3 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 Council has published a Professional Code and Conduct (the Code) (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 seven years, action is being taken by the Ethics Committee of the Council to update 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 Hong Kong Police Force, the Independent Commission Against Corruption 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 and the Deputy Chairman in consultation with 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.

(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 2007) was as follows:-

Professor LAU Wan-yee, Joseph (Chairman)

Professor FOK Tai-fai, JP (Deputy Chairman)

Dr CHAN Hon-yee, Constance, JP (from 12 February 2007 onwards)

Dr CHENG Man-yung

Dr CHU Kin-wah

Dr FOO Kam-so, Stephen

Ms. CHEUNG Jasminia Kristine*

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

Mrs TAI POON Ching-sheung, Joyce, BBS, JP*

Miss WAN Lai-yau, Deborah, BBS, JP*

** serving on rotation basis, each for a period of 3 months.*

3.6 In 2007, the Council processed a total of 472 complaints. ***Table 1*** shows the nature of complaints. Comparative figures for the years of 2003, 2004, 2005, 2006 and 2007 are shown in the same table. As the figures show, the number of disciplinary cases received by the Council had dropped by about 11% from 2003 to 2004, but increased by 28% in 2005, 17% in 2006 and 1.5% in 2007. 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, failure to give proper advice, and conducting inappropriate treatment or inappropriate prescription of drugs.

3.7 In 2007, the PIC Chairman considered all the 472 cases received. Of these, 146 cases were dismissed jointly by the Chairman and the Deputy Chairman in consultation with the lay member of the PIC. 35 cases could not be pursued further because the complainants failed to provide further information or statutory declaration. 60 cases were referred to the PIC for consideration. No decision has yet been reached on 231 cases for which further information or statutory declaration is required. ***Table 2*** shows the reasons for dismissal of the 146 cases by the Chairman and the Deputy Chairman of the PIC.

3.8 ***Table 3*** shows the decisions of the PIC on the cases it has considered. In 2007, a total of 99 cases were considered by the PIC, including cases carried forward from 2006.

3.9 ***Table 4*** gives a closer look into the PIC's work in 2007. A total of 12 meetings were held to consider the 99 cases. Of these 99 cases, 65 cases were dismissed by the PIC, 34 cases were referred to the Council. 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.

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 2007. A total of 20 cases were heard in the year of 2007, including 2 cases that were partly heard and to be continued in 2008. In all the 18 concluded cases (100%), 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 2003 to 2007. Ten appeals were lodged with the Court of Appeal in 2007 (including 6 appeals which were carried forward from previous years).