DISCIPLINARY PROCEEDINGS STATUTORY PROVISIONS

Disciplinary powers are conferred upon the Board by section 20 of the Medical Practitioners and Dentists Act Cap.253 of the Laws of Kenya as read together with the Medical Practitioners and Dentists (Disciplinary Proceedings) (Procedure) Rules under the Act.

I. PRELIMINARY INQUIRY COMMITTEE

The Chairman of the Preliminary Inquiry Committee shall be the Registrar at all material times, who shall also be the Director of Medical Services, or in his absence, the Deputy Director of Medical Services, who shall also be a member of the Board, or any other person elected from among the Committee members. The Chairman shall be assisted by several members who are elected by the Board from time to time and may co-opt members under the circumstances of each case. The Committee shall receive and review complaints against a medical practitioner or a dentist or an institution and it shall determine whether it may require the personal appearances of the medical or dental practitioner or a representative of the institution. The concerned medical or dental practitioners or party shall be at liberty when called upon to appear or respond in writing, to do so in person or through their advocate. The primary functions of the Committee are to establish whether or not a prima facie case exists to necessitate the personal appearance of a practitioner or the Institution before the Board. Proceedings of the Preliminary Inquiry Committee are to be held in camera and undertaken expeditiously.

II. PROFESSIONAL CONDUCT COMMITTEE

1. The Board shall constitute a Professional Conduct Committee at least seven (7) days before the inquiry, to inquire into cases of alleged malpractice.
2. The Professional Conduct Committee shall be composed of at least three (3) members, and the entire membership shall be in accordance with Legal Notice No.21/2012 as follows:-
    a) a chairperson;
    b) two (2) persons registered in the profession in which the concerned medical or dental practitioner is registered and at least one of whom is registered in the same discipline as the concerned medical or dental practitioner;
    c) one Member of the Board;
    d) one person representing the general public;
    e) an advocate of the High Court who shall be the legal advisor; and
    f) the chief executive officer of the Board.

The Professional Conduct Committee shall have powers to conduct inquiries into

the complaints submitted by the Preliminary Inquiry Committee and give appropriate recommendations and sanctions to the Board.

Ill. THE TRIBUNAL

The Full Board exercising judicial or quasi functions (outside the regular judicial system) to determine disciplinary matters is known as a Tribunal.

All disciplinary proceedings are in consultation with the Board in accordance with Section 20 of the Act and the applicable provisions of the Medical Practitioners and Dentists (Disciplinary Proceedings) (Procedure) Rules. The Chairman or his Deputy on receipt of the findings and recommendations of the Preliminary Inquiry Committee or the Professional Conduct Committee referring a complaint or case to the Full Board, shall with the recommendation of the Board deal accordingly in accordance with rules 5,6,7,8,9 and 10 of the Medical Practitioners and Dentists (Disciplinary Proceedings) (Procedure) Rules. The Chairman or his Deputy may also with the recommendation of the Board consult the Director of Public Prosecutions or the Attorney General, in accordance with Section 24 of the Act, who shall advise on the need or otherwise for the Board to institute a formal prosecution against a doctor's or dentist's professional misconduct.

The primary duty of the Board sitting as a Tribunal is to protect the public and the profession. Subject to this over-riding duty, the Board shall also consider what is in the best interest of the doctor or dentist.

IV. PROCEEDINGS

Disciplinary cases are of two kinds:-

(a) Those arising from conviction of a doctor or dentist in the regular Courts or other Tribunals. These are usually reported to the Board by the Police, the Secretaries or Officials of those Tribunals or through any other reliable sources. A charge of professional misconduct may be brought against a practitioner in respect of any conduct before a criminal Court or Tribunal for which he is placed on probation or discharged conditionally or absolutely, or in the case of an acquittal on a technicality of law or procedure.

A conviction in itself gives the Board jurisdiction even if the criminal offence did not involve professional misconduct. The Board is however particularly concerned with convictions for offences, which affect a doctor's or dentist's fitness to practice. It is therefore unwise for a practitioner to plead guilty in a Court of law to a charge to which he believes he has a defence.

Every medical and dental practitioner, save while working for and in a State hospital and attending to a patient of the State Hospital, shall ensure that he or

she has at all times a Professional Indemnity Cover from a recognized Insurance Company or Organization or is legally covered against possible litigations of a professional nature, by being member of a medical defence or protection Organization.

(b) Those where a medical and dental practitioner is alleged to have acted in a manner amounting to serious professional misconduct. The Board receives these complaints through numerous sources which include:-

(i) Committee of lnquiry in a Health Care Facility;

(ii) National Hospital Insurance Fund, Pharmacy and Poisons Board or other professional Bodies or Councils;

(iii) Medical or Dental Associations or Societies in Kenya;

(iv) Complaints from members of the public, individual doctors or other health care workers;

(v) Charges of professional misconduct may, if facts warrant, be made in respect of conduct which has previously been subject of proceedings in Courts, Tribunals or medical bodies outside Kenya.

The meaning of" Serious Professional Misconduct"("infamous conduct in a professional respect'1

1. "If it is shown that a medical man, in the pursuit of his professional duties has done something with regard to which would be reasonably regarded as disgraceful or dishonorable by his professional brethren of good repute and competence then it is open to the Board, if that be shown to say that he has been guilty of "infamous conduct in a professional respect"(Lord Justice Lopes (31)).
2. Infamous conduct in a professional respect means no more than serious misconduct judged according to the rules, written or unwritten, governing the profession (Lord Justice Scrutton (4)).

A doctor or dentist must be careful not to do anything, which may be interpreted as dishonorable or disgraceful by his professional colleagues.

V. GENERAL PENALTIES

(a) PRELIMINARY INQUIRY COMMITTEE AND PROFESSIONAL CONDUCTCOMMITTEE

At the conclusion of an inquiry by the Preliminary Inquiry Committee in which a doctor or dentist or institution has been proved to have been guilty of professional misconduct or is found to have breached the applicable Law at the material time, the Committee shall by

simple majority determine whether the complaint shall be referred to the Board or decide on one or more of the following courses:-

1. To admonish a doctor or dentist or the institution and conclude the case. This is done by sending warning letters to practitioner(s) or the institution(s).
2. To be at liberty to record and adopt a mediation agreement or compromise between the complainant and the practitioner or the institution, on the terms agreed and thereafter inform the Chairman.
3. To order the payment of costs for the Committee's sitting payable by the medical or dental practitioner or institution on such terms as shall be deemed just and fit in the circumstances.
4. To levy reasonable costs of the proceedings from parties
5. To order a medical or dental practitioner to undergo continuos professional development for a maximum of up to fifty points.
6. To suspend licences for medical institutions for up to six months.
7. To order closure of medical/dental institution until compliance with the requirements of operating license.

(b) TRIBUNAL

At the conclusion of any inquiry in which a doctor or dentist has been proved to have committed a criminal offence or is judged to have been guilty of serious misconduct in a professional respect or is found to

have breached the applicable law at the material time, the Tribunal shall decide on one or more of the following courses:-

1. To admonish a doctor or dentist or the institution and conclude the case. This is done by sending warning letter(s) to the practitioner(s) or the institution(s). This decision is by simple majority.
2. To place the doctor or dentist on probation. The Board may, at its own discretion, direct the doctor or dentist to be supervised during the probation period or for such a period that does not exceed the probation by one or such number of professional colleagues as the Board may decide and also call for a report from the supervisor(s). The probation shall be for a period not exceeding six (6) months. The decision shall be by a simple majority.
3. Be at liberty to record and adopt a mediation agreement or compromise between the complainant and the practitioner or the institution, on the terms agreed.
4. To order the payment of costs for the Board's sitting(s) to be paid by the medical or

dental practitioner or the institution on such terms as shall be deemed just and fit in the circumstances.

5. To direct suspension of a doctor's or dentist's registration or licence for a period not exceeding twelve (12) months. Such a practitioner ceases to be entitled to practice as a registered or licensed practitioner or under another practitioner or an institution during that period. The Board may, after notifying the practitioner resume consideration of the case before the end of the period of suspension, which period should not be less than six months, and may also order extension of the period or complete erasure.
6. To direct removal from the register. In such cases this remains effective indefinitely unless and until a doctor or dentist makes a successful application for restoration of his or her name in the register. Suspensions and removal from the register shall be made by a two-thirds majority of the Board members in accordance with the Act.
7. To suspend licences for medical institutions for upto six months.
8. To order closure of medical *I* dental institution until compliance with the requirements of operating license.

(c) **APPEALS**

Appeals should be made within thirty (30) days to the High Court in accordance with the Act.

(d) RESTORATION TO THE REGISTER

(I) Application for restoration to the register after erasure may be made in the prescribed manner at any time after twelve (12) months. If unsuccessful, a further period of six (6) months must elapse. Thereafter a practitioner may apply at six (6) months' intervals until he/she is successful. The Board may request for names of referees to whom it may apply for confidential information in all applications of lifting suspensions or for restoration of names to the register.

(ii) Every application shall be determined on its own merits, bearing in mind the nature and gravity of the original offence, the length of time since suspension or erasure and the conduct of the applicant in the intervening period.

TYPES OF CONDUCT WHICH RAISE DISCIPLINARY ISSUES

1. Termination of pregnancy:-

The Constitution of Kenya and the Laws of Kenya do not permit termination of pregnancy on demand. Termination of pregnancy is only allowed where in the opinion of a medical practitioner registered under this Act, there is need for emergency treatment or the life or health of the mother is in danger or if permitted by any other

law. In applying this article, the following shall be undertaken-

i) Nonjudgmental counseling. In counseling the practitioner shall consider health broadly also in line with the right to health, consumer rights and right to information as provided in the Constitution of the Republic.

ii) The practitioner and the hospitals or health facility must maintain complete record of each case.

iii) Where proper services are unavailable for whatever reasons the practitioner shall refer patients appropriately.

2. Gender reassignment:-

Gender reassignment is not permitted on demand. The specialist attending to the patient with gender problems shall constitute a team of specialists whose decisions would be based on anatomical and special needs of the patients but whose decisions must be based on the right to health and other fundamental rights in the Constitution.

3. In-Vitro fertilization (IVF) and assisted reproduction:-

Practitioners shall refer patients in need of IVF services to an IVF Accredited centers as shall be accredited by the Board, from time to time. Patients in need of IVF services shall be attended to by a multi-disciplinary team of specialists and the practitioners or institutions providing such services shall keep proper and accurate records.

4. Sex selection:-

The practice of sex selection, which implies the termination of unintended sex, is unconstitutional and not permitted. It is unethical for practitioners to engage in such practice, to support or to encourage sex selection.

5. Medical certificates:-

Medical and dental certificates shall only be issued by a duly qualified and registered medical or dental practitioner. The contents of the certificate should be accurate and must include the full names of the practitioner, registration number and place of the practice. The content must also include the reason for which the certificate is requested with supporting evidence, where necessary. The issuance of certificates should adhere to ethical principles.

6. Institutions that can do laboratory and radiological tests:-

Medical and dental practitioners should only utilize the services of accredited laboratories and Radiology Centers for their patients.

7. Drugs prescription:-

ln prescribing medicine to patients, practitioners shall adhere to ethical and scientific principles.

8. Abuse of professional confidence:-

A practitioner or an institution shall not disclose to a third party information which has been obtained in confidence from a patient or the patient's guardian, where applicable. The practitioner or institution shall safeguard the confidential information obtained in the cause of practice, teaching, research or other professional duties subject only to such exceptions as are applicable. The following are possible exceptions:

(I) The patient or his/her lawyer may give a valid consent;

(ii) The information may be required by law or through a Court Order;

(iii) Public interest may persuade a practitioner that his/her duty to the community overrides the one of the patient;

(iv) Information may be given to a relative or appropriate person if in his/her opinion it is undesirable on medical grounds to seek the patient's consent; and

(v) In the interest of research and medical education, information may be divulged, but at all times the patient's name shall not be revealed.

A practitioner shall always be prepared to justify his/her action whenever he/she discloses confidential information. Whenever possible except in the public interest, the practitioner should keep secret the identity of the patient.

9. Abuse of relationships between Practitioners and Patients:-

Medical and dental practitioners are privileged people who gain confidential information by virtue of their position of trust. Abuse of this trust can only do harm to the profession's reputation in the eyes of the public. Medical and dental practitioners shall desist from, and discourage patients from inappropriate non-professional relationships. Practitioners shall at all times exercise due diligence in dealing with situations that may put them at risk of such inappropriate relationships. Furthermore, there are offences of abuse of position of power as outlined in the Sexual Offences Act in addition to other relevant laws of what constitutes inappropriate relationships.

10. Abuse of financial opportunities:-

Practitioners should adhere to consumer rights as provided for in Article 46 of the Constitution of Kenya which provides that: Consumers have the right-

a) To goods and services of reasonable quality;

b) To the information necessary for them to gain full benefit from goods and services;

c) The protection of their health, safety and economic interests; and

d) Where applicable, to compensation for loss or injury arising from defects in goods or services.

Furthermore, practitioners should avoid undue influence, dishonesty or improper financial transactions and must adhere to the Public Officer's Ethics Act, where it is deemed applicable.

Abuse of financial opportunities may occur as a result of:-

(a) Improperly obtaining money from patients or insurance organizations as well as sanctioning payments or financial claims under insurance schemes or any other authority;

(b) Dishonestly using other medical and dental practitioners' names and services to earn money;

(c) Soliciting for patients either directly or through agents;

(d) Cross referral of patients from private to public clinic and vice versa which is done unofficially and without the best interest of the patient; and

(e) Practitioners taking undue advantage of patient's dependence on them to get disproportionate benefits of financial rewards for their services.

11. Billing of patients:-

Once a practitioner has referred a patient to another practitioner, the referring practitioner shall not raise a bill for any services after the referral. In unavoidable circumstances, if a practitioner without prior arrangement, attends to a patient in the absence of the primary practitioner, the two practitioners shall discuss and agree on who raises the bill.

In case of a treatment which involves more than one practitioner, the primary practitioner shall with due integrity be responsible for billing of the patient. However, the billing should be discussed amongst the practitioners and should safeguard the patients from financial exploitation.

12. Professional Indemnity Cover:-

For purposes of acquiring and renewing annual practicing licences, all practitioners save for public officers practicing within the Republic of Kenya

and all institutions offering medical and dental services within the Republic of Kenya must show proof of having acquired a professional indemnity cover at all times and for that year from a recognized and licensed Insurance Company or any other recognized organization offering such services and such Indemnity Cover must be renewed immediately it expires or lapses.

13. Group practice:-

The Board encourages formalized group practice. However, full proof systems must be formalized and put in place to avoid exploitation amongst practitioners in the group. However, when practitioners provide services in a group setting they shall, at the outset, describe the roles and responsibilities of all parties in the group and any exceptional to the requirement of confidentiality.

The Board shall require that the rules and the regulations and memorandum of

understanding of the group practice be deposited with the Board for purposes of registration.

14. Handing over patients:-

(a) In handing over patients from one practitioner to another, there should be a brief summary in writing on the patient's management between the two practitioners or institutions and the patient which shall be documented.

(b) Practitioners and institutions shall desist from handing over responsibility to unqualified persons.

15. Responsibility for patients care:-

Any practitioner who "gives cover" to any person or institution shall bear the ultimate responsibility for the services rendered.

It is unethical for practitioners to provide services which they are not qualified for where qualified practitioners are available. It shall also be considered unethical if a practitioner does not consult and refer in cases where a referral is appropriate and an opportunity for referral is available.

However, the following exceptions shall be applicable:-

(a) In situations where the responsible practitioner has to share responsibility with a person registered by other Authorities; such as nurses, clinical officers, dental technologists and community oral health officers, it shall be understood that these other professionals shall bear full responsibility according to their regulatory bodies and Code of Ethics and Professional Practice;

(b) During the course of teaching medical, dental or nursing students or students in other fields, practitioners will associate with unqualified persons. Such an association is inevitable and it is expected to occur under suitable supervision of the trainees. However, the practitioner who is the trainer shall take full responsibility under all circumstances.

16. Advertising, canvassing and related professional offences:-

(a) Professional reputation of colleagues:

A practitioner shall not cast aspersions on the probity, professional reputations or skills of another person registered under this Act.

(b) Impeding a patient:

A practitioner shall not impede a patient, or in the case of a minor, the parent or a guardian of such a minor, from obtaining the opinion of another practitioner or from being treated by another practitioner.

(c) Related professional offences:

These offences may be committed at the expense of professional colleagues by canvassing for patients, advertising or by taking advantage of the depreciation of the professional skill or ability of another practitioner. Practitioners should avoid

doing anything which may be interpreted as an attempt to attract patients to themselves or degrade the reputation of colleagues.

17. Conduct negatively affecting the reputation of the profession:-

(a) These undesirable modes of personal behavior may arise from the following acts:

(i) Abuse of alcohol and other substances of abuse while on duty;

(ii) Members of the profession must avoid appearing in public while under the influence of alcohol and they must certainly not be at work while intoxicated;

(iii) Breach of Dangerous Drugs Act or some other offences committed by the use of drugs;

(iv) Indecent dressing while on duty or working as a practitioner or attending to patients;

(v) Unbecoming behavior outside the areas of practice. All practitioners must maintain a good sense of decorum at all times.

(b) Practitioners have a responsibility to report to the Board, in good faith, if they notice the conduct or condition of their colleague affects their colleague's ability to properly discharge their duties. The report shall be made in confidence.

(c) Convictions for offences for instance of obtaining by false pretenses, forgery, fraud, indecent behaviour, assault or other misdemeanors are felonies which are punishable under the laws of Kenya, and would reflect adversely on the profession's standing in the public eye and therefore, must be avoided. The Board takes a serious view of assaults or indecencies committee by practitioners against patients or colleagues in the course of their duties. The Board may take disciplinary action where a practitioner has been convicted in a court of law, for any offence.

18. Maintenance, dissemination and keeping records:-

(1) Practitioners and Institutions shall create, maintain ,store and retain complete records and data relating to their professional work and patients in order to:-

a) Facilitate the efficacious provision of services by him/her or another practitioner or institution;

b) Allow for analysis;

c) Meet institutional requirements;

d) Ensure accuracy of billing and payments;

e) Facilitate subsequent professional intervention or inquiry; and

(f) Ensure compliance with all applicable legal provisions.

(2) Practitioners and Institutions shall maintain confidentiality in creating, storing, accessing, transferring and disposing of records under their control, whether these

are kept in written, automated or any other form. The records shall be kept for the duration as provided by the law.

(3) Practitioners and institutions must use coding or other techniques to avoid disclosure of confidential information where such information is to be disclosed to unauthorized position, database system or records.