

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 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) which was promulgated 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 Medical Registration Ordinance;
 - (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 2009) was as follows:-

Professor LAU Wan-ye, Joseph (Chairman)

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

Dr CHAN Hon-ye, Constance, JP

Dr FOO Kam-so, Stephen

Dr HO Hung-kwong, Duncan (from 7 January 2009 onwards)

Dr LUI Cho-ze, Joseph

Miss CHAN Ching-har, Eliza, BBS, JP* (from 1 September 2009 onwards)

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 2009, the Council processed a total of 493 complaints. [Table 1](#) shows the nature of complaints. Comparative figures for the years of 2005 to 2009 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 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.
- 3.8 In 2009, the PIC Chairman considered all the 493 cases received. Of these, 181 cases were dismissed jointly by the Chairman and the Deputy Chairman in consultation with the lay member of the PIC. 32 cases could not be pursued further because the complainants failed to provide further information or statutory declaration. 65 cases were referred to the PIC for consideration and out of which, 6 cases were subsequently referred to the Council for formal inquiry. 2 cases were referred to Health Committee for consideration. No decision has yet been reached on 213 cases for which further information or statutory declaration is required. [Table 2](#) shows the nature of complaint of the 181 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 2009, a total of 103 cases were considered by the PIC, including complaint cases received in 2008 or before.
- 3.10 [Table 4](#) gives a closer look into the PIC’s work in 2009. A total of 12 meetings were held to consider the 103 cases. Of these 103 cases, 60 were dismissed by the PIC while 41 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 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.



- 3.12 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.
- 3.13 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.
- 3.14 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.
- 3.15 [Table 5](#) shows the number of disciplinary inquiries conducted by the Council in 2009. A total of 19 cases were heard in the year of 2009, including 3 cases that were partly heard and to be continued in 2010. In all of the 16 concluded cases, 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.
- 3.16 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 2005 to 2009. A total of 14 appeals had been lodged with the Court of Appeal as at 2009 (including 10 appeals which were carried forward from previous years). 1 appeal was allowed by the Court of Appeal and 1 appeal was withdrawn by the doctor concerned.