

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 (MRO) 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 a 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 Code of Professional Conduct (the Code) (Revised in January 2009), and each registered medical practitioner has been given a personal copy of the Code.
- 3.4 The Preliminary Investigation Committee (PIC) is established by the Council to perform the following functions:-
- (a) to make preliminary investigations into complaints or information touching any matter that may be inquired into by the Council or heard by the Health Committee and to give advice on the matter to any registered medical practitioner;
 - (b) to make recommendations to the Council for the holding of an inquiry under section 21 of the MRO;
 - (c) to make recommendations to the Health Committee for conducting a hearing; and
 - (d) to make preliminary investigations upon a referral by the Education and Accreditation Committee.
- 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 2011) was as follows:-

Professor LAU Wan-ye, Joseph, SBS (Chairman)

Professor FOK Tai-fai, SBS, JP (Deputy Chairman)

Dr CHAN Hon-ye, Constance, JP

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Dr FOO Kam-so, Stephen
Dr HO Hiu-fai (from 12 February 2011 onwards)
Dr HO Hung-kwong, Duncan
Miss CHAN Ching-har, Eliza, BBS, JP*
Ms CHEUNG Jasminia Kristine*
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 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 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).
- 3.7 In 2011, the Council processed a total of 461 complaints. **Table 1** shows the nature of complaints. Comparative figures for the years of 2007 to 2011 are shown in the same table. As the figures show, the number of disciplinary cases received by the Council had maintained at a high level in recent years. The category of “disregard of professional responsibility to patients” included mainly cases on unsatisfactory result of treatment, inappropriate medical advice/explanation, inappropriate prescription of drugs and improper diagnosis.

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- 3.8 In 2011, the PIC Chairman considered all the 461 cases received. Of these, 114 cases were dismissed jointly by the Chairman and the Deputy Chairman in consultation with the lay member of the PIC as being frivolous or groundless. 10 cases could not be pursued further because the complainants failed to provide further information or statutory declaration, or the complaints were anonymous or withdrawn. 46 cases were referred to the PIC for consideration and out of which, 3 cases were subsequently referred to the Council for formal inquiry. No decision has yet been reached on 291 cases for which further information is required. **Table 2** shows the nature of complaint of the 114 cases dismissed by the Chairman and the Deputy Chairman of the PIC.
- 3.9 **Table 3** shows the decisions of the PIC on the cases it has considered. In 2011, a total of 99 cases were considered by the PIC, including complaint cases received in 2010 or before.
- 3.10 **Table 4** gives a closer look into the PIC's work in 2011. A total of 11 meetings were held to consider the 99 cases. Of these 99 cases, 40 were dismissed by the PIC while 59 were referred to the Council. At each PIC Meeting, the presence of a lay member is mandatory.
- 3.11 The majority of complaints did not reach the inquiry stage. They were dismissed either because they were frivolous or 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.
- 3.12 In an inquiry, the defendant doctor is normally legally represented. The Secretary of the Council, who is normally represented by a Government 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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- 3.13 To deal with any legal issues raised in disciplinary inquiries, the Council is assisted throughout the hearing by its own Legal Adviser.
- 3.14 In the case *Medical Council of Hong Kong v. Helen Chan* (FACV 13/2009), the Court of Final Appeal in May 2010 held that the Legal Adviser's (i) presence at the Council's private deliberations and (ii) drafting of the Council's decisions in disciplinary inquiries not only are lawful, but also contribute to safeguarding the defendant's constitutional right to hearing by a competent, independent and impartial tribunal. In view of the Court of Final Appeal's decision, the Council decided in June 2010 to resume the former practice of inviting the Legal Adviser (i) to be present during the Council's deliberations in disciplinary inquiries and (ii) to draft the Council's judgments on the basis of the Council's decisions, findings and reasoning.
- 3.15 The Legal Adviser does not take part in the Council's deliberations or decision-making. He only gives legal advice to the Council, and will inform the parties of any legal advice given during the Council's private deliberations. He will also draft the judgment on the basis of the Council's decisions, findings and reasoning. The Council will thoroughly scrutinize the draft and modify it where necessary in order to ensure that the judgment says what the Council means.
- 3.16 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.
- 3.17 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; or
 - Warning letter.

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- 3.18 **Table 5** shows the number of disciplinary inquiries conducted by the Council in 2011. A total of 21 cases were heard in the year of 2011. In 19 of the 21 cases (90.5%), 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.
- 3.19 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 2007 to 2011. A total of 18 appeals had been lodged with the Court of Appeal as at 2011 (including 13 appeals which were carried forward from previous years). 6 appeals were dismissed by the Court of Appeal, 2 appeals were allowed by the Court of Appeal and 4 appeals were withdrawn by the registered medical practitioners concerned.