

MEMORANDUM FOR THE CABINET
BY THE HONOURABLE PRIME MINISTER

Disciplinary Procedure of Medical Practitioners
in the Public Service

One of the functions of the A. & E. Board set up under Ordinance No. 1 of 1959 (the Medical and Health Department (Constitution) (Amendment) Ordinance) was "to advise the Governor in respect of disciplinary proceedings against Medical Practitioners in the Government Service in their capacity as public officers". The Ordinance in question also empowered the Governor to make regulations in respect of disciplinary proceedings against Medical Practitioners. Under the Adaptation of Laws (No. 2) Order 1963 it became the duty of the Board to advise the Minister responsible for the Medical and Health Department on disciplinary proceedings against Medical Practitioners and power to make regulations in respect of such proceedings has been vested in the Prime Minister.

The constitutional position is that power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices vests in the Prime Minister acting on the recommendation of the Public Service Commission. However, the Prime Minister may, acting on the recommendation of the Public Service Commission, delegate in writing any of these powers to any public officer or authority as may be specified in the instrument of delegation. The Constitution also provides that the Commission may make regulations with the consent of the Prime Minister or such other Minister as may be authorised by the Prime Minister. These regulations can confer powers and impose duties on any public officer or authority of the Government of Malta for the purpose of the discharge of the Commission's functions.

There is an obvious conflict between the provisions of the Constitution and the provisions of the Medical and Health Constitution Ordinance. But, since the provisions of the Constitution are overriding constitutionally, it is only regulations made by the Public Service Commission which can have any force in law. Although, therefore, a provision exists for the making of regulations under the Medical and Health (Constitution) Ordinance this power cannot be exercised as any regulations so issued would be ultra vires the Constitution.

During the past 3 years a number of attempts have been made to establish a system of disciplinary procedure with regard to Medical Practitioners in the Government Service which, on one hand, would satisfy the Advisory and Executive Board and, on the other, would not conflict with the provisions of the Constitution. No progress has however been made as the A. & E. Board considers that the Board, is by law, the body responsible for ensuring discipline among Medical Practitioners in the Government Service.

The point at issue is whether the A. & E. Board should be responsible for advising the Minister on the disciplinary proceedings against Medical Practitioners in the public service and whether they should establish their own procedure when so doing. Medical Practitioners who are public officers obviously fall under the Prime Minister acting

on a recommendation of the Public Service Commission as regards discipline and the A. & E. Board can therefore only advise the Minister on general matters regarding disciplinary proceedings and not on disciplinary proceedings against individual officers. An attempt has been made to associate the A. & E. Board with the Public Service Commission in exercising disciplinary control over Medical Practitioners in the Government Service and a number of draft amendments to the regulations have been proposed to the A. & E. Board (cfr. Annex 1). These amendments have proved unacceptable to the Board (cfr. Annexes 2 and 3).

The Board's stand raises important issues of policy. The advice of the Law Officers is that the exclusion of Medical Practitioners from the operation of the Public Service Commission insofar as disciplinary procedure is concerned is ultra vires the Constitution. In order to satisfy the aspirations of the A. & E. Board one of two things can be done. An instrument of delegation can be issued by arrangement with the Public Service Commission empowering the A. & E. Board to exercise disciplinary control over Medical Practitioners in accordance with ad hoc regulations which can be made by the Commission with the consent of the Prime Minister. Even then, such delegation would be without prejudice to the Prime Minister's power, (in any case in which he would deem it proper to use it), to exercise disciplinary control on the recommendation of the Public Service Commission and, moreover, any decision of the Board to remove a Medical Practitioner from a public office would be subject to appeal to the Prime Minister acting in accordance with the recommendation of the Public Service Commission (sections 113 (2)(a) and 113 (3) of the Constitution). The other alternative would be to amend the Constitution so as to exclude Medical Practitioners from the field of competence of the Public Service Commission.

The first alternative has certain dangers in that the Government would no doubt be faced with requests from other bodies of staff e.g. Engineers, Lawyers, for similar treatment. A further difficulty is that the Public Service Commission would also have to be prepared to make a recommendation to the Prime Minister for the issue of an instrument of delegation and to agree to the making of ad hoc regulations. The second alternative would satisfy the A. & E. Board but also raises the difficulties of repercussions from other sectors and would require the support by the votes of not less than two-thirds of all the members of the House of Representatives.

The only other possible alternative would be to amend the regulations in the sense proposed at Annex 1. This alternative appears to be the least harmful but is not satisfactory to the A. & E. Board.

Ministers are asked to advise on the line of action to be followed.

7th February, 1968.

DRAFT AMENDMENTS TO PUBLIC
SERVICE COMMISSION REGULATIONS

- Add before the word "Whenever" at the beginning of regulation 14 the following words:-

"Subject, with regard to medical practitioners in the Government service, the provisions of the next following regulation."

- Add after regulation 14 the following regulation 14A:-

"14A. In the case of medical practitioners holding a post in the Government service, whenever the head of department considers it necessary to institute disciplinary proceedings against any such officer on grounds of alleged misconduct, but is of opinion that the misconduct alleged, if proved, would not be serious enough to warrant dismissal under regulation 16 -

(a) he shall communicate to the officer concerned, in writing, a statement of the charge or charges against him, setting out particulars of the evidence relied on to support the charge or charges. This statement shall be delivered personally to the officer by a responsible official of the department concerned. No documentary evidence shall be used against the officer unless he has previously been supplied with a copy thereof or given access thereto. The officer shall be required before a day specified (which day must allow a reasonable interval for the purpose) to reply in writing to the charge or charges made, stating any grounds on which he relies to exculpate himself;

(b) if the officer does not furnish a reply within the period specified, or does not, in the opinion of the head of department, exculpate himself, then the head of department shall forward to the Commission copies of the charge or charges, the officer's reply, if any, with his own comments, should he wish to make any;

(c) the Commission, upon receipt of the papers aforesaid, shall, as soon as may be, request the Advisory and Executive Board; to set up a disciplinary board, composed of three of the members of the A. & E. Board. The names of the proposed members shall be submitted to the Commission for its approval. The Board so set up shall investigate the charge or charges, and shall report thereon to the Commission, through the head of department.

(d) The Commission, on receipt of the report may, if it so deems necessary, remit the report to the Advisory and Executive Board for further investigations.

(e) The Disciplinary Board shall ensure that the officer concerned knows the whole case against him, and that he is given an adequate opportunity of making his defence, either by himself, or by an officer in the public service, or by a representative of the Staff Association or Union to which the officer belongs.

(f) The Commission, after examining the report or reports, original and supplementary, as the case may be, and after consulting with the Advisory and Executive Board, shall forward the whole proceedings to the Prime Minister, and shall make the relevant recommendation."

- Add to 16 (f) after paragraph (f) thereof, the following proviso -

"Provided that, in the case of medical practitioners holding a post in the Government service, the Committee, in addition to the Chairman designated as aforesaid, shall consist of three members of the Advisory and Executive Board."

OFFICE OF THE ADVISORY AND
EXECUTIVE BOARD.

4th December, 1967.

Dear Judge Harding,

Thank you for your letter of the 28th ultimo.

I have now examined the proposed 'modus' and I will certainly submit your suggestion to the Board at its next meeting of the 15th instant. However I think it is premature to arrive at a decision at this stage when, as you note, there exists as yet no authority from the Honourable Prime Minister and the Board has not yet received a reply to its letter of 17th November whereby it had sought to establish fundamental points of principle.

In the aforesaid letter the Board made it amply clear that it was not prepared to enter into any temporary arrangement nor discuss the details of the permanent solution before it received an assurance from Government that the basic principles put forward had been accepted. This procedure was and is still valid; it is inspired by the conviction that it is only in this manner that the necessary guide lines denoting the course which discussions are to take could be set for all concerned.

If I may express a personal opinion without in any way prejudging the issue, I was thinking that the delegation of authority to the Board would have been finally carried out in a totally different manner. As it is the proposal seems to take care of the temporary measures under point 2 on page 2 of the Board's letter dated the 17th ultimo rather than provide for the definite solution which the Board desires. Apart from other aspects, your proposal falls short of the Board's aspirations as regards the exclusion of disciplinary proceedings which could lead to dismissal, in the reservation of certain powers to the head of the department in the initial stages of proceedings and by the fact that the Board as a body appears to be totally excluded saving for the appointment of the disciplinary board and in respect of consultation which the Commission might deem it necessary to hold after that the report has been submitted to the Commission.

I repeat that the present letter conveys my own personal impressions and is purposely being limited to the salient features which emerge from your draft. My purpose in writing is to let you know my reactions which, I feel bound to put before the Board.

A copy of this letter is being forwarded to the Honourable Minister of Health.

Yours sincerely,

(Sd.) Gius. G. Gatt.

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OFFICE OF THE ADVISORY
AND EXECUTIVE BOARD.

18th December, 1957

Dear Judge Herding,

The Board has now discussed your letter of the 28th ultimo and the draft amendments therewith enclosed.

I am instructed to inform you that the Board has found your suggestions unacceptable and it has fully endorsed the views expressed in my letter of the 4th instant.

Copy of this letter is being forwarded to the Honourable Minister of Health.

Yours sincerely,

(Sd.) Gius G. Gatt

The Chairman,
Public Service Commission,
4, Old Mint Street,
Valletta.

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