

STANDING ORDERS
FOR THE CONDUCT OF INQUIRIES AT THE PRELIMINARY INVESTIGATING
COMMITTEE LEVEL AND AT THE COUNCIL LEVEL

PREAMBLE:

The objective of this ‘Standing Orders’ is to standardize procedures and processes of inquiries by the Preliminary Investigation Committee (the ‘PIC’) and the Malaysian Medical Council (the ‘Council’) in enforcing the Disciplinary Jurisdiction of the Council in accordance to the Medical Act 1971 (the ‘Act’) and the Medical Regulations 1974 (the ‘Regulations’) enacted thereunder as well as conforming to the Rules of Natural Justice.

1. INTRODUCTION:

At its 46th meeting on 9/12/86, the Council adopted a new Code of Professional Conduct (the ‘Code’) to replace the 1975 Medical Ethics. In conducting a disciplinary inquiry the Council will be guided by this ‘**Code of Professional Conduct**’ which was published in April 1987. Besides this, 2 other booklets entitled ‘**Good Medical Practice**’ and ‘**Confidentiality**’ were sanctioned and introduced by the Council in January, 2001 to supplement the Code of Professional Conduct.

Disciplinary jurisdiction of the Council is conferred by Section 29 of the Act. The jurisdiction is over any ‘registered’ person. ‘Registered’ means ‘provisionally’ registered under Section 12 or ‘fully’ registered under Section 14 of the Act.

Section 29 lists out five circumstances under which the Council may exercise disciplinary jurisdiction. These circumstances or facts will have to be ‘proved’ at an ‘inquiry’. While the main crux of inquiries by the Council is for offences under Section 29(2)(b) of the Act 1971 under the heading ‘has been guilty of infamous conduct in any professional respect’, inquiries under other headings can also be held, when necessary.

Regarding the meaning of ‘infamous conduct in a professional respect’, the Code quoted the definition by **Lord Justice Lopez** made in 1894, and judgment delivered in 1930 by **Lord Justice Scrutton**. The Code also quoted the **Declaration of Geneva** adopted by the World Medical Association in 1948, and amended in 1968 and 1983.

The Code sets out the minimum standards of conduct of registered persons as judged by peers in the profession assembled as the Council. **Breaches** of these minimum standards are referred to as ‘**infamous conduct in a professional respect**’. The Code propounds the minimum standards under four main headings: -

- (1) Neglect or disregard of professional responsibilities.
- (2) Abuse of professional privileges and skills.
- (3) Conduct derogatory to the reputation of the medical profession.
- (4) Advertising, canvassing and related professional offences.

For details, one must refer to all sections and subsections under each heading and to the 5 Appendices of the Code. An in-depth knowledge and understanding of the Code and the two related booklets is critical to any inquiry by the Council. All members of the

PICs must be familiar with them, if the Council's disciplinary jurisdiction is to be fairly and effectively implemented.

2. PROCESS OF INQUIRIES

Each PIC has both a right and duty to deal with a complaint/information according to the Act, the Regulations and these Standing Orders (the 'Orders') as well as its own rules, upon evidence placed before it, and according to its own reasonable judgment of each case without any outside influence or interference.

The process of inquiry into any complaint or information is divided into two distinct levels namely: -

- a. Preliminary Investigation conducted by the PIC.
- b. Inquiries conducted by the Council itself.

Inquiries at the PIC level is governed by Regulations 26 to Regulation 29 of the Regulations whereas inquiry at the Council level is provided for in Regulation 31 of the same Regulations.

Rules of Natural Justice have to be observed by bodies conducting the inquiries, which has a duty to act judicially. It is paramount that justice is meted out to both parties, i.e. the complainant and the respondent practitioner.

The PIC, being an independent entity, shall conduct its inquiries independently, without the need to seek advice or guidance from the Council.

3. PRELIMINARY INVESTIGATION COMMITTEE

3.1 REGULATION 26, MEDICAL REGULATIONS 1974

The membership of the PIC shall consist of such number of members not being less than three nor not more than six to be appointed by the President of the Council (President). A Chairman amongst them shall also be appointed by the President. The quorum of a PIC shall be two. Vacancies have to be filled as and when the situation arises. Decision on any issue by the PIC is by a majority of those present and voting.

It is mandatory to have all the members of a quorum continuously present throughout an inquiry. If need be, a short break can be granted by the chairman.

New members or members who have not been present at the commencement of the inquiry are disallowed from participating at any continued inquiry. The PIC is to seek consent from both parties before allowing any non-participating person to be present during any inquiry.

The secretariat is not to interfere in any process of inquiry before the start of the inquiry. Complaints/information sanctioned by the President has first to be

deliberated by each individual PIC before further action is to be taken by the secretariat.

3.2 REGULATION 27, MEDICAL REGULATIONS 1974

3.2.1 Complaint or information

A disciplinary inquiry starts with a complaint or information alleging certain facts against a registered person/practitioner. **All** complaint or information made or received which falls into any of the 4 categories stated under Regulation 27 **shall** be forwarded by the President to the Chairman of any of the PICs. All complaint or information would have to be in writing. Any further decision on the complaint or information rests solely on the decision of the PIC.

A complaint could come from the injured party himself, his next of kin, his lawyer or any other person. His identity and locus standi should be verified and confirmed by documentary evidence e.g. identity card, Mykad, birth certificate, marriage certificate, passport and so on. The PIC must ensure that the record of its proceeding contains this verification and confirmation. This is to avoid mala fide claims.

3.2.2 Information for disciplinary inquiry

Disciplinary investigation can be held on information received. The information may be in respect of a named registered person/practitioner alleging e.g. in relation or pursuant to an enforcement activity, certain professional misconduct at a specified place, which may or may not be his place of practice.

It is important that the PIC ensures the following: -

- (a) the information is made by the **person directly involved** in the enforcement activity though the report itself can be submitted by his superior in the department or agency;
- (b) personal details of the **person directly involved** or leader in the enforcement activity is given in the information or requested for;
- (c) the person in (a) and (b) is regarded as the complainant in the inquiry;
- (d) the party to the enforcement activity is legally empowered to do enforcement.

3.2.3 Identity of complainant

The complainant can be: -

- (a) the injured party;
- (b) a member of his family;
- (c) his lawyer;
- (d) an interested party e.g. insurance agent;
- (e) estate of the injured party.

For (a), the PIC must be satisfied with the following: -

- Name in full;
- I.C. / Mykad / Passport No.

For (b), relationship to the injured party should be verified and confirmed by documentary evidence e.g. marriage or birth certificate, and a letter under the hand of the injured party that the complainant is acting on his behalf.

For (c), if in doubt, get the injured party to confirm.

For (d), get his personal details and details of his interest to establish locus standi.

For (e) scrutinize the letter of administration.

3.2.4 Identity of registered person/practitioner complained against

It is important that the right doctor is being called for investigation. To ensure this, the PIC must be satisfied with the following:-

- Name in full;
- I.C. / Mykad/ Passport No;
- Place of practice;
- Registration (provisional or full) No. & Date;
- Annual Practising Certificate No. & Date.

It is the responsibility of the Secretary to ensure that these particulars are made available to PIC and recorded in the PIC record of proceedings. As a matter of routine, the PIC should ask the complainant and the doctor whether they recognize each other, and the response recorded.

3.2.5 Facts in issue or Substance of the Complaint

If the facts in issue constitute a ‘disciplinary matter’ and the PIC believes that the complaint or information is ‘probably true’, the PIC must proceed along the provisions of Regulation 29. Whilst the details for each case, which should be described in full will differ, the facts in issue will fall under any of the headings, sub-headings and sub-sub-headings of the Code. The facts in issue may be as follows: -

- neglect or disregard of professional responsibilities;
- failure to conscientiously assess history, symptoms and signs of patients;
- failure to be sufficiently thorough in professional attention, examination and where indicated diagnostic investigations;
- delay in attending to patient;
- failure to refer or consult appropriate professional colleagues when indicated;
- employment of unqualified or unregistered person;
- covering of unregistered person or association with unqualified or unregistered person;

- failure to protect the life and health of a person on whom biomedical research is being carried out;
- conflict of interest with pharmaceutical or medical equipment industry;
- abuse of professional privileges e.g. in prescribing, use and sale of poisons and dangerous drugs, issuing untrue, misleading or improper certificate, notification, and reports including sick certificate;
- involvement in non-therapeutic induced abortion. This is also a criminal offence;
- abuse of trust, confidence, undue influence and personal relationship with patient;
- conduct derogatory to the reputation of the profession such as disrespect for human life, indecency and violence;
- personal misuse or abuse of alcohol or other drugs, dishonest financial transactions, incompetence to practice and conflict of interest with commercial undertakings; and
- advertising, canvassing and related professional offences.

To be fair to the complainant and the registered person/practitioner against whom the complaint or information has been made, the facts in issue should be as **specific** and **explicit** as possible because only then can the details of the facts in issue be adequately and diligently studied and deliberated upon to enable PIC members to form appropriate conclusions, rather than getting lost in ‘**immaterial**’ or ‘**irrelevant**’ details which frequently emerge at examinations and cross-examinations.

3.2.6 Pending Litigations at the Courts

If there are complaints received regarding issues which are at the same time being contested in the courts, it is incumbent on the PICs to study each individual situation to ascertain whether issues raised may be sub-judicial and thus may fall foul of the law leading to contempt of court. If there is no duplication of issues, then the PIC may decide to continue with the inquiry. On the other hand, if there are issues which may be tantamount to interfering with the due processes of the courts, then it is advisable to postpone the inquiry till the final disposal by the courts. The PIC may seek the learned opinion of the legal advisors in such instances.

3.2.7 Cases of Conviction by the Courts under Regulation 27(a) Medical Regulations 1974 & Section 29(2)(a) Medical Act 1971.

If a registered person has been convicted in Malaysia or elsewhere of any offence punishable with imprisonment (whether in itself or in addition to or in lieu of a fine) the PIC can hold an inquiry on the conviction itself without having to prove the allegations for which he had been found guilty.

In such instances there is no need for the PIC to call the complainant to present evidence or the PIC to frame any charges.

It is sufficient to call the defendant and ask him whether he admits or does not admit to the conviction. If he admits, the PIC can then recommend to the Council for a hearing. If he denies, then after asking him to give

reasons, the PIC can deliberate and send its findings to the Council with its recommendations.

3.2.8 Convictions under the Poisons Act 1952 and Dangerous Drugs Act 1952:

A chemist report is required to prove drugs, which are labeled as poisons/dangerous drugs.

3.2.9 Oaths and Affirmations:

There is no provision for an oath under the Regulations.

3.2.10 Usage of Interpreters:

If a requirement for an interpreter arises, only qualified interpreters who are certified are to be used, and with the consent of both the parties concerned.

3.2.11 Transfer of cases from one PIC to another PIC:

In instances where, for reasons to be stated, a complaint/information is transferred from one PIC to another by the President, the new PIC has to treat the complaint/information as a new one and commence a fresh inquiry disregarding whatsoever which was discussed by the previous PIC.

3.2.12. Commencement of Inquiries

An inquiry commences when the PIC convenes on the date set for that inquiry and begins examining the complainant.

3.3. REGULATION 28 MEDICAL REGULATIONS 1974

3.3.1 Summary Dismissal of Complaint or Information

All PICs are mandated with the right to summarily dismiss any complaint or information if it is satisfied that the said complaint or information falls into any of the three circumstances under this Regulation. However it is entirely at the PICs' discretion to decide to either summarily dismiss a complaint/information or to proceed on to hold an inquiry.

There are 3 circumstances under which a complaint or information can be summarily dismissed by the PIC. It is important that this fact is established before the summary dismissal.

- (a) **Name or address of complainant unknown or untraceable:**
If the name and address are not given, the PIC obviously cannot proceed. If the name and address are given, the Secretary should write to the complainant through A.R. Registered letter attaching a copy of the complaint letter to seek confirmation on genuineness of the complaint letter, where it is deemed necessary. If the A.R. Registered letter is returned undelivered or if delivered but

unanswered after two (2) subsequent reminders, the PIC ~~can~~ may summarily dismiss the complaint.

(b) **The facts do not constitute disciplinary matter:**

The PIC should study the facts in issue as stated in the complaint letter and satisfy itself that they do not fit into any of the categories contained in the Code of Professional Conduct.

A statement to that effect should be recorded in its record of proceeding as the reason for summary dismissal.

(c) **Doubt the truth of the complaint or information**

It is difficult for the PIC to doubt the truth unless the complainant and registered person/practitioner are called to appear before it. The reason should be very obvious before invoking this as a ground for summary dismissal.

Summary dismissal by PIC under Regulation 28 of Medical Regulations 1924 should be embedded on proved facts or reasons. The PIC's decision will be communicated to the President. The President shall inform the Council of such decision at the Council's monthly meeting and thereafter the complainant accordingly.

(d) **Statutory Declaration.**

The Committee may, before making any summary decision require the complainant to make a statutory declaration of the facts alleged by him.

There is no provision for any statutory declaration to be solicited once the PIC decides to hold an inquiry.

(Appendix A - Sample of statutory declaration.)

3.4 REGULATION 29 MEDICAL REGULATIONS 1974

This Regulation clearly lays down the procedure to be followed once the PIC decides to hold any inquiry. Regulation 29 (1), (2) & (3) is completely related to adducing statement by the complainant, his witnesses, the cross-examination of complainant and his witnesses and the examination of the complainant or his witnesses by the PIC.

A date is to be fixed for an inquiry and call letters containing relevant information is are to be sent out one month before the inquiry date to both the complainant and the respondent practitioner.

3.4.1 Access to Documents:

The complainant and respondent shall be given copies of:

- a. Complaint letter;
- b. Statutory declaration, if any;
- c. All other documents related to the complaint/information; and
- d. Any other statement or communication sent to the Secretariat/Council except for any written advice given by the legal advisor.

Complainant/informant and respondent practitioner are to be advised to bring all **original documents** and enough copies of such documents to be distributed to all parties concerned at the inquiry.

(Appendix B - First Call Letters to the Respondent Practitioner and the Complainant.)

It is important to remember that at this stage only the complainant and/or his witness/es is/are involved in presenting the complaint. It is advisable that the respondent practitioner not be questioned on any aspect of the substantive issue at this point, if need be only minimum clarification on factual issues be sought.

Both the complainant and the respondent have the option to be present with or without a counsel and both the counsels have equal rights of representation.

3.4.2 Adducing Evidence:

The primary responsibility and authority of the PIC is to find out whether there are '**sufficient grounds**' to support the '**allegation**' or facts in issue.

The respondent can be given the option of submitting on a 'no case to answer' before the PIC deliberates to decide whether to call for the defense of the respondent practitioner.

At the end of the preliminary hearing or examination, the PIC, after taking the statements of the complainant and the persons in support of the allegation shall: -

- (a) if it finds that there are not sufficient grounds to support the allegation, recommend to the Council that no action be taken;

However under Regulations 31 the Council is empowered to overturn this decision and may, for reasons to be recorded, still decide to hold an inquiry. This is because only the complainant had been heard at this stage, though the defending practitioner may during cross-examination or re-examination rebut or produce evidence to rebut the allegation, which evidence the PIC has to consider.

- (b) if it finds that the statements support the allegation, frame the charge and explain to the practitioner that he is at liberty to state his defense on the charge framed against him.

(Appendix C – Call Letters for Defence to the Respondent Practitioner and Complainant.)

If the practitioner, after being informed of his right, elects not to make a statement before the PIC, then the PIC shall recommend that there

shall be an inquiry by the Council and submit all records to the Council within 60 days of the decision.

After the charge is formulated and the registered person/practitioner elects to defend himself before the PIC, the Committee shall record his statement as far as possible 'word for word'. At this stage, the respondent as well as the complainant/informant are entitled to be assisted by counsels.

After taking the practitioner's statement the PIC shall:-

(a) if it finds that there are not sufficient grounds to support the charge, recommend to the Council that no action be taken, or
(After this stage, when both the complainant and the respondent practitioner had been heard, the Council has no power to overturn the decision of the PIC)

(b) if it finds that there are grounds to support the charge, recommend to the Council that there shall be an inquiry by the Council.

The records of any preliminary inquiry by the PIC shall be prepared and sent to the Council within 60 (sixty days) of completion of such inquiry.

4. REGULATIONS 31 MEDICAL REGULATIONS 1974:

This Regulation relates to inquiries at the Council level.

When a report is submitted by any of the PIC to the Council, the Council will deliberate on it and make its decision. Once it decides to hold an inquiry, it will frame the charges. They may use the charges framed at the PIC level or it has the liberty to frame new charges if it thinks fit.

The respondent practitioner is called on a fixed date for the inquiry. The complainant is also called. Both parties maybe represented by counsels. The roles of the counsels are the same as at the PIC level.

The Council, may on its own volition, call for and shall record any statements from any such persons who have made statement before the PIC, if it is of the opinion that it would be fair and just to do so.

The quorum for an inquiry at the Council level is 9.

(Appendix D - Call Letter for Inquiry by the Council.)

In deciding on the appropriate punishment, the Council should be guided by:-

- a) the severity of the offences (The laws have not specified punishment for different types of offences)
- b) admission of remorse during mitigation, and

- c) precedents of identical or similar cases.

The processes of decision-making by Council members, following the practitioner's plea in mitigation, should follow what is elaborated elsewhere in this paper regarding decision-making. This will ensure **individual, independent** judgment of each Council member.

After the MMC has finally disposed of the inquiry, the Secretariat is to report the decision made to the respective PICs.

5. RELATED MATTERS

5.1. Facts: Its Meaning

The word 'fact' means and includes:-

- a. anything, state of things or relating of things capable of being perceived by the senses; or
- b. any mental condition of which any person is conscious.

Fact in issue means any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any inquiry or proceeding, necessarily follows.

It is important, right at the beginning of the processes under Regulation 29, for the PIC to seek '**clarification**' from the complainant so that the **facts in issue** are 'specific' and 'explicit' to enable it to conduct the inquiry around them. The intention is to '**clarify**', 'not to lead' the complainant. This is to facilitate the PIC thinking process. Under no circumstance should 'coaching' be allowed.

5.2 Proof of Facts

Proof of facts may be by (a) oral evidence, (b) documentary evidence and exhibits, and (c) circumstantial evidence.

(a) Oral evidence

Oral evidence in all cases must be direct. The witness may say he saw it, experienced it, heard it, or had perceived it by any other senses. Details of what he saw or experienced, heard or perceived must match the facts in issue alleged to have existed. If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds e.g. in the case of an expert witness.

(b) Documentary evidence and exhibits

(i) Primary

Primary evidence means the document/exhibit itself produced for the inspection of the PIC/Council. All documents for the complainant and the respondent practitioner are to be marked either as P., D. or I.D. depending on its admissibility by the PIC. Normal practice is to admit documents by the complainant when the complaint is being heard and to admit documents by the respondent practitioner at the stage when and if his defence is called.

However, if circumstances warrant it, when the complainant is presenting his complaint, in order for the respondent practitioner to rebut certain facts, the PIC at its discretion, may allow certain specific documents from the respondent practitioner be admitted at this stage of the inquiry.

(ii) **Secondary evidence**

They include:-

- Certified copies attested by Advocate & Solicitor or Commissioner for Oaths;
- Copies made from the original by mechanical processes;
- copies made from or compared with the original;
- counterfoil and carbon copies of documents as against the parties who did not execute them;
- oral accounts of the contents of a document given by some person who has himself seen it.

(c) **Circumstantial evidence**

The essential issues are: -

- (i) the circumstances from which the conclusion is drawn should be fully established;
- (ii) all the facts should be consistent with the hypothesis;
- (iii) the circumstances should be of a conclusive nature and tendency;
- (iv) the circumstances should, to moral certainty, actually exclude every hypothesis but the one proposed to be proved.

5.3 Burden of Proof:

He who alleges must prove. In a disciplinary inquiry, the burden of proof on the facts in issue lies with the complainant. The evidences (oral, documentary, or circumstantial) provided by him must be able to convince the PIC/Council.

5.4 Proving of Facts:

A fact is said to be '**proved**' when, after considering the matters before it, the PIC/Council either **believes it to exist or considers its existence so probable** that a **prudent** man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

A fact is said to be '**disproved**' when, after considering the matters before it, the PIC/Council either **believes that it does not exist or considers its non-existence so probable** that a **prudent man** ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

In considering whether the facts in issue have been 'proved' or 'disproved', the PIC/Council must take into account other facts brought in to support or rebut the allegations. Such other facts may include: -

- a. facts forming part of same transactions;
- b. facts which are the occasion, cause or effect of facts at issue;
- c. motives, preparation and previous or subsequent conduct;
- d. facts necessary to explain or introduce relevant facts;

- e. facts not otherwise relevant become relevant e.g. inconsistency with facts in issue or relevant fact or make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable;
- f. facts which may enable PIC/Council to determine amount of damages;
- g. facts showing existence of state of mind or of body or bodily feeling;
- h. facts bearing on question whether act was accidental or intentional;
- i. existence of any course of business when relevant;
- j. confession caused by inducement, threat or promise;
- k. entries in books;
- l. opinion of experts.

Each of these other facts must be scrutinized or verified with the same vigor as facts in issue. They must be ‘**relevant**’, and ‘**proved**’ or ‘**disproved**’ to the same level of conviction as the facts in issue and grounded on adequate evidence (oral, documentary/exhibit, and circumstantial) of credible quality. The intention is to ensure consistency of standards in adducing evidence throughout the inquiry. Individual members of the PIC/Council must focus their entire and continuing attention on the proceedings of the inquiry to enable them to reach a reasonable, equitable, and independent judgment on issues before them, and to be able to explain the rationale of their judgment.

5.5 Witness:

5.5.1 Who may testify?

All persons shall be competent to testify unless the PIC considers that they are prevented from understanding the questions put to them, or from giving rational answers to questions put to them, because of tender years, extreme old age, and disease of body or mind.

5.5.2 Accomplice

An accomplice shall be a competent witness against an accused person, and a finding of guilt is not ‘illegal’ merely because it proceeds upon his uncorroborated testimony.

5.5.3 Number of witness

No particular number of witnesses shall in any case be required for the proof of any fact. It is not a question of number but the quality (or truth) of the witnesses.

5.6 Call Letters To The Complainant:

The PIC will have to call the complainant to appear before it for the purpose of Regulation 29 (1), (2), (3) and (4), and at later stage for Regulation 29 (5), (6) and (7). Without the complainant, the inquiry cannot proceed.

Call letters must be sent by A.R. Register or through a reliable courier service one month in advance of the inquiry date. If it cannot be delivered, use the good office of the state director. There have been instances where the complainant has failed to attend the inquiry though instructed by the PIC, leading to considerable delay in

the inquiry. A maximum limit of 3 chances to appear before the inquiry is to be imposed. If the complainant still fails to appear, the inquiry maybe discontinued and the complainant and registered person informed accordingly with the sanction of the Council. Three attempts are to be made to trace the complaint and such letters are to be sent at an interval of one month each.

5.7. Procedures and Protocols:

Pertinent issues to be addressed before or during an inquiry:

- (a) Ensure the inquiry hall is comfortable, and microphones and taping facilities are in order. All hand-phones are to be switched to silent mode.
- (b) All, i.e. the complainant, registered person/practitioner, their lawyers if any; members of PIC, PIC's legal counsel, and secretariat are present. Any other person authorized by the PIC to be in attendance should be similarly seated. Witnesses brought in by complainant or registered person/practitioner must remain in holding rooms until called upon.
- (c) The PIC Chairman introduces members of the PIC, its legal counsels and secretary. Similarly, the complainant and his party, and the registered person/practitioner and his party will be asked to identify themselves.
- (d) Ensure that all participants in the inquiry are in possession of all and similar documents which will be the basis of examination. Also ensure that there are enough copies of relevant laws, Code and related documents for referral if necessary.
- (e) PIC Chairman is to explain inquiry procedures, and responsibility and authority of PIC.
- (f) PIC Chairman is to state that none of PIC members present is 'disqualified' by Regulation 33 of Medical Regulations the 1974.
- (g) An interpreter for complainants who are not conversant in Bahasa Malaysia or English is to be made available. Such services should be rendered from qualified interpreter accepted by both the complainant and the respondent practitioner.
- (h) The complainant reads out the complaint letter making reference to documentary evidence and exhibits if any. From this point all documents and exhibits should be appropriately and serially labeled. The PIC should satisfy itself that they are 'material' and 'relevant' before admitting them for examination or cross-examination. Similarly, if the complainant has brought witness/witnesses, PIC Chairman should ask for list of witness/witnesses and how they are relevant to the inquiry. PIC will have to decide which witness/witnesses can be admitted to the inquiry.
- (i) PIC may seek clarification to ensure that the facts at issue are 'specific' and 'explicit'. Ask the complainant to confirm its conclusion and the registered person/practitioner whether he understands.

- (j) The PIC Chairman's role is very important. In the examination, cross-examination, or re-examination, he should allow only questions, the answers to which would be 'material' and 'relevant' to the facts at issue. If the questions are too long or complex, he should ask the questioner to break them up into smaller parts. The Chairman may disallow questions which are 'immaterial', 'irrelevant', 'inquisition' type or which seeks to embarrass the complainant/s, witnesses or registered person/practitioner.
- (k) The complainant and registered person/practitioner may call his witness at any time with the Chairman's permission. Statement by witness/witnesses should be 'material' and 'relevant' to the facts at issue. Before finishing with a witness/witnesses, both parties should be asked about future need to recall that particular witness/witnesses. If all parties are satisfied and had indicated no further need for cross-examination, the witness/witnesses can be released.
- (l) During every hearing session, all PIC and Council members should refrain from leaving the room. If remotely needed, the Chairman should stop the session until all members are present. To avoid interruption, it is a good practice to have a 15 minutes intermission after every 1-1½ hour session.
- (m) The Secretary should assign a runner to perform various odd jobs so that the session can run smoothly without interference.

5.8 **Framing the Charge:**

Regulation 29 (4) (b) says that if the PIC finds that the statements 'support the allegation, frame the charge' and explain to the practitioner that he is at liberty to state his defence on the charge framed against him'.

The PIC should record the rationale of its findings i.e. the evidence which have 'proved' or 'disproved' the facts in issue and other facts in full, and in clearly understood language.

The charge would be contained in the call letter to the registered person/practitioner to appear before the PIC under Regulation 29 (5), (6), and (7). A legal counsel may help to draft the call letter, which amongst others should state the following: -

- (a) the **circumstances** surrounding the case in specific, clear, precise and accurate terms. These circumstances will have to be 'proved' in the course of the inquiry
- (b) the **offences committed** in specific, clear, precise and accurate terms. The PIC must decide specifically with regards to the offences. Each element of the offences will have to be 'proved'. The standards to be measured against are contained in the Code of Professional Conduct, Good Medical Practice & Confidentiality booklets.

(c) **names of the offences** of infamous conduct in any professional respect. Here the PIC should be guided by the Code whose terminologies should be used as far as possible and the names chosen should be as specific as possible. The name for e.g. 'neglect or disregard of professional responsibilities' may be further de-constructed or broken into: -

- (i) failure to conscientiously assess the history, symptoms and signs of a patient's condition, or
- (ii) failure to be sufficiently thorough in professional attention, examination and where necessary diagnostic investigation, or
- (iii) failure to provide competent and considerate professional management, or
- (iv) failure to provide appropriate and prompt action upon evidence suggesting the existence of a condition requiring urgent medical intervention, or
- (v) failure to consult appropriate professional colleagues.

Similar breakdown can be made for: -

- (i) Abuse of professional privileges.
- (ii) Conduct derogatory to the reputation of the medical profession, and
- (iii) Advertising, canvassing and related professional offences.

(d) **Generic name of Offence under Regulation 27**

Quote as given in Regulation 27 of Medical Regulations 1974 and Section (1) and (2) of Medical Act 1971: -

- (i) *has been convicted in Malaysia or elsewhere of any offence punishable with imprisonment (whether in itself only or in addition to or in lieu of a fine);*
- (ii) *has been guilty of infamous conduct in any professional respect;*
- (iii) *has obtained registration by fraud or misrepresentation;*
- (iv) *has since been removed from the register of medical practitioners maintained in any place outside Malaysia.*

(e) **Disciplinary Punishment (Section 30 Medical Act 1971)**

'The Council may in the exercise of its disciplinary jurisdiction, impose any of the following punishments –

- (i) *order the name of such registered persons to be struck off from the Register; or*
- (ii) *order the name of such registered person to be suspended from the Register for such period as it may think fit; or*
- (iii) *order the registered person to be reprimanded; or*

- (iv) *make any such order as aforesaid but suspend the application thereof, subject to such conditions as the Council may think fit, for a period , or periods in the aggregate, not exceeding two years;*

and may, in any case, make such order as the Council thinks fit with regard to the payment of the costs of the Registrar and of any complainant or of the registered person, and any costs awarded may be recovered as a civil debt.'

5.9 Service of Letter of Charge:

The letter of charge would be the call letter signed and dated either by the President or by the PIC chairman. Normally a grace period of one month before the inquiry date by the Council or PIC is given. All such letters should be sent by AR Register (Courier e.g. Poslaju), to the last known address (APC address or residential address or to both), of the registered person/practitioner. If undelivered, the good office of the state director may be used to get it delivered and duly acknowledged.

Apart from specifying the date, time and place of enquiry, the call letter would also have to mention the registered person/practitioner's right to bring documentary/exhibit evidence, witnesses, and legal counsel and to cross-examine and re-examine persons appearing in the inquiry.

There has been instances in the past of registered persons/practitioners failing to attend inquiries by PIC or even by Council, or otherwise abuse the inquiry processes, by resorting to the following:-

- (a) sending a last minute letter or fax to say that they are otherwise committed;
- (b) saying that they are suddenly taken ill;
- (c) they have just engaged a legal counsel who needs time to prepare for the inquiry, or otherwise is committed to another case in Court;
- (d) not bringing the necessary documentary evidence/exhibit; or witness.

These failures or 'abuses' have resulted in long delays in the inquiry and hence waste of time of the PIC or Council.

Both the PIC and Council has taken a serious view of this, and has taken the following stand: -

- (a) only three chances are given to the registered person/practitioner to defend himself; and
- (b) at the third chance, if the registered person/practitioner is still absent and there is evidence that the call letter had been properly served, the inquiry should proceed in his absence, right up to Regulation 29 (7) in the case of PIC and Regulation 31 (7) in the case of the Council. Since he has failed to be present, the registered person/practitioner will have no opportunity to make any plea in mitigation.

5.10. Report of PIC to Council – Regulation 30:

(a) **Summary dismissal**

There is no legal requirement at present for the PIC to forward report of summary dismissal. But as a matter of good practice this is being done for the Council to take note of. The report should consist of all related documents including verbatim minutes of PIC meeting arranged in sequential, proper order, and state the reason for summary dismissal.

(b) **Recommendation for Council inquiry or not to take action**

The records of the preliminary inquiry must be complete with all documents (including exhibits) arranged in sequential proper order.

5.11 Decision Making by Members of PIC/Council:

To maintain fairness and justice to both the complainant and the registered practitioner, it is significant that each and every member of the PIC and the Council members consider ALL relevant facts of the case gathered during inquiry and to identify which among them has been ‘proved’ or ‘disproved’ before making a decision.

At the PIC level, due to the small number and closeness of members involved, and the fact that its role is purely **investigatory** in character, decision-making by show of hands or consensus can be acceptable.

Due to a much bigger number of members at the Council level and its role as the ‘**real**’ disciplinary authority in determining whether a respondent is guilty or otherwise, it is crucial that each and every member is **seen to be making individual ‘independent’ judgement and not ‘following’ the views of others.** Hence, every member shall need to state his grounds in detail to support his decision.

The Council should take note that decision-making at the Council level is currently governed by the following rulings:

a. Para 2(3) of the First Schedule which states:

(2) The quorum for a meeting of the Council shall be nine, and the decision of the Council shall be by a simple majority of the members present and voting.

b. Para 2(5) of the First Schedule which states:

(5) The Chairman at any meeting shall have an original vote and also, if upon any question the votes shall be equally divided, a casting vote.

5.12 Role of Legal Counsel of PIC/Council:

The role of the Legal Counsel of the PIC or Council is to assist the PIC or Council during any inquiry touching on disciplinary matter, specifically to advise on:

- (a) all questions of law ensuing in the course of the inquiry; and
- (b) the meaning and construction of all documents produced during the inquiry.

The PIC or Council Chairman may request a legal counsel to explain legal matters at an inquiry.

5.13 Confidentiality:

The entire disciplinary inquiry is confidential, and should be treated as such when handling any documents, recording and communicating with outside parties.

5.14 Recording of Proceedings of PIC and Council:

The records of proceedings of the PIC and Council consist of:-

- a. records of PIC under Regulations 29(3) and (6) and of Council under Regulation 31; and
- b. certified copies of all documentary evidence used by the PIC or Council.

These records would be the basis of appeal to the High Court under Section 31 of the Act. Hence they must be properly prepared and kept in an orderly manner. The responsibility for this rests with the Secretary.

Currently examinations, cross examinations, and re-examinations are conducted through questions and answers which are contemporaneously tape-recorded. Occasionally the complainant and/or the practitioner may make written statements, which will have to be signed.

As the tapes are merely to facilitate the recording by the PIC or Council for its records of the inquiry, which will have to be confirmed by their members at subsequent meetings, accordingly they do not constitute as part of the records.

The Council has decided that both the complainant and the respondent practitioner/s involved in any inquiry shall be furnished with copies of record of proceedings at all levels of inquiry.

5.15 Private Deliberation of PIC/Council Proceedings:

In the course of the inquiry the PIC/Council may deliberate in private e.g.:-

- a. to summarize outcome of earlier sessions in a long inquiry;
- b. to seek advice of legal counsel;
- c. to make decisions or arrive at judgments; or
- d. to consider preliminary issues raised by complainant or the practitioner.

It has to be ensured that these deliberations contain sufficient details and rationalization. These records should be considered strictly private and confidential to the PIC or Council members only. The complainant, the practitioner as well as their legal counsels have no legal privities to such documents.

5.16 Communicating the Outcome:

The final decision or judgment of inquiry at the PIC/Council will be communicated and rationalized to the practitioner, complainant as well as their legal counsels at open session, and duly recorded in the record of inquiry proceedings.

At the Council level, relevant parties will be informed of the outcome.

5.17 Annual Report:

The Secretary is required to table an Annual Report on disciplinary inquiries at the Council's annual meeting. The format is to be decided by the Council.

***THIS STANDING ORDERS WAS ADOPTED BY THE MALAYSIAN
MEDICAL COUNCIL ON 14 DECEMBER 2004***