

## WHAT YOU NEED TO KNOW ABOUT

# SMC DISCIPLINARY PROCEEDINGS

Text by Christopher Chong, Teaching Faculty, SMA Centre for Medical Ethics and Professionalism

With the recent publicity of a number of disciplinary cases against doctors before the Singapore Medical Council (SMC), it is an opportune time to revisit this issue and consider how medical practitioners can best handle such complaints.

In order to understand how to deal with SMC complaints, we will first provide a brief overview of the SMC disciplinary process.

### Overview of the disciplinary process

Complaints to the SMC against medical practitioners can be made by patients, patients' relatives, members of the public, the Ministry of Health (MOH), or even brought by the SMC.

### Complaints Committee and investigation

In relation to complaints made by the public, a three-person Complaints Committee (CC) is appointed once a complaint is received by the SMC.

Upon review of the complaint, the CC can:

- unanimously dismiss the complaint if it is deemed frivolous; or
- unanimously direct mediation or issue a letter of advice; or
- order an investigation with the appointment of an investigator.<sup>1</sup>

Pursuant to the Medical Registration Act (MRA), the SMC has established an Investigation Unit, tasked with the investigation of complaints with fairly extensive powers<sup>2</sup> to carry out these investigations. If an investigation is ordered by the CC, the investigator issues a Notice of Complaint to the medical practitioner, inviting a response

in writing by a certain deadline. It is usually only at this stage that the medical practitioner becomes aware that a complaint has been made.

A report will be submitted to the CC after the investigator completes the investigation,<sup>3</sup> which will include the medical practitioner's written response, the records, the findings and, where relevant, an independent expert opinion.

### Outcome of CC's deliberations

After considering the available information, the CC may determine that either no formal inquiry by a Disciplinary Tribunal (DT) is necessary or order that an inquiry before a DT be held.

#### No formal inquiry required

Upon determining that **no formal inquiry** by a DT is necessary, the complaint may be dismissed. There are a number of other orders available to the CC and the most commonly seen orders are for the CC to issue a letter of advice or a letter of warning.<sup>4</sup>

It should be noted that complainants, upon being notified that the complaint has been dismissed by the CC, may appeal to the Minister for Health against the dismissal within 30 days.<sup>5</sup> The Minister for Health will then initiate a process, whereby the CC will submit the grounds of their decision and both the complainant and the medical practitioner can submit their comments on the grounds of decision for the Minister's consideration in determining whether the appeal should be allowed.

#### Formal inquiry is required

If the CC determines that **a formal inquiry is necessary**, an inquiry by a DT will be ordered.<sup>6</sup> There is no right

of appeal against this decision. The SMC will then engage lawyers to act as prosecutors, and they will draft the charges of professional misconduct against the doctor, serve the Notice of Inquiry on the doctor and conduct the disciplinary inquiry.

The charges by the SMC Prosecution will be framed in accordance with section 53(1) of the MRA, and in relation to (a) conviction of any offence involving fraud or dishonesty; (b) conviction of any offence implying a defect in character which makes him unfit to practise; (c) improper act or conduct which brings disrepute to the profession; (d) conduct of a medical practitioner in his professional capacity (ie, professional misconduct); and (e) the failure to provide professional services of the quality which is reasonable to expect of him.<sup>7</sup>

In relation to cases involving medical treatment, the charge will usually relate to whether a doctor met the standard of care in treating and managing a patient under section 53(1)(d) (professional misconduct) and, more recently, section 53(1)(e) (failure to provide professional services of the quality which is reasonable to expect of him).

### Disciplinary inquiry

A DT made up of three members is appointed (with one member being a Judge or Judicial Commissioner of the Supreme Court, or an advocate and solicitor, or officer in the Singapore Legal service for not less than 15 years).

The inquiry is quasi-criminal in nature and the hearing is akin to a trial.

At the hearing, the doctor can choose to plead guilty to the charge(s), leaving the DT to determine the

nature and severity of the punishment. Alternatively, a doctor may choose to contest the charge(s), in which event, oral and documentary evidence will be adduced and factual and expert witnesses will be called. At the conclusion of the hearing, the DT will deliver the verdict (whether guilty or not guilty) and sentence (if guilty).

### Handling SMC proceedings

In this day and age, the preparation for handling of complaints should commence before a complaint is even made, with proper risk management being put in place.

### Risk management

Ensure that you have adequate professional indemnity coverage. The coverage should, at the very least, cover the legal costs incurred by the doctor in preparing a written response to the complaint and in preparing and attending the disciplinary inquiry hearing. The coverage may also indemnify the doctor against the costs of the SMC's prosecutors should the doctor be found guilty by the DT and ordered to pay the legal costs of the SMC.

In providing treatment to patients, ensure that there are proper steps taken in arriving at a diagnosis. Thereafter, provide adequate advice on the proposed treatment, benefits, risks and complications, and alternatives of that treatment, and obtain informed consent.

Most importantly, always maintain proper records by documenting your findings, discussions and treatment plans. The likelihood of successfully defending SMC disciplinary proceedings are often determined by the thoroughness and clarity of the medical records. It is pointless to studiously carry out the steps set out in the paragraph above if they are not reflected in the records.

Keep yourself updated on the SMC Ethical Code and Ethical Guidelines and any Practice Guidelines and MOH Circulars.

### If you receive a Notice of Complaint

Notify the professional indemnity provider immediately and through them,

engage a suitably experienced lawyer to assist in responding to the complaint. This will provide objectivity and, through the lawyer's experience and familiarity with such proceedings, an insight and approach to dealing with the complaint.

The lawyer will also provide guidance as to how the explanation should be drafted, which would involve a careful review of the medical records, the input of any other individuals involved in the care, the inclusion of any supportive medical literature and if necessary, the procurement of a supportive expert opinion (if the complaint relates to the standard of care).

### If you receive a Notice of Inquiry

Inform the lawyers who had previously assisted in the preparation of the explanation to the CC.

If it was not done previously, obtain the best evidence available, whether from the documents, potential factual witnesses or experts.

Working with the lawyers, make a realistic assessment of the merits of the case, based on the evidence obtained and the medical literature. A decision can then be made about whether to plead guilty to the charges or to contest the charges.

In the event that a decision is made to contest the charges, the doctor should work with the lawyers on preparing for the hearing.



### Conclusion

This article provides some guidance on what should be done if a doctor faces a complaint to the SMC.

We have not discussed the latest developments in the law relating to disciplinary proceedings, following a series of recent High Court decisions on the standards to be applied in determining whether there has been professional misconduct, the recalibration of sentences and the increased use of fines in place of short suspensions in suitable instances. These should certainly be addressed in subsequent articles. Watch this space. ♦

### Notes

1. Section 42(4) of the Medical Registration Act (Chapter 174) (MRA).
2. Section 60A of the MRA.
3. Section 48 of the MRA.
4. Section 49(1) of the MRA.
5. Section 49(10) to 49(12) of the MRA.
6. Section 49(2) of the MRA.
7. Section 53(1) of the MRA.

Christopher is a senior partner at Dentons Rodyk & Davidson LLP and specialises in professional malpractice, commercial litigation and insurance. He has defended hospitals and medical practitioners in medical negligence suits and has also represented professionals in disciplinary proceedings. Christopher is a lay member of the National Healthcare Group's Domain Specific Review Board, reviewing proposed clinical trials conducted in Singapore.

