

CONSUMER COUNCIL OF FIJI



Submission to

Fiji Medical Council

Review of Medical and Dental Act

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The Consumer Council of Fiji exists to safeguard the interest of consumers in the market place and aims to build a conscious and assertive consumer movement in Fiji.

1.0 Introduction

The Consumer Council of Fiji (“the Council”) takes the opportunity to make a submission to the Fiji Medical Council on the ***Review of Medical and Dental Act*** so that it truly protects the public through safe and competent medical and dental practice by the medical and dental practitioners. The purpose of Medical and Dental Practitioners Act is to regulate the practice and education of medical and dental practitioners.

The Consumer Council of Fiji is a statutory body established under the Consumer Council of Fiji Act 1976 (Cap 235). The Council provides the external pressure as a watchdog to create a fair and just delivery of goods and services. It represents and protects the rights and interests of consumers and in particular the disadvantaged groups, rural poor and women by identifying and articulating the policy issues that are of importance to consumers. First and foremost the Consumer Council is an ***advocacy organization***, conducting rigorous research and policy analysis on key consumer issues, dispute resolution and advocacy. The Council’s insight into consumer need is a powerful tool for influencing decision makers to bring about change.

The Ministry of Health (MOH) aims to provide a health care system that is accessible, affordable, responsive, equitable, and of high quality to the people. MOH has based hospitals in three geographic divisions (Labasa, Lautoka, Suva) supported by area and sub-divisional hospitals, health centers and nursing stations in the smaller towns and rural and remote areas.

The Consumer Council believes that the new legislation(s) that are formulated must be accountable and responsible to its clients or patients i.e. the consumers who are the users of the service. There must be an overriding duty to protect consumers of the health services through effective regulation of the medical practice, where natural justice and fair hearing must be designed within the legislation to deal with consumer issues, concerns and complaints, particularly those that have “public interest” component to it.

For example, a case such as Shavneet's may have been a "trial by media" or an attempt to bring forward the truth regarding the death of an innocent, vibrant and healthy child on the operating table, but such cases must be taken seriously to investigate the facts and evidences as the family of the deceased have a right to closure if the death was perceived to have been caused through incompetence or negligence of the attending doctors or perhaps, systems and processes in place that may have failed to ensure that such deaths could have been avoided. Because the profession is like any other profession that demands accountability, transparency, responsibility and competency in the way service is delivered as we are dealing with professionals with special skills and competencies, despite the noble cause of saving lives, it should not be treated as though human error or system failure is acceptable. While we have to accept and appreciate the virtuous profession of doctors who work long hours, sometimes under deplorable conditions with one end goal to save lives of the sick, diseased, wounded, or just mothers giving birth, they must also understand that if a human life can be saved through their careful and considered actions despite the "the spur of the moment" decisions they have to make, then they must be ethically responsible and conscious of their calling.

Therefore, the purpose of this Submission is to recommend worthwhile changes and improvements to the Fiji Medical and Dental Act for the purpose of general improvements in the Health Sector through accountability and transparency. An ***Issues Paper*** prepared by the Council is attached which forms the basis for this submission - **(Attachment 1)**.

Fiji, being a small island nation with less than one million people, it is not practical to have too many institutions which not only creates confusion or mismanagement of resources amongst the institutions but it also contributes to 'implementation deficit'. A more centralized approach is desired, where the Council suggests that there should be one Council called ***Fiji Medical and Dental Council (FMDC)***.

Having one body such as FMDC to control, regulate, monitor and mandate both medical and dental practice is advantageous where resources can be merged to deal with issues relating to both practice, however, if separate regulatory body is still desired, then the FMDC can have sub-bodies demarcating dental and medical practice and issues pertaining to the (new) Act under one institution. The new Act must state clearly the "legal mandate" of the new regulatory body giving it effective and practical powers to regulate and monitor the medical and dental practice; enforce provisions of the new legislation in respect to offences and penalties and so on.

2.0 Establishment of the Fiji Medical and Dental Council (FMDC)

The Medical and Dental Council's primary function is to protect the public in its dealings with the medical profession. Some doctors do engage in unethical and unprofessional conduct, causing harm to patients and undermining the public's trust in the profession. Incompetence and ensuing negligence in the profession must be avoided at all cost.

The Council recommends that the FMDC should consist of medical and non medical personnel. The following is an example of the kind of representation that would be fair and reasonable:-

- ❖ 1 Nominee of MOH appointed by the Minister of Health;
- ❖ (1) The Head of School of the Fiji School of Medicine;
- ❖ 2 members from the Fiji Council of General Practitioners (FCGP);
- ❖ 2 members from the Fiji Dental Association including one specialist¹
- ❖ 2 members from the Fiji Medical Association (FMA) including one specialist;
- ❖ 1 community representative;

¹ Considering that the Consumer Council does not favour a separate regulatory body such as the Fiji Dental Council to regulate the dental profession if FMDC can take over the responsibility, then FDA and FMA representative is adequate.

- ❖ 1 legal representative;
- ❖ 1 retired nurse; and
- ❖ 1 consumer representative

It has been generally observed that such regulatory bodies are not effective due to nature of the representation of the members who are relatively made up of “busy and non-available” members. For example, a nominee of the Minister of Health must be a person who can focus attention and time to oversee the functions and powers of the Council is duly met as any other member of FMDC. A quorum of 12 is good but at least 9 representatives must be present when important issues are dealt with, especially if it borders on allegation of medical negligence.

The appointments to the FMC shall be made by the Minister for Health, according to the Act. The Chairperson should be appointed by the FMDC which should be on a rotational basis of at least 3 years. Other members can also be rotated which can be set out in the Act that establishes the Council, including the constitution, vacancies, functions, non-liabilities of members, etc.

2.1 Function of the Fiji Medical and Dental Council

FMDC must ensure that only properly trained doctors are registered, and that registered doctors maintain high standards of professional conduct, competence and skills, overall patient-care, and ethics and integrity in the service delivery. FMDC must be independent of the government and without any due influence from interested parties, particularly the medical profession. Conflict of interest must be reported to the Chairperson of the FMDC.

The Consumer Council would like to suggest that the FMDC should be responsible for:-

- Registration of doctors and dentists and renewal of registration;

- De-registration of medical and dental practitioners under a strict established criterion such as professional misconduct, etc;
- Setting ethical standards (code of ethics/practice) in medical and dental practice and demand adherence and compliance through regular monitoring;
- Mandating and monitoring professional development of the medical and dental practitioners, preferably on a regimented basis to ensure medical and dental professionals are up to date with the demands of the society, the profession and innovative breakthroughs, and so on. While FMDA will monitor such professional development, the responsibility would be on individual practitioners to obtain the necessary education to fulfill the requirements set down by FMDA ;
- Recognising and accrediting medical and dental courses from the Fiji School of Medicine or any other recognized medical institution as deemed appropriate by the FMDC;
- Setting standards for doctors running private practices, including implementing proper hygiene standards where client's life would be at foreseeable risk;
- Putting in place "Complaint Notification Process" as the grievance and redress mechanism to address complaints against medical professionals, including providing due process of natural justice through established complaints or disciplinary proceeding procedures. Alternative Dispute Resolution (mediation, conciliation, etc) can be utilised for relatively minor complaints unless the gravity of the offence is such that it must be reported to the police or other relevant authorities where a criminal offence has been committed, then the FMDA must take steps to lodge formal complaint for criminal investigation;
- Compelling mandatory reporting against doctors and dentists' professional misconduct that should be assessed against the complaints and redress mechanisms and procedures set down by FMDA so that only genuine and substantiated complaints are registered with facts and evidences to minimize abuse of process. Medical professionals who are incompetent or has health impairment or disability should be assessed fairly by the FMDA so that these matters are not treated as a "justification" for any foreseeable and calculated risk taken by the doctor or dentist that results in loss of life or serious harm done to the patient;

- Providing protection and indemnity to the “whistle-blowers” that may bring forward substantiated facts and evidences against any doctor or dentists for malpractice;
- Assessment and proper regulation or monitoring of expatriate doctors before and after entry into the local market;
- Conducting regular periodic or on-spot or random inspection to ensure that FMDC’s standard is maintained and complied with;
- Maintaining annual Registers for doctors and dentists including deregistered doctors and dentists which can be freely available to the public; and
- Publishing a list of registered and de-registered practitioners on annual basis or as deemed necessary by the FMDC;

2.2 Funding of the FMDC

The Board should be funded through registration and certification fees paid by all private and public medical professionals on a regular basis (a criterion can be established based on the income level, *pro bono* or charitable service provided to communities or whatever FMDC deems appropriate). FMDC can also generate income through regular inspection and monitoring of the profession in order to assess compliance and adherence with FMDC rules, regulations and policies and establish fines for offences and penalties imposed.

3.0 Medical and Dental Practitioner Registration Process

Under the Medical and Dental Practitioners Act the medical and dental practitioners are registered **only once (lifetime registration)** and **will only be de-registered** if they have retired or their registration has being cancelled.

3.1 Application for Registration of Medical and Dental Practitioners

The current Act does not provide a detailed application process for registration of medical and dental practitioner.

The Council strongly recommends setting a benchmark that for every application for registration it must be accompanied with the following *evidence* as practiced elsewhere:

- a) Evidence of the identity of the applicant;
- b) Evidence that the applicant is not dependent on a drug to such an extent that his or her ability to practice medicine;
- c) Evidence that the applicant has not been refused registration elsewhere;
- d) Proven evidence of qualification and experience; and
- e) Evidence of clean criminal record.

3.2 Renewal of Registration

Lifetime registration will not create room for improvement by medical and dental practitioners. Instead, it has the potential to create negligence, incompetence, inefficiency, nepotism and mistakes which are costly to the public or consumers. Continuous education is crucial for doctors and dentists to be on top of their profession and the latest developments. Lives have also been lost in the past in Fiji due to unresolved medical negligence or without due care provided to the patient from the time of seeking medical assistance to conclusion of service delivery despite the legal process may have exonerated the perpetrators (*example: Savneets case & Dr Mudliar's case*). Duty of care in this profession is perhaps, higher than any other profession known to mankind. Hence, continuous professional development and education via discussion of medical negligence cases with new graduates as well as the older professionals can reduce loss of lives and enhance favourable perception of our doctors in Fiji.

The Consumer Councils Recommendation:

That the registration should not be valid for more than a year (based on the resources of FMDC) from the day the application was granted. The renewal should be based on satisfactory performance assessed by FMDC based on a certain criteria taking into consideration years of experience, academic credentials, community service and feedback, etc.

For example, private practitioners who also provide goodwill and pro bono health service to the poor and disadvantaged communities can use this to mitigate their position when seeking registration. This will encourage and enhance accessible and affordable service delivery to those who cannot afford expensive medical services, while at the same time make private practitioners more community-oriented.

3.3 Overseas Doctors and Dentists Registration in Fiji

Currently the Act does not have any regulation on recruiting of expatriates into the public and private practices and the regulatory bodies do not have powers to shut down illegal operations. In fact, the Council has encountered cases where no proper registration is sought with the current medical and dental regulatory bodies and expatriate doctors and dentist opening up shop with basically no hygiene or patient-care standards in place. Where registration is sought, the person can become eligible for full registration after one year based on the assessment carried out by the FMDC.

The Councils submission/recommendation:

The Council strongly recommends that the *non-resident*² doctors and dentists be registered initially for a period of one year on probation based on the following:

- Evidence of qualification and experience;
- Community Service in their respective countries;
- Clean criminal record;
- Contribution to the profession in terms of research papers, presentations and upgrading their professional skills;
- A letter from the Medical Council where the expatriate worked in the last 5 years; and
- Evidence of their last registration

² The Act must define different categories of doctors between Fiji citizen and non-citizen and Fiji residents and non-resident in the way it sees appropriate taking into account immigration laws, local business registration laws, etc. This will protect the local market from over-flooding of overseas doctors/dentist and protect consumers from any malpractice as seen in the case of Anco. At times it has been experienced that expatriate doctors come to Fiji and carry out malpractice and run away when investigations are carried out against allegations of malpractice or professional misconduct.

The current Act specially provides guidelines for local medical and dental practitioners and not expatriates. There are no specific rules or regulations for expatriates. This has created the gap in the system which may eventually allow expatriates to flood our local markets without proper regulation or policing of their practice. The Consumer Council has experienced a particular dental practice established by an expatriate dentist in Fiji who fails to meet minimum standards for patient hygiene and care. Sterilization equipment is missing from the clinic and delicate needles and tools that enter a patient's mouth were being literally "boiled in an aluminum pot". The fear of contracting HIV or similar ailments through blood and fluid transmission is not something that is beyond an average person's understanding as education and awareness these days tell us most things that doctors fail to disclose to patients or practice themselves.

Further, recruiting of expatriate health professions into Fiji's health care system is increasingly seen as band-aid solution to address the doctor shortage in the major public hospitals. The recruitment drive is mostly done from Asian countries, like Bangladesh, India, Sri Lanka, Philippines, China and Thailand. Major concerns of the public and consumers relating to the international recruitment are the **incompetence in written and spoken English language and poor performance** of expatriate doctors. Language barrier is the biggest influencing factor that leads to improper diagnosis and has serious adverse impact on the patients' health and wellbeing which has been highlighted by the Auditor General in his reports in the past years.

The qualification and competencies of expatriate doctors and their work ethics has been questioned many times as fake credentials have been discovered from time to time or unreported cases of medical negligence have been highlighted that has not been actioned upon.

The Consumer Councils Submission/Recommendation:

Improvement in the procedures used in recruiting expatriate doctors, their screening and supervision must be strengthened.

FMDC must put in place established criterion for selection process including expertise and skills brought into Fiji in comparison to what is available locally. The local market should be widely scrutinized to ascertain whether any local professional can fit in the gap or the urgency of recruiting expatriates. Continuing education should also be mandatory for expatriate doctors implemented by FMDC.

4.0. De-registration

The Consumer Council would like to recommend a criterion be clearly established for deregistration, including putting in place a waiting period before any registration can be reconsidered. Re-registration must be carefully analyzed against the offence committed and penalties imposed by the FMDA so that re-offending is discouraged.

Ideally, any deregistered doctor or dentist by the FMDC should not own a medical or dental practice nor he/she should and practice medicine or dentistry. The case in point is Dr Angco who owns multiple practices despite being deregistered. Some criteria for deregistration are:

- Violating the code of ethics;
- Professional misconduct;
- Incompetence and lack of duty of care;
- Charged and convicted by the Court/Tribunal;
- Wrongful procedure and medical negligence; and
- Causing/aggravating injury to patients without justification.

4.1 Deregistration for negligence /duty of care

Dr Mudaliar's case, for the first time highlighted in Fiji that *medical negligence* cases are indeed, in existence. The case became public knowledge through mass media, which brought out many facets of moral debates, including whether abortion, being illegal in Fiji but performed on the patient by Mr Mudaliar was justified or not. Apart from this case, the general public is aware of the settlements by the Attorney-Generals office on many other cases relating to doctor-patient relationship in the public hospitals around Fiji.

Shavneet's case also opened up a can of worms in the public medical practice demanding justice, accountability and transparency of an untimely death of a young and healthy child who did not wake up from a simple surgery on his fractured arm. The Public Service Commission finally sat to deliberate on the disciplinary proceedings and came up with a small fine for the loss of life while Ministry of Health in the wake of the scandal continued to defend their doctors.

Fines are good as long as it is not disproportionate to the loss or damage sustained. Where there is loss of life, more heavy penalties is warranted. De-registration for at least 2 years is a starting point.

5.0 Recruitment of Medical and Dental Practitioners in Public Hospital

The Consumer Council recommends that the recruitment of medical and dental practitioners to be done by the Ministry of Health and **not** the Public Service Commission. The administration aspects such as salary and position can be determined by the PSC but the Ministry of Health should recruit staff based on the merits, qualification, experience and the need for the applicant, taking into account any specialist skills and qualification. Further, if the MOH identifies that temporary or short-term vacancies or internships can be created to ease the demand of the populace, then MOH should be free to pursue what suits their urgent needs. However, one officer from the PSC can be with the MOH recruitment team to deal with this.

Additionally, negligence of doctors should be investigated by FMDC and not PSC. Independence and impartiality is very important when dealing with medical negligence cases. If however, FMDC fails to reprimand or take any action against the perpetrator of medical negligence that is either reported or detected through regular monitoring of the profession despite there is a prima facie case, then an independent enquiry committee appointed by the State can step in to investigate against the case and FMDC's inaction.

6.0. Entering into Independent Practice

Any doctor or dentist entering into private practice must get approval from the FMDC which must ensure that their premises is safe and contains necessary resources such as wheelchair, adequate bed, sterilizers, nurse and other personnel, etc. This rule must also apply to expatriates medical and dental practitioners. For young graduates, they **must serve 5 years** in public hospitals and 2 years under the guidance of a private practitioner to open up own clinics. Expatriates must be Fiji citizens to start a private practice. If employed by private or public hospitals, then he or she must be registered by the FMDC and regularly monitored.

7.0 Notification of Complaints (Grievance Redress Mechanism for Complaints Against Doctors)

The Council recommends that FMDC should establish procedures for patients to notify and lodge complaints directly to the FMDC. The offences and penalties must be clearly stated within the legislation.

Following any disciplinary or complaints handling procedures, deregistered doctors must be published to protect the public as well as in the spirit of transparency. This will not only ensure the provision of effective service delivery by medical and dental practitioners, but also to reduce the cases of medical negligence in Fiji. This will go well with the **Freedom of Information Legislation** that the government intends to introduce shortly.

8.0 Recommendations

- There is a need for dental and medical practitioners to be registered on a yearly or biannual basis based on their **performance, community service, clean criminal record and contribution to the profession in terms of research papers, presentations and upgrading their professional skills.**

- Continuing medical education for professional development should be introduced to address medical negligence and up-skilling the medical professionals of the modern techniques and technology irrespective of their expertise and fields.
- The procedures undertaken in recruiting expatriate doctors, their screening and supervision must be strengthened by FMDC. Expatriates should be thoroughly screened before entering into Fiji's medical workforce as there are major concerns to the **incompetence in communication and written and spoken English and poor performance** of expatriate doctors as highlighted by the Auditor General's Office.
- Penalties for offence should be harsher so that the practitioners conduct themselves more professionally and ethically.
- Fiji Medical Council should introduce basic standards in general practice. There is an urgent need to introduce minimum standards of practice that will ensure the above issues raised are adequately addressed. Although some GPs have taken the initiative to implement policies and designs adopted from overseas standards, there needs to have a local standard that can be applied to all GPs. In the absence of any standard for medical practitioners practicing in Fiji is putting patient health care at risk which results in unfortunate deaths that could easily be prevented.
- Amend the archaic Medical and Dental Practitioners Act to incorporate the FCOGP Bill. There is absolutely no control as to how private practitioners operate and practice in Fiji due to the fact that they are left unregulated. They should be regulated by the FMDC to ensure better delivery of health care and value for money, as patients pay exorbitant fees and charges to receive medical services. FMDC should play a facilitative active role in engaging private practitioners by inviting them to organized medical meetings and workshops and encouraging them to participate in its community health care initiatives.

- The Council needs to operate independently from MOH to carry out its functions effectively. FMDC should be established as a statutory organization to deliver its functions effectively. FMDC needs to introduce a database system to store such information and publicize them annually for public consumption.
- FMDC should address patient grievances against inefficient, incompetent and negligent medical practices. At present, there is no active body to provide redress to patients as the health care system fails to make adequate provisions for consumer redress mechanisms.
- FMDC should introduce penalties such as deregistration or appropriate fines for every serious offences.
- FMDC can implement systematic and periodic assessments and inspections, and where necessary conduct spot checks on independent practitioners to ensure their practice meets basic requirement as stipulated by FMDC. If a practice fails to meet the requirement, then penalties should apply with the ultimate closure of the practice.
- By law all private practitioner must be a member of FCOGP. This will help in self regulation of its members and FCOGP will be represented in FMDC.
- The FMDC should have powers to set up commission of inquiry as and when need arises. The panel should have an independent person outside the scope of medical profession.

9.0 Conclusion

Fiji's health system needs to be on par with developed nations as it is faced with challenges and difficulties. The health of people cannot be compromised. Fiji has seen many cases of negligence and malpractice which are either not reported or there is no firm mechanism to report such abuses.

Penalties are inconsistent and too lenient which allows perpetrators to escape through the system. It is time to correct those weaknesses so that the public gain confidence in the country's health system.

Today some medical and dental practitioners seem to show little or no regard to the profession and to the public who largely rely on them to be provided with the best service, the best diagnosis and the best treatment. The Consumer Council and the public know that it is not happening.

The Council believes that our submission will help to eradicate some of the major problems in the health sector through recommending changes and improvements so that consumers and the nation equally benefit.

Yours sincerely

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Ms Joshika Samujh

For: CEO, The Consumer Council of Fiji

THE END