

LEGISLATIVE COUNCIL BRIEF

CHIROPRACTORS (REGISTRATION AND DISCIPLINARY PROCEDURE) RULES CHIROPRACTORS REGISTRATION (FEES) REGULATION (COMMENCEMENT) NOTICE 2001

INTRODUCTION

On 5 June 2001, the Secretary for Health and Welfare, in exercise of the power under section 1 of the Chiropractors Registration (Fees) Regulation, made the Chiropractors Registration (Fees) Regulation (Commencement) Notice 2001 at Annex A. On the same day, the Chiropractors Council, in exercise of the power under sections 6 and 17 of the Chiropractors Registration Ordinance (Cap. 428), made the Chiropractors (Registration and Disciplinary Procedure) Rules at Annex B.

BACKGROUND AND ARGUMENT

2. Chiropractors are persons trained and qualified in the practice of chiropractic including the practice of the prevention, diagnosis and treatment of functional disorders of the human body through manipulation of the joints, particularly of the vertebral column and peripheral joints, including the pelvis.

3. The Chiropractors Registration Ordinance provides for the regulation of the practice of chiropractic through a system of registration and disciplinary control of chiropractors and the establishment of a Chiropractors Council as the regulatory authority. Since its establishment, the Chiropractors Council has been making preparation to enable the registration of chiropractors. The following subsidiary legislation have to be made to support and facilitate the registration and disciplinary process -

- (a) Chiropractors Registration (Fees) Regulation, to be made by the Chief Executive in Council, providing for fees payable for registration as chiropractors and other related matters; and

- (b) Chiropractors (Registration and Disciplinary Procedure) Rules, to be made by the Chiropractors Council, setting out the detailed registration and disciplinary procedures and related matters.

4. The Chiropractors Registration (Fees) Regulation was made on 27 March 2001 and tabled at the Legislative Council on 25 April 2001. The Chiropractors (Registration and Disciplinary Procedure) Rules were made by the Chiropractors Council on 5 June 2001. Subject to Members' comments, the Chiropractors Council intends to invite application for registration as chiropractors with effect from 1 September 2001.

THE COMMENCEMENT NOTICE

5. The Secretary for Health and Welfare, through the Commencement Notice at Annex A, appoints 1 September 2001 to be the commencement date for the Chiropractors Registration (Fees) Regulation. The date is set to tie in with the commencement of the registration exercise for chiropractors.

THE RULES

6. The Rules provide for matters in relation to registration and disciplinary procedures that apply to a registered chiropractor. Part 1 sets out the definitions of the terms used in the Rules. Part 2 provides for the Registration Committee and application for a practising certificate. Part 3 provides for the duties and powers of the Preliminary Investigation Committee. Parts 4 and 6 provide for the powers and duties of the Inquiry Committee and matters regarding an inquiry. Part 5 is about documentation in relation to proceedings before an inquiry. Part 7 provides for the duties of the Legal Adviser. Part 8 is about service of documents.

PUBLIC CONSULTATION

7. Public consultation is not considered necessary as the Commencement Notice and the Rules affect only the chiropractic profession. The Chiropractors Council has endorsed the Rules.

BASIC LAW IMPLICATIONS

8. The Department of Justice advises that the Commencement Notice and the Rules do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

9. The Department of Justice advises that the Commencement Notice and the Rules are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE REGULATION

10. The Commencement Notice and the Rules will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

11. The Department of Health has been providing secretariat support to the Chiropractors Council. There will be no additional cost arising from implementation of the registration system.

LEGISLATIVE TIMETABLE

12. The legislative timetable is as follows –

Publication in the Gazette	8 June 2001
Tabling at Legislative Council	13 June 2001

PUBLICITY

13. A press release will be issued when the Rules are gazetted. A spokesman of the Chiropractors Council will be available to handle media and public enquiries.

ENQUIRY

14. For any enquiries on this brief, please contact Miss Winsome AU, Assistant Secretary for Health and Welfare at 2973 8118.

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Health and Welfare Bureau
6 June 2001

**CHIROPRACTORS REGISTRATION (FEES) REGULATION
(L.N. 79 OF 2001) (COMMENCEMENT) NOTICE 2001**

Under section 1 of the Chiropractors Registration (Fees) Regulation, I appoint 1 September 2001 as the day on which the Regulation shall come into operation.

Secretary for Health and Welfare

5 June 2001

**CHIROPRACTORS (REGISTRATION
AND DISCIPLINARY PROCEDURE) RULES**

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CHIROPRACTORS (REGISTRATION AND DISCIPLINARY PROCEDURE) RULES

(Made by the Chiropractors Council under sections 6 and
17 of the Chiropractors Registration Ordinance
(Cap. 428))

PART 1 PRELIMINARY

1. Commencement

These Rules shall come into operation on 1 September 2001.

2. Interpretation

In these Rules, unless the context otherwise requires -

"complainant" (投訴人) means a person from whom a complaint against or in respect of a registered chiropractor is made to or received by the Secretary;

"Inquiry Committee" (研訊委員會) means the Inquiry Committee referred to in section 15(1);

"legal representative" (法律代表), in relation to a complainant or respondent, means a counsel or solicitor who represents that complainant or respondent;

"notice of a referral" (轉交投訴通知書) means a notice of a referral mentioned in section 17(2) of the Ordinance;

"party to an inquiry" (研訊一方) means any of the following -

- (a) the Secretary where he presents the case against the respondent under section 29;
- (b) the complainant where he presents the case against the respondent under section 30;

- (c) the respondent whose conduct is the subject of the inquiry;

"Preliminary Investigation Committee" (初步調查委員會) means the Preliminary Investigation Committee referred to in section 9(1);

"Registration Committee" (註冊事務委員會) means the Registration Committee referred to in section 5(1);

"respondent" (答辯人) means a registered chiropractor against or in respect of whom a complaint is made to or received by the Secretary.

PART 2

REGISTRATION COMMITTEE AND APPLICATION FOR PRACTISING CERTIFICATE

3. Qualifications for registration

(1) Without affecting the generality of section 9 of the Ordinance, the Council shall cause to be published, in the form of a notice in the Gazette, within 15 days after 1 January each year, a list of all the examinations, training and experience that the Council may accept generally for the purposes of subsection (1)(a) of that section.

(2) The Council -

- (a) shall keep an updated list of all the examinations, training and experience that the Council may accept generally for the purposes of section 9(1)(a) of the Ordinance; and
- (b) where an amendment is made to the content of the list mentioned in paragraph (a) after a notice has been published in the Gazette in accordance with

subsection (1) in the same year, shall cause the amendment to be published, in the form of a notice in the Gazette, as soon as practicable.

(3) A notice or list under this section shall include the name of each body or organization that holds such examination or provides such training and experience as specified in that notice or list.

4. Application for registration

(1) An application for registration under section 10 of the Ordinance shall be submitted to the Secretary in writing and shall contain the following -

- (a) a statement by the applicant of his personal particulars including -
 - (i) his correspondence address; and
 - (ii) if the applicant is practising as a chiropractor in Hong Kong, the address at which he is practising;
- (b) a statement by the applicant as to -
 - (i) whether he has been convicted in Hong Kong or elsewhere of any offence punishable by imprisonment;
 - (ii) whether any disciplinary proceedings have been instituted against him in relation to his practice of chiropractic in Hong Kong or elsewhere; and
 - (iii) whether any disciplinary order has been made against him in relation to his practice of chiropractic in Hong Kong or elsewhere;

- (c) a statement by the applicant of each qualification relating to chiropractic held by him; and
 - (d) a statement by the applicant of any relevant working experience in chiropractic gained by him.
- (2) An application for registration shall be submitted together with -
- (a) 3 copies of a recent photo of the applicant, and one of these copies shall be fixed on the application form;
 - (b) for the purposes of section 9(1)(c) of the Ordinance, a declaration in writing from the applicant that he is competent to practise as a chiropractor; and
 - (c) for the purposes of section 9(1)(d) of the Ordinance -
 - (i) 2 reference letters, each of which shall be from any person -
 - (A) who is specified for the purpose of this subparagraph in subsection (6);
 - (B) not being a chiropractor, a member of the Council, a member of any committee of the Council or a relative of the applicant; and
 - (C) who has known the applicant for at least 12 months and has the opportunity of judging his character,

stating that the applicant is a fit and proper person to be registered under the Ordinance; and

- (ii) any of the following documents -
 - (A) if the applicant is registered as a chiropractor in a place outside Hong Kong, a certificate of registration as a chiropractor which was issued in that place and is valid at the date of application for registration or other equivalent documentary evidence;
 - (B) if the applicant was formerly registered as a chiropractor in a place outside Hong Kong, a certificate of registration as a chiropractor which was issued in that place or other equivalent documentary evidence;
 - (C) if the applicant is practising as a chiropractor in a place outside Hong Kong, a practising certificate which was issued in that place and is valid at the date of application for registration or other equivalent documentary evidence of entitlement to practise chiropractic;
 - (D) if the applicant formerly practised as a chiropractor in a place outside Hong Kong, a practising certificate

which was issued in that place or other equivalent documentary evidence of entitlement to practise chiropractic;

- (E) a reference letter from such body or organization in chiropractic as the Council may accept;
- (F) if a degree or qualification was awarded by a body or institution to the applicant not earlier than 2 years before the application and the applicant applies for registration by virtue of the degree or qualification, a reference letter from that body or institution;
- (G) a declaration in writing from a chiropractor registered in Hong Kong or elsewhere that the applicant is a fit and proper person to be registered under the Ordinance;
- (H) any such other document as the Council may accept.

(3) An application for registration shall be signed by the applicant in the presence of any of the following persons who shall also sign across the applicant's photo fixed on the application form -

- (a) a registered chiropractor; or
- (b) a person authorized by law to take and receive a declaration.

(4) If an application for registration is submitted to the Secretary, the Secretary shall refer the application to the Registration Committee as soon as practicable.

(5) An applicant shall provide the original or certified true copy of -

- (a) any documentary evidence of the degree or qualification by virtue of which the applicant applies for registration;
- (b) the applicant's identity card, passport or any other documentary proof of identity which the Council may accept;
- (c) any documentary evidence of working experience by virtue of which the applicant applies for registration;
- (d) any declaration, document or letter that is mentioned in subsection (2) and that is required to be submitted together with the application; and
- (e) such other documentary evidence as the Council may reasonably require in writing for the purposes of considering the application.

(6) The following persons are specified for the purpose of subsection (2)(c)(i)(A)

-

- (a) a member of the Executive Council;
- (b) a member of the Legislative Council;
- (c) a justice of the peace;
- (d) a minister of religion;
- (e) a medical practitioner;
- (f) a dental practitioner registered under the Dentists Registration Ordinance (Cap. 156);

- (g) a pharmacist registered under the Pharmacy and Poisons Ordinance (Cap. 138);
- (h) a nurse registered under the Nurses Registration Ordinance (Cap. 164);
- (i) a counsel;
- (j) a solicitor;
- (k) a professional accountant within the meaning of the Professional Accountants Ordinance (Cap. 50); and
- (l) a person in such other profession as the Council may recognize.

5. Registration Committee

(1) A registration committee appointed under section 13(1) of the Ordinance shall be known as the "Registration Committee".

(2) A meeting of the Registration Committee shall be held in camera.

(3) The Council shall appoint a member of the Council appointed under section 3(2)(c) of the Ordinance to be the chairman of the Registration Committee.

(4) The Registration Committee -

- (a) shall consider each application for registration referred to it under section 4(4);
- (b) may exercise the power conferred on the Council under section 10(3) of the Ordinance to require an applicant to undertake a written examination;
- (c) may require an applicant to provide any further evidence regarding the applicant's competency to practise as a chiropractor and fitness to be registered under the Ordinance or other information relevant to the application;

- (d) shall make recommendations to the Council, either generally or in a particular case, on the acceptability of the qualifications of the applicants;
- (e) shall advise the Council on the merits of an application.

(5) Before making a recommendation under subsection (4)(d) in respect of an application, the Registration Committee shall consider all documents, evidence and particulars provided by the applicant.

(6) If the Registration Committee recommends that the qualifications of an applicant should be rejected, the Registration Committee shall adequately state the reasons for making such recommendation.

(7) If a member of the Registration Committee has participated in the consideration of an application for registration by the Registration Committee, he shall not participate in the Council's determination of whether the application should be accepted or rejected under section 11(1) of the Ordinance.

(8) If a member of the Registration Committee has an interest in an application for registration, he shall not participate in the consideration of that application.

6. Transaction of business by circulation of papers

The Registration Committee may, unless any of its members objects, transact its business by circulation of papers, and a resolution which is approved in writing by a majority of its members shall be as valid and effectual as if it had been passed

at a meeting of the Registration Committee by the votes of the members so approving the resolution.

7. Procedure regarding application for registration

(1) The Council shall, in considering whether to accept or reject an application for registration under section 11(1) of the Ordinance, take into account the application, all documents, evidence and particulars provided by the applicant, any recommendation of the Registration Committee made under section 5 in respect of the application and any representations made by the applicant under subsection (2).

(2) If the Registration Committee recommends that the qualifications of an applicant should be rejected, the Secretary shall in writing -

- (a) notify the applicant of the recommendation and provide the applicant with an adequate statement of the reasons for making the recommendation; and
- (b) advise the applicant that he may make any representations in writing to the Council within 30 days after the day on which the notification was made under paragraph (a).

(3) Upon a decision of the Council on an application for registration the Secretary shall, within 14 days after the day on which the decision was made, notify the applicant in writing of the decision.

(4) If the Council rejects an application for registration the notification mentioned in subsection (3) shall include -

- (a) the adequate statement of the reasons for the rejection required under section 11(3) of the Ordinance; and
- (b) an advice to the applicant of his right to appeal to the Court of Appeal under section 22 of the Ordinance.

8. Application for practising certificate, etc.

For the purposes of section 12 of the Ordinance, an application for a practising certificate or renewal of a practising certificate shall be made -

- (a) to the Secretary in writing; and
- (b) in such form and manner as the Council may determine.

PART 3

DUTIES AND POWERS OF PRELIMINARY INVESTIGATION
COMMITTEE, ETC.

9. Preliminary Investigation Committee

(1) The 2 members appointed under section 16(3) of the Ordinance shall constitute a committee which shall be known as the "Preliminary Investigation Committee".

(2) Subject to subsections (3), (6), (8) and (9), a member of the Preliminary Investigation Committee shall hold office for a term not exceeding 12 months and may, on the expiry of his term of office, be re-appointed by the Council.

(3) If a member of the Preliminary Investigation Committee is or will be unable temporarily to exercise his functions as such member during any period or in respect of a complaint (as the case

may be), the Council may, subject to subsection (5), appoint a member of the Council to be a temporary member to act in the place of the first-mentioned member during that period or in respect of that complaint (as the case may be), and the office of the first-mentioned member will be suspended during that period or in respect of that complaint.

(4) A temporary member appointed under subsection (3) shall for all purposes be regarded as a member of the Preliminary Investigation Committee.

(5) A person appointed under subsection (3) to act in the place of another person appointed under section 3(2)(b) of the Ordinance must also be a person appointed under that section.

(6) Subject to subsection (7), a member of the Preliminary Investigation Committee may at any time resign as such member by notice in writing given to the Secretary.

(7) If, at the time a notice of resignation referred to in subsection (6) is given by a member, the Preliminary Investigation Committee is considering a complaint, the member may be required by the Council to continue to be such member for the purposes of considering the complaint until the Preliminary Investigation Committee has discharged its functions in relation to the complaint.

(8) Subject to subsection (9)(b), a member of the Preliminary Investigation Committee who ceases to be a member of the Council shall at the same time cease to be a member of the Preliminary Investigation Committee.

(9) If, at the time the Preliminary Investigation Committee is considering a complaint alleging a disciplinary offence -

- (a) the term of office of a member of the Preliminary Investigation Committee expires and he is not re-appointed as such member;
- (b) a member of the Preliminary Investigation Committee ceases to be such member under subsection (8), and his cessation of being a member of the Council is not for any of the reasons referred to in section 2(a), (b) and (c) of the Schedule to the Ordinance,

he shall continue to be a member of the Preliminary Investigation Committee for the purposes of considering the complaint until the Preliminary Investigation Committee has discharged its functions in relation to the complaint.

(10) If a member of the Preliminary Investigation Committee has participated in the consideration of a complaint by the Preliminary Investigation Committee, he shall not participate in the Council's determination of the complaint.

10. Preliminary procedure regarding complaint alleging disciplinary offence

(1) If the 2 members of the Preliminary Investigation Committee are both satisfied that a complaint submitted to them under section 16(3) of the Ordinance is frivolous or groundless, the Preliminary Investigation Committee shall determine not to further consider the complaint.

(2) If a registered chiropractor is alleged in a complaint to have committed misconduct or neglect in a professional respect, the Preliminary Investigation Committee may require the complainant to furnish -

- (a) a document setting out the grounds for the allegation; and

- (b) except where the complaint is made by a public officer acting in his capacity as such, a declaration as to the substance of the complaint and the alleged facts of the case.

- (3) A declaration referred to in subsection (2)(b) shall -
 - (a) state the address and description of the declarant; and
 - (b) if any alleged fact is not within the personal knowledge of the declarant, state the source of the declarant's information and the grounds for his belief in the truth of the fact.

- (4) If the Preliminary Investigation Committee determines not to further consider a complaint under subsection (1), the Secretary shall, as far as practicable -
 - (a) notify the complainant in writing of the determination; and
 - (b) include in the notification an adequate statement of the reasons for the determination.

- (5) Unless there is a determination under subsection (1), the Secretary shall -
 - (a) fix a date for a meeting of the Preliminary Investigation Committee to further consider the complaint;
 - (b) as far as practicable, notify the complainant in writing of the submission of the complaint to the Preliminary Investigation Committee and of the date fixed under paragraph (a);
 - (c) notify the respondent in writing of the receipt and substance of the complaint and of the date fixed under paragraph (a);

- (d) send to the respondent a copy of any declaration furnished under subsection (2); and
- (e) invite the respondent to submit to the Preliminary Investigation Committee a written representation regarding the complaint or any matter alleged in it.

11. Amendments to notification

If the Preliminary Investigation Committee considers that a notification given to the respondent under section 10(5)(c) should be amended, the Secretary shall -

- (a) notify the respondent in writing of the amendment; and
- (b) invite the respondent to submit to the Preliminary Investigation Committee any further written representations.

12. Consideration of complaint by Preliminary Investigation Committee

(1) A meeting of the Preliminary Investigation Committee to consider a complaint shall be held in camera.

(2) The Secretary shall, at a meeting at which a complaint is further considered, put before the Preliminary Investigation Committee the complaint, any declaration made in support of the complaint, any written representations submitted by the respondent, and any other particulars that the Secretary considers may be relevant to the complaint.

(3) The Preliminary Investigation Committee may -

- (a) postpone its consideration of a complaint, in whole or in part, to such date as it thinks fit; or

(b) adjourn its meeting from time to time if it thinks fit.

(4) The Preliminary Investigation Committee shall -

(a) consider all information and matters put before it under subsection (2);

(b) make a recommendation to the Council as to whether the complaint should be referred to an Inquiry Committee; and

(c) direct the Secretary to notify the respondent and, as far as practicable, the complainant in writing of such a recommendation.

(5) Before making a recommendation to the Council, the Preliminary Investigation Committee may make such further investigation and obtain such advice and assistance as it considers necessary.

(6) The Preliminary Investigation Committee may make a recommendation to the Council that the complaint should not be referred to an Inquiry Committee only if the 2 members of the Preliminary Investigation Committee agree that the complaint should not be so referred.

13. Declaration of interest regarding complaint

(1) If a member of the Preliminary Investigation Committee has an interest in a complaint submitted to the Preliminary Investigation Committee, he shall, before considering the complaint, declare his interest to the Council.

(2) On a declaration of interest in accordance with subsection (1), the member of the Preliminary Investigation Committee shall not participate in any deliberation or be involved in any determination regarding the complaint, and the

Council shall appoint another member under section 9(3) accordingly.

14. Reference of complaint to Council

(1) The Council shall consider a recommendation made by the Preliminary Investigation Committee under section 12(4) in respect of a complaint before referring, if the Council determines that an inquiry should be held, the complaint to an Inquiry Committee.

(2) If a person was or is a member of the Preliminary Investigation Committee for the purposes of considering a complaint under section 12, that person shall not act as a member of the Inquiry Committee in respect of that complaint.

(3) If, after considering a complaint referred by the Preliminary Investigation Committee to the Council, the Council determines that no inquiry should be held, the Secretary shall notify the respondent and, as far as practicable, the complainant in writing of the determination including an adequate statement of the reasons for the determination.

PART 4

INQUIRY COMMITTEE

15. Inquiry Committee

(1) For the purposes of these Rules, an inquiry committee established under section 17(1) of the Ordinance to determine whether or not the registered chiropractor against whom a complaint has been made has committed a disciplinary offence shall be known as the "Inquiry Committee".

(2) At a meeting of the Inquiry Committee, 3 members, including a member who is a person appointed under section 3(2)(b) of the Ordinance, shall form a quorum.

(3) Subject to subsection (4), the Chairman shall be a member of the Inquiry Committee and shall also be the chairman at a meeting of the Inquiry Committee.

(4) In the absence of the Chairman from a meeting of the Inquiry Committee, the members present at that meeting may, subject to subsection (2), elect among themselves another member as the chairman at that meeting.

16. Preliminary procedure in relation to inquiry

(1) The Inquiry Committee shall not proceed to hear evidence of a complaint unless -

- (a) a notice of a referral is sent in accordance with subsection (2); and
- (b) section 17(5) of the Ordinance has been complied with.

(2) If a complaint is referred to the Inquiry Committee under section 17(1) of the Ordinance, the chairman of the Inquiry Committee shall fix a date for an inquiry and the Secretary shall, within 60 days after the date of referral -

- (a) send a notice of a referral to the respondent in accordance with section 17(2) of the Ordinance; and
- (b) as far as practicable, send to the complainant a notice in writing of the holding of an inquiry.

(3) If, after a complaint has been referred to the Inquiry Committee under section 17(1) of the Ordinance, further evidence is produced in writing which suggests that an inquiry should not be held, the Inquiry Committee shall consider such evidence.

(4) When the Inquiry Committee is considering any evidence under subsection (3), the inquiry shall not commence and, if the inquiry has already commenced, it shall be suspended.

(5) If, after considering any evidence under subsection (3), the Inquiry Committee is of the opinion that no inquiry should be held, the Secretary shall notify the respondent and, as far as practicable, the complainant in writing of the Inquiry Committee's opinion and the reasons for forming such opinion.

(6) The respondent and the complaint may, within 30 days after being notified under subsection (5), make any written representations, and the Inquiry Committee shall, after considering such representations, if any, determine as to whether or not an inquiry should be held.

PART 5

DOCUMENTATION BEFORE INQUIRY

17. Notice of a referral

For the purposes of section 17(2) of the Ordinance, a notice of a referral -

- (a) shall state the date, time and place at which the inquiry is to be held; and
- (b) shall be accompanied by an adequate statement, in the form of a charge, specifying the substance of the complaint.

18. Summons to witness

For the purposes of section 19(1)(b) and (2) of the Ordinance, a summons to witness shall be -

- (a) in such form as the Council may determine; and

- (b) served on a person in accordance with section 41(1).

19. Amendments to notice of a referral

(1) If, before the commencement of an inquiry, it appears to the chairman of the Inquiry Committee that a notice of a referral does not comply with the requirements of section 17 or is otherwise defective, the chairman may give such direction for the amendment of the notice as the chairman thinks necessary in order to remedy the defect unless, having regard to the merits of the case, the chairman is of the opinion that the required amendment cannot be made without injustice to the respondent.

(2) The Secretary shall, as soon as practicable after the amendment of a notice of a referral under subsection (1), give notice in writing to the respondent and, as far as practicable, the complainant informing them of the amendment made to the notice.

20. Documents sent to other party before inquiry

(1) A party to an inquiry shall send to any other party to the inquiry, not less than 10 days before the date of the inquiry (or such lesser period as the parties may agree), copies of all the documents on which the first-mentioned party intends to rely at the hearing of the inquiry.

(2) If a document has not been sent in accordance with subsection (1), the chairman of the Inquiry Committee may adjourn the inquiry.

21. Order to produce any material, record or document

(1) On application by a party to an inquiry and at any time before the date of the inquiry, the chairman of the Inquiry Committee may order any other party to the inquiry to produce any material, record or document that is in the possession of the other party and relevant to the charge.

(2) If a party fails to produce any material, record or document in accordance with subsection (1), the party who applied for the production may adduce evidence of the content of the material, record or document by any alternative method.

PART 6

INQUIRY

22. Inquiry in public or in camera

(1) Subject to subsection (2) and to the power of the Inquiry Committee under section 19(1)(c) and (d) of the Ordinance to admit or exclude the public or any member of the public from the inquiry or to admit or exclude the media from the inquiry, an inquiry shall be open to the public.

(2) The Inquiry Committee may at its discretion determine that an inquiry shall be held wholly or partly in camera.

23. Adjournment of inquiry

(1) The chairman of the Inquiry Committee may at any time adjourn an inquiry to such date as he thinks fit.

(2) The Secretary shall send to the respondent and, as far as practicable, the complainant a notice in writing of the adjournment under subsection (1).

24. Representation

- (1) A party to an inquiry may be represented by a legal representative.
- (2) The Secretary for Justice may, on the application of the Secretary, appoint -
 - (a) a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87);
 - (b) a counsel; or
 - (c) a solicitor,

to carry out the duties of the Secretary in respect of an inquiry.

25. Record of proceedings

- (1) The Inquiry Committee may -
 - (a) appoint a person to prepare a verbatim record of the proceedings of an inquiry; or
 - (b) cause the proceedings to be recorded on tape and may arrange for the transcription of the tape recording into a verbatim record in writing.
- (2) If a verbatim record of the proceedings or a part of the proceedings has been prepared, the chairman of the Inquiry Committee shall, on application to him by a party to the inquiry and on the payment of the prescribed fee, provide the party with a copy of the verbatim record or that part of the record that is required by the party.

26. Opening of inquiry

(1) At the opening of an inquiry, the Secretary shall read the notice of a referral in respect of the inquiry or, if the notice is amended, the notice of a referral as amended to the Inquiry Committee.

(2) If the respondent is not present and is not represented at the opening of the inquiry, the Secretary shall furnish to the Inquiry Committee such evidence as the Inquiry Committee may require to prove that section 17(5) of the Ordinance and, where applicable, section 23(2) has been complied with, and on being satisfied as to such evidence, the Inquiry Committee may proceed with the inquiry in the absence of the respondent and his legal representative.

(3) If the respondent or his legal representative is present at the opening of the inquiry, the chairman of the Inquiry Committee shall, immediately after the reading of the notice of a referral under subsection (1), inform the respondent or his legal representative of the respondent's right to cross-examine any witness for any other party to the inquiry, to give evidence and to call his own witness.

(4) After an inquiry has been opened under this section, it may be proceeded with to its conclusion notwithstanding the absence of the respondent and his legal representative.

27. Admission of charge

(1) After the Secretary has read the notice of a referral under section 26(1), the chairman of the Inquiry Committee shall ask the respondent to state, either himself or through his legal representative, in respect of each charge -

- (a) whether he objects to the charge on a point of law; and
- (b) whether he admits the charge,

and the statement shall be recorded.

(2) If the respondent, either himself or through his legal representative, does not admit the charge, the procedures specified in section 29 shall apply.

(3) If the respondent, either himself or through his legal representative, admits the charge, the Secretary shall present to the Inquiry Committee a statement of the facts of the charge, and the respondent or his legal representative shall then state whether the respondent accepts the facts as so presented.

(4) If the respondent does not accept any of the facts as so presented, the parties to the inquiry may call evidence.

(5) The Inquiry Committee shall consider the facts as so presented and (as the case may be) the evidence so called and make determination under section 31.

(6) If the respondent is not present and is not represented at the inquiry, and no statement is made under subsection (1), the respondent shall not be regarded as having admitted the charge and a statement to that effect shall be recorded in respect of each charge.

28. Objection on point of law

(1) Where the respondent objects to a charge on a point of law under section 27(1)(a), the Secretary may reply to the objection.

(2) If the Secretary replies to the objection mentioned in subsection (1), the respondent may answer the reply.

(3) If the Inquiry Committee upholds the objection mentioned in subsection (1), the charge to which the objection relates shall be considered subject to the objection.

29. Procedure at inquiry

(1) At an inquiry held by the Inquiry Committee, the Secretary shall, subject to section 30, present the case against the respondent, adduce evidence in support of the case and then close the case against the respondent.

(2) At the closing of the case against the respondent, the chairman of the Inquiry Committee shall ask the respondent whether he or his legal representative wishes to make either or both of the following submissions in relation to a charge in respect of which evidence has been adduced -

- (a) that sufficient evidence has not been adduced by the Secretary upon which the Inquiry Committee can find that the truth of the facts as alleged in the charge has been proved;
- (b) that the facts as alleged in the charge are not such as to support a finding that the respondent has committed a disciplinary offence.

(3) If a submission is made under subsection (2), the Secretary may reply to the submission, and the respondent may, either himself or through his legal representative, answer the reply.

(4) The Inquiry Committee shall then determine whether the submission made under subsection (2) shall be upheld and the chairman of the Inquiry Committee shall announce the determination.

(5) If the Inquiry Committee -

- (a) upholds the submission made by the respondent or his legal representative in respect of a charge, the finding shall be recorded that the respondent has not committed the disciplinary offence; or
- (b) rejects the submission made by the respondent or his legal representative, the chairman of the Inquiry Committee shall call on the respondent or his legal representative to state the respondent's case.

(6) When called on to state the respondent's case, the respondent may, either himself or through his legal representative -

- (a) adduce evidence in support of his case; and
- (b) address the Inquiry Committee once, either before or after adducing such evidence.

(7) At the conclusion of the case of the respondent, the Secretary may address the Inquiry Committee in reply if evidence other than the respondent's own evidence has been adduced on behalf of the respondent or leave to address the Inquiry Committee has been obtained from the Inquiry Committee.

**30. Complainant to present case
against respondent**

(1) At the written request of a complainant made not later than 21 days before the date of the inquiry, the chairman of the Inquiry Committee may, subject to subsection (2), permit the complainant to -

- (a) present the case against the respondent; and
- (b) call evidence to support the case,

and in such case, a reference to the Secretary in sections 29 and 33 shall be read as a reference to the complainant.

(2) The legal representative of a complainant may not present a case against a respondent who is not legally represented. This subsection shall not be construed so as to compel a respondent to obtain legal representation in order that the legal representative of a complainant may present a case against him.

(3) Where the complainant is permitted to present the case and call evidence under subsection (1), the complainant and the respondent shall be so informed by the Inquiry Committee by notice in writing not less than 10 days before the date of the inquiry. The complainant becomes a party to the inquiry accordingly.

31. Determination of Inquiry Committee

(1) Upon the respondent's admission of charge under section 27 or at the conclusion of the proceedings under section 29, the Inquiry Committee shall, subject to subsection (2), determine -

- (a) whether the truth of the facts as so presented have been proven to its satisfaction; and
- (b) whether the respondent has committed the disciplinary offence.

(2) The Inquiry Committee may postpone its determination to such further meeting as it may determine.

(3) If the Inquiry Committee has made a determination, its chairman shall, at a meeting of the Inquiry Committee, deliver the determination in such terms as the Inquiry Committee may approve, and the determination, if delivered verbally, shall be reduced into writing within 21 days after the verbal delivery, and the determination so reduced into writing shall be signed by the chairman of the Inquiry Committee.

(4) The Inquiry Committee shall, subject to subsection (5), provide an adequate statement of the reasons for the determination.

(5) The reasons mentioned in subsection (4) shall be provided at the same time when the determination is delivered in accordance with subsection (3), and if provided verbally, the reasons shall be reduced into writing within 21 days after the verbal provision of the reasons, and the reasons so reduced into writing shall be signed by the chairman of the Inquiry Committee.

32. Notice of postponement of determination, etc.

(1) If a determination under section 31 is postponed to a further meeting, the Secretary shall, not less than 7 days before the date fixed for the further meeting, serve on the respondent a notice specifying the date, time and place fixed for the further meeting and inviting him to appear at that meeting.

(2) If there is a complainant in respect of a charge, the Secretary shall, as far as practicable, also send him a copy of the notice served under subsection (1).

(3) At the further meeting, the chairman of the Inquiry Committee may invite the Secretary to recall for the Inquiry Committee's information the position in which the case stands, and the Inquiry Committee may hear any of the parties to the inquiry.

33. Amendments to charge

(1) Before the Inquiry Committee determines whether a respondent has committed a disciplinary offence, the Inquiry Committee may amend the charge concerned and the charge, as amended, shall be read and explained to the respondent or his legal representative -

- (a) who shall be called on by the chairman of the Inquiry Committee to state -
 - (i) whether he objects to the charge as amended; and
 - (ii) whether he admits the charge as so amended; and
 - (b) who shall be entitled to -
 - (i) a reasonable adjournment for preparing his further defence;
 - (ii) recall any witness to give evidence; and
 - (iii) call any other witness to give evidence if he thinks necessary.
- (2) A person who gives evidence for the respondent under these Rules may be -
- (a) cross-examined by the Secretary;
 - (b) re-examined by the respondent or his legal representative on matters arising out of the cross-examination.

34. Postponement of making order

(1) If the Inquiry Committee determines that a respondent has committed a disciplinary offence, the Inquiry Committee may, subject to subsection (2) and section 35, determine the order to be made under section 18 of the Ordinance.

(2) The Inquiry Committee may, in accordance with section 36, postpone its making of an order under section 18 of the Ordinance to such further meeting as it may determine.

35. Address in mitigation

(1) At the meeting of the Inquiry Committee at which it is to make an order under section 18 of the Ordinance, the Secretary may produce records of any meeting of an Inquiry Committee at which an order was made against the respondent under that section.

(2) Before the Inquiry Committee makes an order under section 18 of the Ordinance, the chairman of the Inquiry Committee shall ask the respondent or his legal representative whether the respondent wishes to address the Inquiry Committee, and the respondent may, either himself or through his legal representative -

- (a) address the Inquiry Committee by way of mitigation; and
- (b) adduce evidence as to -
 - (i) the circumstances leading to the commission of the disciplinary offence;
 - (ii) his character and antecedents; and
 - (iii) the circumstances leading to the making of a previous order mentioned in subsection (1) against him.

(3) The Inquiry Committee may then determine the order to be made under section 18 of the Ordinance and the chairman of the Inquiry Committee shall, at a meeting of the Inquiry Committee, deliver the determination in such terms as the Inquiry Committee may approve, and the determination, if delivered verbally, shall be reduced into writing within 21 days after the verbal delivery, and the determination so reduced into writing shall be signed by the chairman of the Inquiry Committee.

36. Notice of postponement of making order

(1) If a determination of the Inquiry Committee in respect of making an order under section 18 of the Ordinance is postponed to a further meeting, the Secretary shall, not less than 7 days before the date fixed for the further meeting, serve on the respondent a notice specifying the date, time and place fixed for the further meeting and inviting him to appear at that meeting.

(2) If there is a complainant in respect of a charge, the Secretary shall, as far as practicable, also send him a copy of the notice served under subsection (1).

37. Evidence

(1) The Inquiry Committee may hear, receive and examine evidence by oral statement on oath or by written deposition or statement and the chairman of the Inquiry Committee may administer such oath.

(2) Every witness -

(a) shall be examined by the party calling him;

(b) may, subject to subsection (5), be cross-examined by any other party to the inquiry; and

(c) may be re-examined by the party calling him only on matters arising out of the cross-examination.

(3) The Inquiry Committee may refuse to admit the evidence of any deponent to a document who is not present for, or who declines to submit to, cross-examination.

(4) The chairman of the Inquiry Committee or any member of the Inquiry Committee through the chairman may, if the chairman or the member thinks desirable, put questions to any of the parties to the inquiry or to any of their witnesses.

(5) Where the Inquiry Committee has put questions to a witness of a party to an inquiry, any of the parties to the inquiry may examine the witness on matters arising out of the questioning.

38. Voting

(1) In the taking of votes of the Inquiry Committee on any question to be determined by it, the chairman of the Inquiry Committee shall call on its members to signify their votes and shall then announce the determination of the Inquiry Committee in respect of such question.

(2) Where a determination of the Inquiry Committee so announced is challenged by any of its members, the chairman of the Inquiry Committee shall call on each member to declare his vote, and the chairman shall then announce -

- (a) his own vote;
- (b) the number of members who have voted -
 - (i) for the matter in issue;
 - (ii) against the matter in issue; and
- (c) the result of the voting.

(3) Where, on any question to be determined by the Inquiry Committee, the number of votes mentioned in subsection (2)(b)(i) and (ii) are equal, the question shall be deemed to have been decided in favour of the respondent.

(4) No person other than a member of the Inquiry Committee and the Legal Adviser shall be present when the Inquiry Committee votes on any matter.

PART 7

DUTIES OF LEGAL ADVISER

39. Duties of Legal Adviser in relation to inquiry by Inquiry Committee

The Legal Adviser shall be present at every inquiry in accordance with section 17(4) of the Ordinance and an inquiry shall not proceed in the absence of the Legal Adviser.

40. Advice by Legal Adviser

(1) Where during the hearing of an inquiry under section 17 of the Ordinance, the Legal Adviser advises the Inquiry Committee on any question of law as to evidence, procedure or any other matter in respect of the inquiry, the Legal Adviser shall, as far as practicable, do so in the presence of the parties to the inquiry or their legal representatives. Where it is impracticable to do so, the chairman of the Inquiry Committee shall cause the parties to the inquiry or their legal representatives to be informed of the advice.

(2) If an advice of the Legal Adviser is tendered after the Inquiry Committee has commenced to deliberate as to its findings, the chairman of the Inquiry Committee shall cause the parties to the inquiry or their legal representatives to be informed of the advice.

(3) In the case of the Inquiry Committee not accepting the Legal Adviser's advice mentioned in subsection (1) or (2), the chairman of the Inquiry Committee shall cause all parties to the inquiry or their legal representatives to be informed of this fact.

PART 8

MISCELLANEOUS

41. Service of documents, etc.

- (1) For the purposes of these Rules -
 - (a) a notice, notification or any other communication or document required under section 7(2), (3) or (4), 10(4) or (5), 11(a), 14(3), 16(2)(b) or (5), 18, 19(2), 20(1), 23(2), 30(3), 32(1) or (2) or 36 to be made, given or sent to, or served on a person may be so made, given, sent or served by delivering it to that person by hand or by leaving it at, or by sending it by prepaid registered post or by prepaid post addressed to that person's address last known to the Secretary;
 - (b) a notice, notification or any other communication or document referred to in paragraph (a) which is effected by post shall, unless the context otherwise requires, be deemed to have been effected at the time when the letter containing it would be delivered in the ordinary course of post.
- (2) In all other circumstances, except the sending of a notice of a referral in accordance with section 17(2) of the Ordinance and section 16(2)(a), a notice, notification or any other communication or document required under these Rules may be sent by post.
- (3) For the purposes of these Rules, service of a notice, notification or any other communication or document on a person

may be proved by means of a sworn statement made by the Secretary or any person responsible for effecting the service.

Chairman,
Chiropractors Council

5 June 2001

Explanatory Note

The main purpose of these Rules is to provide for matters in relation to registration and the disciplinary procedures applicable to a registered chiropractor pursuant to the Chiropractors Registration Ordinance (Cap. 428).

2. Part 1 sets out certain definitions and Part 2 provides for the Registration Committee and application for a practising certificate.
3. Part 3 provides for the duties and powers of the Preliminary Investigation Committee.
4. Parts 4 and 6 provide for the duties and powers of the Inquiry Committee and matters regarding an inquiry.
5. Part 5 is about documentation in relation to proceedings before an inquiry.
6. Part 7 provides for the duties of the Legal Adviser to the Chiropractors Council.
7. Part 8 is about service of documents.