers based on a set of criteria and standards including learning outcomes and credits based on students' academic load. As far as the JTC is concerned, this is established by the MMC as with other professions, engineering, architecture etc. The JTC's functions are to consider an application for accreditation, making recommendation whether to grant or refuse an application, make recommendation for imposing conditions entering and conducting an institutional audit and making recommendation for the revocation of accreditation. These recommendations of the JTC are then forwarded to the MMC which can either approve the granting of accreditation or refuse the granting of accreditation, in which case it has to state grounds for doing so. According to Dr. Milton Lum, past president of Private Medical Practitioners Malaysia and former president of the Malaysian Medical Association,

accreditation in Malaysia in whatever discipline was first started by the MMC way back in 1995. MMC invited experts from Australia and United States and formulated these accreditation guidelines which were then piloted in the 3 public universities, University Malaya, University Sains Malaysia and University Kebangsaan Malaysia and then applied to all medical schools, both public and private from the year 2000.[3]According to Dr. Milton Lum, the National Accreditation Board was established for private institutions of higher learning in 1997 and the Quality Assurance Board in the Ministry of Education was established in 2002. Both these bodies were shut down with the implementation of the Malaysia Qualification Agency in 2007. It can be seen that a lot of other programs in other disciplines have been based on the same format as that of the medical program, which was first initiated by the MMC Therefore, in terms of accreditation, it can be said that the MMC has blazed the trail for all other disciplines in this country. As stated earlier, professional standards have always got to be set by that particular profession itself and no one else. For example the medical profession is very much associated with the Nursing Profession. However the medical profession cannot set the standards for the nursing profession. Only the nurses' profession which can set standards for their own profession. If there is confusion about jurisdiction, regulating roles and setting of standards then this can only be confusing not only to the regulators but also to the regulated. In the final analysis, in medicine, it's the patients who will be affected at the end of the day and all of us are potential patients. If we were to refer to Section 51 Malaysian Qualification Agency Act 2007 (Act 679), it states: 51. (1) A Joint Technical Committee consisting of representatives of

therelevant professional body, an officer of the Agency and such other persons as may be deemed necessary by the relevant professional body shall be established by the relevant professional body for the purpose of—(a) considering an application for accreditation under subsection 50(1);(b) making recommendations to grant or refuse the application for accreditation under subsection 52(1);(c) making recommendations for imposing conditions under section 54;(d) entering and conducting an institutional audit under subsection 52(3); and(e) making recommendations for the revocation of accreditation under section 55.(2) The representatives of the relevant professional body and the officer of the Agency in the Joint Technical Committee established under subsection (1) may differ as between different professional programmes or professional qualificationsThe operating word in section 51 of the Act states that the JTC shall be established by the MMC. "SHALL" means mandatory establishment by the MMC. Therefore it can be affirmatively said that no one else can establish the JTC but the MMC. One of the issues that has been highlighted by law makers is the problem of regulating medical education, in that, it is increasingly being provided by the private sector and this reflects the change in the medical education in the country. There are thirty-three colleges in Malaysia providing forty-two medical programs in Malaysia and out of these thirty-three colleges, twenty-two of them are private colleges.[4]According to Dr Chang Keng Wee, Master of the Academy of Medicine of Malaysia,[5]because of the increased number of medical seats available, students with unsuitable attitudes and aptitudes are gaining entrance in large numbers. He said that the introduction of minimum A level and STPM scores by the MMC in May 2011, for entry into



local medical programmes is a small step in the right direction. However, there is some doubt as to the standard of universities/university colleges offering matriculation courses and offering direct entry into their medical programmes based on these non-standardised examinations. He went on to say that with the mushrooming of medical schools, there is a great shortage of qualified lecturers, especially for the clinical disciplines. Many private medical schools are now dependent on overseas lecturers who may not have recognised postgraduate qualifications for specialist practice in Malaysia. Dr David KL Quek,[6]past President of the Malaysian Medical Association, said that even in countries like the United Kingdom, with a long tradition of medical practice, has 180, 000 doctors and 28 medical schools serving the 64 million population. Their institutions have senior teachers and instructors. In Malaysia there are 33, 000 doctors serving the 28 million population, most are in private practice. So the question that arises is, ' Do we have enough teachers for the 42 medical programmes?'It is submitted that whether this is seen as a positive or negative trend and what are the potential issues that can come out of this trend depends on the private medical colleges. If these institutions play their role and take cognizance of their social responsibilities and not just be driven by economics, then it is submitted that they have a positive role to play. A majority of private universities in the developed economies contribute enormously to the medicine in general and to specific disciplines in particular. If these private colleges are driven mainly by economics, churning money as their priority, then the omens are not good for everyone. The following are the medical schools in this country:[7]1) University Malaya (UM)2) Universiti Kebangsaan Malaysia (UKM)3)

Universiti Sains Malaysia (USM) : 2 programmes<sup>4</sup>) Universiti Putra Malaysia (UPM)<sup>5</sup>) UiTM<sup>6</sup>) University Sains Islam Malaysia (USIM)<sup>7</sup>) Universiti Darul Iman<sup>8</sup>) Universiti Sarawak Malaysia (UNIMAS)<sup>9</sup>) Universiti Sabah<sup>10</sup>) Universiti Malaysia Kelantan<sup>11</sup>) Melaka-Manipal Medical College<sup>12</sup>) Monash University Malaysia<sup>13</sup>) International Medical University (IMU)<sup>14</sup>) SEGI University College<sup>15</sup>) Allianze College of Medical Sciences (ACMS): 5 programmes<sup>16</sup>) Penang Medical College (PMC)<sup>17</sup>) Mahsa University College<sup>18</sup>) Masterskills University College of Health Sciences<sup>19</sup>) Royal College of Medicine Perak (UNIKL) : 2 programmes<sup>20</sup>) Universiti Islam Antarabangsa (UIA)<sup>21</sup>) Newcastle University Malaysia<sup>22</sup>) Perdana University : Graduate Medical School<sup>23</sup>) Perdana University : RCSI<sup>24</sup>) Inssaniah University College<sup>25</sup>) Quest International University Perak<sup>26</sup>) Cyberjaya School of Medical Sciences<sup>27</sup>) AIMST<sup>28</sup>) Taylor's University College<sup>29</sup>) Management and Science University (MSU)<sup>30</sup>) University Tunku Abdul Rahman (UTAR)<sup>31</sup>) University College Sedaya International (UCSI)<sup>32</sup>) University Pertahanan Nasional Malaysia (UPNM)<sup>33</sup>) Lincoln University College - 2 programmes

It can be seen that the statistics given about the number of medical schools in Malaysia compared with United Kingdom are revealing and unearth some important issues: The private medical schools which have mushroomed - are some of them just churning out medical graduates for money? Clearly, the evidence seems to support this hypothesis:-The Lincoln University College and its "business" arrangement with an unrecognised Ukrainian medical school. The 25% pass rate of the graduates at the qualifying exam. The sharp increase in housemen and the ability of our hospitals to give them adequate training. The aim of the

liberalising recognition of medical degrees seems to be to redress the doctor shortage in the shortest possible time. But at what cost? The result is a "dumbing down" of the profession, with students who are clearly not qualified ending up as doctors. This does not help at all in the meeting the Government's objective of promoting medical tourism. Malaysia, which some thirty years ago, prided itself in having a tertiary education system on par with the best, is now way down in the pecking order, churning out graduates of poor quality. Sadly, the medical profession has and will continue to suffer the same fate unless the standards for recognition are tightened. It is submitted that the MMC should be reinstated as the sole body deciding on recognition of medical schools. The JTC which comes under the Qualifying Agency Act 2007 will now make the recommendation for the MMC to approve. My personal observation is that the Health Minister is from Malaysian Chinese Association (MCA) and the Higher Education Minister is from United Malays National Organisation (UMNO). Therefore, will the MMC really have the desire, will or the political clout to over-rule the JTC's recommendation? As Dr Jeyakumar said the MMC's role might be (if it not already is) reduced to the role of rubber stamp.

**B. DISCIPLINARY**

**PROCEEDINGS** I think this is also a significant change, perhaps in my opinion, more important than the other two in my paper. MMC shall establish a different mechanism to inquire into complaint or information received against medical practitioners. The words "infamous conduct in any professional respect" is replaced by "serious professional misconduct as stipulated in the Code of Professional Conduct and any other guidelines and directives issued by the Council". It is submitted that the appointment of a

Disciplinary Board is similar to that of the legal profession. The Disciplinary Board would, in my opinion, take on the role now played by the Preliminary Investigation Committee under the Medical Regulations 1974 (Regulation 26). What caught my eye is the power given to the Minister to confirm, reverse or vary the Disciplinary Board's decision on appeal:-Powers of the Health Minister in subsection 12(2) of the Medical Act 1971 :"(2)The Minister may from time to time, after consulting the Council, add to, delete from or amend the Second Schedule by order published in the Gazette"- The 2nd schedule is under the custodian of Medical Act and the Health Minister has all the exclusive rights in maintaining and altering the Schedule to ensure the quality of medical training institutions. Under section 25 of the Amended Act:-'(11) Any registered medical practitioner who is aggrieved by the decision of the Disciplinary Board or President under this section may appeal in writing to the Minister;(12) the Minister may confirm, vary or reverse the decision of the Disciplinary Board or President;(13) the Minister's decision on any appeal under subsection (11) shall be binding and final'. Compare this with the Legal Profession Act 1976 where the appeal has to be the High Court. Section 26 Legal Profession Act 1976 - Appeal from the decision of Board to Judge:(1) Any person dissatisfied with any decision of the Board may apply to a Judge for a review of the decision.(2) If the Board fails to determine any request within six weeks after it has been first submitted to it, the applicant may apply under this section as if the request had been determined adversely to him.(3) Every application under this section shall be made by summons in chambers on the petition of the appellant if he has filed a petition, otherwise by originating summons; the Judge hearing the

application may in his discretion adjourn the application into open Court.(4) Every summons in chambers or originating summons, as the case may be, shall be supported by evidence on affidavit and shall be served together with the affidavit on the Board; such summons in chambers or originating summons shall not be heard before the expiry of twelve days after the date of service on the Board.(5) At or before the hearing of the application the Board may submit to the Judge a confidential report on the applicant; such report shall not be filed in Court but a copy thereof shall be furnished to the applicant.(6) A confidential report under this section shall be privileged.(7) At the hearing the Judge may dismiss the application or make any order under this Act as he considers fair and reasonable.(8) A Judge who is a member of the Board shall not hear any application under this section. In my opinion, to oust the court's jurisdiction is never a good idea, if justice is to be served with impartiality. The High Court should be the proper forum for appeal, as it would be better equipped to consider the merits of the appeal, rather than the Minister (even one acting on advice) who MAY be persuaded by extraneous considerations, not the impartial dispensing of justice. C.

**SPECIALISTS' REGISTER**The third significant change is pertaining to the requirement of a Specialist Register under Section 12 of the amendments which inserts section 14C. There will now be 3 parts of the Register instead of 2, which are: Part A - provisional registration, Part B - full registration, Part C - specialist register. (new)There is no special provision for registration of specialists under the Medical Act 1971. Under section 14 of the Medical Act 1971, medical practitioners who intend to practice in this Malaysia have to be registered with the Malaysian Medical Council. This register is for all

medical practitioners based on their basic medical degrees. This includes both specialists and non-specialists. The Academy of Medicine of Malaysia was formed in 1966 and it embraces all specialties in medicine. To be enrolled in the Academy of Medicine of Malaysia, candidates must possess a recognized higher professional qualification and be certified to be specialists by the appropriate authorities. In 1999, the Academy of Medicine of Malaysia established their own Specialist Register. The Specialist Register is a database of members of the Academy of Medicine Malaysia. The Register contains information about specialists and their discipline/speciality, place of practice, qualifications, etc. The Ministry of Health, on the other hand, had its own gazette exercise for their specialists under the General Orders so that these specialists may be employed to the respective grades of service and given appropriate remuneration. These two bodies, that is the Ministry of Health and the Academy of Medicine of Malaysia then collaborated and established the National Specialists Register. With the National Specialists Register in place, the Academy of Medicine's Specialists Register was automatically transferred in the National Specialists Register. That means to say that the names of the specialists appeared in the National Specialists Register in their respective specialties. Now under the amendments, with the Specialist Register in place, it will be easier because that there is only one single register for medical specialists in all sectors, including the Ministry of Health, the universities, as well as the private sector.[8]Should the need for a second opinion or further management of a medical condition arise, with the Specialist Register in place, doctors will be able to identify specialists in the relevant specialties to whom they can refer. Over and above this, the public

will be able to identify the relevant specialist doctors to whom they may wish to be referred or may wish to consult. With this amendment, the Malaysian Medical Council will be in a position to ensure that those admitted to the register are competent and fit to practice and therefore the medical profession will be duly regulated. In addition, with the Specialists Register in place, the public will be know the total number of specialists and the number in individual specialties. This in turn will be impediment to strategizing and planning for specialist manpower training and provision of health care services. In meeting the requirements of the Private Health Facilities and Services Act 1998, private hospitals will need the Specialist Register as essential reference, as the Act requires these facilities to have a credentialing mechanism in place under section 42.

## **Section 42**

(1) The Director General shall cause to be kept and maintained in such form and manner as may be prescribed -(a) a register of all private healthcare facilities or services licensed under this Act;(b) a register of all private medical clinics and private dental clinics registered under this Act; and(c) such other register or registers as he deems that the private healthcare facility orservice should maintain.(2) The registers in paragraphs 1(a) and (b) shall be deemed to be public document within the meaning of the Evidence Act 1950 [Act 56] and shall be open for public inspection and the public may make a search on and obtain extracts from the registers upon payment of a prescribed fee. With the impending implementation of National Health Financing Scheme, payment for service will be based on the qualification and skills of the practitioners. Specialist Register will be essential here as a

reference resource. Under the umbrella of the World Trade Organization, Malaysia will be opening its doors to foreign medical practitioners in compliance with the General Agreement on Trade in Services (GATS). It is essential to have the Specialist Register in place to ensure that only appropriately qualified and competent foreign doctors are permitted to practice their respective specialties in this country. This will safeguard the interest of the public, and ensure that standards of specialist practice are not compromised.[9]CONCLUSIONWith the establishment of the Specialist Register under the amendments, it will be easier because that there is only one single register for medical specialists in all sectors, including the Ministry of Health, the universities, as well as the private sector. Further, the Malaysian Medical Council will be in a position to ensure that those admitted to the register are competent and fit to practice and therefore the medical profession will be duly regulated. With regard to the Medical Act, there must not be confusion when it comes to the different roles to accreditation by the different parties. It is obvious that professional standards of education can only be set by professionals of education and it is submitted that if this be maintained and as long as the powers we understand it, we should not have any difficulty. As far as other governmental agencies, they can also have to be conversant with their roles. There should not be much conflict because in other countries where there is a accreditation agency and the Medical Council or Medical Regulatory Authority, their roles are pretty well understood and defined and everyone should confine themselves to their respective roles that they play. These roles are in fact complementary rather than diagnostic.



## **B I B L I O G R A P H Y**

### **ARTICLES**

Dr Jeyakumar Devaraj, the Member of Parliament for Sungai Siput, made the above address in Parliament on 14 June 2012  
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