

## **Policy and Mechanism on Appeal to Court**

This submission seeks to set out the policy intent of appeal to Court arrangements regarding the Council's decision to not include or remove a name from the General Register or the Specialist Register on the following considerations-

- (a) disciplinary grounds (see sections 9(3) and 18)
- (b) qualification grounds (for General Register) (see section 8) and sections 12B and 12E considerations (for Specialist Register)
- (c) correction of register (see section 15)

### **Policy intent**

2. Whether or not appeal to Court is provided for in different non-inclusion or removal scenarios depends on two factors. One is strength of peer-review element in formulating the decision, and the other is the degree of seriousness of the impact of such a decision to the subject person.

3. We would like to emphasize that deliberations concerning inclusion in and removal from the registers are essentially peer-review decision within the profession. Generally speaking, Dental Council, being a statutory body mainly comprising representatives from the dental profession (some of whom nominated by leading academic institutions) is in a better position to articulate the professional standard expected of their peers and hence is considered more competent in making inclusion/removal decisions. When in some circumstances, decisions are made on grounds that take into account elements such as, but not limited to, misconduct or malpractice, right of appeal to Court is considered appropriate.

4. Dental Council's non-inclusion/removal decisions can cause varying degree of hardship to the subject person. Generally speaking, the more such hardship, the stronger the case for the subject person to seek redress through appeal to Court. Factors affecting the degree of seriousness include whether the decision would cause a dentist to be barred from practising and hence deprive him of a way to earn a living, and how far such decision may defy a dentist's reasonable expectation, etc.

## **The Appeal Mechanism**

5. Section 23(1), as amended, provides that any person whose name has been ordered not to be entered in the General Register under section 9(3) or any registered dentist who is aggrieved by any order made in respect of him under section 15, 15A(2) or 18 may appeal to the Court of Appeal, which may thereupon affirm, reverse or vary the order appealed against. Any person who is aggrieved by a decision of the Court of Appeal may appeal to the Court of Final Appeal. (see section 2(3)).

### *Decision of not entering an applicant's name in and removing a dentist's name from the General/Specialist Register on disciplinary grounds*

6. As non-inclusion and removal decisions on disciplinary grounds take into account elements such as, but not limited to, misconduct or malpractice, we consider that provision of the right of appeal to the Court is necessary. There are four different possible scenarios and they are set out in the ensuing paragraphs.

7. For ***inclusion in General Register***, the Council may, under section 9(3), refuse to admit the name of an applicant in the General Register if it is satisfied after due inquiry that the applicant -

- (a) has been convicted in Hong Kong or elsewhere of any offence punishable with imprisonment; or
- (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 repealed Ordinance.

Decisions of non-inclusion on these grounds can be appealed against pursuant to section 23(1).

8. A dentist's name may be ***removed from the General Register*** after due inquiry under section 18. Section 23(1) provides for an appeal channel to Court of Appeal.

9. If during the processing of an application for ***inclusion in the Specialist Register***, the concerned dentist is removed from the General Register, his application for inclusion in the Specialist Register will not be considered, as he is no longer a registered dentist. The dentist may appeal to Court against the removal from the General Register (para. 8 above refers). If his name is subsequently restored to the General Register, he may apply for inclusion of his

name in the Specialist Register again.

10. If a dentist's name is removed from the General Register on disciplinary grounds, it will be automatically **removed from the Specialist Register** by virtue of the proposed section 15A(1), because the dentist is in effect barred from practising dentistry. In the circumstances, the redress is also to rely on section 23(1) which provides for appeals against the Council's decision concerning removal from the General Register. If his name is subsequently restored to the General Register, he may apply for inclusion of his name in the Specialist Register again.

11. In short, in the above non-inclusion and removal scenarios which involve disciplinary proceedings, right of appeal to Court is provided for.

*Decision of not entering an applicant's name in the General Register on qualification grounds and Specialist Register on section 12B considerations*

12. For **inclusion in the General Register**, the Council should not entertain such applications if the applicants are not qualified (sections 8 and 9(1)). We consider that the Dental Council, being a statutory body mainly comprising representatives from the dental profession, is in a better position to determine matters relating to professional qualifications, which are primarily peer-review in nature. We consider that the right of appeal to Court for such cases is not necessary.

13. In order to apply for **inclusion in the Specialist Register**, the applicant has to be a registered dentist, who is allowed to practise in all areas of dentistry by virtue of his comprehensive training. Whether a registered dentist should be granted a specialist title is primarily a question of whether he is qualified and hence a peer-review decision. The Dental Council is therefore in the best position to make such a judgment. Also, in terms of hardship caused to the subject dentist if his application for inclusion is rejected, we consider such a decision should cause relatively less suffering when compared with a removal case. We therefore consider that the right of appeal to Court is not necessary.

*Decision of removing a dentist's name from the Specialist Register on section 12E considerations*

14. The decision to **remove** a dentist **from the Specialist Register** is against the expectation of the dentist. The action is considered more serious

than non-inclusion, because it takes away a title that the dentist is already enjoying. Therefore we consider that the right of appeal to Court should be granted, as in all other removal cases.

*Decision of removing a dentist's name from the General/Specialist Register on account of correction of register*

15. Removal from the General Register/ Specialist Register under section 15, as in other removal cases, defies a dentist's reasonable expectation and deprives him of a way to earn a living (for removal from the General Register) or takes away a title that the dentist is already enjoying (for removal from the Specialist Register). Therefore we consider that the right of appeal to Court should be granted.

16. If a specialist's name is removed from the Specialist Register, due to correction of General Register, the redress is provided by section 23(1) against the removal order made under section 15.

17. To facilitate understanding of the different scenarios, a table on the appeal mechanism in relation to Dental Council's decision on different considerations is presented below.

	Disciplinary grounds	Qualification grounds (for GR)/ sections 12B and 12F (for SR) considerations	Correction of register
GR non-inclusion	Appeal to Court [s. 9(3) and s.23(1)]	No appeal to Court	N/A
GR removal	Appeal to Court [s.18 and s.23(1)]	N/A	Appeal to Court [s.15 and s.23(1)]
SR non-inclusion	Appeal to Court against removal from GR on disciplinary grounds [s.18 and s. 23(1)]	No appeal to Court	N/A
SR removal	Appeal to Court against removal from GR on disciplinary grounds [s. 18 and s. 23(1)]	Appeal to Court [s. 15A(2) & 23(1)]	Appeal to Court [s.15 and s.23(1)]