

# **EXECUTIVE SUMMARY**

## **Direct Investigation Control of Healthcare Professions Not Subject to Statutory Regulation**

### **Background**

In Hong Kong, statutory regulation of healthcare professions can be traced back to the 1950's with the enactment of the Medical Registration Ordinance and the Dentists Registration Ordinance. Nurses, midwives, pharmacists and dental hygienists were put under statutory regulation in the 1960's. The Supplementary Medical Professions Ordinance (Cap 359) was enacted in 1980 to regulate five more disciplines which included medical laboratory technologists, occupational therapists, physiotherapists, radiographers and optometrists. The practice of chiropractors and Chinese medicine practitioners were regulated in 1993 and 1999 respectively in view of their popularity. Since then, no more healthcare professions have been put under statutory regulation.

2. However, from time to time, media reports suggested that the health of the public might be at risk as a result of emergence of new types of treatments that have healthcare implications and substandard service provided by practitioners providing such treatments. Recent incidents concerning improper treatments by beauty salon practitioners pointed to the need for tighter monitoring and review of the regulatory regime for healthcare professions. Hence, The Ombudsman initiated this direct investigation on 21 January 2013 to examine whether the current control mechanism is sufficient and identify areas for improvement.

### **Regulatory system in Hong Kong**

3. DH all along adopts a risk-based approach to consider whether a particular healthcare profession should be subject to statutory regulation. The major consideration is the nature and scope of work of the professionals and the risks associated with their practices. Other considerations include patient interface, size of profession, employment distribution in public and private sectors and presence of alternative control (ie society-based registration system). In general, healthcare personnel who perform invasive or critical procedures are accorded with higher priority for statutory regulation.

### ***Statutory Regulation***

4. In Hong Kong, currently around 87,000 healthcare professionals from 13 disciplines are subject to statutory regulation. The regulatory bodies formed under respective pieces of legislation are given the power to prescribe the registration requirements, establish disciplinary mechanism to handle and investigate complaints and take disciplinary actions against their members.

### ***Society-based Registration***

5. Under society-based registration, professional bodies concerned administer an enrollment system and promulgate a list of qualified members to enable members of the public to make informed choices when seeking certain healthcare services. To provide quality services to the public, some professional bodies may also adopt a professional code of practice, encourage their members to pursue continuing professional development, develop quality assurance scheme and devise a disciplinary mechanism to ensure that only qualified personnel could stay on their lists. According to DH's manpower survey conducted in 2009, over 7,300 practitioners were engaged in 15 healthcare sectors not subject to statutory regulation. All these 15 healthcare disciplines have established associations/societies and have maintained membership registers.

## **DH's monitoring and review system**

### ***DH's position***

6. DH considers that excessive regulation may pose unnecessary barriers to market entry, discourage competition and cause resource implications to society. Statutory regulation of healthcare professions should, therefore, be called for only when there is evidence showing that the practice of a healthcare profession has demonstrated an unacceptable level of risk to the public.

7. DH also considers that, while there are healthcare personnel not specifically regulated, there is legislation in place to guard the public against general medical malpractices. Moreover, under common law, all healthcare practitioners have a duty of care towards their patients, and they are required to exercise due care and skill reasonably expected of them as competent practitioners practising in the field. Any aggrieved patients may seek legal remedy/redress through civil litigation.

### ***DH's monitoring***

8. DH has developed certain guidelines, codes of practice, surveillance and reporting systems, market assessment, risk monitoring and risk communication vehicles. DH adopts these administrative tools to ensure safety of medical devices and Western medicines. It also collaborates closely with other bodies, such as law enforcement agencies, consumer advocates and regulatory bodies, to handle complaints about healthcare services, including even those not within its own portfolio.

### ***Administration's review***

9. The Administration set up a high-level steering committee, chaired by the Secretary for Food and Health in January 2012, to conduct a strategic review on healthcare manpower planning and professional development. It will cover and focus on the regulatory structure for the healthcare professions, including the functions and composition of the existing regulatory bodies for healthcare professionals. For other healthcare professions not statutorily regulated at the moment, the review will also look into matters relating to their future development, including whether or not they should be subject to regulatory control of some form.

10. In addition, The Secretary for Food and Health has been meeting representatives of various healthcare professions to discuss issues of mutual interest every one or two years.

### **Our Observations**

11. We believe that statutory control will allow DH to closely monitor qualified healthcare personnel and prevent unqualified personnel from practising, whereby professional conduct of the practitioners can be upheld and their professional standard enhanced. In other words, the quality of treatment and service standard can be guaranteed.

12. While it is accepted that not all healthcare professions need to be regulated by Government and probably even less by statutory control, it is imperative that DH should be vigilant on any risks that practices of unregulated healthcare personnel may bring to the public. However, from information provided by DH, no effective mechanism is currently in place to monitor the service standards of unregulated healthcare personnel and review the need for statutory regulation as media have reported alleged malpractices of unregulated healthcare personnel from time to time. In the course of our investigation, we observed the following deficiencies:

## ***Monitoring Mechanism***

### *Lack of complaint information*

13. DH only keeps complaint figures against unregulated healthcare personnel it employs. These figures do not cover personnel in six of the 15 disciplines and those working in private sector. Worse still, DH keeps no complaint statistics about other healthcare disciplines not falling into its healthcare framework. Thus, the information collected is incomplete and insufficient.

### *Lack of information exchange*

14. Although DH had established a long term working relationship with the Consumer Council, yet a mechanism to analyse the information of safety related complaints only started in October 2012, a few months after our inquiry on this subject and an incident of improper treatment in a beauty salon resulting in death and injuries. Furthermore, DH took no initiative to obtain complaint statistics or the details of malpractice of their members from the societies of unregulated healthcare personnel.

### *No monitoring on societies and service standard of their members*

15. DH emphasises that voluntary society-based registration can be an effective alternative to statutory control. However, we do not find DH to have provided any assistance to relevant societies or made genuine efforts to understand how they are organised and how their regulatory schemes operate. We find that some of the societies do not have a homepage for public access or provide its members' list to patients for reference. Also, DH seems to show no interest whether they have any code of practice/conduct and appears to be unaware of their operation and development.

## ***Review mechanism***

### *No review mechanism*

16. DH did not conduct any consultation or review to assess the need for putting any healthcare personnel under statutory control since the enactment of Cap 359 in 1980. There is no specific plan or timetable to do so. Nor is there any mechanism to trigger such review.

### *Lack of communication with societies*

17. DH did not establish a formal communication channel with the societies of unregulated healthcare professionals to help promote their development in accordance with the self-regulatory system. In the past, open forums with the representatives of healthcare sectors were held to discuss healthcare-related issues only at irregular intervals. Meeting with representatives of unregulated healthcare personnel for the discussion of statutory regulation was for the first time arranged in June 2012. There was no such meeting between 1980 and 2011.

### ***Role of DH***

18. DH has the duty to assure the qualification of the healthcare personnel in order to maintain a high quality of healthcare service. DH discharged such duty in the past by putting 13 healthcare professions under its regulatory framework. However, our investigation reveals that DH did not have any monitoring mechanism on the operation of unregulated healthcare personnel. Nor did DH have any review mechanism on the need to put them under statutory regulation.

### **Recommendations**

19. The Ombudsman has made seven recommendations to DH, as follows:

- (1) To collect relevant complaint statistics for conducting regular risk-based analyses (**para. 13**);
- (2) To enhance communication with the law enforcement agencies, related organisations and societies for gathering relevant complaint information for risk-based analyses (**para. 14**);
- (3) To consider providing guidance to societies of healthcare personnel not statutorily regulated on monitoring the qualification and service standard of their members (**para. 15**);
- (4) To follow up cases related to malpractice of unregulated healthcare personnel in order to assure that the service provided meets the standard as required (**para. 15**);
- (5) To examine the complaint statistics periodically for analysing whether more stringent regulation should be introduced to a particular group of healthcare personnel (**para. 16**);

- (6) To discuss with its policy bureau in the Administration to map out a long-term review strategy for the scope and ways to strengthen regulatory control of unregulated healthcare personnel and also the need for putting them under statutory control (**para. 16**); and
- (7) To enhance communication with societies of unregulated healthcare personnel for exchanging opinions regularly (**para. 17**).

20. DH has indicated its welcome of the above recommendations and undertook to take appropriate follow-up actions.

**Office of the Ombudsman  
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