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29 July 2001

LegCo Panel on Health Services,
Subcommittee on Improvements to
the Medical Complaints Mechanism,
Legislative Council,
HKSAR.

Dear Ms. Chan,

Submission for improvement to the medical complaints mechanism

Thank you for inviting our union to give views on improvements to the medical complaints mechanism. First of all, I would like to inform you that our union, Union of Hong Kong Audiology Technicians, has formally re-titled to **Hong Kong Association of Audiologists** (HKAAT) since 22 May 2001. Any further correspondence relating to our union, please refer our new title in the future. For handling complaints within our Association, the arrangements relating to disciplinary hearings are based on the procedure currently taken place in United Kingdom where we have obtained our qualification.

Attached please find our suggestions. If you would like to make them available on the Website of the Council on the Internet, please feel free to do it.

Yours sincerely,



(Mr. Leung Kwong Ki)
for Chairman of Hong Kong Association of Audiologists

Appendix

HKAAT-Disciplinary Procedure

Introduction

The purpose of this procedure is to help uphold standards and to provide a fair and effective method of dealing with matters of discipline involving individual members of the Hong Kong Association of Audiologists (HKAAT). The procedure aims to ensure that members are aware of their rights in respect of discipline and expulsion from HKAAT. Disciplinary action is uniformly and fairly applied throughout the membership.

The Executive Committee of HKAAT will convene, as and when appropriate, a Disciplinary Action Committee comprising of a minimum of three and a maximum of five senior committee members. The senior committee members will be the Chair, Vice Chair of HKAAT, and three most senior members. The Disciplinary Action Committee will not be convened in the same area, or comprise of committee members active in the same area, as the alleged disciplinary offence occurred. The Disciplinary Action Committee members will not discuss publicly the character or competence of a professional colleague. Where information is given to other professionals it is the committee's responsibility to ensure that such people appreciate that this information is given in the strictest confidence.

The Disciplinary Procedure will be implemented in situations where the professional may be called into disrepute and/or where matters of gross misconduct which can include theft, fraud, acts of indecency, gross incompetence and physical violence occurred.

Counseling

The Executive committee has the option to decide that a particular case can be dealt with by recorded counseling without resort to the formal disciplinary procedure.

Members will be entitled to be accompanied at such counseling interviews.

If it is decided by the Executive Committee that an improvement in conduct, capability or performance is required, then an agreed plan of action to remedy this must be formulated and recorded in writing and in conjunction with the member's line manager.

Formal Disciplinary Procedure

In the event that the alleged offence can only be satisfactorily dealt with by the use of the formal procedure, the following stages will guide the committee's actions.

Suspension

In certain circumstances, for example where an allegation of a serious offence has been made against a member of staff, suspension from membership may be appropriate. Suspension is without prejudice and should not be regarded as a disciplinary measure but as a means of carrying out further enquiries. It should only be implemented to enable a thorough examination of the facts.

The suspension shall be confirmed in writing to the member stating:

- a) The dates of suspension, the reason(s) for suspension and date(s) on which it (they) occurred.
- b) What further action is contemplated.
- c) That a formal interview will take place at the earliest opportunity.
- d) That the member must not, without prior approval, discuss the matter with any member other than those assisting with the presentation of the case.

It is expected that a period of suspension should not normally continue beyond six weeks.

Inquiry Stage

A senior committee member will be nominated as Investigating Officer to investigate the facts relating to the alleged offence. A formally disciplinary hearing cannot be held until this inquiry has taken place. The member concerned will normally be interviewed at this stage and has the right to be accompanied. They must be informed that this is a fact finding interview and that, dependent on the outcome of the inquiry, a formal disciplinary hearing may be necessary. At the conclusion of this inquiry stage the senior committee member must form a reasonable belief on the balance of probability that the member has a case to answer before referring the matter to the next stage. Any subsequent formal disciplinary hearing will usually be conducted by other senior committee members with the delegated authority to administer the possible disciplinary penalty.

Formal Disciplinary Hearing

At the hearing the allegations and the results of the inquiry will be put to the member along with any witness statements. The member or their representative will have the right to respond to this evidence and put their own version of events. They may also cross-examine any witness present.

Members of the public and/or Association and/or patients/clients who have made complaints or made witness statements will not be required to be present at the hearing. However, colleagues who have submitted statements may be required to

attend, by either party. Following presentation of all the evidence the senior committee members will adjourn to consider all the facts and will decide:

- a) whether there is sufficient information available to form a reasonable belief that a disciplinary offence has or has not been committed.

In the event of insufficient information being available, further enquires should be instituted.

- b) whether any disciplinary offence, which has been committed, is sufficiently serious to warrant formal disciplinary action.

If it is decided that no disciplinary offence has been committed, or that recorded counseling will suffice, the senior committee member will confirm this fact, in writing, to the member and his/her line manager.

- c) the course of disciplinary action to be taken.

Courses of Disciplinary Action

For matters other than Gross Misconduct

As a result of the hearing and in accordance with the severity of the offence, the senior committee members will decide which of the following steps to take:

1. No further action
2. Issue a formal verbal warning which will be effective for 6 months
3. Issue a written warning which will be effective and recorded within the Association for 12 months
4. Issue a final written warning which will be effective and recorded within the Association for 24 months

Any further and substantiated breach of discipline by the member with a current disciplinary warning will automatically result in moving to the next stage, including expulsion, if in receipt of a final written warning.

Matters of gross misconduct

The member will be subject to expulsion from HKAAT.

Confirmation of Action Taken

The senior committee members must then inform the member of the penalty to be imposed and either the date of expulsion or the expiry date of any warning. This must then be confirmed, in writing, to the member, their representative and employer. This must include:

- a) Date of the disciplinary hearing and those present
- b) Nature of misconduct
- c) Any mitigating circumstances taken into account
- d) Standards expected in the future
- e) What will happen if standards are not met
- f) Action taken and length of effectiveness of warning
- g) Rights of appeal, where to send notice of appeal, time limits for appeal

Appeals Procedure

Members have the right to appeal against formal disciplinary penalties issued. To exercise such a right, an appeal must be lodged within 14 days of receipt of the written notification of the outcome to the Chairperson of HKAAT.

Procedure at Appeal Hearing

The senior committee member will state the disciplinary case and bring forward any relevant witnesses.

The member, their representative and persons hearing the appeal may question any aspect of the case put forward by the senior committee member, including witnesses.

The member and their representative will explain the nature of their dissatisfaction and bring forward any relevant witnesses (it is not anticipated that witnesses will be repetitive of one another but additional statements of corroboration from other witnesses are acceptable submissions).

The senior committee member, against whom the appeal is brought, and the persons hearing the appeal may question any aspect of the employee's case, including witnesses.

The senior committee member, against whom the appeal is brought, will then present their closing arguments.

The member may exercise a right of reply to the senior committee member's case, but may not introduce anything new to the proceedings.

The appeal will adjourn and the persons will consider both presentations in private before coming to a decision.

The outcome of the appeal will be notified to the member in writing and his/her representative as soon as practicable.