

4

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 an 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,

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

4.4 The Council has published a Code of Professional Discipline for distribution to each registered dentist to provide general guidance to dentists on the proper behaviour to be observed in the profession and what may commonly constitute unprofessional conduct. The Code is not a complete guidebook on professional ethics, nor can it specify all offences which may lead to disciplinary action. Ultimately it is for the Council to decide on the merits of each individual case whether the conduct of an individual dental practitioner under complaint or information received constitutes unprofessional conduct.

4.5 Complaints or information received against registered dentists touching on matters of unprofessional conduct are normally either lodged with the Council by individuals or been referred to the Council by the press, the police or such other organizations as the Consumer Council. In accordance with the statutory procedure, individual complaints may normally be handled under the following procedures -

- (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 or 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; and

- (c) inquiry by the 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 3 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 PIC is as follows -

Dr Wong Tin-chun (Chairman up to 30.9.2005)

Dr Tso Wei-kwok, Homer, BBS, JP (Chairman since 13.10.2005)

Dr Lai Sik-hung, Francis

Dr Leung Shui-kwong, Peter (up to 31.5.2005)

Dr Chiang, Stanley Li-biau (since 1.6.2005)

4.8 In 2005, the Council had processed a

total of 97 disciplinary cases, representing a slight decrease of 6.7% when compared with the 2004's figure. The decrease was attributable to the decrease in the number of complaints received in relation to the disregard of professional responsibilities to patients. **Table 1** shows the different nature of the complaints received. Comparative figures for the years 2003 and 2004 are also shown in the table. 59.8% of the complaints received were related to the disregard of professional responsibilities to patients.

4.9 The number of complaints processed in 2005 under the 3-stage process mentioned in paragraph 4.5 above is given in **Table 2**. Out of the 97 cases received, 65 were dismissed by the Chairman. The PIC had held 7 meetings in 2005 and considered 21 cases in total (including 3 cases carried forward from 2004), out of which 6 cases (i.e. 28.6%) were referred to the Council for inquiry.

4.10 **Table 3** gives a closer look into the PIC's work in 2005. 4 of the 6 cases referred for formal inquiry were heard in 2005. Hearings of the remaining cases would be scheduled in 2006.

4.11 The majority of complaints did not reach the inquiry stage but were dismissed either by the PIC Chairman or at the decision of the PIC. They were dismissed either due to their frivolous nature or because they were related to such allegations which could not be taken as unprofessional misconduct. Others were cases which could not be pursued further due to a lack of or insufficient supporting evidence. However, it should be pointed out that

4

Preliminary Investigation Committee and Disciplinary Proceedings

some of the complaints had touched on civil claims of professional negligence or compensation which should more appropriately be dealt with through civil proceedings.

4.12 At an inquiry, the defendant dentist is normally represented by his/her defence counsel. 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 the calling of witness and independent expert opinion. Hence, it is normally not necessary for the complainant to engage his own legal representative to present the case at the disciplinary hearing.

4.13 The Legal Adviser to the Council sits throughout the hearing to assist the Council to deal with any legal issues raised at the disciplinary hearing. It should be stressed that, in deciding on whether the defendant dentist is guilty of the charges laid against him/her, the 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 Council is satisfied after an inquiry that a dentist has committed an offence which amounts to unprofessional conduct, then any one of the following disciplinary sanctions may be considered -

- (a) removal of the dentist's name from the Register of Dentists;
- (b) removal of the dentist's name from the Register of Dentists for such

period as the Council may think fit;

- (c) reprimand; or
- (d) any other order as the Council thinks fit, but no such order is to be of greater severity than those in (a) to (c) above.

The Council has the power to suspend the operation of an order made under (a), (b) or (c) 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 2005. A total of 7 inquiries were held in the year, including 2 on complaints against applications for restoration to the Register of Dentists and another case on canvassing involving 8 dentists under complaint. The Council found the dentists concerned guilty of unprofessional conduct in 5 of the 7 disciplinary inquiries. In the canvassing case where 8 dentists were involved, 4 of them were found guilty of unprofessional conduct.

4.16 Any dentist who is aggrieved by the order of the Council is entitled to appeal to the Court of Appeal and the Court of Final Appeal. The Courts may thereupon affirm, reverse or vary the order appealed against. Table 5 shows the number of appeals lodged against the Council's orders in 2003 to 2005. One appeal was lodged in 2005.