



Disciplinary Proceedings for Medical Practitioners

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In Malaysia, medical practice is governed by the Medical Act 1971 (the Act) and Medical Regulations 1974¹ while the profession is regulated by the Malaysian Medical Council (MMC). Among others, the MMC is in charge of addressing complaints lodged against medical practitioners.

The most common complaint is that of “serious professional misconduct”, also popularly known as “infamous conduct”.² In line with the definition of “infamous conduct” in two earlier cases:

- (a) “...*professional conduct considered disgraceful or dishonourable by his professional brethren*”, per Lopes LJ;³ and
- (b) “*infamous conduct in a professional respect means no more than serious misconduct judged according to the rules, written and unwritten, governing the profession*”, per Scrutton LJ,⁴

the MMC adopted the principle that “serious professional misconduct” means a failure to meet minimum standards of professional practice set in the Code of Professional Conduct as well as other guidelines and directives issued by the MMC.

Mechanism of disciplinary proceeding

At the outset, it must be understood that the process involves three distinct layers consisting of the Preliminary Investigation Committee (PIC), the Disciplinary Board and lastly, the MMC. Members of the PIC and the Disciplinary Board will be selected from a Disciplinary Panel consisting of members of the MMC, any fully registered medical practitioner of at least 10 years of good standing with a current annual practising certificate, or any other person recommended by the MMC.

¹ This has been amended by the Medical (Amendment) Act 2012 and Medical Regulations 2017, which came into force on 1 July 2017.

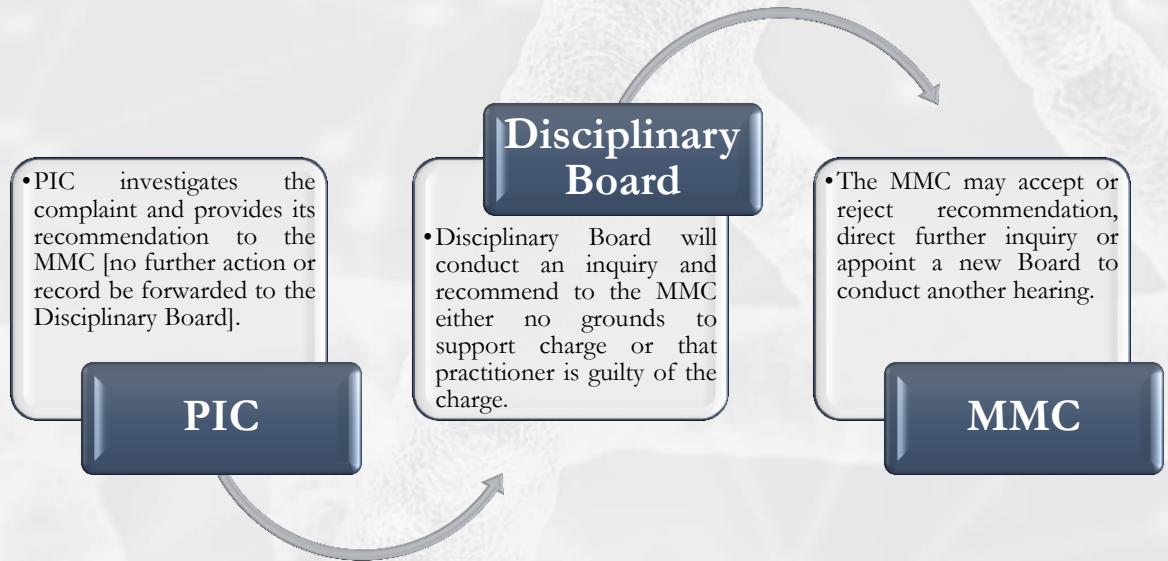
² Medical Act 1971, s 29(2)(b) and Standing Orders for the Conduct of Inquiries of the Malaysian Medical Council.

³ *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750

⁴ *R v General Medical Council* [1930] 1 KB 562



Where there is cause for unhappiness with the conduct of a doctor, one can lodge a complaint with the MMC. This kickstarts the mechanism for disciplinary proceedings, an overview of which is shown below:



Once a complaint is lodged, a PIC of not more than five individuals will be formed to investigate the complaint.⁵ The function of the PIC is to conduct a preliminary investigation into the complaint or information touching on any disciplinary matter to determine whether there should be an enquiry.⁶

Where details of the complainant are untraceable or facts do not constitute a disciplinary matter or there is reason to doubt the truth of the complaint, the PIC may recommend that the MMC summarily dismiss the complaint.⁷ Otherwise, the Medical Regulations 2017⁸ requires the PIC to:

- (a) notify the registered practitioner concerned of the receipt of a complaint or information with regard to him;
- (b) forward a copy of the complaint or information and any supporting statutory declaration and document received to the registered medical practitioner concerned;
- (c) require the registered medical practitioner concerned to submit a reply to the complaint or information within 30 days from the receipt of the notification; and

⁵ Medical Regulation 2017, reg 35 (1)
⁶ Medical Regulation 2017, reg 35 (2)
⁷ Medical Regulation 2017, reg 39 (1)
⁸ Medical Regulation 2017, reg 40



- (d) request from the registered medical practitioner concerned for clarification or further documents to be provided within 14 days from the receipt of the request.

The PIC shall then recommend to the MMC to either refer the matter to the Disciplinary Board or that no further action is to be taken. Of course, the MMC will have the final say. In the event the MMC agrees that there are sufficient grounds to proceed, the matter will be forwarded to the Disciplinary Board, which will then conduct an inquiry into the complaint independently. It is of utmost importance that the rules of natural justice are observed during the inquiry. If reasonable opportunity to defend is not given to the registered medical practitioner, this may be sufficient grounds for an appeal to the High Court. That said, courts have held that administrative bodies such as the MMC need not adhere to strict rules applied in courts, but instead have a flexible system which can be adapted to their needs and is fair.⁹

After consideration of the records submitted by the PIC, the Disciplinary Board shall write to the complainant and the registered medical practitioner informing them of the specified date, time and place fixed for the inquiry.¹⁰ Both the complainant and the registered medical practitioner have the right to be present with or without legal counsel and should be given copies of the relevant documents.

During the inquiry, the Disciplinary Board will firstly hear the presentation of the complaint and thereafter deliberate on the complaint. Having framed the charge with the assistance of a legal advisor, the Disciplinary Board shall then inform the registered medical practitioner of the charge(s) against him and explain that he/she is at liberty to state his/her defence and call witnesses. Next will be the presentation of statement from the registered medical practitioner.

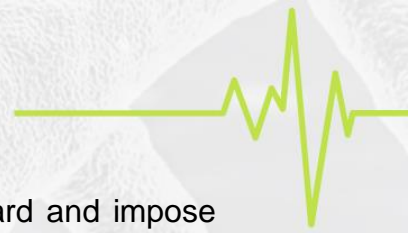
Upon completing the inquiry (within six months, unless an extension is granted by the MMC) and hearing the plea in mitigation (if any), the Disciplinary Board shall either recommend to the MMC that no further action be taken or that the practitioner is guilty of the charge.¹¹ The MMC, upon considering the records and the recommendation of the Disciplinary Board, may:¹²

⁹ *Haji Ali bin Haji Othman v Telekom Malaysia Berhad* [2003] 4 AMR 441

¹⁰ Medical Regulation 2017, reg 42

¹¹ Medical Regulation 2017, reg 44

¹² Medical Regulation 2017, reg 45



- (a) accept the recommendation of the Disciplinary Board and impose the punishment;
- (b) direct the Disciplinary Board to reconvene the meeting and inquire further into the complaint or information;
- (c) direct that a new Disciplinary Board be constituted and conduct an inquiry into the complaint or information;
- (d) direct that the charge be dismissed if the MMC finds that no case has been made out against the registered medical practitioner concerned;
- (e) reject the recommendation of the Disciplinary Board and make its own decision; or
- (f) give such other direction as the MMC thinks fit.

Thereafter, the MMC shall inform the registered medical practitioner of its decision and shall also have the right to publish the conclusion of any inquiry done in the media.¹³ If charged, the registered medical practitioner will have 30 days to file an appeal against the decision at the High Court.

Concluding remarks

Disciplinary proceedings for medical practitioners appear to be overly complex and time-consuming in the author's opinion. As the fate of the registered medical practitioner is in limbo during these proceedings, measures to simplify and shorten the process would be much welcome.

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The definition of 'media', however, remains unclear.