

**For discussion
on 27 June 2001**

**LegCo Panel on Health Services
Subcommittee on improvements to the medical complaints mechanism**

Purpose

To apprise members of the Subcommittee of the functions and structure of the Medical Council, and her scope of work, in particular the current disciplinary procedures.

Background

2. Attached at Appendix I is a leaflet which outlines the functions and structure of the Medical Council, and her scope of work, in particular the current disciplinary procedures.

Disciplinary Procedures

3. Whereas the disciplinary procedures of the Medical Council are summarized in the leaflet at Appendix I, details of the disciplinary procedures are set out in the Medical Registration Ordinance, Cap. 161, Laws of Hong Kong, and its subsidiary legislation, namely the Medical Practitioners (Registration and Disciplinary Procedure) Regulation. Copies of the Ordinance and Regulation are attached at Appendix II.

Reform Proposals

4. Disciplinary procedures is one of the areas being actively examined and considered by the Working Group on Reform of the Medical Council. Members of the profession and the public have been asked to give their opinions and suggestions in this respect and will be consulted on the recommendations of the Working Group to improve the disciplinary procedures as soon as it is available.

*The Medical Council of Hong Kong
June 2001*

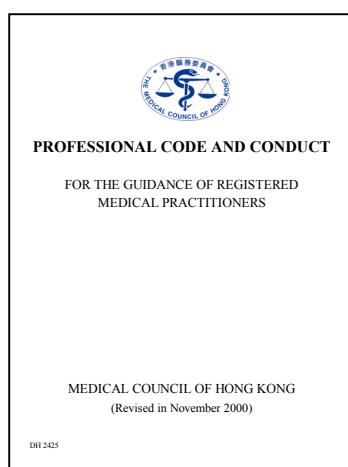
This leaflet is a brief description of the role of the Medical Council and her scope of work in safeguarding the standard of medical practice in Hong Kong. Hopefully, the information will help to enhance understanding of the current system of how Medical Council carries out her work and the complexity and variety of professional issues that the Medical Council needs to consider in her mentioned role. Apart from disciplinary function, the other tasks like maintaining a register of doctors and specialists, upholding the standard of medical education, continuing medical education, professional performance and fitness to practise are part and parcel of her scope. This leaflet only specifically explains the disciplinary proceedings which are of public concern.

THE MEDICAL COUNCIL OF HONG KONG

The Medical Council of Hong Kong is established under and empowered by the **Medical Registration Ordinance, Cap 161**, Laws of Hong Kong to assure and promote quality in the medical profession in order to protect the patients and the public at large.

Functions (the scope of work)

- ◆ the registration of medical practitioners and specialists, and keeping of up-to-date register;
- ◆ the conduct of Licensing Examination; and
- ◆ the maintenance of ethics, professional standards and discipline in the profession. Guidance to the profession in this aspect is published in a booklet called *Professional Code and Conduct*. It is issued to every registered medical practitioner and kept under continuous review. Revised version is published from time to time.



COMPOSITION OF THE MEDICAL COUNCIL

- ◆ 28 Members of the Medical Council (MC):
 - 2 registered medical practitioners nominated by University of Hong Kong
 - 2 registered medical practitioners nominated by Chinese University of Hong Kong
 - 2 registered medical practitioners nominated by Department of Health
 - 2 registered medical practitioners nominated by Hospital Authority
 - 2 registered medical practitioners nominated by Hong Kong Academy of Medicine (HKAM)
 - 7 registered medical practitioners elected by the Hong Kong Medical Association (HKMA)
 - 7 registered medical practitioners elected by all registered medical practitioners
 - 4 lay persons appointed by the Chief Executive
- ◆ Chairman of the Council is elected among the Members.
- ◆ All the Council Members will sit in the policy meetings.
- ◆ For Committees and Subcommittees, apart from the Chairman (who must be a Member of MC), a significant proportion of membership is made up of non-Members by appointment.
- ◆ For the disciplinary inquiry, the MC can also appoint non-Member from a Panel of Assessors which include 10 registered medical practitioners and 4 lay persons.

Committees and Sub-Committees

To enhance performance of its duties and exercise of its powers the Medical Council has established the following Committees:

- (a) Licentiate Committee
 - Examination Sub-Committee
 - Internship Sub-Committee
 - Credentials Sub-Committee
 - Exemptions Sub-Committee
 - Review Sub-Committee
 - (b) Education and Accreditation Committee
 - (c) Ethics Committee
 - (d) Preliminary Investigation Committee (PIC)
 - (e) Health Committee
- ◆ The Council may appoint Members of the Council and persons who are not Members to be members of these committees;
 - ◆ Only a Member of the Council may be appointed as the Chairman of a Committee.

Under current legislation, Medical Council can only look into professional conduct of registered medical practitioners. Other areas such as performance, administrative complaints, medical negligence claims, etc. are outside the remit of the Medical Council.

TWO MAJOR TYPES OF DISCIPLINARY OFFENCES

(I) Conviction of offence punishable with imprisonment

- ◆ conviction in itself leads to disciplinary proceedings even if the offence does not involve professional misconduct
- ◆ irrespective of whether a prison term is imposed or not
- ◆ bound to accept the court's determination
- ◆ particularly serious view is taken of offences involving dishonesty, indecent behaviour or assault, and dangerous drugs records
- ◆ minor offences (e.g. traffic offences) will not normally be referred for disciplinary inquiry

(II) Professional misconduct

"If a medical practitioner in the pursuit of his profession has done something which will be reasonably regarded as *disgraceful, unethical or dishonourable* by his professional colleagues of good repute and competency, then it is open to the Medical Council of Hong Kong, if that be shown, to say that he has been guilty of professional misconduct."

(Professional Code and Conduct for the Guidance of Registered Medical Practitioners)

3-STAGE DISCIPLINARY PROCEEDINGS

Secretary of Medical Council receives information or complaint and informs complainant of procedures for handling complaint



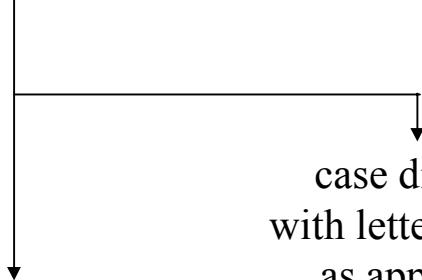
Stage 1

- I.** Initial screening by PIC Chairman, in consultation with the PIC Deputy Chairman



Stage 2

- II.** PIC Meeting



Stage 3

- III.** Disciplinary Inquiry by MC or Health Committee

The Preliminary Investigation Committee (PIC)

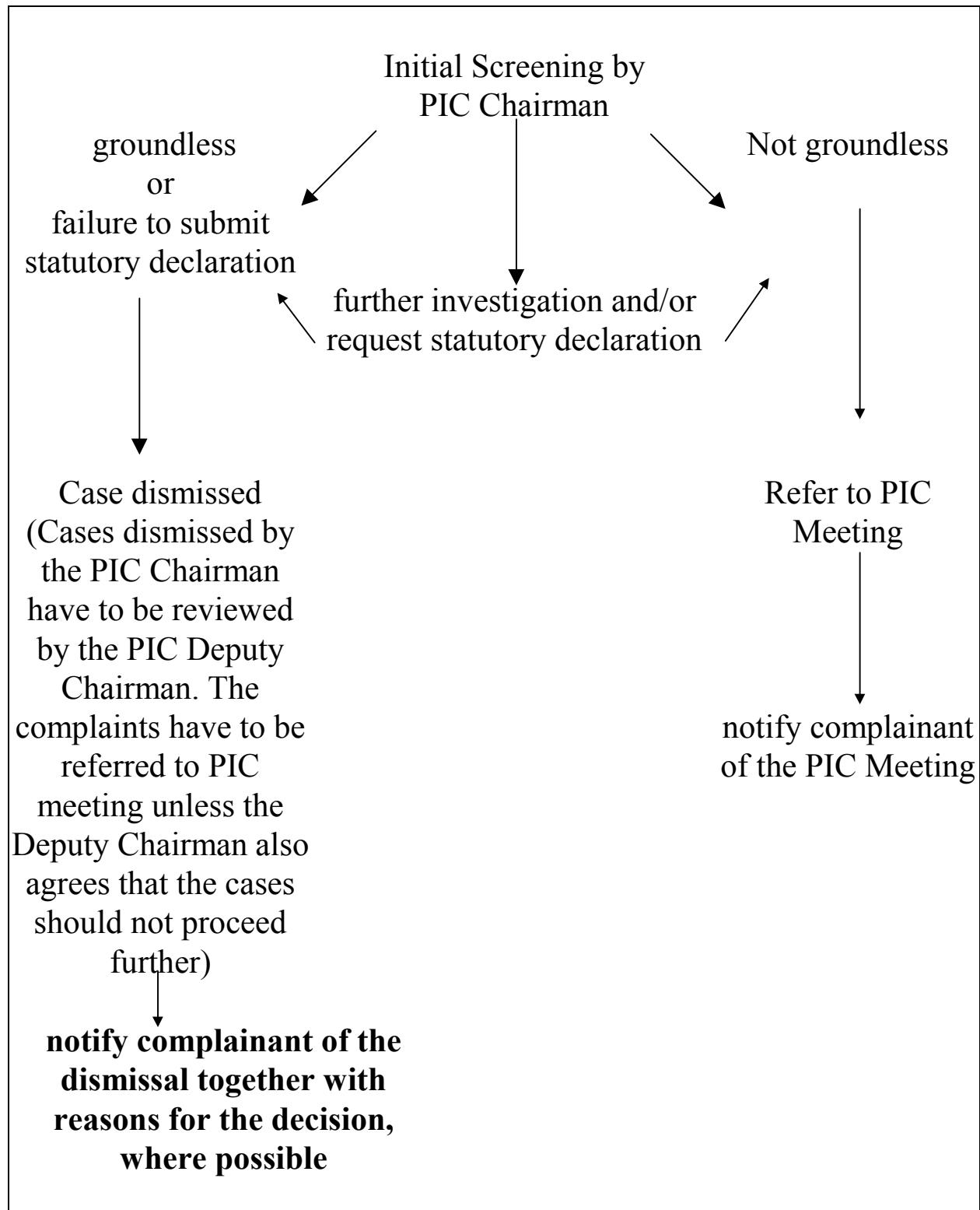
7 Members:

- ◆ Chairman and Deputy Chairman (*both elected among the Council Members*)
- ◆ 1 registered medical practitioner nominated by Department of Health
- ◆ 1 registered medical practitioner nominated by the Hospital Authority
- ◆ 1 registered medical practitioner nominated by the Hong Kong Medical Association
- ◆ 1 registered medical practitioner nominated by any Council Member
- ◆ 1 of the 4 Lay Members of the Medical Council to serve the PIC on rotational basis (the presence of a Lay Member at the PIC meeting is mandatory)

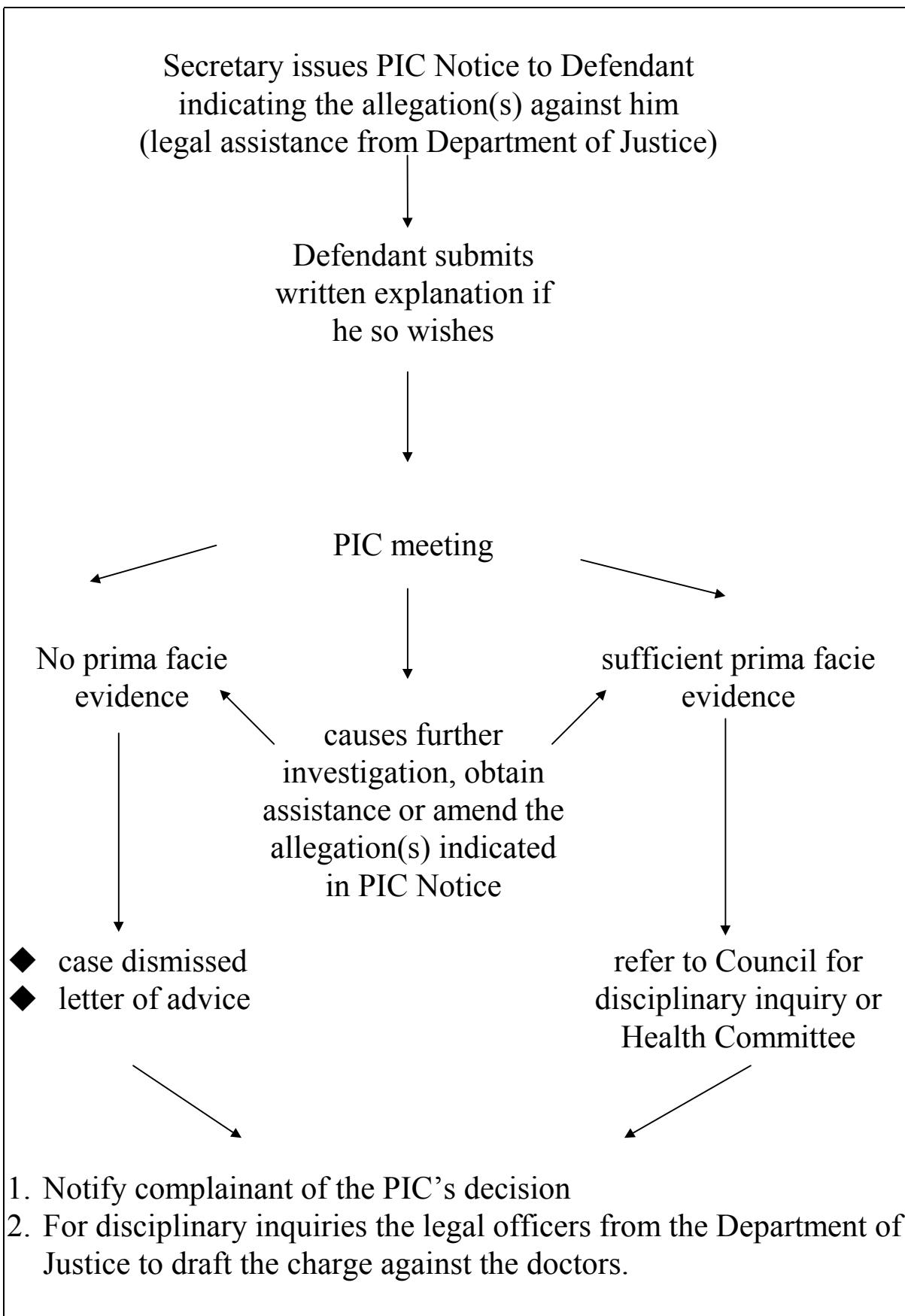
Please note:

- ◆ The PIC Chairman and Deputy Chairman shall NOT attend the hearing of any case referred to the Council for inquiry
- ◆ Likewise the same Lay Member shall NOT attend the inquiry into a case which he/she considered at the PIC meeting he/she attended

I Initial Screening by Chairman of the Preliminary Investigation Committee (PIC)



II. Meeting of the Preliminary Investigation Committee (PIC)



III. Disciplinary Inquiry

The inquiry can only look into whether the registered medical practitioner is guilty or not of professional misconduct according to the charge. Under the present legislation (Medical Registration Ordinance Cap 161) there is no provision for penalty action or sentence against unsatisfactory professional conduct not amounting to misconduct.

In essence, the disciplinary inquiry is

- ◆ Adversarial in nature
- ◆ Must present specific “charges” against the doctor
- ◆ Burden of proof is always on the Secretary who presents the charge against the doctor
- ◆ Legal Officer from the Department of Justice represents the Secretary
- ◆ The Defendant doctor is usually represented by a solicitor or counsel
- ◆ The Complainant acts as a witness for the Secretary
- ◆ Standard of proof: commensurate with the gravity of guilt, from balance of probability to beyond reasonable doubt
- ◆ Open hearing (the Council has power to order any or all the information relating to the inquiry not to be disclosed)
- ◆ Quorum for inquiry:
5 including members from a Panel of Assessors and at least one Lay Council Member, subject to not less than 3 Members of the Council and the majority being registered medical practitioners.