



GOVERNMENT OF BERMUDA  
Ministry of Health

# Health Practitioners Tribunal

## **Consultation Document**

Publication Date: *4<sup>th</sup> June 2019*

Closing Date for Comments: *30<sup>th</sup> September 2019*

*Version 1.3, 26<sup>th</sup> August 2019*  
*Revised to extend closing date*

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### Published

Updated V1.3 190826 (extended)

Revised V1.2 190624 (extended)

Revised V1.1 190618 (questions removed)

V.1 May 2019

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**Subject of the consultation:**

A proposed Health Practitioners Tribunal that would assume responsibility for adjudication of complaints regarding professional misconduct and fitness to practise for registered health professionals. The Health Practitioners Tribunal will be an independent body that makes decisions separate from regulatory authorities such as the Council for Allied Health Professions, the Bermuda Dental Board, the Bermuda Medical Council, the Bermuda Nursing and Midwifery Council, the Bermuda Psychologists Council, the Optometrists and Opticians Council and the Pharmacy Council.

**Scope of this consultation:**

The Ministry of Health proposes to introduce a Health Practitioners Tribunal in 2020. This consultation sets out a proposal for how the tribunal will be designed and implemented. We are seeking your feedback on the impact of these proposals to inform the design and implementation.

**Who should read this:**

Registered health professionals. In addition, individuals or organisations that may be affected directly or have a particular interest in the policy scope and public health objectives should read and comment.

**Consultation period:**

Starting 1<sup>st</sup> June 2019 and ending the 30<sup>th</sup> September 2019.

**How to respond or enquire about this consultation:**

**Responses must be given online at:** [forum.gov.bm](http://forum.gov.bm)

Enquiries can be sent to: [moh@gov.bm](mailto:moh@gov.bm)

Anonymous responses cannot be considered.

**After the consultation:**

Responses will inform the design and implementation of a Health Practitioners Tribunal. We will publish a report summarizing the feedback received, including individual responses identified by name and affiliation on [www.gov.bm/health-public-consultations](http://www.gov.bm/health-public-consultations). Information provided in response to this consultation, including personal information, will be disclosed in accordance with the Public Access to Information Act 2010.

**Getting to this stage:**

The Ministry of Health has considered the feedback from regulatory authorities, Supreme Court judgments, Attorney-General's Chambers and other evidence that demonstrates the need to modernise the adjudication of complaints against health practitioners. The Ministry considered international best practice, a jurisdictional review, and other countries' approaches to complaint-handling and adjudication, and carried out various discussions with stakeholders, to inform the proposals in this document.

**Previous consultations:**

This is the first public written consultation on the issue.

# Table of Contents

1. Overview .....	5
2. Policy Background.....	6
Introduction to complaint handling arrangements.....	6
Concerns with the current complaint handling arrangements.....	7
3. Policy Objective.....	7
4. Policy Proposal.....	8
Table 1: Current Complaint Process and Proposed Changes.....	11
Potential impact of the proposal.....	10
Potential Benefits .....	12
Cost.....	13
Table 2: Estimated Cost of Health Practitioners Tribunal.....	13
Potential Risks .....	14
5. Responding to the Consultation .....	15
How to respond.....	15
Confidentiality .....	16
6. Appendix I: Complaints and Disciplinary Hearings Data 2014-2017 .....	17
7. Appendix II: Jurisdictional Review .....	18
8. Appendix III: Complaint Process Flow Chart and Proposed Health Practitioners Tribunal....	20

# 1. Overview

- 1.1 The Ministry of Health ("Ministry") and health professions' regulatory authorities ("regulatory authorities") are required by statutory mandate to take appropriate action against practitioners to ensure the protection of the public. There are seven (7) regulatory authorities: the Council for Allied Health Professions, the Bermuda Dental Board, the Bermuda Medical Council, the Bermuda Nursing and Midwifery Council, the Bermuda Psychologists Council, the Optometrists and Opticians Council and the Pharmacy Council.
- 1.2 The legislation for health professions provides regulatory authority members with the authority to investigate possible violations of their published code of conduct and the authority to enforce these laws by revoking, suspending or restricting a license if a violation is proven.<sup>1</sup>
- 1.3 The disciplinary process is governed by the provisions of law generally applicable to the regulation of health professions, and by Supreme Court decisions interpreting these laws. The Ministry, Attorney-General's Chambers and members appointed as legal representatives and health practitioners provide significant resources to support regulatory authorities in their quasi-judicial role of hearing charges of misconduct which have been made against a registered person.
- 1.4 The current complaint handling and disciplinary structure for health professions is unsustainable for the following reasons:
  - a) Inadequate processes and lack of procedural fairness with complaint handling due to inconsistent legal oversight and direction.
  - b) Substantial workload burden on current regulatory authority members due to voluntary nature of appointments and current remuneration structure, the absence of orientation and training, administrative support constraints, and lack of policies and procedures.
  - c) Insufficient legal representatives to serve on the Ministry's 14 regulatory authorities and professional conduct committees.
- 1.5 The purpose of this consultation document is to seek formal views on the impact of a proposal for a Health Practitioners Tribunal ("HPT" or "tribunal") and inform its design and implementation. The Ministry intends to establish a tribunal in 2020.

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<sup>1</sup> Regulatory authority members refer to appointed members of boards, councils and professional conduct committees established under the Dental Practitioners Act 1950, the Nursing and Midwifery Act 1997, the Medical Practitioners Act 1950, the Pharmacy Act 1979, the Allied Health Professions Act 2018, the Optometrists and Opticians Act 2008 and the Psychological Practitioners Act 2018.

## 2. Policy Background

### Introduction to complaint handling arrangements

- 2.1 Bermuda is fortunate to have a dedicated group of professionals that contribute to the health regulatory structure through membership on a regulatory authority and performance of functions, such as the continuous updating of standards for health professions, registration, re-registration, research and complaint-handling. These duties are performed in addition to their full-time commitments as practising health professionals.
- 2.2 A 2005 Supreme Court judgment concluded that the disciplinary setup for health professionals' legislation did not meet the requirements of section 6(8) of the Bermuda Constitution.<sup>2</sup> Specifically, the judgment ruled that health professionals' legislation doesn't provide a mechanism for the separation of the investigation and adjudication roles, thus depriving health professionals of their constitutional right to a fair hearing before an impartial tribunal.
- 2.3 In response to the 2005 judgment, the Ministry established professional conduct committees ("PCCs") to investigate complaints, leaving regulatory authorities to adjudicate as a means to address due process and natural justice. PCCs investigate complaints in order to make a decision as to whether a complaint should be placed before a regulatory authority for adjudication. PCCs also have power to dismiss a complaint or perform mediation if there is a misunderstanding between parties. Currently, this setup results in 14 attorneys appointed for 7 regulatory authorities and 7 PCCs. The current state of complaint handling is suboptimal and much is required to ensure that PCCs and regulatory authorities receive training and have appropriate legal and administrative support. These challenges will require appropriate funding.
- 2.4 As further evidence of the need for additional resources for PCCs and regulatory authorities, a 2016 Supreme Court judgment ruled that the Dental PCC and the Bermuda Dental Board acted in good faith but failed to maintain procedural fairness with their investigation and subsequent penalisation of a respondent during a disciplinary hearing.<sup>3</sup> Despite having legal representatives appointed to both the Dental PCC and the Bermuda Dental Board, the process undertaken did not meet the quasi-judicial standard. This judgment also concluded that there should be more consideration as to the level of legal support for disciplinary procedures in order to ensure correct procedure.

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<sup>2</sup> Dr James Fay and Keri Payne v. the Governor and the Bermuda Dental Board. Supreme Court Judgment No. 100: 2005.

<sup>3</sup> Dr Amenemhet Tamerry v. the Bermuda Dental Board and the Ministry of Health and Seniors. Supreme Court Judgment No. 214: 2016.

## Concerns with the current complaint handling arrangements

- 2.5 In consultation meetings, regulatory authority members reported that managing complaints has increasingly detracted from other functions required under their respective legislation.<sup>4</sup> While the number of complaints is relatively stable for most professions, it is the type, nature and severity of a complaint that can increase the amount of time required for investigation and adjudication. It is important to note that the Medical Council receives the majority of the complaints made annually and a volunteer based system alone cannot adequately manage this volume. Additionally, insufficient training, varied levels of administrative and legal support and the limited number of complaints received by a majority of the professions makes proficiency in complaint handling a challenge. See [Appendix I](#) for a record of regulatory authority complaints and disciplinary hearings over time.
- 2.6 Regulatory authority and PCC members receive a token stipend of \$50 (\$100 for Chairs) for meeting to fulfil their duties under their respective legislation. However, it doesn't reflect or compensate for the high volume of work required, particularly as much of the investigative work occurs outside of meetings and an enquiry or hearing can last many hours or days. A token stipend is inadequate for such high-stakes meetings that result in significant loss of professional income for participants.
- 2.7 The remuneration of PCC and regulatory authority members engaged in investigation and disciplinary proceedings results in a structure of professional support that is inconsistent and insufficient. This is especially significant when considering the lack of administrative support and the amount of time required for preparation and coordination of investigations and disciplinary hearings whilst taking into account their full-time professional duties. Health practitioners and legal professionals serving on PCCs and participating in disciplinary hearings are not adequately compensated for their time and service. For example, a regulatory authority that contracted an attorney to assist with one disciplinary hearing in order to address their legal needs spent approximately \$61,000 on just one complaint in 2018.<sup>5</sup> This figure doesn't account for additional hours not billed by the appointed legal representative and health practitioners serving on the regulatory authority or their loss in work revenue.

## 3. Policy Objective

- 3.1 The objective of this policy proposal is to create a tribunal that is sustainable, effective and efficiently utilises available resources, inclusive of legal and administrative support, for complaint-handling; and that can appropriately safeguard patients, and ensure procedural justice to health professionals.

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<sup>4</sup> Notes from consultation meetings with regulatory authority members held on the 29th November, 2017 and 22nd February, 2018.

<sup>5</sup> Peek-Ball, C. Communication regarding support for regulatory authorities, Chief Medical Officer, 10th September, 2018.

- 3.2 [Appendix II](#) provides a jurisdictional review of complaint tribunal services for health professionals. A wide variety of jurisdictions were chosen in order to establish best practices and common themes in complaint handling structures.

## 4. Policy Proposal

- 4.1 The Ministry is proposing to establish an independent adjudication body to be known as the Health Practitioners Tribunal (HPT). This change will remove the responsibility for adjudication and disciplinary proceedings from regulatory authorities to an independent HPT. The proposal includes a health practitioner investigation committee (“investigation committee”) that will remain independent from the adjudicating tribunal. [Table 1](#) outlines the current setup and proposed changes. [Appendix III](#) depicts the current and proposed complaint process flow chart and highlights the key design elements of the proposed HPT.
- 4.2 The proposal will establish a panel of registered health practitioners and lay persons<sup>6</sup>, similar to the setup for jury duty. The members of the panel will be selected for a specified time period, receive training and will potentially be called to serve on an investigation committee or the HPT if the need arises. The number of registered health practitioners on the panel will be representative of the number of practitioners in a specified profession and the number of historical complaints received.
- 4.3 The proposal includes the consolidation of the number of attorneys serving as members on regulatory authorities and PCCs. Instead of appointing 7 attorneys for each of the 7 PCCs, the Ministry will contract one attorney to assist with the complaint handling, investigation and prosecution process. Another separate, attorney will be hired to assist the HPT with adjudication at disciplinary hearings. This will eliminate the need to appoint attorneys for each of the 7 regulatory authorities.
- 4.4 The proposal eliminates the current structure of 7 PCCs and replaces it with a complaint driven investigation committee under the direction of an attorney. When a complaint is received, the attorney will select members from a panel of trained health practitioners and lay persons.
- 4.5 The proposed investigation committee will be comprised of 3 members:
- a) an attorney;
  - b) a representative from the profession that is the subject of the complaint; and
  - c) a lay person.
- 4.6 The investigation committee will screen complaints before initiating a formal investigation in order to determine whether a complaint should be dismissed, placed before the HPT for adjudication or mediated due to a misunderstanding. During an

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<sup>6</sup> A lay person is defined as a person who is not a registered health practitioner. There are examples of utilising lay persons in the regulation of health professionals as a means to ensure that health practitioners are not protecting each other at the risk of public interest and protecting patients.



investigation, the investigation committee will gather supporting documentation from all parties involved. Please note that when a decision is made to place a matter before the HPT, the investigation committee will formulate charges and present (or cause to be presented) their case before the HPT.

- 4.7 The proposal includes an attorney, separate from the attorney on the investigation committee, who will assist the HPT with adjudication at disciplinary hearings. When a matter is placed before the HPT, the attorney will select members from a panel of trained health practitioners and lay persons.
- 4.8 The proposed HPT is comprised of 3 members:
- a) an attorney;
  - b) a representative from the profession that is the subject of the complaint; and
  - c) a lay person.
- 4.9 The HPT will make a determination as to whether professional misconduct or fitness to practise allegations are proven or not proven. If allegations are found to be proven or partially proven, the HPT determines what disciplinary action should be taken.
- 4.10 The proposal also includes the utilisation of lay persons on the investigation committee and HPT. In each case, there will be an attorney, one member will be from the profession that is the subject of the complaint while the other member will be a lay person. A lay person is defined as a person who is not a registered health practitioner. There are examples of utilising lay persons in the regulation of health professionals as a means to ensure that health practitioners are not protecting each other at the risk of public interest and protecting patients.<sup>7,8,9,10,11</sup> Consideration will be given to ensure that lay persons have insight or experience in health, advocacy or non-profit health sector work and to avoid persons completely unfamiliar with the complex environment of healthcare service delivery or with potential bias against healthcare professionals.
- 4.11 The HPT and investigation committee will have a quorum of 3 used for decision making for investigation and adjudication. See [Appendix II](#) for jurisdictional review.
- 4.12 The proposal includes the utilisation of contracted legal representatives and/or expert witnesses in order to ensure that legal support is available when a conflict of interest arises and for expert advice, if required.

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<sup>7</sup> Birkeland, S., Christensen, R., Damsbo, N., Kragstrup, J. (2013). Process-related factors associated with disciplinary board decisions. *BMC Health Services Research*, 13:9. Retrieved at <https://doi.org/10.1186/1472-6963-13-9>

<sup>7</sup> Cruess, S., Cruess, R. (2005). The medical professions and self-regulation: A current challenge. *Ethics Journal of the American Medical Association*, 7:4. Retrieved at <https://journalofethics.ama-assn.org/article/medical-profession-and-self-regulation-current-challenge/2005-04>

<sup>8</sup> Adams, T. L. (2016). Professional self-regulation and the public interest in Canada. *Professions & Professionalism*, Vol. 6, No. 2, 1-15. Retrieved at <http://dx.doi.org/10.7577/pp.1587>

<sup>9</sup> White, W.D. (2014). Professional self-regulation in medicine. *American Medical Association Journal of Ethics*. Vol. 16, No. 4: 275-278. Retrieved at <https://journalofethics.ama-assn.org/article/professional-self-regulation-medicine/2014-04>

<sup>11</sup> Collier, R. (2012). Professionalism: The privilege and burden of self-regulation. *Canadian Medical Association Journal*. 184(14): 1559–1560. Retrieved at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3470617/pdf/1841559.pdf>

- 4.13 Local expert advice will be the standard for assessing the nature of an allegation when elements of a particular case are unclear. The use of overseas expert witnesses will be determined by the severity of the allegations and the need to distance local practitioners from serving as experts.
- 4.14 Legal representatives will chair and have a vote in proceedings in addition to their role to provide legal guidance and ensure due process.<sup>12</sup>
- 4.15 There will be designated resource to provide full administrative support for complaint handling and the proposed HPT.
- 4.16 The Supreme Court will remain as the final option for appeal of any decision made by the proposed HPT.

### Potential impact of the proposal

- 4.17 The proposal to include lay persons on an investigation committee or HPT is a new concept for most regulatory authorities and health professionals in Bermuda. However, the utilisation of lay persons in the regulation of health professionals is consistent in the literature as well as in the jurisdictional review provided in [Appendix II](#). A lay person is defined as a person that is not a registered practitioner. While there may be some objections to the inclusion of lay persons, this must be considered against the need for transparency in the regulation of health professionals. It should be noted that lay persons will be required to undergo training, sign confidentiality agreements and have relevant professional experience.
- 4.18 Communication about a proposed HPT will need to clearly establish rights and responsibilities for all impacted, both registered health professionals and the public. The Ministry will need to consider formal evaluation tools in order to establish whether the tribunal meets its purpose and has clear outcomes, especially given the dichotomous challenge of maintaining legal process and fairness while improving health outcomes and the effectiveness of the health system. Additionally, more consideration will need to be given to how disciplinary decisions will be made public. The Ministry and regulatory authorities must strike the right balance between public protection and the potential for irreversible damage caused by unsubstantiated allegations in a small community.

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<sup>12</sup> Jurisdictional review established that there isn't common practice, as some legal representative have a vote while others are solely utilised to provide advice.

**Table 1: Current Complaint Process and Proposed Changes**

<b>Complaint Process</b>	<b>Current</b>	<b>Proposed Changes</b>	<b>Benefits of Change</b>
<b>1. Point of Entry</b>	Complaint to administrator, professional conduct committee (PCC) or regulatory authority (RA)	Complaint to administrator for newly established investigation committee (IC)	<ul style="list-style-type: none"> <li>• One pathway for complaints</li> </ul>
<b>2. Screening/ Investigation</b>	PCC = 1 attorney + 2 health professionals	IC = 1 attorney + 1 health professional specific to the subject of the complaint + 1 lay person	<ul style="list-style-type: none"> <li>• Lay person = transparency in regulation</li> </ul>
	1 PCC each for 7 regulatory authorities (RA) = 7 attorneys + 14 health professionals	Attorney selects from panel of appointed health professionals and lay persons for each complaint received	<ul style="list-style-type: none"> <li>• Eliminates 7 PCCs</li> <li>• Each IC is complaint specific</li> <li>• Efficient use of health professionals/attorneys</li> </ul>
	§ All members compensated with stipend	§ Attorney is compensated as full time employee or contractor to investigate complaints for all professions § Health professionals and lay persons receive stipend	<ul style="list-style-type: none"> <li>• Addresses compensation for the investigation workload</li> <li>• Legal oversight for due process</li> </ul>
<b>3. Determination for Action</b>	No changes – in relation to a complaint, PCC/IC will either dismiss, mediate or refer (lay charges) the matter to the RA/ Health Practitioners Tribunal (HPT)		
<b>4. Adjudication</b>	RA = 1 attorney + 4–11 health professionals	HPT = 1 attorney + 1 health professional specific to the subject of the complaint + 1 lay person	<ul style="list-style-type: none"> <li>• Lay person = transparency in regulation</li> </ul>
	7 RAs = 7 attorneys + about 47 health professionals	Attorney selects from panel of appointed health professionals and lay persons for each complaint received	<ul style="list-style-type: none"> <li>• RAs can focus on registration/ re-registration and updating standards for profession</li> <li>• Eliminates 7 attorneys serving on RAs</li> <li>• Each HPT is complaint specific</li> <li>• Efficient use of health professionals/attorneys</li> </ul>
	§ All members compensated with stipend	§ Health professionals and lay persons compensated at \$225 if the time taken is < 4 hours and \$450 if the time taken is > 4 hours per day § Attorney is compensated as full time employee or contractor to adjudicate complaints for all professions	<ul style="list-style-type: none"> <li>• Addresses compensation for the time commitment and workload for disciplinary hearings</li> <li>• Legal oversight for due process</li> </ul>
<b>5. Decision</b>	No changes – in relation to a complaint, RA/HPT will either dismiss (facts proven) or impose disciplinary powers (facts proven or partially proven)		
<b>6. Appeal</b>	No changes – appeal to Supreme Court within 28 days of receipt of decision		

## Potential Benefits

- 4.19 The introduction of a fully supported complaint handling process, via an independent HPT and a consolidated health professions investigation committee, compliments the Ministry's plan to shift administrative support for the majority of regulatory authorities to the Bermuda Health Council.<sup>13</sup> By increasing the support and structure for complaint handling and adjudication, the Ministry is closing the gap in regard to longstanding issues identified by regulatory authorities. This is a positive step in the right direction for all that have been intimately involved with complaint handling and the regulation of health professionals.
- 4.20 Shifting the adjudication of complaints from regulatory authorities to the HPT will allow regulatory authorities to focus on registration, re-registration and updating standards for their professions.
- 4.21 The proposed panel of registered health practitioners and lay persons will address the need for a reserve of practitioners required when conflicts of interest arise.
- 4.22 There will be dedicated administrative and legal support to address the orientation of members on the panel of registered health practitioners and lay persons as well as the ongoing development of policies, procedures and training required to ensure an effective and fair complaint handling and disciplinary process.
- 4.23 Full compensation and consolidation of legal support will increase efficiency and ensure consistency in complaint handling across professions. Additionally, consolidation of legal support will eliminate the need to have 7 attorneys appointed to regulatory authorities.
- 4.24 The utilisation of lay persons is not only evidence-based, but places less burden on the small pool of registered health practitioners in order to obtain a quorum of 3 for investigation committees and the HPT. Additionally, the utilisation of lay persons will spread the workload, but also make the disciplinary process for health practitioners more open and transparent.
- 4.25 Contracted legal representatives can act as alternates and provide support when a conflict exists with the primary attorneys on the investigation committee and the HPT.
- 4.26 Contracted expert witnesses allow a neutral party to weigh in on whether a standard of care is met as opposed to leaving the decision solely in the hands of a local practitioner serving as 'expert'.
- 4.27 The proposed HPT and a separate consolidated health professions investigation committee will establish an adequate legal and operational framework by maintaining natural justice and providing transparency for both registered health practitioners and the public.

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<sup>13</sup> Note, the Bermuda Medical Council and the Bermuda Nursing and Midwifery Council are not transferring to the Health Council because they already have established administrative support.

## Cost

- 4.28 The estimated cost of establishing a HPT is \$397,300 - \$469,200. [Table 2](#) provides an estimate of the cost of a proposed HPT.
- 4.29 Eligible members serving on an investigation committee will be entitled to \$50 per meeting. It is estimated that the investigation into a complaint will require 3 – 5 meetings before a determination for action.<sup>14</sup>

<b>Table 2: Estimated Cost of Health Practitioners Tribunal</b>	
<i>(all estimates are based on FY 2017-18 complaint data)</i>	
<b>Investigation Committee Members (non-legal)</b>	<b>\$8,100 - \$13,500</b>
<i>Investigation committee Members (non-legal, n=2) per current PCC-based costs:</i>	
27 complaints x 3-5 meetings per complaint at \$50 per meeting x 2 = \$8,100 - \$13,500	
<b>Investigation Committee Attorney</b>	<b>\$136,000 - \$148,000</b>
<i>Investigation Committee Attorney (n=1):</i>	
1 full time experienced attorney = \$136,000 - \$148,000 <i>(salary based on crown counsel scale)</i>	
<i>-not accounting for absence and conflict of interest</i>	
<b>HPT Members</b>	<b>\$2,700</b>
<i>HPT Members (non-legal, n=2):</i>	
4 disciplinary hearings –	
2 disciplinary hearings at 4 hours x \$225 x 2 = \$900	
2 disciplinary hearings at 4+ hours x \$450 x 2 = \$1,800	
<b>HPT Attorney</b>	<b>\$136,000 - \$148,000</b>
<i>HPT Attorney (n=1):</i>	
1 full time experienced attorney = \$136,000 - \$148,000 <i>(salary based on crown counsel scale)</i>	
<i>-not accounting for absence and conflict of interest</i>	
<b>Administrative Support</b>	<b>\$65,000</b>
<i>Administrative Assistant (n=1):</i>	
1 administrative assistant at \$55,000 - \$65,000 per year = \$65,000	
<b>Contracted Service Providers</b>	<b>\$49,500 - \$92,000</b>
<i>Expert Witnesses (n=0 – 1):</i>	
1 serious allegation estimated at \$4,000 – \$12,000	
<i>-severity of case determines need for contracting with overseas expert advice</i>	
<i>Legal Representatives (n=0 – 3):</i>	
<i>Based on conflict of interest for 2 complaints and 2 disciplinary hearings –</i>	
2 complaints x 5 – 20 hours at \$350 - \$500 = \$3,500 - \$20,000	
2 disciplinary hearings x 60 hours at \$350 - \$500 = \$42,000 - \$60,000	
Total = \$45,500 - \$80,000	
<i>-conflict or absence may require the use of additional attorneys</i>	
<b>Overhead</b> – <i>absorbed by current entity supporting complaint handling</i>	<b>\$0</b>
<b>Total Range</b>	<b>\$397,300 - \$469,200</b>

<sup>14</sup> Based on annual data submitted by PCCs.

- 4.30 It is estimated that contracted legal representatives will be remunerated at \$350 - \$500 per hour.
- 4.31 Eligible members serving on a HPT that participate in a disciplinary hearing will be entitled to the following remuneration:
- a) \$225 if the time taken is four hours or less per day
  - b) 450 if the time taken if more than four hours per day<sup>15</sup>

## Potential Risks

- 4.32 The cost of establishing a HPT will likely require the raising of fees prescribed in legislation for regulatory authorities.
- 4.33 There will be challenges with the number of health practitioners on an investigation committee or HPT – this is due to small numbers of practitioners in some professions and practitioners wanting more representation of their profession in decision making. The latter may be particularly important in decisions regarding disciplinary action.
- 4.34 Recruitment of attorneys with the required experience and the need to accommodate for conflict of interest will be a challenge.

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<sup>15</sup> Compensation figures taken from the South Australian Health Practitioners Tribunal and converted to Bermuda dollars.

## 5. Responding to the Consultation

This consultation is being conducted by the Ministry of Health. There are 5 stages to this policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Securing budget and drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the details of the proposed policy design.

### How to respond

1. Respond to the summary of questions online by 30<sup>th</sup> September 2019 at: [forum.gov.bm](http://forum.gov.bm).
2. Enquiries can be emailed to [moh@gov.bm](mailto:moh@gov.bm)
3. Response must include **your name and state if you are a business, individual or representing an organisation**. In the case of an organisation, please indicate the number of people you are representing. Anonymous responses cannot be considered.
4. **Do not send consultation responses to the Minister. All views and responses must be considered in the public consultation process and will be made available to the public. There will be no private consultations.**
5. **In the interest of transparency anonymous submissions cannot be accepted.**

This document can also be accessed from our website at [www.gov.bm/health-public-consultations](http://www.gov.bm/health-public-consultations).

Paper copies of this consultation document may be obtained free of charge at the Ministry of Health Headquarters in Continental Building, 25 Church Street, Hamilton HM 11.

All responses will be acknowledged, but it will not be possible to reply to individual representations.

A summary of the responses to this consultation will be made available for review and placed on the Ministry of Health consultation website at [www.gov.bm/health-public-consultations](http://www.gov.bm/health-public-consultations).

## Confidentiality

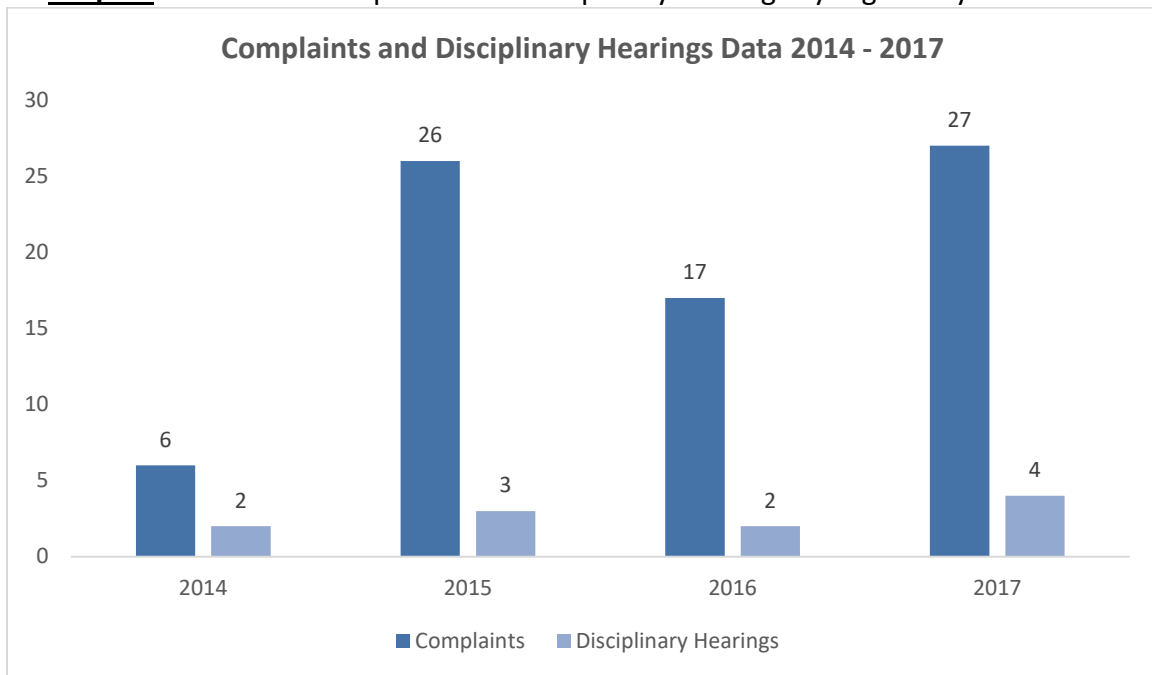
Information provided in response to this consultation, including personal information, will be disclosed in accordance with the Public Access to Information Act 2010.



## Appendix I: Complaints and Disciplinary Hearings Data 2014-2017

In order to gain an accurate understanding of the amount of resources required to assist regulatory authorities with complaint handling, investigation and adjudication, the total number of complaints received by professional conduct committees (PCCs) and the total number of complaints that progressed to disciplinary proceedings should be reviewed. Graph 1 shows the year over year change in the number of complaints and disciplinary hearings reported by regulatory authorities from 2014 to 2017.<sup>16</sup>

**Graph 1:** Number of complaints and disciplinary hearings by regulatory authorities



\*Data reported each year from September 1<sup>st</sup> to August 31<sup>st</sup> to the Bermuda Health Council

<sup>16</sup> Note. Adapted from “2017 Statutory Boards Self-Assessment Report,” by Bermuda Health Council, 2018, p. 7. Copyright 2018 by Bermuda Health Council.

## Appendix II: Jurisdictional Review

Jurisdiction	<i>Medical Practitioners Tribunal Service (MPTS) – UK</i>	<i>UK- Health &amp; Care Professions Tribunal Service (HCPTS) – UK</i>	<i>South Australian Health Practitioners Tribunal (SAHPT) – AU</i>	<i>Medical Board of California (US)</i>	<i>Provincial Dental Board of Nova Scotia (CA)</i>	<i>Bermuda Health Professions (BM)</i>	<i>Bahamas Medical Council (BS)</i>	<i>Bahamas Health Professions Council (BS)</i>	<i>Cayman Health Professions (KY)</i>	<i>Bermuda Bar Association (BM)</i>
Website	<a href="https://www.mpts-uk.org/">https://www.mpts-uk.org/</a>	<a href="https://www.hcpts-uk.org/">https://www.hcpts-uk.org/</a>	<a href="http://www.healthpractitionertribunal.sa.gov.au/">http://www.healthpractitionertribunal.sa.gov.au/</a>	<a href="http://www.mbc.ca.gov/">http://www.mbc.ca.gov/</a>	<a href="http://pdbns.ca/">http://pdbns.ca/</a>	<a href="https://www.gov.bm/health-boards-councils-and-committees">https://www.gov.bm/health-boards-councils-and-committees</a>	<a href="http://bahamasmedicalcouncil.org/">http://bahamasmedicalcouncil.org/</a>	<a href="http://bahamashpc.com/">http://bahamashpc.com/</a>	<a href="http://www.dhrs.gov.ky/">http://www.dhrs.gov.ky/</a>	<a href="http://www.bermudabar.org/">http://www.bermudabar.org/</a>
Regulatory Body	General Medical Council (GMC)	Health and Care Professions Council (HCPC)	Australian Health Practitioners Registration Agency (AHPRA)	Medical Board of California via Office of Consumer Affairs	Provincial Dental Board of Nova Scotia	Bermuda Board/Council for Medicine, Dentists, Psychologists, Nursing, Allied Health, Optometrists/ Opticians and Pharmacy	Bahamas Medical Council	Bahamas Health Professions Council	Cayman Council for Medicine and Dental, Nursing and Midwifery, Pharmacy and Allied Health	Bermuda Bar Council
Type of Practitioners	physicians	16 professions: art therapists, biomedical scientists, chiropodists/podiatrist, etc.	15 professions: medicine, nursing and midwifery, pharmacy, etc.	physicians	dentists, dental hygienists and dental assistants	25+ professions: medicine, nursing, midwifery, pharmacy, etc.	physicians	12+ professions: acupuncture; audiology, speech language pathologists, etc.	physicians, dentists, nurses, midwives, allied health, etc.	attorneys
# of Registered Practitioners	236,732 <sup>17</sup>	350,330 <sup>18</sup>	53,823 <sup>19</sup>	137,967 <sup>20</sup>	1,348 <sup>21</sup>	2,331 <sup>22</sup>	457 <sup>23</sup>	384 <sup>24</sup>	-	533 <sup>25</sup>
<b>Adjudication Phase</b>										
# of members	3	3+	4	6	5	3-9	3	3+	6	3
Type of Members Tribunal/HPT	MPTS is constituted by 1 Chair who can be physician, lay or in some cases legally qualified + 1 physician + 1 lay person	HCPTS is constituted by a Chair, 1 from the profession subject of complaint, and 1 lay person (where health is of concern, 1 physician)	SAHPT is constituted by a chair (lawyer or magistrate) + 2 members from health profession (same profession) + 1 lay member	HPT is constituted of 6 members – Panel A has 1 lawyer + 1 layperson + 4 physicians Panel B has 2 lawyers + 1 lay person + 3 physicians	Dentist panel: chair, 3 dentists and 1 lay person; dental assistant or hygienist: will be chair, 1 dentist, 2 dental assistants or hygienists and 1 lay person	Varies depending on profession: Nursing – 9 members; medicine – 7; etc.	3 physicians with at least 10 years of experience	Disciplinary Committee is comprised of no less than 3 members: 1 registrant from profession subject of complaint, 1 judge or attorney	Councils consist of a Registrar and 5 other members inclusive of 1 non-practitioner	Disciplinary Tribunal consists of Chair (judge) + 2 Bar Association members
Quorum	3	3	4	not specified	3	varies by legislation/policy	not specified	3	majority	3
<b>Investigation Phase</b>										
# of Members	2+	2+	1+	1+	4	3	3	3	6	7
Type of Members on Investigation Team	Investigation Committee has the same setup of MPTS (same panel) with a Chair, at least 1 physician and 1 lay person.	Practice Committees have a Chair, at least 1 registrant who is subject of proceedings and 1 lay person. Screeners have 1 registrant + 1 lay person. If more than 2	Investigator or part of a team of investigators from the AHPRA. Panels must have at least 3 members: 2 members from the profession and 1 lay member	Central Complaint Unit which consists of 1 consumer services analyst/investigator and a medical consultant	Dentist panel: chair, 2 dentists and 1 lay person; dental assistant or hygienist: chair, 1 dentist, 1 dental assistant or hygienist and 1 lay person	Professional Conduct/Complaints Committee (PCC) has 1 lawyer and 2 members of the profession	Complaints Committee has 1 chair (physician) + 2 physicians, all are Council members	Investigating Committee is no less than 3 members: 1 from profession subject of complaint	Councils consist of a Registrar and 5 other members inclusive of 1 non-practitioner	Professional Conduct Committee (PCC) comprised of 1 Bar Council members and 6 Bar Association members

<sup>17</sup>General Medical Council (2017). The state of medical education and practice in the UK. Retrieved from <https://www.gmc-uk.org/>

<sup>18</sup>Health and Care Professions Council (2017). Annual report and accounts 2016–17. Retrieved from <https://www.hcpc-uk.org/>

<sup>19</sup>Australian Health Practitioner Regulation Agency (2017). Annual Report Summary 2016/17 Your National Scheme: Regulating health practitioners in South Australia. Retrieved from <https://www.ahpra.gov.au/annualreport/2017/downloads.html>

<sup>20</sup>Medical Board of California (2017). 2016-2017 Annual Report Medical Board of California. Retrieved from [http://www.mbc.ca.gov/Publications/Annual\\_Reports/](http://www.mbc.ca.gov/Publications/Annual_Reports/)

<sup>21</sup>Provincial Dental Board of Nova Scotia (2017). Provincial Dental Board of Nova Scotia Board Proceeding 2017. Retrieved from [http://pdbns.ca/uploads/publications/Board\\_Proceedings\\_2017\\_-\\_Final.pdf](http://pdbns.ca/uploads/publications/Board_Proceedings_2017_-_Final.pdf)

<sup>22</sup>Bermuda Health Council (2018). 2017 Statutory Boards Self-Assessment Report. Retrieved from <http://www.bhec.bm/statutory-board-reports/>

<sup>23</sup>Bahamas Medical Council (2018). Retrieved from <http://bahamasmedicalcouncil.org/medical-register/>

<sup>24</sup>Bahamas Health Professions Council (2018). Retrieved from <http://bahamashpc.com/current-professionals/>

<sup>25</sup>Bermuda Bar Association (2018). Retrieved from <https://www.bermudabar.org/practicing-members-listings.html#click-here-to-view-alphabetical-list-of-members>

Jurisdiction	<i>Medical Practitioners Tribunal Service (MPTS) – UK</i>	<i>UK- Health &amp; Care Professions Tribunal Service (HCPTS) – UK</i>	<i>South Australian Health Practitioners Tribunal (SAHPT) – AU</i>	<i>Medical Board of California (US)</i>	<i>Provincial Dental Board of Nova Scotia (CA)</i>	<i>Bermuda Health Professions (BM)</i>	<i>Bahamas Medical Council (BS)</i>	<i>Bahamas Health Professions Council (BS)</i>	<i>Cayman Health Professions (KY)</i>	<i>Bermuda Bar Association (BM)</i>
	Case examiners have 1 medical and 1 lay officer	screeners, registrants can exceed lay persons by one.								
<b>Quorum</b>	2 or 3	2 or 3	varies	N/A	3	3	3	3	majority	3
<b>Description of Process</b>										
<b>Description of Process</b>	<ol style="list-style-type: none"> <li>1. Registrar considers if it falls within misconduct and investigates</li> <li>2. Registrar can dismiss, refer directly to MPTS or the medical and lay case examiner</li> <li>3. Case examiners can (unanimously) dismiss, issue warnings, agree to undertakings, refer to Investigation Committee for hearing on whether to issue a warning or to MPTS for determination</li> <li>4. Where case examiners do not agree, the Investigation Committee can hold an oral hearing and can dismiss, issue a warning or refer to the MPTS</li> <li>5. Legal Assessors advise on questions of law arising in proceedings (not part of decisions)</li> </ol>	<ol style="list-style-type: none"> <li>1. Registrar assigns allegation to screeners</li> <li>2. Screeners have 1 registrant and 1 lay and investigate to determine whether to dismiss, refer to Practice Committee or mediate person (unanimous vote with two screeners but majority with more than two)</li> <li>3. Exception is that the Investigating Committee (3) can investigate matters of fraudulent credentials and make a determination</li> <li>4. Practice Committees are the HCPTS who make a determination whether to sanction a registered person</li> <li>5. Legal Assessors give advice to Screeners, statutory committee, the Registrar or the Council</li> </ol>	<ol style="list-style-type: none"> <li>1. The National Board (or panel or committee of a National Board) investigates an allegation resulting in a report of findings</li> <li>2. The panel can dismiss, refer to another entity, refer to a health or performance assessment, refer to a health panel, refer to a performance and professional standards panel, impose conditions, accept an undertaking, caution or refers the matter to the SAHPT</li> <li>3. At any point during a panel hearing, the practitioner who is the subject of the hearing, can refer the matter to the SAHPT</li> <li>4. At any point during a panel hearing, the panel, with reasonable evidence of misconduct or improperly obtained registration, can refer the matter to the SAHPT</li> </ol>	<ol style="list-style-type: none"> <li>1. Central Complaint Unit reviews allegations to determine if there is a violation of the Act that warrants further action</li> <li>2. A medical consultant is utilised for a 2<sup>nd</sup> review at this stage</li> <li>3. Investigations with evidence of possible violations are forwarded to the Office of the Attorney General where a formal charge is drafted</li> <li>4. There are 2 HPTs (A &amp; B) comprised of Board members that conduct hearings</li> <li>5. The hearing is conducted by an administrative law judge who proposes a decision that includes findings of fact, conclusions of law, and recommends a penalty</li> <li>6. The HPT may adopt, modify or substitute an alternate decision</li> </ol>	<ol style="list-style-type: none"> <li>1. Registrar reviews complaint and collects relevant records before submission to the Complaints Committee</li> <li>2. Chair of Complaints Committee (dentist) appoints a panel</li> <li>3. The panel investigates and may dismiss, caution, reprimand, counsel or refer to the Discipline Committee</li> <li>4. Chair of Discipline Committee (dentist) appoints a panel for determination</li> <li>5. Counsel may be employed to assist the Registrar to present a case to the Disciplinary Committee and the Disciplinary Committee may also hire counsel to advise the conduct of a hearing (not part of decision making)</li> </ol>	<ol style="list-style-type: none"> <li>1. PCC receives and investigates complaint</li> <li>2. PCC can dismiss, mediate or refer to the relevant Board/Council</li> <li>3. Board/Council makes determination</li> <li>4. Most PCCs and Boards/Councils have separate legal support</li> </ol>	<ol style="list-style-type: none"> <li>1. Complaints Committee receives and investigates</li> <li>2. Complaints Committee reports findings to the Council with recommendations to either dismiss, refer to the Disciplinary Committee or direct other steps as considered necessary</li> <li>3. If special expertise is required, the Council may appoint a person or panel with the requisite skills to conduct the investigation</li> <li>4. Disciplinary Committee conducts a formal hearing to make determination</li> <li>5. The Council may engage the services of legal counsel to assist the Complaints Committee in preparing the referral and the Disciplinary Committee in conducting a hearing</li> </ol>	<ol style="list-style-type: none"> <li>1. Investigating Committee conducts preliminary investigation</li> <li>2. Disciplinary Committee conducts a hearing and makes determination but will take the recommendation of the Council</li> <li>3. The Council can dismiss or make such disciplinary order as it sees fit</li> </ol>	<ol style="list-style-type: none"> <li>1. Registrar (no vote) will investigate any allegation of fraud or improperly obtained registration</li> <li>2. Council investigates allegations and consults with the Attorney General (AG) for legal advice whether to proceed further with investigation (independent legal advisor if the complainant is employed by the Government)</li> <li>3. Council conducts hearing and makes determination</li> <li>4. At Council request, the AG assigns a legal advisor to assist with proceedings.</li> </ol>	<ol style="list-style-type: none"> <li>1. Complaint received by Council and forwarded to PCC</li> <li>2. PCC investigates and can make interim arrangements as necessary, admonish, dismiss and refer to disciplinary tribunal</li> <li>3. Disciplinary Tribunal conducts hearing and makes determination</li> </ol>
<b>Other Details</b>										
<b>Complaints / Investigations</b>	8,197 in 2016; 1,436 (18%) were investigated <sup>1</sup>	2,259 in FY 2016-17; 1,854 were closed; 53 cases were investigated <sup>26</sup>	917 notifications were received; 19 were referred to the tribunal in FY 2015-16	9,619 in 2016-17; 89 referred to C&F; 1,465 investigated; 425 cases referred to AG <sup>20</sup>	-	27 complaints received with 4 referred for legal action in 2016-17 <sup>20</sup>	-	-	-	-

<sup>26</sup> Health and Care Professions Council (2017). Fitness to practise annual report 2017. Retrieved from <https://www.hcpc-uk.org/>

# Appendix III: Complaint Process Flow Chart and Proposed Health Practitioners Tribunal

**(CURRENT) 1. Point of Entry**  
 Complaint about registered person received by administrator, **professional conduct committee (PCC)** or to regulatory authority

**1. Point of Entry** *NEW!*

- Complaint about registered person received by administrator for **investigation committee (IC)**

**(CURRENT) 2. Screening and Investigation by PCC**

- PCC = 1 attorney + 2 health professionals
- 1 PCC each for 7 regulatory authorities (RA) = 7 attorneys + 14 health professionals
- \$ All members compensated with stipend

**2. Screening and Investigation by IC** *NEW!*

- IC = 1 attorney + 1 health professional specific to the subject of the complaint + 1 lay person
- Attorney selects from panel of appointed health professionals and lay persons
- \$ Attorney compensated as full time employee or contracted to investigate complaints for all professions
- \$ Health professionals and lay persons receive stipend

**Description of Screening Process**  
 PCC/IC screen complaint for appropriateness to investigate (allegations set out matters of professional misconduct, unfitness to practice, improperly obtained registration, being struck off a register in another jurisdiction and conviction of an indictable offence)

**Description of Investigation Process**  
 PCC/IC gather evidence and written statements from both parties: complainant and respondent (registered person).

**3. Determination for action**

Dismissal      Mediation

**(CURRENT) 4. Charges Laid Before Regulatory Authority (RA)**

- RA = 1 attorney + 4–11 health professionals
- 7 RAs = 7 attorneys + about 47 health professionals
- \$ All members compensated with token stipend

**4. Charges Laid Before Health Practitioners Tribunal (HPT)** *NEW!*

- HPT = 1 attorney + 1 health professional specific to the subject of the complaint + 1 lay person
- Attorney selects from panel of appointed health professionals and lay persons
- \$ Health professionals and lay persons compensated at \$225 if the time taken is < 4 hours and \$450 if the time taken is > 4 hours per day
- \$ Attorney is compensated as full time employee or contracted to adjudicate complaints for all professions

**Description of Adjudication Process**  
 Attorney from PCC/IC and respondent or respondent's counsel present evidence in support of or to refute charges at disciplinary hearing held by RA/HPT

**5. Decision**

Dismissal      Disciplinary Action

**6. Appeal**  
 To Supreme Court within 28 days of receipt of decision