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## *The Preliminary Investigation Committee and Disciplinary Proceedings*

4.1 The Dental Council's jurisdiction over dentists' professional conduct is laid down in the Dentists Registration Ordinance and the Dentists (Registration and Disciplinary Procedure) Regulations.

4.2 Disciplinary proceedings may be instituted against a registered dentist who:

- (a) has been convicted in Hong Kong or elsewhere of an offence punishable with imprisonment;
- (b) has been guilty of unprofessional conduct;
- (c) has obtained registration by fraud or misrepresentation;
- (d) was not at the time of his registration entitled to be registered; or
- (e) is practising dentistry in premises or under conditions which are unsuitable for such practice.

4.3 If any applicant for registration:-

- (a) has been convicted in Hong Kong or elsewhere of any offence punishable with imprisonment;
- (b) has been guilty of unprofessional conduct; or
- (c) is the subject of an existing order made under section 17(1)(i) or (ii) of the Dentists Registration Ordinance 1940,

inquiry may then be instituted to determine whether the name of the applicant should be entered on the register. The Dental Council has a discretion after such inquiry to order that the name of the applicant be not entered on the register.

4.4 The Dental Council has published a Code of Professional Discipline for distribution to each registered dentist to provide general guidance to dentists as to what may commonly constitute unprofessional conduct. This document is not a complete code of professional ethics, nor can it specify all offences which may lead to disciplinary action. Ultimately it is the Council that decides in each case whether the conduct of an individual dental practitioner constitutes unprofessional conduct.



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4.5 Complaints against registered dentists touching on matters of unprofessional conduct are normally either lodged with the Council by individuals or referred to the Council by the press, the police or other organizations such as the Consumer Council. In accordance with the statutory procedure, individual complaints may go through three stages:-

- (a) Initial consideration by the Chairman of the Council's Preliminary Investigation Committee (PIC) who must, unless it appears to him/her that the complaint is frivolous or groundless and should not proceed further, direct that the case be referred to the PIC for consideration;
- (b) Examination by the PIC of the complaint/information received as well as the explanation of the defendant dentist to determine whether or not there is a prima-facie case for a formal inquiry;
- (c) Inquiry by the Dental Council, which sits in a panel of at least 4 Council Members, to hear the evidence of the complaint and representations from the defendant dentist.

4.6 The PIC is made up of three members. Its composition is as follows:-

- (a) 1 member of the Council elected by the Council, who shall be the Chairman of the Committee;
- (b) 2 registered dentists qualified to be registered under section 8 of the Ordinance, ordinarily resident in Hong Kong, who are not members of the Council and who shall be appointed by the Chairman of the Council:-
  - (i) from a panel of not less than 12 such registered dentists nominated by the Hong Kong Dental Association; or
  - (ii) in the event of the Hong Kong Dental Association failing to nominate at least 12 such registered dentists, at the discretion of the Chairman.

4.7 The membership of the Committee is as follows:-

[Dr Wong Tin-chun \(Chairman\)](#)

[Dr Leung Shui-kwong, Peter](#)

[Dr Lai Sik-hung, Francis](#)

The Legal Adviser of the Committee is Mr Lam Ken-chung, Simon who provides legal advice in the deliberation of disciplinary cases.

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4.8 This year, the Council processed a total of 104 disciplinary cases, representing an increase of 20.9% when compared with 2003's figure. The increase is chiefly due to the significant increase in the number of complaints received in relation to canvassing and disregard of professional responsibilities to patients. **Table 1** classifies the complaints by their different nature. Comparative figures for the years of 2003 and 2002 are also shown in the same table. Most of the complaints (70.2%) were related to the disregard of professional responsibilities to patients.

4.9 **Table 2** shows the number of complaints processed under the three-stage process. Out of the 104 cases received in 2004, 67 were dismissed by the Chairman. The PIC held 7 meetings and considered 21 cases in total (including some cases carried forward from previous years), out of which 7 cases (33.3%) were referred to the Council for inquiry.

4.10 **Table 3** gives a closer look into the PIC's work in 2004. Four of the 7 cases referred for inquiry were heard in 2004. It is expected that the remaining cases will be heard in 2005.

4.11 The majority of complaints did not reach the inquiry stage. They were dismissed either due to their frivolous nature or because they were related to such allegations which could not indeed have been regarded as unprofessional conduct. Others are cases which could not be pursued further due to a lack of or insufficient supporting evidence. However, it should be pointed out that some of the complaints in fact touched on civil claims of professional negligence or compensation which should, more appropriately, be dealt with through civil proceedings or the Small Claims Tribunal.

4.12 In an inquiry, the defendant dentist is normally legally represented. The Secretary to the Dental 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 a witness. Hence, it is normally not necessary for the complainant to engage his own lawyer to present the case at a disciplinary hearing.



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4.13 To deal with any legal issues raised at the disciplinary inquiry, the Dental Council is assisted throughout the hearing by its own Legal Adviser. It should also be stressed that, in finding any dentist guilty, the Dental Council has to be satisfied with the evidence put before it; and the standard of proof it applies in each case has to be commensurate with the gravity of the offence charged.

4.14 In the event that the Dental Council is satisfied after an inquiry that a dentist has committed a disciplinary offence then any one of the following disciplinary sanctions may be meted out:-

- (i) removal of the dentist's name from the Register of Dentists;
- (ii) removal of the dentist's name from the Register of Dentists for such period as the Council may think fit;
- (iii) reprimand;
- (iv) any other order as the Council thinks fit, but no such order is to be of greater severity than those in (i) to (iii).

The Council has the power to suspend the operation of an order made under (i), (ii) or (iii) for a period or periods

not exceeding 2 years, in which case the order will not take effect unless during the suspension period the dentist is found guilty of another disciplinary offence or is in breach of a condition of the suspension order.

4.15 **Table 4** shows the number of inquiries conducted by the Council in 2004. A total of 7 inquiries were held in the year, including one on an application for restoration to the register of dentists. One hearing was adjourned and to be resumed in 2005. The Council found the dentists concerned guilty of unprofessional conduct in four of the 5 disciplinary cases (80%).

4.16 Any dentist/applicant who is aggrieved by the order of the Council is entitled to appeal to the Court of Appeal. The Court of Appeal may thereupon affirm, reverse or vary the order appealed against.

4.17 **Table 5** shows the actual number of appeals lodged against the Council's orders in 2002, 2003 and 2004 respectively. There was no appeal lodged in 2004.