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## *The Preliminary Investigation Committee and Disciplinary Proceedings*

- 3.1 The Council's jurisdiction over the professional conduct of registered medical practitioners is laid down in the Medical Registration Ordinance and the Medical Practitioners (Registration and Disciplinary Procedure) Regulation.
- 3.2 The situations that give rise to disciplinary proceedings being instituted include where a registered medical practitioner has been convicted in Hong Kong or elsewhere of any offence punishable with imprisonment or where there is evidence that a registered medical practitioner has been guilty of misconduct in any professional respect.
- 3.3 For the purpose of giving general guidance to registered medical practitioners as to what may commonly constitute professional misconduct, the Medical Council publishes a Professional Code and Conduct which is reviewed by the Ethics Committee and revised to ensure that it reflects current professional ethics. It was last revised in November 2000. Each registered medical practitioner is given a personal copy of the Code.
- 3.4 Complaints against registered medical practitioners touching on matters of professional misconduct are normally either lodged with the Council by individuals or referred to the Council by other bodies such as the Police, the ICAC and the press. In accordance with the established procedures, individual complaints processed in 2002 will go through part or all of the following three stages:-
  - (a) Initial consideration by the Chairman, the Deputy Chairman and a lay Member of the Council's Preliminary Investigation Committee (PIC) who decide whether the complaint is groundless, frivolous or unpursuable, and therefore cannot or should not proceed further or that it should be referred to the PIC for full consideration.
  - (b) Examination by the PIC of the complaint/information received as well as the explanation of the registered medical practitioner(s) being accused, and decision as to whether or not there is a prima-facie case to refer it to the Council for a formal inquiry.
  - (c) Inquiry by the Medical Council comprising a panel of at least 5 Council Members including a lay Member to hear the evidence from both the complainant and the defending registered medical practitioner(s).



3.5 The PIC comprised 7 members including 1 of the 4 lay Members of the Council. The Chairman of the PIC is assisted by a Deputy Chairman, both of them being elected by the Council from among its Members. The membership of the PIC (as at 31 December 2002) was as follows:-

Dr LAW Chi-lim, Robert (Chairman)

Professor FOK Tai-fai (Deputy Chairman)

Dr CHAN LOUIE So-sum, Susan, JP

Dr CHOW Pak-chin

Dr LI Kwok-tung, Donald

Dr MAK Sin-ping, JP

Mrs CHENG CHO Chi-on, Mariana JP\*

Mr Robert KWOK, JP\*

Mr LAM Kan-ming, Mark\*

Miss YAU Ho-chun, Nora, MH, JP\*

*\* serving on rotation basis, in the sequence of alphabetical order of their surnames each for a period of 3 months.*

3.6 In 2002, the Medical Council processed a total of 287 complaints. **Table 1** shows the nature of complaints. Comparative figures for the years of 1998, 1999, 2000, 2001 and 2002 are also shown in the same table. As the figures show, the number of disciplinary cases received by the Medical Council had dropped by about 6% and 1% in 1999 and 2000 respectively. The figure had increased by 4% and 22% in 2001 and 2002 respectively. The major categories of disciplinary cases on "disregard of professional responsibility to patients" are failure or unsatisfactory result of surgery and failure to properly / timely diagnose illness or to give proper advice.

3.7 In 2002, the PIC Chairman considered all the 287 cases received. Of these, 117 cases were dismissed by the PIC Chairman, the PIC Deputy Chairman and the lay Member. 28 cases could not be pursued further because the complainants failed to provide further information or statutory declaration. 71 cases were referred to the PIC for consideration. **Table 2** shows the reasons for dismissal of the 117 cases by the PIC Chairman, the PIC Deputy Chairman and the lay Member.



- 3.8 **Table 3** shows the result of the processing of the complaints by the PIC. In 2002, a total of 76 cases was considered by the PIC, including cases carried forward from 2001.
- 3.9 **Table 4** gives a closer look into the PIC's work in 2002. A total of 11 meetings were held to consider the 76 cases. Of these 76 cases, 60 cases were dismissed by the PIC, 14 cases were referred to the Council for inquiry, and 2 cases were under consideration pending further investigation. At each PIC Meeting, the presence of the lay Member is mandatory.
- 3.10 The majority of complaints did not reach the inquiry stage. They were dismissed either because they were frivolous or because they related to allegations which could not be regarded as professional misconduct. Some of the complaints in fact touched on civil claims of professional negligence or compensation which should, more appropriately, be dealt with through civil proceedings or the Small Claims Tribunal. In these cases, the complainants were advised accordingly. Others could not be pursued further due to a lack of supporting evidence, complainants withdrawing their complaints or being unwilling to testify.
- 3.11 In an inquiry, the defendant doctor is normally legally represented. The Secretary of the Medical Council, who is normally represented by a counsel of the Department of Justice, is responsible for presenting evidence to substantiate the disciplinary charges, including for example the calling of the complainant as the prosecution's witness. Hence, the complainant seldom needs to engage his or her own lawyer to present the case at a disciplinary hearing.
- 3.12 To deal with any legal issues raised at the disciplinary inquiry, the Medical Council is assisted throughout the hearing by its own Legal Adviser. It should also be stressed that, in finding any registered medical practitioner guilty, the Medical Council has to be satisfied with the evidence put before it; and the standard of proof which applies in each case has to be commensurate with the gravity of the offence charged.



3.13 At an inquiry, where a registered medical practitioner is found guilty of a disciplinary offence, he will face one of the following disciplinary sanctions:-

- Removal from the General or Specialist Register;
- Removal from the General or Specialist Register for such period as the Council may think fit;
- Reprimand;
- Suspended application of any of the above for a period not exceeding 3 years, subject to any conditions the Council may think fit;
- Warning letter.

3.14 **Table 5** shows the number of disciplinary inquiries conducted by the Council in 2002. A total of 10 cases were heard in the year of 2002. In 9 of the 10 cases (90%), the Council found the registered medical practitioners concerned guilty. Cases which featured more prominently were related to the registered medical practitioners' disregard of professional responsibilities to patients.

3.15 By law, any registered medical practitioner who is aggrieved by the disciplinary order of the Council is entitled to appeal to the Court of Appeal. **Table 6** shows the actual number of appeals lodged against the Council's orders in 1998, 1999, 2000, 2001 and 2002 respectively. There were 5 appeal cases lodged against the Council's orders in 2002 including 4 appeal cases carried forward from 2001. 3 appeal cases were heard by the Court of Appeal of which 2 were dismissed and 1 was allowed. 1 appeal case was withdrawn by the appellant.