

**Follow-up on issue raised in the sixth Bills Committee meeting  
of the Pharmacy and Poisons (Amendment) Bill 2014**

***Background***

During the clause-by-clause examination of the Pharmacy and Poisons (Amendment) Bill 2014 (“PPAB”) in the sixth Bills Committee meeting held on 17 July 2014, Hon Paul TSE raised the issue of whether the provisions under clause 14 of the PPAB pertaining to the proposed new section 15(1)(e) of the Pharmacy and Poisons Ordinances (“PPO”), which is related to the appointment of Disciplinary Committee, should be restricted to conduct that is relevant to the pharmacy practice.

***Section 15(1) of the PPO***

2. The current section 15(1) of the PPO stipulates that “*When a complaint is received by the Pharmacy and Poisons Board (“the Board”) regarding the conduct of a registered pharmacist, an employee of a registered pharmacist, a body which is an authorized seller of poisons or an officer or employee of or partner in such body, or when any such person or body is convicted of an offence under this Ordinance, the Dangerous Drugs Ordinance (Cap 134) or the Antibiotics Ordinance (Cap 137) or when it otherwise appears necessary or desirable to the Board that the conduct of any such person or body should be inquired into, the Board may, for the purpose of such inquiry, appoint a Disciplinary Committee.*”

3. Clause 14 of the PPAB proposes to amend section 15(1) of the PPO by, among others, specifying in clearer terms the circumstances under which a Disciplinary Committee may be appointed by the Board to inquire into the conduct of registered pharmacists. Such circumstances include, but not limited to, contraventions of the codes of conduct or convictions for offences under the ordinances specified in the proposed new section 15(1)(c) of the PPO. The proposed new section 15(1)(e) preserves the existing power of the Board to appoint a Disciplinary Committee provided for in the current section 15(1) of the PPO.

#### Previous Disciplinary cases against pharmacists

4. The word “conduct” in existing section 15(1) is not defined under the current PPO. From 2008 to June 2014, a total of 3 registered pharmacists were disciplined by the Disciplinary Committee by virtue of the power under the provision “*when it otherwise appears necessary or desirable to the Board that the conduct of any such person or body should be inquired into*”, which will be retained under the proposed new section 15(1)(e). Of these three cases concerned, one was disciplined for conviction of behaving in a disorderly manner in a public place under the Public Order Ordinance (“POO”) (Cap. 245) and the other two were disciplined because of conviction of obtaining property by deception and conviction of fraud respectively under the Theft Ordinance (“TO”) (Cap. 210). The name of the pharmacists convicted under TO was removed from the register of pharmacists for three days and the pharmacist convicted under POO was censured by way of issuing a warning letter against him. The conduct concerned in these three cases was not directly related to the practice of pharmacy nor the offence under the ordinance specified in the current section 15(1). Such conduct could however reasonably be regarded as disgraceful or dishonest by members of the pharmacist profession of good repute and competency. As revealed in these three disciplinary cases, the power to appoint a Disciplinary Committee under the said provision was exercised by the Board only when the conduct involved might affect the pharmacists’ fitness to practice. The proposal to retain the power to discipline under the said provision is to maintain the status quo and is considered necessary.

#### United Kingdom (“UK”)

5. The Pharmacy Order 2010 of the UK does not define misconduct or specify the nature of the offence convicted. The Pharmacy Order 2010 established the General Pharmaceutical Council (“GPhC”) which is an independent statutory regulator. Its functions are to establish and maintain a register of pharmacists, pharmacy technicians and premises at which a retail pharmacy business is, or is to be, carried on and to ensure the continued fitness to practice of registrants. Article 51(1) of the Pharmacy Order 2010 stipulates that misconduct and criminal conviction are two of the grounds on which GPhC may regard a person’s fitness to practise as “impaired”. Article 52 requires the GPhC to refer a matter which alleges that a registrant’s fitness to

practice is impaired or calls into question a registrant's fitness to practice to the Investigation Committee which will then decide whether it should be considered by Fitness to Practise Committee. In two recent cases concerning the Pharmacy Order 2010 in which the pharmacist's registration was removed, the misconduct of the pharmacists in question did not directly relate to the professional practice of the pharmacists. In the case of MONJI, Sudhir Manilal GPhC (Registration Number 2031792), the pharmacist had been guilty of serious misconduct involving dishonesty in stealing or trying to steal a quantity of fragrance testers from his employer when he was a senior and trusted manager, his conduct in telling a false story to the Investigation Committee and an attempt to discredit a honest witness. In BALA, Mohamed Ismail GPhC (Registration No 2073822), the pharmacist was found systematically and continuously submitting claim forms for remuneration which were fundamentally false. Other misconduct that has led to inquiry on fitness to practise includes convictions for drink driving and perverting the course of justice<sup>1</sup>.

### Other Laws of Hong Kong

6. As for the legislation governing disciplinary action in respect of medical practitioners (i.e. the Medical Practitioners (Registration and Disciplinary Procedure) Regulations (Cap. 161E)), dentists (i.e. the Dentists (Registration and Disciplinary Procedure) Regulations (Cap. 156A)) and nurses (i.e. the Nurses (Registration and Disciplinary Procedure) Regulations (Cap 164A)), though such legislation all explicitly stipulate that complaint or information relating to "misconduct in any professional respect or unprofessional conduct" is one of the grounds for disciplinary inquiry, the conduct inquired into may be conduct that does not directly relate to the professional practice<sup>2</sup>.

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<sup>1</sup> Vijay Ratilal Mistry (Pharm J, May 2012, page 570)

<sup>2</sup> In Preliminary Investigation Committee of the Dental Council v Tomlin [1996] 2 HKLRD 133, a dentist was complained of improper association with a patient after the complainant found out that his wife had committed adultery with the dentist. The dentist said that the result was simply a social relationship that was carried on outside the professional relationship of dentist and patient. The Preliminary Investigation Committee ("PIC") refused to refer the case to the Dental Council for full inquiry. The Court of Appeal held that the PIC should refer the complaint to the Dental Council to determine whether, before it could amount to unprofessional conduct, the conduct complained of had to be an abuse of a dentist's professional position in order to further an improper association or to commit adultery.

Well-established transparent mechanism

7. The misconduct concerned and results of the disciplinary inquiries held against registered pharmacists are published in the annual report of the Board as well as in its websites. The public and the profession therefore will have access to information about the conduct that the Board would appoint a Disciplinary Committee to inquire into.

8. The Board, consisting of registered pharmacists, academics, registered medical practitioner and Government representatives, has a well-established mechanism in place which is open and transparent. The Board will conduct preliminary assessment of the complaint and initiate investigation if necessary. A Disciplinary Committee will only be appointed if the Board considers that there are sufficient grounds (by taking into consideration the nature of the offences, consequences of the alleged misconduct and its impact on the complainant, the general public and the pharmacy profession etc.). As illustrated by the past disciplinary cases, there is conduct which, though may not be related to pharmacy practice, would be regarded as disgraceful or dishonest by members of the pharmacist profession of good repute and competency and hence would affect the pharmacist's fitness to practice, such as fraud, obtaining property by deception or behaving in a disorderly manner in a public place. As such, it is necessary for the Board to retain the existing power under the proposed new section 15(1)(e) to appoint a Disciplinary Committee to inquire into the conduct of registered pharmacist so as to maintain public confidence in the pharmacist profession.

**Food and Health Bureau**

**3 October 2014**