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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 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 has published a Professional Code and Conduct (which was last revised in November 2000) and each registered medical practitioner has been given a personal copy of the Code. In view of the fact that the Code has been issued for four years, the Ethics Committee of the Council will make recommendations to the Council on updating the Code. Changes which had already been approved and minor changes which would be neither substantial nor controversial will be incorporated in the updated version 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, complaints will be processed 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) to decide whether the complaint is groundless, frivolous or not pursuable, 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 as well as the explanation of the doctor concerned, and decision as to whether or not there is a prima-facie case to refer it to the Council for a formal inquiry.

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(c) Inquiry by the 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 comprises 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 2004) was as follows:-

Dr LAW Chi-lim, Robert (Chairman)

Professor FOK Tai-fai (Deputy Chairman)

Dr CHAN LOUIE So-sum, Susan, JP

Dr CHIU Shing-ping, James (from 7 January 2004 onwards)

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 2004, the Council processed a total of 311 complaints. **Table 1** shows the nature of complaints. Comparative figures for the years of 2000, 2001, 2002, 2003 and 2004 are also shown in the same table. As the figures show, the number of disciplinary cases received by the Council had increased by 4%, 22% and 22% in 2001, 2002 and 2003 respectively. The figure had dropped by about 11% in 2004. The category of "disregard of professional responsibility to patients" included mainly cases on failure or unsatisfactory result of surgery, failure to properly/timely diagnose illness, and failure to give proper advice.

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- 3.7 In 2004, the PIC Chairman considered all the 311 cases received. Of these, 119 cases were dismissed jointly by the Chairman, the Deputy Chairman and the lay member of the PIC. 40 cases could not be pursued further because the complainants failed to provide further information or statutory declaration. 81 cases were referred to the PIC for consideration and 1 case was referred jointly by the Chairman and the Deputy Chairman of the PIC to the Health Committee for hearing. No decision has yet been reached on 70 cases for which further information or statutory declaration is required. **Table 2** shows the reasons for dismissal of the 119 cases by the Chairman, the Deputy Chairman and the lay member of the PIC.
- 3.8 **Table 3** shows the decisions of the PIC on the cases it has considered. In 2004, a total of 112 cases was considered by the PIC, including cases carried forward from 2003.
- 3.9 **Table 4** gives a closer look into the PIC's work in 2004. A total of 11 meetings were held to consider the 112 cases. Of these 112 cases, 87 cases were dismissed by the PIC, 25 cases were referred to the Council for inquiry. 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 constitute professional misconduct. Some of the complaints in fact touched on civil claims of professional negligence or compensation which should be dealt with in civil proceedings or the Small Claims Tribunal. In these cases, the complainants were advised accordingly. Others could not be pursued further due to the lack of supporting evidence or 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 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 in a disciplinary inquiry.

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- 3.12 To deal with any legal issues raised in the disciplinary inquiry, the Council is assisted throughout the hearing by its own Legal Adviser. It should also be stressed that, before any registered medical practitioner is found guilty of any disciplinary offence, the offence has to be proved to the required standard by the evidence put before the Council. The standard of proof which applies in each case has to be commensurate with the gravity of the offence charged.
- 3.13 If a registered medical practitioner is found guilty of a disciplinary offence after an inquiry, 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 2004. A total of 12 cases were heard in the year of 2004, including 1 case that was partly heard and to be continued in 2005. In 10 of the 11 concluded cases (91%), the Council found the registered medical practitioners concerned guilty. The more prominent cases were related to the registered medical practitioners' disregard of professional responsibilities to patients.
- 3.15 A registered medical practitioner aggrieved by the disciplinary order of the Council has a right in law to appeal to the Court of Appeal. **Table 6** shows the number of appeals against the Council's orders in the 5 years from 2000 to 2004. Three appeals were lodged with the Court of Appeal in 2004 (including 1 appeal against an order made by the Council in 2003). The only appeal heard in 2004 was dismissed by the Court of Appeal.