

# Disciplinary Proceedings for Medical Malpractice and Negligence Regulations - 2009

## 1. Preamble:

- 1.1 The Bhutan Medical and Health Council, which was established under the Medical and Health Council Act 2002, is the regulatory body for the medical and health professionals in relation to their professional responsibilities including ethical code of conduct. The council regulations stipulate that the registered members conform to accepted professional standard of care and practice. The council is empowered to initiate disciplinary actions against any erring practitioner to ensure that medical care is delivered in a safe and competent way.
- 1.2 A medical or health care professional may face disciplinary proceedings from an employer, professional body or the legal system. The flow chart in Appendix-I outlines the various routes available in Bhutan to sanctions for medical malpractice, which are not mutually exclusive.
- 1.3 According to section 6 of the 'Medical and Health Council Regulations-2005' of the Kingdom of Bhutan, any registered medical or health professional shall be liable for disciplinary actions by the Council for medical malpractice or negligence and offences or conditions as outlined below:
  - 1.3.1 Gross negligence of duty;
  - 1.3.2. Professional misconduct, as defined in appendix-II;
  - 1.3.3. Breach of professionally approved standard of practice;
  - 1.3.4. Conviction for crime under the laws of the land;
  - 1.3.5. Practising without a valid registration or qualification;
  - 1.3.6. Physical or mental incapacity.

## 2. Title:

- 2.1 This regulation shall be called, '**Disciplinary Proceedings for Medical Malpractice and Negligence Regulations - 2009.**'
- 2.2 This regulation shall come into force with effect from 13<sup>th</sup> March 2009 corresponding to 18<sup>th</sup> day of the 1<sup>st</sup> month of Earth Female Ox Year of the Bhutanese calendar

### **3. Purpose and Scope:**

- 3.1 The regulation lays down the procedures to be followed for complaint and investigation mechanism and disciplinary proceedings against all registered medical and health professionals in Bhutan with respect to allegations of medical negligence or malpractice or professional incompetency to practice medicine.
- 3.2 This regulation shall not apply to investigations into complaints made against a health institution or the health ministry for which a separate investigation board or committee shall be instituted as directed by the Minister of Health.
- 3.3 This regulation shall supplement the section (9) of the Medical and Health Council Regulations-2005.

### **4. Sources and Filing of Complaints**

- 4.1 Sources of complaints:** Accusations of serious professional misconduct or other disciplinary enquiries may arise from the following sources:
  - 4.1.1. Patient or patient's family or relative.
  - 4.1.2. Professional colleagues including head of institution, department, or unit
  - 4.1.3. Members of the public
  - 4.1.4. Police - on conviction of medical or health professionals in courts of law
  - 4.1.5. Court
- 4.2 Respondents:** Complaints for professional misconduct, faulty health care and claims for damages may be made against any of the following:
  - 4.2.1. Individual treating practitioner/carer
  - 4.2.2. The concerned hospital/ health centre
  - 4.2.3. The health ministry
  - 4.2.4. The Bhutan Medical and Health Council
- 4.3 Filing of Complaints:**
  - 4.3.1 The complaint made by an aggrieved patient or patient party, a member of public or professional colleague, shall be addressed to the President of the Council in writing (appendix-III).

4.3.2 A sworn document shall be obtained from the complainant.

4.3.3 The council shall not entertain any anonymous complaints.

4.3.4 The council shall consider the complaints only if they are lodged within one year from the date of occurrence of the alleged professional misconduct or negligent act; and complaints made beyond this specified period will be entertained only on case by case basis.

## **5. Receipt and Notification of Complaints**

5.1. The Registrar shall send a letter of acknowledgment to the complainant regarding the receipt of the complaints.

5.2. Where there is a prima facie case, the Registrar shall send a letter of notification to the practitioner against whom the complaint is lodged; and may direct the practitioner to clarify the circumstances, which may result in the matter being closed (Appendix- IV).

## **6. Investigation and Adjudication**

The complaints shall be considered in three stages as outlined in the following subsections:

### **6.1. Initial Screening**

6.1.1 The President will scrutinise the complaints and may direct a person appointed for this purpose to establish the facts. Any malicious, obviously false and unfounded trivial grievances are rejected at this stage and the complainant is notified accordingly.

6.1.2 Where there appears to be some case to answer, the matter shall be referred to the Inquiry Committee.

### **6.2 Preliminary Investigation by the Inquiry Committee (IC)**

6.2.1. The Inquiry Committee shall be comprised of 3 members constituted from amongst the Professional Ethics sub-committee (PESC).

6.2.2 All convictions in courts of law have to be referred directly to the Inquiry Committee; in such cases the Council's primary role is to decide whether the actions of the health professional amounts to serious professional misconduct or not and the Council has no power to question the facts leading to the conviction by the courts.

6.2.3 At this stage, the practitioner concerned shall be notified of the allegations made against him/her and is directed to make a written explanation within 30 days from the date of this notification.

6.2.4 After considering the explanation offered by the practitioner including all the available evidences, the Inquiry Committee may decide to:

- i. Refer the case to Disciplinary Committee (DC),

- ii. Refer the case to Health Committee,
- iii. Issue a reprimand letter to the practitioner, or
- iv. Dismiss the case.

### **6.3 Formal Hearing by the Disciplinary Committee (DC):**

- 6.3.1 The Disciplinary Committee shall be comprised of 4 members from the PESC (excluding the IC members) and 3 additional members with technical expertise to be nominated by the Council on ad hoc basis.
- 6.3.2 Following referral to the Disciplinary Committee, the case shall be conducted in a formal manner with both the complainant(s) and the practitioner(s) making their case before the DC.
- 6.3.3 The first hearing on the case shall be conducted at the earliest possible time and the practitioner and the complainant shall be notified 15 days in advance of the date and venue of the hearing.
- 6.3.4 The practitioner shall then intimate to the Council in writing about his/her ability or inability to attend the hearing on the specified date. Where the respondent (practitioner) is unable to attend the hearing due to unavoidable circumstances he/she shall notify the Council in advance so that the date of hearing may be adjusted. The new date of hearing shall be communicated to the concerned practitioner and the complainant.
- 6.3.5 Where the practitioner or the authorized representative fails to reply to the Council's notification letter, the Council shall send a reminder letter to the concerned party. If the practitioner or authorized representative fails to respond for the third time, then the practitioner shall be charged with 'failure to respond' that would amount to professional misconduct. The hearing shall be conducted in the absence of the practitioner and the judgement passed accordingly.

### **6.4 Decision and Penalties**

- 6.4.1 At the conclusion of the hearing the Disciplinary Committee may take one of the following decisions:
  - i. Reprimand practitioner and close the case;
  - ii. Place the practitioner on probation by postponing judgement;
  - iii. Make the practitioner's registration 'conditional';
  - iv. Suspend the practitioner's registration for a period not exceeding one year, in the first instance;
  - v. Erase the practitioner's name from the Register;
  - vi. Refer the practitioner to the Health Committee;

6.4.2 The Registrar will communicate the decisions of the disciplinary committee to the practitioner in writing (appendix- V) within 7 days of passing of the judgement by the committee.

**Explanations:**

- a. When the judgement is postponed the next date of hearing should be notified to the practitioner/legal representative and the practitioner is put on **‘probation’**. During the period of probation, the practitioner is given a chance to conduct himself/herself correctly and is required to obtain references from his/her professional colleagues . During the next hearing the Council will either conclude the case if the report is satisfactory or initiate other disciplinary actions.
- b. **‘Conditional registration’** entails imposition of restrictions upon the practitioner in certain specified areas of practice for a specific period of at least three months. For instance, the practitioner may not be allowed to prescribe dangerous drugs, or he/she may only work under supervision. At the end of conditional registration term, the practitioner is required to obtain references/reports from his/her supervisor. The Council will decide further course of actions depending on the supervisor’s report.
- c. **‘Suspended registration’** means removal of the practitioner’s name from the Register for a specific period not exceeding 12 months. During the period of suspension, the practitioner cannot practise as a registered medical or health practitioner. During this time, the Council may order further extension of suspension or even erasure from the Register if the Council is satisfied that it is necessary to do so in the interest of the public safety and protection or in the practitioner’s own interests.
- d. **‘Erasure’** means removal of a practitioner’s name from the Register, and such a practitioner cannot practice the profession in the government or private sectors.

**7. Practitioners Unfit to Practise due to Physical or Mental Illness**

- 7.1 The usual disciplinary machinery described above is inappropriate if a practitioner’s incapacity to practice is due to physical or mental illness. The majority of such cases relates to addiction to alcohol or other drugs or to mental illness.
- 7.2 At the local level, the professional colleagues may persuade a practitioner, who is unfit to practise, to voluntarily give up practice.
- 7.3 Upon receipt of such a notification, the President will consider the case and direct the practitioner to submit, within 14 days of notification, to examination by at least two medical examiners who will be appointed by the President from panels of medical examiners. The practitioner may choose his own practitioners to examine him/her and send their findings to the President.

- 7.4 The report of the medical examinations shall be communicated to the practitioner, who will be asked to state within 30 days as to whether he/she is prepared to voluntarily accept the recommendations of the examiners regarding the management of illness.
- 7.5 If the practitioner agrees to follow the recommendations, no further action will be taken. If he refuses to be medically examined or accept the recommendations, the case will be referred to the Health Committee.

## **8. Health Committee**

- 8.1 The primary goal of the Health Committee is to provide an alternative means whereby a practitioner can be prevented from practising if he/she constitute a risk to the patients or himself/herself by reason of his/her physical or mental state of health.
- 8.2 Referrals to the Health Committee may be made by the Inquiry Committee and/or Disciplinary Committee during the disciplinary hearings on negligence or professional misconduct, if the committee is satisfied that the practitioner is seriously impaired to practise.
- 8.3 The Health Committee shall comprise of 5 members, with 4 medical examiners and 1 member of the Council appointed by the President. The committee shall subject the practitioner to medical examinations and consider all the available evidences including testimonies from the relevant witnesses.
- 8.4 After considering all the material evidence, the Health Committee may make the following recommendations to the Council:
- i. Suspend the registration of the practitioner for a period not exceeding 12 months;
  - ii. Make the registration '*conditional*' for a period not exceeding 12 months.
  - iii. Need to update the practitioner's knowledge and skills.
  - iv. Permanent erasure of the practitioner from the Register.
- 8.5 The Council shall implement the recommendations of the Health Committee and notify the practitioner accordingly. Where the practitioner's registration is '*erased*', '*suspended*' or made '*conditional*', the explanations offered under section 6.4.2. shall apply.

## **9. Appeal and Application for Restoration of Registration**

- 9.1 The practitioner and the complainant, if not satisfied with the decisions of the Council, shall have the right to appeal in writing to a competent Court within 30 days from the date of notification of the decisions of the Disciplinary Committee. The practitioner shall forfeit the right to appeal after the lapse of 30 days period.
- 9.2 The Court may affirm, reverse or vary the Council decisions and the Court decision is binding.

- 9.3 During the period allowed for appeal, the decision of the Disciplinary Committee shall not take effect until after the appeal period expires or upon dismissal by the Court unless the erasure is made effective forthwith in order to protect the public or in the best interest of the practitioner.
- 9.4 Where the practitioner has suffered erasure from the register, he/she cannot apply for restoration of his/her registration until after the elapse of at least 1 year from the date of enforcement only upon fulfilment of conditions as specified by the Council from time to time.

## **10. Definition of Terms**

- 10.1 Council:** means Bhutan Medical and Health Council.
- 10.2 Disciplinary Committee:** a disciplinary committee constituted by the Council.
- 10.3 Inquiry Committee:** a disciplinary committee constituted by the Council.
- 10.4 Health Committee:** a committee constituted to decide on a case pertaining to a practitioner's competence/incompetence by reason of physical, mental or other illnesses/ conditions.
- 10.5 Medical malpractice:** means any unjustified act or failure to act upon the part of medical or health professional which results in harm to the patient.
- 10.6 Medical negligence:** means any unjustified act or failure to act upon the part of medical or health professional which results in harm to the patient.
- 10.7 Erasure:** erasure of the practitioner's name from the Register whereupon the practitioner cannot practice medicine in Bhutan or elsewhere.
- 10.8 Practitioner:** means any medical or health professional registered and currently practising medicine in Bhutan.

**10.9 President:** means the President of the Bhutan Medical and Health Council.

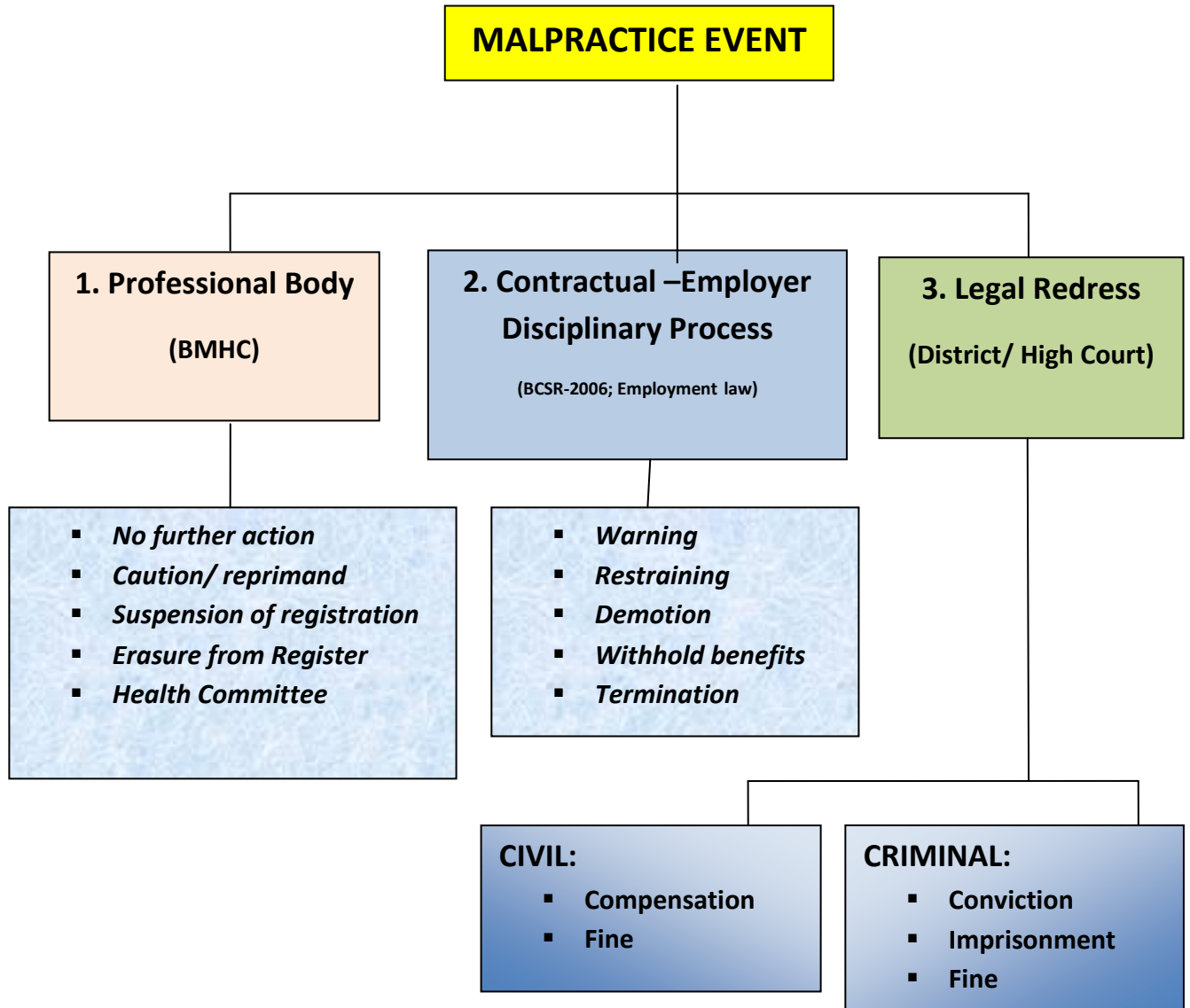
**10.10 Professional Ethics Sub-Committee:** refers to the professional ethics sub-committee constituted as per the provisions of the Medical & Health Council Act 2002.

**10.11 Professional misconduct:** means behaviours and actions or omissions of medical or health professionals that are outside the accepted professional code of ethics and practice.

**10.12 Registrar:** means the registrar of the Bhutan Medical and Health Council.



## Appendix I: Available Routes of Disciplinary Proceedings in Medical Malpractice



## Appendix –II: Serious Professional Misconduct (6 - 'A's and 5 -'F's)

The list of professional misconduct and medical negligence is limitless. However, the majority of medical suits against the practitioner arise from one or more of fairly well-defined groups of acts of commission or omission, such as:

- i. **Alcoholism:** when a practitioner is addicted to alcohol so that his ability to perform the professional duties is impaired. Negligence suits may follow when the practitioner fails to attend to a patient or causes harm to the patient through medical interventions under the influence of intoxication.
- ii. **Addiction:** Medical and health practitioners, by virtue of prescribing powers and/or access to medicines, may fall prey to addiction to therapeutic substances, like morphine, codeine, barbiturates, anaesthetic agents, and amphetamines. In the interest of protecting patients and in their own well-being, it is necessary to remove such practitioners from the access to drugs through disciplinary actions.
- iii. **Abortion:** Under the Penal Code of Bhutan, the medical termination of pregnancy (legal abortion) can be carried out only by the registered obstetricians/gynaecologists when the continuation of pregnancy poses an imminent threat to the life of the mother, or if the pregnancy is the result of rape or incest or when the mother is of unsound mind. The illegal termination of pregnancy, if notified as a result of conviction in a criminal court, is a ground for disciplinary action including erasure of the practitioner's name from the register.
- iv. **Adultery:** adultery of a practitioner with his patient and or attendant constitutes misuse of professional privileges which may adversely impact on the crucial professional relationship between the practitioner and the patient.

A woman need not necessarily be a patient of the practitioner, but if the relationship was formed through his attending another member in the household, this would be deemed to be abuse of professional privilege. Further, the practitioner will not be absolved of misconduct if the practitioner ceases to attend the women professionally before improper association takes place, as this association was gained through his professional position.

In order to institute a disciplinary action, it would suffice to show that an improper relationship existed beyond the permitted range of professional contact and actual adultery need not be proved.

- v. **Advertising:** Self-advertisement in a restricted way, such as providing publicly available facts like name, qualifications, address and telephone numbers is not only permissible but also desirable. However, the practitioners should never disparage nor claim superiority over other colleagues. They must not claim to offer cures for specific illnesses.
- vi. **Association:** in the discharge of their professional duties towards a patient, the medical and health professionals should not associate with any unqualified assistants or persons for financial incentives, where such association may jeopardise the standard of care rendered to the patient. This, however, does not

preclude the practitioner from using the services of medical auxiliaries and technicians.

- vii. **Failure to Attend:** Failure to attend a patient by a practitioner and resulting in aggravation of injury, disease or death, and where such dereliction of duty was the result of gross neglect for life by the practitioner concerned, is actionable for either civil or criminal negligence. However, the BMHC will initiate action against a practitioner for repeated or flagrant neglect of professional duties, whether or not such neglect result in injury or death to the patients.
- viii. **False Certification:** The abuse or neglectful handling of various forms of medical certification required by the laws, especially if some pecuniary benefit is obtained by the certifier or the patient, would entail disciplinary action by the BMHC. The certifier must ensure that there are no serious inaccuracies in certification, either through deliberate falsehood or carelessness due to pressures of overwork and persistence from the patient.
- ix. **Force:** Physical or verbal assault on the patient or attendant by the medical and health professionals is not acceptable any may entail disciplinary action by the council besides being dealt with under the other laws. A health care worker cannot force a person from accepting the recommended treatment or medical interventions including the laboratory tests without the informed consent of the patient. However, the law permits a health care worker to administer recognized form of treatment to a patient, even with force, if such intervention is necessary to promote the patient's physical or mental health.
- x. **Fee-Splitting:** Fee-splitting or 'dichotomy' refers to a situation where a practitioner calls-in a specialist of his choice but who may not necessarily be the best person for the patient's benefit and the fee is split between the two. This also includes referrals of patients by a practitioner to a certain chemist/pharmacy shop for dispensing of prescriptions and where the practitioner has financial or proprietary interest. Such financial or commercial interest has to be direct and substantial in order to constitute a professional misconduct.
- xi. **Fraud and Financial Falsification:** deliberate falsification of claims by practitioners for remuneration and expenses, such as medical fees, over-time payments, subsistence allowances, and travelling expenses would result in disciplinary actions including criminal proceedings in a court of law. Such financial irregularities in private practice settings include illegal use of government hospital beds and facilities for treating private patients.

**Appendix –III: Template for Filing of Complaints**

The President  
Bhutan Medical and Health Council  
Thimphu

Sir,

I wish to bring to your notice on the grievance(s) against the under-mentioned health care worker:

1. Name of Health Care worker:.....
2. Designation of worker:.....
3. Work place of Health Worker:.....
4. Date & Time of Incident: .....
5. Grievance/complaints against the above worker (*use additional sheets, if required*):.....  
.....  
.....  
.....  
.....
6. Name & Address of Aggrieved Party: .....
- .....
- .....

**Declaration:**

I, ..... hereby certify that the information provided above is true.

Signature:.....  
Name:.....  
Address: .....

Date: .....

**Appendix –IV: Template for Notice of Inquiry**

Ref. No.: .....

Date:.....

To

..... (name of respondent),

.....

.....

**Sub: - Letter of Notice for Inquiry**

Sir/Madam,

This notice is being given to you that the Council is in receipt of a complaint/report against you, whereupon an inquiry will be held into the allegations in the copy of complaint enclosed.

You are further notified that a meeting of the disciplinary committee will be held on..... at ..... in the office of.....

.....

You are instructed to acknowledge the receipt of this notification and confirm your attendance at the meeting in writing within 21 days of the issue of this notice. If, for any reason, you desire a postponement of the inquiry, you may make an application to the undersigned forthwith stating the grounds on which you desire such postponement.

Any explanations or statement or communication including documentary evidence that you wish to make in connection with the said complaints should be addressed to the undersigned and transmitted to reach the office not less than 14 days before the appointed day of holding of inquiry.

.....

Registrar,  
BMHC  
Thimphu.

**Appendix –V: Template for Notice of Decisions of the Disciplinary Committees**

Ref. No.: .....

Date:.....

To

..... (name of practitioner),

.....

.....

**Sub: - Decisions of the Disciplinary Inquiry**

Sir/Madam,

This notice is being given to you that the Disciplinary Committee, having conducted inquiry into the complaints against you, has arrived at the following decisions:

- 1. You are warned against repeating such misconduct in future.
- 2. Judgement is postponed until further notice, and you are placed on probation.
- 3. Your registration is made ‘conditional’
- 4. Your registration is suspended for .....
- 5. Your registration is erased from the Register.
- 6. You are referred to the Health Committee.

Further, explanation is given to you that with respect to decision No.....

.....

.....

.....

In case of suspension or erasure from the register, you have the right to make an appeal to the High Court in writing, which should be transmitted to reach the office of the undersigned not later than 30 days from the date of notification of this decision, failing which you forfeit the right to appeal and the decisions shall be imposed upon you.

.....

Registrar  
Bhutan Medical & Health Council