STANDING ORDERS FOR THE CONDUCT OF INQUIRIES OF THE MALAYSIAN MEDICAL COUNCIL
(FOR INQUIRIES CARRIED OUT UNDER MEDICAL REGULATIONS 2017)

PREAMBLE:

These Standing Orders serve as a guide, and aim to standardize the procedures and processes of disciplinary inquiries of the Malaysian Medical Council (the 'Council') in carrying out its Disciplinary Jurisdiction under the Medical Act 1971 (amended 2012) (the 'Act') and the Medical Regulations 2017 (the 'Regulations') enacted thereunder.

These Standing Orders apply to inquiries in relation to disciplinary offences committed or alleged to have been committed by a Registered Medical Practitioner (RMP) from 1st July 2017 onwards, in accordance with the savings clause in Section 42(5) of the Medical (Amendment) Act 2012.

At all times, the Council, the Preliminary Investigation Committees and Disciplinary Boards retain the discretion to handle inquiries in a manner deemed appropriate in the circumstances of a particular case, and in a manner consistent with the Regulations. This accords with the long held maxim that every administrative body is the master of its own procedure.

1. INTRODUCTION

In conducting disciplinary inquiries under the Act the Council is guided by the **Code of Professional Conduct** (Code), supplemented by the **Duties of a Doctor** which comprises the Guidelines on **Good Medical Practice** and **Confidentiality**, as well as the various Guidelines and directives sanctioned and published by the Council from time to time.

The 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 of the Act lists out the circumstances under which the Council may exercise disciplinary jurisdiction. These circumstances or facts will have to be proven 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 'alleged to have committed serious professional misconduct', inquiries under Section 29(2)(a), 29(2)(a)(a), 29(2)(c), 29(2)(d), 29(2)(e) of the Act may also be held, when necessary.

The Code refers to the definition of 'serious professional misconduct' as laid out by the Privy Council in *Roylance v General Medical Council* [1999] 3 WLR 541. The Code also quotes the Declaration of Geneva adopted by the World Medical Association in October 2017 and which was also adopted by the Council subsequently.

The Code sets out the minimum standards of conduct of Registered Medical Practitioners as judged by their peers in the Council. The Code categorizes 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 Appendices of the Code. An in-depth knowledge and understanding of the Code and the Council guidelines, directives and their amendments is critical to any inquiry before the Disciplinary Board (DB). All parties involved in the disciplinary

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

2. PROCESS OF INQUIRIES

Each Preliminary Investigation Committee (PIC) and/or Disciplinary Board (DB) has a duty to deal with a complaint/information in accordance with the Act, the Regulations, guided by the Standing Orders, and in a reasonable and rational manner.

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

a. Preliminary Investigation conducted by the PIC.
b. Inquiries conducted by the DB.

The preliminary investigation by the PIC and the Inquiry by the DB shall be in accordance with Medical Regulations 2017.

Principles of natural justice as applied to disciplinary bodies.

The Rules of Natural Justice

The DB shall conduct its inquiries independently and observe the rules of Natural Justice, which reflect the minimum standards of basic fairness required to be observed by any regulatory or quasi-judicial body. These rules are

(i) The rule against bias (*Nemo judex in causa sua*); and
(ii) The right to be heard (*Audi alteram partem*).

These two rules, i.e. Impartiality and Fairness are the essential characteristics of what is often called natural justice[1].

In essence what is required is a fair hearing before an impartial tribunal for both the complainant/informant and the respondent practitioner. The application of the rules of Natural Justice is to ensure that the decision making process/procedure is fair and reasonable.

The **Rule of Fairness** or the right to be heard, requires an accused person to know the case which is made against him/her. He/she must know what evidence has been given and what statements have been made affecting him/her, and then he/she must be given a fair opportunity to correct or contradict them. The adjudicator or tribunal must not hear evidence or receive representations from one side behind the back of the other.

The **Rule against Bias** disqualifies an individual from acting as an adjudicator. It flows from two fundamental maxims: (1) a man should not be a judge in his own cause; and (2) justice must not only be done but be seen to be done. The first maxim applies not only when the adjudicator is himself a party to the dispute he is deciding, but also when he has some interest therein, whether pecuniary or personal or of some other type. According to the second maxim, it is not necessary to prove that a particular decision was in fact influenced by bias. It is sufficient if there is reasonable suspicion about the adjudicator's fairness[2].

Application of the rules of Natural Justice to administrative and disciplinary bodies

The courts have held that an administrative body is the master of its own procedure and need not assume the trappings of a court. The rules of natural justice are

[1] *B Surinder Singh Kanda v Government of the Federation of Malaya* [1962] 28 MLJ 169, Privy Council
[2] MP Jain's Administrative Law of Malaysia and Singapore, 6th edition, 2007, page 530

variable and do not mean adversarial procedures of a court of law or analogous to a court of law[3].

The standards expected of courts of justice are not a requirement in an inquiry into a disciplinary breach by a member of a professional body by fellow members of the body[4]. What is required is a system which is flexible, adapted to the needs of the Malaysian Medical Council and fair.

The application of the principles of natural justice must also be within the statutory framework which govern the work of the PIC and DB i.e. the Medical Act and Regulations, as well as the procedure laid out in these Standing Orders. The additional safeguards are not meant to frustrate the purpose of the governing legislation[5].

A. Illustrations of Denial of Procedural Fairness:

i. Intimation to a party that the evidence of available witnesses would not be necessary.
ii. Intimation to one party that the cross-examination of the other party and/or the witness would not be necessary.
iii. Denying a party the opportunity to make a submission, where it has been intimated that the party wishes to do so, or refusing to read written submissions.
iv. Deciding on a complaint / information before the complainant / informant's evidence is completed
v. Reference to relevant material not disclosed to parties

[3] *Lembaga Jurutera Malaysia v Leong Pui Kun* [2008] 6 CLJ 93, Federal Court; *Dr. Colin Lee Soon Soo v Majlis Perubatan Malaysia* [2011] 1 CLJ 907

[4] *Lim Ko & Anor v Board of Architects* [1966] 2 MLJ 80, Federal Court

[5] *Malaysian Airline System Bhd v Wan Sa'adi Wan Mustafa* [2015] 1 CLJ 295, Federal Court

B. Illustrations of Actual / Apprehension of Bias

i. Having a direct or indirect interest in any of the parties
ii. Previous recent association with any party
iii. Engaging in badgering a witness with unfair or inappropriate comments or questions
iv. Making adverse comments without justification about a party or his/her counsel.

3. COMPLAINTS MANAGEMENT COMMITTEE (CMC)

Regulation 38(2) of the Medical Regulations 2017 provides that the Council will forward complaints/information against RMPs to the Preliminary Investigation Committee (PIC).

In order to carry out this specific role, the Council has established a Complaint Management Committee (CMC), comprising five (5) members of the Council. These five (5) members of the CMC will hold office as members of this Committee for a period of one (1) year, unless otherwise decided by the Council.

The CMC will sit as and when required to scrutinize complaints/information received by the Council against RMPs and to forward the same to one of the Preliminary Investigation Committees (PIC) set up under Regulation 35 of the Medical Regulations 2017.

The CMC is required to ensure that the complaint/information complies with the requirements of Regulation 38(1) before such complaint/information is forwarded to a PIC:

a. the complaint / information must be in writing; and
b. the complaint / information must be against an RMP.

4. DISCIPLINARY PANEL

Regulation 34 of the Medical Regulations provides for the establishment of a Disciplinary Panel comprising the following persons appointed by the Council:

a. Members of the Council;
b. Fully registered medical practitioners of at least ten (10) years standing with a current Annual Practising Certificate (APC);
c. Any other persons.

The members of the Disciplinary Panel will hold office for a period not exceeding three (3) years, and may be reappointed.

Members of the PIC and Disciplinary Board (DB) will be selected from the Disciplinary Panel and appointed by the Council.

5. PRELIMINARY INVESTIGATION

5.1 ESTABLISHMENT OF PRELIMINARY INVESTIGATION COMMITTEE (PIC) UNDER REGULATIONS 35 and 37 MEDICAL REGULATIONS 2017

Regulation 35 of the Regulations provides that the membership of the PIC shall be not more than five (5) members selected from the Disciplinary Panel and appointed by the Council. The quorum of a PIC shall be three (3).

The Council will appoint a fully registered medical practitioner from among the members of the PIC to be the Chairman of the PIC. The Chairman shall preside at all meetings of the PIC.

In the absence of the appointed Chairman, the most senior fully registered medical practitioner present at that meeting of such Committee shall preside. A decision on any issue by the PIC is by a majority of those present and voting.

In the event of equality of votes, the Chairman or the person chairing the meeting shall have the casting vote.

Complaints / information forwarded by the CMC to a PIC must first be deliberated on by the PIC before further directions are given to the secretariat.

The PIC shall be assisted by a legal advisor, duly appointed under Regulation 48 of the Medical Regulations 2017.

5.2 COMMENCEMENT OF INVESTIGATION BY THE PIC

5.2.1 Complaint or information

An investigation commences with a complaint or information alleging certain matters against an RMP. All complaints or information made or received under Regulation 38 shall be forwarded by the CMC to the Chairman of a PIC.

Identity of complainant/Informant

The complainant/informant can be: -

(a) the aggrieved party;
(b) a member of his family;
(c) his lawyer;
(d) estate of the aggrieved party;
(e) any other person/organization familiar with the circumstances of the case.

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

- Name in full;
- Identity Card No./ Passport No.
- Contact details of Complainant/Informant

The identity and locus standi of the complainant/informant should be verified by the PIC and confirmed by way of documentary evidence.

The PIC may, if it considers necessary, request a Statutory Declaration from the complainant / informant.

5.2.2 Information for disciplinary investigation

Disciplinary investigations can be carried out on information received. The information may be in respect of an RMP alleging professional misconduct, including acts or omissions at a specified place, which may or may not be his place of practice whether or not in relation or pursuant to an enforcement activity. The information may be supported by evidence in any form.

Where the information is in relation to an enforcement activity, the PIC should ensure that:

(a) the information is provided by the person directly involved in the enforcement activity or the report may 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 party involved in the enforcement activity is legally empowered to conduct enforcement.

The persons in (a) and (b) are regarded as the informants in the investigation.

5.2.3 Identity of RMP complained against

It is important that the correct practitioner is investigated. To ensure this, the PIC must be satisfied with the following:-

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

It is the responsibility of the secretariat to ensure that these particulars are made available to the PIC and recorded in the Record of Proceedings of the PIC.

5.2.4 Facts in issue or Substance of the Complaint / Information

The PIC may seek further clarification from the complainant/informant where necessary.

To be fair to the complainant / informant and the RMP 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.

5.2.5 Litigation at the Courts

If there are complaints / information received regarding issues which are at the same time being contested in the courts, the PIC may study each individual situation to ascertain whether issues raised may be identical. The PIC may decide, upon seeking the opinion of the legal advisor, to continue with the investigation.

5.2.6 Cases of Conviction by the Courts under Section 29(2)(a) Medical Act 1971.

Where the complaint/information involves the conviction, in Malaysia or elsewhere, of a registered practitioner, of any offence punishable with imprisonment (whether

in itself or in addition to or in lieu of a fine), the PIC may, if it thinks necessary, seek confirmation regarding the conviction from the Registrar of the relevant court.

5.2.7 Cases of Disciplinary Proceedings by Medical Regulatory Authorities from other Jurisdictions

Where the complaint/information involves any disciplinary proceedings against the RMP by Medical Regulatory Authorities from other jurisdictions (such as the General Medical Council UK), the PIC may instruct the Secretariat to obtain information of the outcome of such disciplinary proceedings from the relevant regulatory authority.

5.2.8 Allegations under the Poisons Act 1952 and Dangerous Drugs Act 1952:

A chemist's report is required to prove that drugs which form the subject matter of the complaint/information, are poisons / dangerous drugs.

5.2.9 Receipt of Complaint/Information

The PIC is deemed to have received the complaint/information when it is satisfied it has all relevant documents in order to proceed under Regulation 40.

An investigation commences when the PIC convenes on the date set for the investigation of a complaint/information, upon having received the complaint/information as described above.

5.3 SUMMARY DISMISSAL OF COMPLAINT OR INFORMATION - REGULATION 39 MEDICAL REGULATIONS 2017

Any PIC may recommend to the Council to summarily dismiss any complaint / information if it is satisfied that the said complaint or information falls into any of the following three (3) circumstances under the Regulations.

(a) Name or address of complainant/informant unknown or untraceable:

If the name and address of the complainant/informant are not given, the PIC obviously cannot proceed. If the name and address are given, the secretariat may, where found necessary, write to the complainant/informant via Registered Post, attaching a copy of the complaint /information, to seek confirmation on genuineness of the complaint letter/information. If the Registered letter is returned undelivered or if delivered but unanswered after two (2) subsequent reminders, the PIC may summarily dismiss the complaint / information.

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

A statement to that effect and the reason shall be recorded in the PIC's record of proceedings for summary dismissal.

(c) The PIC has reason to doubt the truth of the complaint or information:

A statement to that effect shall be recorded as a cause for summary dismissal

The PIC may require the complainant / informant to produce a statutory declaration of the facts alleged by him, in support of his complaint.

The PIC's recommendation and reasons thereof shall be communicated to the Council within 30 days of close of investigation.

5.4 INVESTIGATION BY PIC - REGULATIONS 40 & 41 MEDICAL REGULATIONS 2017

5.4.1 Procedure

Once the PIC decides to proceed with investigation, the primary responsibility and authority of the PIC is to establish whether there are sufficient grounds to support the allegation or facts in issue.

Note: The RMP is known as the 'respondent' in the investigations carried out by the PIC and proceedings before the DB.

The PIC shall:

(a) notify the respondent within thirty (30) days of the receipt of a complaint / information;

(b) require the respondent to submit a reply within thirty (30) days of receipt of the notification from the PIC; and

(c) if necessary, request for clarification or further documents from the respondent to be provided within fourteen (14) days of a request by the PIC.

5.4.2 Recommendations by the PIC

After considering the respondent's reply and further clarification, if any, the PIC may recommend to the Council:

(a) that no further action be taken; or

(b) that an inquiry be held by a DB.

The PIC may recommend an inquiry by the Disciplinary Board (DB) if no response is received from the respondent.

5.4.3 Withdrawal of Complaint / Information or Complainant / Informant uncontactable

In the event the complainant / informant wishes to withdraw the complaint / information or in the event the complainant / informant cannot be contacted by the PIC, the PIC may inform the Council that it is not able to proceed with its investigation under Section 40 of the Medical Regulations 2017.

However, Section 40(3) of the Medical Regulations 2017 empowers the PIC, in the event it finds that there are sufficient grounds to support the allegation against the respondent, to recommend to the Council to appoint a member of the Disciplinary Panel (who is not a member of the Council) as a complainant/informant in the matter. Such person must not be a member of the CMC or the PIC in relation to the matter.

5.4.4 Records

The complete records, recommendation and grounds of the preliminary investigation by the PIC shall be prepared and sent to the Council within 30 days of completion of such investigation.

5.4.5 Decision of the Council

The Council may, after consideration of the recommendation of the PIC, either:

a. summarily dismiss the complaint or information; or
b. forward the complaint or information together with the recommendations of the PIC to a duly appointed DB to conduct an inquiry.

The Council must record its reasons for its decision. The Council shall inform the complainant/informant of its decision in writing.

5.4.6 Change in Constitution of PIC

In the event a member of the PIC passes away in the course of an investigation, is unable to attend inquiries for a prolonged period due to ill health or has completed their term of appointment during the course of an investigation, another member of the PIC may step in to continue with the investigation. Any decisions, acts done or proceedings taken by the PIC remain valid and unaffected by any vacancy or defect in the constitution of the PIC (Regulation 37(7)).

6. DISCIPLINARY BOARD

6.1 ESTABLISHMENT OF A DISCIPLINARY BOARD - REGULATION 36 MEDICAL REGULATIONS 2017

The Disciplinary Board (DB) shall comprise at least three members of the Council, three (3) registered medical practitioners of at least ten (10) years of good standing with current practicing certificates and one (1) lay member, selected from the Disciplinary Panel and appointed by the Council. A Chairman amongst them shall also be appointed by the Council. The quorum of a DB shall be five (5).

A member of a PIC investigating a complaint/information shall not be a member of the DB conducting the inquiry in relation to the complaint/information.

6.2 INTERIM ORDERS - SECTION 29A of the MEDICAL ACT 1971 and REGULATION 42(1) of the MEDICAL REGULATIONS 2017

6.2.1 Powers to issue Interim Orders

The DB is empowered under Section 29A of the Medical Act and Regulation 42 of the Medical Regulations 2017, to issue an Interim Order to the RMP against whom the complaint/information has been made.

Two (2) types of Interim Order that may be issued by the DB, i.e.:

a. suspension of the respondent's medical registration for a period not exceeding twelve (12) months (Interim Suspension Order); or

b. continuation of the respondent's medical registration, subject to his compliance of any requirement that the DB thinks is appropriate to impose upon him, for a period not exceeding twelve (12) months (order for Interim Restricted Registration).

The period of the interim order must be specified in the order itself.

6.2.2 Procedure

Upon receipt of the complaint / information together with the PIC's recommendation, and upon examining the complaint / information, if the DB is satisfied that:

a. an Interim Order is necessary for the protection of the members of the public;
b. an Interim Order is in the public interest; or
c. it is in the interest of the respondent that his registration be suspended or be made subject to conditions;

the DB may make an order to that effect.

The DB will notify the Registrar who will then immediately serve a notification of the order on the respondent. The Interim Order must be strictly complied with by the respondent. Non-compliance will not be countenanced and will lead to disciplinary action.

The DB shall inform the Council of its reasons when an Interim Order has been made.

The Interim Orders shall not be published on the Council's website.

6.2.3 Review, Revocation and Replacement of Interim Orders

The Interim Order shall be reviewed by the DB within six (6) months from the date of the order, and thereafter, before the end of three (3) months from the previous review, as long as the order continues in force.

The DB may also review the Interim Order where new evidence which is relevant to the Order has become available to the DB subsequent to making of the Order.

The DB is also empowered to revoke the Interim Order or revoke any condition imposed by the Order.

The DB may also replace an order for Interim Restricted Registration with an Interim Suspension Order having effect for the balance of the period of the original order, provided it is satisfied that this is necessary for the protection of the members of the public, or is in the public interest or in the interest of the respondent himself or if the respondent has not complied with any condition of an order for Interim Restricted Registration.

The DB may replace an Interim Suspension Order with an order for Interim Restricted Registration having effect for the balance of the period of the original order, if it is satisfied that the public interest or the interest of the respondent would be more adequately served by doing so.

The above powers are to be exercised by the DB which made the order, or by the DB appointed in place of the original DB, if such is the case.

In making any such revocation or replacement, the DB should record its reasons for doing so, and inform the Council of the same.

The Registrar is required to immediately notify the respondent of the decision to revoke or replace the Interim Order.

6.2.4 Extension and Expiry of Interim Order

If the DB is of the opinion that an Interim Order must be extended, the DB will have to apply to the President for extension of such Order. The President may extend the Order for up to six (6) months, each time an extension is sought by the DB.

An Interim Order shall continue in force until:

a. the end of the period specified in the order or if extended, any extended period; or
b. the date on which the proceedings before the DB are concluded,

whichever is earlier.

6.3 INQUIRIES BY THE DISCIPLINARY BOARD - REGULATION 42 MEDICAL REGULATIONS 2017

The DB, after consideration of the records submitted by the PIC, shall write to the complainant/informant requiring his attendance and his witnesses before the DB at a specified date, time and place fixed for the inquiry. The DB shall also notify the respondent practitioner of the date, time and place fixed for the inquiry, and of his right to be present with or without legal counsel.

Both the complainant/informant and the respondent shall have the right to be present with or without a legal counsel and when present, both counsels have equal rights of representation.

6.3.1 Call Letters for Commencement of Inquiry

Call letters must be sent by A.R. Registered Post / Certificate of posting or through a reliable courier service one month in advance of the inquiry date. If it cannot be delivered to the respondent, the assistance of the State Director of Health should be sought.

6.3.2 Access to Documents:

Prior to the commencement of the inquiry, the complainant/informant and respondent shall be given copies of:

(a) The Complaint/informant's letter;
(b) Statutory declaration (if any);
(c) The Respondent's reply and clarification; and
(d) All other documents related to the complaint / information.

Should any party wish to adduce additional documents in support of the complaint or the defence, all such documents, together with sufficient copies, shall be sent to the MMC Secretariat at least 2 weeks prior to the scheduled inquiry for distribution to all parties.

6.3.3 Procedure During Inquiry

a. Presentation of complaint / information

The complainant / informant first presents the complaint / information, after which the DB may seek clarification, followed by cross-examination by the respondent, and if necessary, the DB may seek further clarification thereafter.

The same process also applies to any witness called by the complainant/informant.

Both parties may make submissions before the DB deliberates to decide whether to call for the defence of the respondent.

b. Deliberation on complaint

At the end of the complainant's/informant's presentation, the DB, after taking the statements of the complainant/informant and the persons in support of the allegation: -

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

(b) if it finds that the statements support the allegation, shall frame the charge against the respondent.

The DB shall adjourn the inquiry and frame the charge with the assistance of the legal advisor. The DB shall record the rationale of its findings.

In the case of a complaint against several respondents, the DB may take the statement of the complainant against all the respondents in one sitting.

Upon deliberation, if the DB finds sufficient grounds to support the allegations against 1 or more of the respondents named in the complaint, the DB shall frame separate charges against each respondent, and proceed in accordance with Regulation 42(7)(b) of the Medical Regulations 2017 against each respondent separately.

The DB may, on an application by any respondent in a complaint against more than one respondent, hear the defences of the respondents in the same sitting, if deemed appropriate or suitable in the circumstances of the case.

c. Presentation of Statement from the Respondent Practitioner

At the reconvened inquiry, the DB shall record any statement from the respondent. The DB shall seek clarification from the respondent, after which the complainant / informant may be permitted to cross-examine the respondent, if necessary, followed by further clarification by the DB, if required.

The same process also applies to any witnesses called by the respondent.

At any point of time during the inquiry, the DB may require the complainant/informant or the respondent to produce any relevant material and to make copies of the same, or to attend before the DB and to produce any such relevant material.

6.3.4 Procedures and Protocols

Pertinent issues to be addressed before or during an inquiry:

(a) The complainant / informant, respondent, their legal counsel if any, members of DB, DB's legal advisor, and secretariat are present. Any other person authorized by the DB to be in attendance may be present. Witnesses brought in by complainant / informant or respondent must remain in holding rooms until called.

(b) The DB Chairman introduces members of the DB, its legal advisor and secretariat. Similarly, the complainant / informant and those present with him/her, and the respondent and those present with him/her will be asked to identify themselves.

(c) The DB Chairman shall ensure that all participants in the inquiry are in possession of the documents which will be the basis of the inquiry and ensure that there are enough copies of relevant laws, Code and related documents for referral.

(d) The DB Chairman shall explain the inquiry procedures, and responsibility and authority of DB.

(e) None of DB members present must be affected by Regulation 50 of Medical Regulations 2017.

(f) Parties may only be represented by advocates and solicitors duly registered under the Legal Profession Act 1976 and holding a current practising certificate.

(g) A certified interpreter/translator may be made available for complainant/informants or respondents who are not conversant in both Bahasa Malaysia and English. Any party who is not conversant with either Bahasa Malaysia or English may be accompanied by a person to assist him/her to understand the proceedings, if such proceedings are conducted in the language that he/she is not conversant with.

(h) The complainant / informant shall present the complaint letter/ information making reference to documentary evidence and exhibits if any. From this point all documents and exhibits shall be appropriately and serially labeled. The DB shall satisfy itself that they are material and relevant before admitting them.

(i) The DB may seek clarification from the complainant/informant, the respondent and their respective witnesses.

(j) The complainant / informant and respondent may call their witnesses with the Chairman's permission. Statements by witnesses should be material–and

relevant to the facts at issue. Upon completion of cross-examination and clarification, the witness/witnesses may be released.

(k) All DB members shall be present throughout the inquiry. Members who have to leave during the course of the inquiry are disallowed from participating at any continued inquiry.

(l) For the purposes of the inquiry, the DB may require the complainant or the respondent concerned to produce any material or record and to make copies of such material or record for the DB and parties.

(m) At all times from the commencement until the completion of the inquiry before the DB, all communication between the DB and any of the parties shall be in the presence (if oral) and/or with the knowledge (in writing) of all parties.

6.3.5 Witnesses

All persons shall be competent to testify as witnesses unless the DB considers that they are prevented from understanding the questions put to them.

No particular number of witnesses shall in any case be required for the proof of any fact.

The complainant/informant will be responsible for the attendance of any other persons in support of the complaint/information. In the same manner, the respondent will be responsible for the attendance of witnesses in support of his defence.

6.3.6 Expert Witnesses

Parties may produce expert witnesses, if considered necessary to the complaint/information or the respondent's defence. The production of expert

witnesses shall comply with the provisions of the Malaysian Medical Council's Guidelines on Expert Witnesses.

The DB may, if it considers necessary, require the assistance of an expert to advise the DB on specific matters arising during the inquiry. In such instance, the DB shall disclose to parties the questions framed by the DB for the expert and his written advice. Should any of the parties wish to cross-examine the expert brought in to advise the DB, such request should be made in writing to the DB prior to the date of the inquiry.

The DB will give due consideration to the opinion of all experts.

6.3.7 Framing the Charge:

The charge shall be contained in the call letter to the registered practitioner to appear before the DB. The charge should contain the following: -

(a) the circumstances surrounding the case in specific, and accurate terms;

(b) the offences allegedly committed in specific, and accurate terms. The standards to be measured against are contained in the Code of Professional Conduct and any other guidelines and directives adopted by the Council.

6.3.8 Call letter containing the charge

The call letter shall be signed and dated by the DB chairman. The date, time and place of inquiry shall be included in the call letter. The date of the inquiry must be at least one (1) month from the date of the call letter.

The call letter would also have to mention the respondent's right to bring documentary evidence, witnesses and legal counsel, and to cross-examine and re-examine persons appearing in the inquiry.

The call letter shall also be sent to the complainant / informant informing him/her of his/her right to bring legal counsel and his right to cross-examine persons appearing in the inquiry.

All such letters shall be sent by Registered Post or Courier to the last known address (APC address or residential address or to both), of the respondent and complainant / informant. If undelivered, the office of the state director of health may be used to get it delivered on the respondent practitioner and duly acknowledged.

6.3.9 Postponement of the Inquiry and Absence of Parties

Requests for postponements shall be considered only on valid reasons and/or in exceptional circumstances.

A maximum of two (2) postponements may be permitted, after which the DB will proceed with the inquiry.

Each party may be permitted only one (1) postponement. This includes postponement / adjournment of the inquiry by reason of the absence of any party.

Requests for postponements shall be submitted not less than two (2) weeks before the date of the inquiry.

Any further postponement will only be permitted in the case of exceptional circumstances at the sole discretion of the DB.

All requests for postponement shall be supported by valid documentation i.e. medical certificates, proof of court proceedings etc.

The DB may proceed with the inquiry notwithstanding the absence of any party, if in its opinion, it is fair and reasonable to do so in the circumstances.

6.3.10 Fitness to Practice

During the course of the inquiry, if the DB is of the opinion that the respondent is professionally incompetent or his fitness to practice is impaired by physical or mental disability, the DB may refer the respondent to the Fitness to Practice Committee for an evaluation.

6.3.11 Recommendations of the DB:

In the event the respondent, upon being informed that he may make his defence before the DB, chooses not to put forward any defence or to call witnesses in support, the DB may recommend to the Council that the respondent is guilty of the charge(s) framed against him.

In the event the respondent makes his defence before the DB, after taking into account the respondent's statement, and other statements from any witness called by the respondent, the DB shall:-

(a) if it finds that there are not sufficient grounds to support the charge, recommend to the Council that no further action be taken, or

(b) if it finds that there are grounds to support the charge, inform the respondent of its findings and the reasons for its decision, and inform the respondent that he may enter a plea in mitigation.

In making its decision, the DB is to also take into account any evaluation report of the Fitness to Practice Committee.

Upon hearing the respondent's plea in mitigation, the DB will recommend to the Council the appropriate punishment under Section 30 of the Act. In making this recommendation, the DB shall be guided by:-

(a) the severity of the offence(s)
(b) substance of plea in mitigation, and
(c) precedents of identical or similar cases.

The DB shall also be guided by the principle of proportionality, in that the punishment recommended must be proportionate to the gravity of the misconduct.

The DB shall endeavour to complete the inquiry within twelve (12) months of the commencement of the inquiry.

6.3.12 Grounds of Recommendation/ Decision

The written grounds for the recommendation of the DB, both in relation to its finding on the question of guilt, as well as the punishment to be imposed, shall be prepared by the Chairman of the DB, with the assistance of the Legal Advisor, and forwarded to the Council, together with the record of proceedings, for its consideration.

6.3.13 Decision Making by the DB

In the interest of justice for both the complainant/informant and the respondent, it is important that each and every member of the DB consider all relevant facts in making a decision.

The merits of the matter shall be deliberated upon by the DB before each member makes his decision. However, it is important that each and every member makes an individual and independent finding. Hence, every member

shall need to state his/her grounds in support of his/her finding to the DB during deliberations.

The deliberations and the grounds of each DB member remain confidential at all times. Only the decision of the DB shall be conveyed to all parties.

In the event the votes are equally divided, the Chairman of the DB shall have the casting vote.

The processes of decision-making by the DB, following the respondent's plea in mitigation shall follow the same guidelines as set out above.

6.3.14 Private Deliberation of DB Proceedings

In the course of the inquiry the DB may adjourn the proceedings and deliberate in private. Decisions of the DB made after private deliberations shall be conveyed to all parties.

6.3.15 Role of Legal Advisor of DB

The role of the Legal Advisor of the DB shall be to assist the DB during any inquiry touching on a disciplinary matter, specifically to advise on:

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

The Chairman of the DB may request the Legal Advisor to explain legal matters during the inquiry.

6.3.16 Confidentiality:

The entire disciplinary inquiry is confidential, and shall be treated as such when handling any documents, records and communication.

6.3.17 Records of Proceedings of the DB:

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

(a) records of the PIC and DB; and
(b) all documentary evidence submitted to PIC or DB.

The recording shall be reduced to writing and confirmed by the members.

Copies of record of proceedings at all levels of the inquiry shall be made available to both complainant/informant and respondent.

6.3.18 Recusal

As the members of the DB have a duty to carry out their functions, they should not too readily disqualify themselves. They must reflect on whether it is a case where an apprehension of bias really does arise. If there is a doubt, they should declare their association (if any) with a party to both parties, and obtain the consent of both parties to continue as a member of the DB. Apprehension of bias will not arise just because the same adjudicator has decided similar cases in the past, even though the past decisions are not in line with the present party's wishes.

6.3.19 Transfer of Cases from One DB to Another DB:

The Council may transfer a matter from one DB to another DB under Regulation 45(1)(c) of the Medical Regulations, or in the event the assigned DB is unable

to inquire into the matter for lack of quorum by reason of compliance with Regulation 50 of the Medical Regulations.

The reasons for such transfer are to be recorded by the Council.

In the case of such transfer, the new DB has to treat the complaint/information as a new one and commence a fresh investigation disregarding all discussions and deliberations of the previous DB.

6.3.20 Withdrawal of Complaint

If, prior to or during the inquiry before the DB, the complainant withdraws the complaint / information or the complainant is no longer contactable by the DB, the DB may recommend to the Council to dismiss the complaint.

However, if upon examination of the Complainant and any person in support of the allegation, the DB finds that there are serious grounds to support the allegation against the respondent concerned, notwithstanding the withdrawal of the complaint or inability to contact the complainant, the DB may recommend to the Council, and the Council may direct that the DB proceed with the inquiry against the respondent concerned or give such other directions as the Council thinks fit, in accordance with its powers under Regulation 45 of the Medical Regulations 2017.

6.3.21 Changes in constitution of DB

In the event a member of the DB passes away in the course of an inquiry, is unable to attend inquiries for a prolonged period due to ill health or has completed their term of appointment during the course of an inquiry, another member of the DB may step in to continue with the investigation. Any decisions, acts done or proceedings taken by the DB remain valid and

unaffected by any vacancy or defect in the constitution of the DB (Regulation 37(7)).

7. DECISION OF THE COUNCIL – REGULATION 45 MEDICAL REGULATIONS 2017

The Council, upon considering the records and recommendations of the DB, as well as the DB's grounds for its recommendations, may make any one of the following decisions:

a. Accept the recommendation of the DB and impose the punishment as recommended by the DB.

   In such case, the Council, in informing both parties of its decision, shall enclose a copy of the DB's grounds.

b. Direct the DB to reconvene the meeting and inquire further into the complaint or information.

   In such case, the Council, in informing both parties of its decision, shall also state briefly its reasons for this direction.

c. Direct that a new DB be constituted and conduct an inquiry into the complaint or information.

   In such case, the Council, in informing both parties of its decision, shall also state briefly its reasons for this direction.

d. Direct that the charge be dismissed if the Council finds that no case has been made out against the respondent.

In the event the dismissal is subsequent to a recommendation by the DB that the charge be dismissed, the Council, in informing both parties of its decision, shall provide both parties a copy of the DB's grounds.

In the event the dismissal is subsequent to a recommendation by the DB to punish the respondent, the Council, in informing both parties of its decision, shall provide both parties a copy of the DB's grounds, as well as a copy of the Council's grounds.

e. Reject the recommendation of the DB and make its own decision.

In such case, the Council, in informing both parties of its decision, shall provide both parties a copy of the DB's grounds, as well as a copy of the Council's grounds.

The written grounds for Council's decision, where necessary as stated above, shall be prepared by the President of the Council or any member of the Council so appointed by the President to do so, with the assistance of the Legal Advisor.

After the Council has finally disposed of the inquiry, the Secretariat is to inform the respective DB, the Complainant/Informant and the Respondent of its decision and the grounds for its decision as set out above within thirty (30) days of the Council's decision.

Malaysian Medical Council
Effective date: 28th October 2025
(459th Council Meeting)