

6. THE ETHICS COMMITTEE AND THE PROFESSIONAL CODE AND CONDUCT



6.1

The Ethics Committee (EC) is established by the Council and its functions include:-

- (a) to study and review any case relating to medical ethics or professional conduct, either on its own motion or at the request in writing of not less than 20 registered medical practitioners;
- (b) to advise and make recommendations to the Council on matters about medical ethics and professional conduct generally.

6.2

The membership of the EC (as at 31 December 2006) was as follows:-

Dr David FANG, SBS, JP (Chairman)
Dr CHAN Chok-wan
Dr CHAN Yee-shing
Ms CHEUNG Jasminia Kristine* (from 1 March 2006 onwards)
Dr CHOW Pak-chin (from 12 February 2006 onwards)
Dr LAI Cham-fai
Professor LEUNG Ping-chung, SBS, OBE, JP
Dr LI Kwok-tung, Donald
Mrs LING LEE Ching-man, Eleanor, SBS, OBE, JP**
Dr SHIH Tai-cho, Louis (from 8 February 2006 onwards)
Professor TAO LAI Po-wah, Julia***
Dr YEUNG Chiu-fat, Henry

* *lay person who is appointed for a term of three years with effect from 1 March 2006.*

** *lay person who is re-appointed for a term of two years with effect from 25 March 2006.*

*** *lay person who is appointed for a term of three years.*

6.3

In response to an enquiry, the EC had a discussion on whether a doctor could issue sick leave certificates in respect of himself. The EC was of the opinion that self-issuance of sick leave certificates was unacceptable. With the endorsement of the Council, a guideline was published in the 12th Issue of the Council's Newsletter in March 2006.

6.4

At the invitation of the Preliminary Investigation Committee, the EC considered whether a doctor-patient relationship existed between the examining doctor and the examinee in disability assessment examinations which were usually commissioned by insurance companies or law firms for the purpose of compensation assessment. The EC had prepared a set of guidelines on "Doctor-patient relationship in disability assessment examinations" for the guidance of all medical practitioners. With the endorsement of the Council, the guidelines were published in the 12th Issue of the Council's Newsletter in March 2006.

6. THE ETHICS COMMITTEE AND THE PROFESSIONAL CODE AND CONDUCT



6.5 Since January 2005, the EC has been updating the Professional Code and Conduct (the Code) issued in November 2000 to incorporate previously approved changes, to improve clarity and remove ambiguities, and to re-arrange the provisions in a more systematic manner. With the endorsement of the Council, the Code would be renamed as the "Code of Professional Conduct" (the updated Code) upon promulgation.

6.6 The updating exercise continued in 2006. However, in view of concerns on the provisions on practice promotion, it was decided to promulgate section 5 of the updated Code on "*Professional communication and information dissemination*" ahead of the promulgation of the complete updated Code. Section 5 of the updated Code, which superseded paragraph 4 of the existing Code on "*Communication in professional practice*", was promulgated in the 12th Issue of the Council's Newsletter in March 2006.

6.7 In 2006, the EC had also reviewed paragraph 14.2 of the Code on "*Contract medicine and managed care*", paragraph 15 on "*Improper financial transaction*" and paragraph 16 on "*Relationships between the medical profession and the pharmaceutical and allied industries*". The recommendations drawn up by the EC had been endorsed by the Council and incorporated into the updated Code pending promulgation.

6.8 On the direction of the Council, the EC considered the suggestion of the Chairman of the Preliminary Investigation Committee that:-

- (a) The rule against public endorsement or promotion of a commercial brand of medical or health related products be incorporated in the updated Code in order to provide clearer guidance to members of the profession as well as to obviate arguments that the lack of a written rule implies there is no prohibition on public endorsement of health products by doctors.
- (b) Medical and health product companies be also included in paragraph 14.1 of the Code which governs "*Relationship between doctors and organizations*".

In this connection, paragraphs 5 and 14 of the Code were still being reviewed by the end of 2006. Any amendments, if approved, would be incorporated into the updated Code.

6. THE ETHICS COMMITTEE AND THE PROFESSIONAL CODE AND CONDUCT



6.9 The EC was tasked by the Council to continue to study the possibility of further relaxing the restrictions on dissemination of service information in a moderate manner. The EC continued its discussion on the matter and formed the view that doctors directories was a controlled and prescribed manner to effectively disseminate service information to the public. To widely publicize the availability of doctors directories, the Council endorsed the EC's recommendation to encourage organizations for which the Council had given approval to publish doctors directories to widely publicize the availability of their doctors directories so as to facilitate members of the public in making informed choices of doctors. In this connection, letters were issued to 5 organizations concerned in May 2006 encouraging them to widely publicize their doctors directory. In addition, the Council also endorsed the EC's recommendations to encourage more medical associations, in particular specialist institutions/associations, to publish doctors directories; and to add hyperlinks in the Council's website to those Doctors Directories which had been published online so as to facilitate access by members of the public. The Council also agreed, on the recommendation of the EC, to examine its communication strategy with members of the profession and members of the public in due course.

6.10 In 2006, the EC had processed one application from a specialist association for approval to publish a doctors directory. The Council, on the recommendation of the EC, approved that application in October 2006. In addition, the EC was still processing another application from a medical association seeking the Council's approval for publishing a district-based doctors directory.

6.11 A task force was formed by EC to comprehensively review the updated Code in order to ensure that the updated Code would be consistent with the freedom of expression guaranteed under the Basic Law and the Hong Kong Bill of Rights Ordinance.

6.12 It was brought to the Council's attention that unreasonable budget constraints were imposed by the contractual terms of two health insurance companies on their panel doctors. At the invitation of the Council, the EC had considered the matter and was of the view that the constraints would pose a serious problem of medical ethics in the quality of medical care delivered by the panel doctors. The EC recommended and the Council endorsed the following course of action:-

- (a) To issue a letter to all medical practitioners cautioning them in general terms that joining health insurance schemes with unreasonable budget constraints may infringe paragraph 14.2.2 of the Code.
- (b) To alert the public that health insurance schemes which impose unrealistic restrictions on doctors' practices may lead to undesirable effects on the standard of medical services delivered to the patients.

6. THE ETHICS COMMITTEE AND THE PROFESSIONAL CODE AND CONDUCT



- (c) To urge other organizations such as Consumer Council and other medical associations to monitor such health insurance schemes with a view to ensuring that they are ethical and in the best interest of patients.

A personal letter reminding doctors of paragraph 14.2.2 of the Code was issued by the Chairman of the Council on 31 July 2006. A press conference, co-hosted by the Chairman of the Council and the Chairman of the EC, on the same matter was also held on that day.

6.13 The EC had considered a request to relax the restrictions on signboards. Noting that the Council is appealing against the decision of Justice Reyes in "*Dr Kwok-Hay KWONG v The Medical Council of Hong Kong*" (HCAL 46/2006), the EC recommended and the Council agreed to await the outcome of the appeal before considering the request further.

6.14 Accepting EC's view that paragraphs 5 and 14.1.1 of the Code may be misunderstood by members of the profession, the Council agreed, on the recommendation of EC, to publish an article in the 13th issue of the Council's Newsletter clarifying the following matters:-

- (a) The Council had never taken a restrictive view on the interpretation of paragraph 5 of the Code concerning incidental promotion. The Council would only take action against a doctor if the doctor intentionally attracted patients through mass media appearances.
- (b) Paragraph 14.1.1 of the Code only required doctors to exercise due diligence to ensure compliance with the Code. It had never been the intention of the Council to impose strict liability on doctors for breaches of the Code by the associated medical organizations.