

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 2003 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).

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- 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 2003) 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 (from 1 January 2003 to 18 November 2003)

Dr LI Kwok-tung, Donald

Dr MAK Sin-ping, JP

Mrs CHENG CHO Chi-on, Mariana, BBS, JP*

Mr LAM Kan-ming, Mark*

Mrs LING LEE Ching-man, Eleanor, OBE, SBS, JP*

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 2003, the Medical Council processed a total of 350 complaints. **Table 1** shows the nature of complaints. Comparative figures for the years of 1999, 2000, 2001, 2002 and 2003 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 1% in 2000. The figure had increased by 4%, 22% and 22% in 2001, 2002 and 2003 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 2003, the PIC Chairman considered all the 350 cases received. Of these, 116 cases were dismissed by the PIC Chairman, the PIC Deputy Chairman and the lay Member. 35 cases could not be pursued further because the complainants failed to provide further information or statutory declaration. 107 cases were referred to the PIC for consideration and 2 cases were referred to the Health Committee for hearing. No decision has yet been reached on 90 cases pending further information or statutory declaration. **Table 2** shows the reasons for dismissal of the 116 cases by the PIC Chairman, the PIC Deputy Chairman and the lay Member.

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- 3.8 **Table 3** shows the result of the processing of the complaints by the PIC. In 2003, a total of 108 cases was considered by the PIC, including cases carried forward from 2002.
- 3.9 **Table 4** gives a closer look into the PIC's work in 2003. A total of 12 meetings were held to consider the 108 cases. Of these 108 cases, 85 cases were dismissed by the PIC, 22 cases were referred to the Council for inquiry, and 1 case was referred to the Health Committee for hearing. 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.

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- 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;
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 - 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 2003. A total of 13 cases were heard in the year of 2003, including 1 case that was partly heard and to be continued in 2004. In 11 of the 12 cases (91%), 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 1999, 2000, 2001, 2002 and 2003 respectively. There were 4 appeal cases lodged against the Council's orders in 2003 including 2 appeal cases carried forward from 2002. Two appeal cases were heard by the Court of Appeal of which 1 was dismissed and 1 was allowed. One appeal case was withdrawn by the appellant.