



**STANDING ORDERS
FOR THE CONDUCT
OF
DISCIPLINARY PROCEEDINGS
UNDER DENTAL ACT 2018**

JULY 2022

**Standing Orders for the
Conduct of Disciplinary Proceedings
under Dental Act 2018**

**Malaysian Dental Council
and
Malaysian Dental Therapists Board**

July 2022

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DATE OF IMPLEMENTATION

1st July 2022

OBJECTIVE

The objective of these standing orders is to standardise the procedures and processes of inquiries by the Preliminary Investigation Committee (the “PIC”), the Disciplinary Committee (the “DC”), the Malaysian Dental Council (the “Council”) and the Malaysian Dental Therapists Board (the “Board”). The Council and the Board as quasi-judicial body in enforcing the Dental Act 2018 and the Dental Regulations 2021 in line with the Rules of Natural Justice.

This Standing Orders was approved by the Council during its' third meeting on 1st June 2022 and approved by the Board during its' first meeting on 8th June 2022. This Standing Orders shall be effective on 1st July 2022.

PART A
STANDING ORDERS FOR THE CONDUCT OF
DISCIPLINARY PROCEEDINGS UNDER
DENTAL ACT 2018

1. INTRODUCTION

On 14 March 2022, the Malaysian Dental Council established a new version of Code of Professional Conduct. This version of the Code of Professional Conduct superseded the previous versions. In conducting a disciplinary inquiry, the Council and the Board will be guided by this new “**Code of Professional Conduct**”. The Council and the Board will also be guided by Guidelines and Directives on subjects related directly and indirectly to dental professional ethics, published by the Council or the Board from time to time, and these will supplement and complement the Code of Professional Conduct as and when applicable.

Disciplinary authority of the Council and the Board is conferred by Section 51 of the Dental Act 2018 (the “Act”). The Council shall have disciplinary authority over all practitioners which include dental practitioner or dental therapist, and the Board shall have disciplinary authority over all dental therapists, registered under this Act.

Section 51 of the Act lists out fifteen circumstances under which the Council may exercise disciplinary jurisdiction and thirteen circumstances under which the Board may exercise disciplinary jurisdiction. These circumstances or facts will have to be “proved” at an “inquiry”. While the main crux of inquiries by the Council and the Board is for offences under the heading “has been guilty of infamous conduct in any professional respect” under Section 51(2)(a) of the Act, inquiries under other headings can also be held.

Regarding the meaning of “infamous conduct in a professional respect”, the Council and the Board maintain the principle that ‘infamous conduct’ means a failure to meet the minimum

standards of professional practice expected by profession. It includes any behaviour that reflects adversely on the reputation of the profession, such as acts that are dishonourable, immoral, dishonest, indecent or violent, even if not directly connected with the practitioner's dental practice. Circumstances may arise from time to time in relation to which there may occur questions of professional conduct which do not come within any of these categories. In such instances, as in all others, the Council or the Board has the right to consider and judge upon the facts presented.

The Code sets out the minimum standards of conduct of registered persons as assessed by peers in the profession assembled as the Council. Breaches of these minimum standards are referred to as “**infamous conduct in a professional respect**”. The Code propounds the minimum standards, which fall under four main categories:

- (1) Neglect or disregard of professional responsibilities.
- (2) Abuse of professional privileges and skills.
- (3) Conduct derogatory to the reputation of the dental profession.
- (4) Advertising and related professional offences.

For details, one must refer to all sections and subsections of the Code. An in-depth knowledge and understanding of the Code, Guidelines and Directives issued by the Council or the Board is critical to any inquiry by the Council or the Board. The PIC and the DC must be familiar with them, if the Council's and the Board's disciplinary jurisdiction is to be fairly and effectively implemented.

PART B
COMPLAINTS OR INFORMATION AGAINST
PRACTITIONER

Under section 53 of the Act, all complaints or information received against a practitioner shall be made in writing and be forwarded to the Complaints Committee. The Complaints Committee shall deliberate on any complaint or information received against any practitioner based on the classification of complaints or information specified in section 54.

2. CLASSIFICATION OF COMPLAINTS OR INFORMATION

The classification of complaints or information is as follows:

- (a) where the complaint or information involves any of the offences referred to in paragraphs 51(2)(a) to (j), and is in relation to a dental practitioner only or to a dental practitioner and a dental therapist, the complaint or information shall be referred to a Preliminary Investigation Committee;
- (b) where the complaint or information involves any of the offences referred to in paragraphs 51(2),(b),(c),(d),(e),(h) and (j), and is in relation to a dental therapist only, the complaint or information shall be referred to a Disciplinary Committee;
- (c) where the complaint or information involves any of the offences referred to in paragraphs 51(2)(k) to (o), and is in relation to a dental practitioner, the complaint or information shall be referred to the Council;
- (d) where the complaint or information involves any of the offences referred to in paragraphs 51(2)(k) to (o), and is in relation to a dental therapist, the complaint or information shall be referred to the Board; or
- (e) where the complaint or information involves an offence committed by a practitioner against this Act or any other Act, the complaint or information shall be referred to the Principal Director.

After the Complaints Committee has classified the complaints or information, the Complaints Committee shall forward their recommendation and complaints or information received to the President for his decision.

3. DISMISSAL OF COMPLAINTS

Under section 57 of the Act, the Complaints Committee may recommend to summarily dismiss any complaint or information if it is satisfied that the said complaint or information falls into any of the four categories under this Regulation.

Summary dismissal should be embedded on proved facts or reasons, and the reasons should be communicated to the President.

There are four grounds under which the Complaints Committee may recommend to the President for summarily dismissal of a complaint or information. It is important that this fact is established before the Complaints Committee recommends summary dismissal. It is important to establish and document the grounds before the recommendation for summary dismissal is made.

(a) **The name and address of complainant are unknown or untraceable**

If the name and address are not given, the inquiry obviously cannot proceed.

(b) **The complaint or information does not constitute an ethical issue or an offence under the Dental Act 2018 or any other Act**

The Complaints Committee should study the facts in issue as stated in the complaint letter and satisfy itself that they do not fit into any of the categories contained in the Code, Guidelines and Directives.

A statement to that effect should be recorded in its record of proceeding as the reason for summary dismissal.

(c) The complaint or information received is doubtful

It is difficult for the Complaints Committee to doubt the truth unless the complainant and registered person/practitioner are called to appear before it. The reason should be very obvious before invoking this as a reason for summary dismissal.

(d) The complainant has withdrawn the complaint in writing

It would be unusual for the Complaints Committee to dismiss a complaint before initiating or conducting an inquiry. Whenever in doubt, the Complaints Committee should recommend investigation to be conducted by the PIC.

PART C
DISCIPLINARY PROCEEDINGS UNDER
MALAYSIAN DENTAL COUNCIL

4. PROCESS OF INQUIRIES

Each Preliminary Investigation Committee (PIC) has both a right and duty to deal with a complaint/information according to the Act, Dental Regulations 2021 (the “Regulations”) and these Standing Orders (the “Orders”), its own rules, upon evidence placed before it and according to its own reasonable judgment of the case without any outside influence or interference.

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

- a. Preliminary Investigation conducted by the PIC.
- b. Inquiries conducted by the Council itself.

Inquiries at the PIC level are governed by Regulations 50 to Regulation 54 of the Regulations, whereas inquiry at the Council level is provided for in Regulation 55 to Regulation 58 of the same Regulations.

Rules of Natural Justice have to be observed by bodies conducting the inquiries, which have a duty to act judicially. It is paramount that justice is meted out to both parties, i.e. the complainant and the respondent practitioner.

The PIC, being an independent entity, shall conduct its inquiries independently, without the need to seek advice or guidance from the Council.

5. PRELIMINARY INVESTIGATION COMMITTEE

5.1 SECTION 55, DENTAL ACT 2018 AND REGULATION 50 & 51, DENTAL REGULATIONS 2021

The membership of the PIC shall consist of the following seven members who shall be appointed by the President:

- (a) where the case involves only a dental practitioner-
 - (i) six dental surgeons, each of whom shall be a dental surgeon of not less than ten years' experience; and
 - (ii) one lay person; or

(b) where the case involves a dental practitioner and a dental therapist –

- (i) five dental surgeons, each of whom shall be a dental surgeon of not less than ten years' experience;
- (ii) one dental therapist who must be present at all the inquiry proceedings; and
- (iii) one lay person.

The President shall also appoint a Chairman from amongst them. The quorum for meeting of PIC shall be not less than half of the members. Decisions on any issue by the PIC are by a majority of those present and voting.

It is mandatory to have all the members of a quorum continuously present throughout an inquiry. If need be, a short break can be granted by the Chairman.

New members or members who have not been present at the commencement of the inquiry or at any one subsequent inquiry, are disallowed from participating at any continued inquiry.

5.2 REGULATION 52, DENTAL REGULATIONS 2021

5.2.1 Complaint or information

A disciplinary inquiry starts with a complaint or information alleging certain facts against a practitioner. All complaints or information made or received which fall into any of the 15 categories stated under Section 51(2)(a) to (o) of the Act shall be classified and managed by the Complaints Committee and shall be forwarded to the President for his decision. All complaint or information shall be in writing. Any further decision on the complaint or information rests solely on the decision of the PIC or the Council.

A complaint could originate from any parties as mentioned in 5.2.3. His identity and *locus standi* should be verified and confirmed by documentary evidence e.g. identity card, Mykad, birth certificate, marriage certificate, passport and so on. The Secretary of the PIC is responsible for this process; but the PIC must ensure that the record of its proceeding contains this verification and confirmation. This is to avoid *mala fide* claims.

5.2.2 Information for disciplinary inquiry

A disciplinary inquiry can be held on information received in respect of a named practitioner alleging professional misconduct at a specified place, which may or may not be his place of practice.

For information received in relation or pursuant to an enforcement activity, it is important that the PIC or the Council ensures the following: -

- (a) the information is made by the person directly involved in the enforcement activity, though the

- report itself can 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) that either the person in (a) and (b) is regarded as the complainant in the inquiry;
 - (d) the party to the enforcement activity is legally empowered to do enforcement.

5.2.3 Identity of the complainant

The complainant can be: -

- (a) the injured party;
- (b) a member of his family;
- (c) his lawyer;
- (d) an interested party e.g. insurance agent;
- (e) estate of the injured party;
- (f) anybody from the government department in his official capacity;
- (g) professional bodies; or
- (h) others

The PIC must be satisfied with the following: -

- i) For (a) to (h)
 - Name in full;
 - I.C. / Mykad / Passport No.
- ii) For (b), relationship to the injured party should be verified and confirmed by documentary evidence e.g. marriage or birth certificate, and a letter under the hand of the injured party if not deceased or incapacitated, that the complainant is acting on his behalf.
- iii) For (c), a letter of authority to act.

- iv) For (d), his personal details and details of his interest to establish *locus standi*.
- v) For (e), letter of administration.

5.2.4 Identity of registered person/practitioner complained against

It is important that the right practitioner is being called for investigation. To ensure this, the PIC must be satisfied with the following:-

- Name in full
- I.C. / Mykad/ Passport No
- Place of practice
- Registration No. & Date
- Annual Practising Certificate No. & Date

It is the responsibility of the Secretary of the PIC to ensure that these particulars are made available to PIC and recorded in the PIC record of proceedings.

5.2.5 Facts in issue or substance of the complaint

If the facts in issue constitute a “disciplinary matter” and the PIC believes that the complaint or information is “probably true”, the PIC must proceed along the provisions of Regulation 52 and 53. Whilst the details for each case, which should be described in full, will differ, the facts in issue will fall under any of the headings, sub-headings and sub-sub-headings of the Code of Professional Conduct, Guidelines or Directives. Please refer to the Code, Guidelines or Directives. The facts in issue (without limitation) may be the following as examples: -

- **neglect or disregard of professional responsibilities;**

- **failure to conscientiously assess history, symptoms and signs of patients;**
- **failure to be sufficiently thorough in professional attention, examination and where indicated diagnostic investigations;**
- **delay in attending to patient(s);**
- **failure to refer to or consult appropriate professional colleagues when indicated;**
- **employment of unqualified or unregistered person;**
- **covering of unregistered person or association with unqualified or unregistered person;**
- **failure to protect the life and health of a person on whom biomedical research is being carried out;**
- **conflict of interest with pharmaceutical or dental /medical equipment industry;**
- **abuse of professional privileges e.g. in prescribing, use and sale of poisons and dangerous drugs, issuing untrue, misleading or improper certificate, notification, and reports including sick certificate;**
- **abuse of trust, confidence, undue influence and personal relationship with patient;**
- **conduct derogatory to the reputation of the profession such as disrespect for human life, indecency and violence;**

- **personal misuse or abuse of alcohol or other drugs,**
- **incompetency to practise**
- **dishonest financial transactions, and conflict of interest with commercial undertakings; and**
- **advertising, canvassing and related professional offences.**

To be fair to the complainant and the respondent practitioner 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 understood to enable PIC members to form appropriate conclusions, rather than getting lost in “immaterial” or “irrelevant” details which frequently emerge at examinations and cross examinations.

5.2.6 Litigations pending at the Courts

If there are complaints received regarding issues which are at the same time being contested in the courts, it is incumbent on the PICs to study each individual situation to ascertain whether issues raised may be subjudicial which may fall foul of the law leading to contempt of court. If there is no duplication of issues then the PIC may decide to continue with the inquiry. On the other hand, if there are issues which may be tantamount to interfering with the due processes of the courts, then it is advisable to postpone the inquiry till the final disposal by the courts. The PIC may seek the learned opinion of the legal practitioners in such instances.

5.2.7 Cases of conviction by the Courts under Section 51(2)(k) Dental Act 2018

If a practitioner has been convicted in Malaysia or elsewhere of any offence punishable with imprisonment (whether in itself or in addition to or in lieu of a fine) the Council can hold an inquiry on the conviction itself without having to prove the allegations for which he had been found guilty. He can be tried based on other provisions of the Code.

In such instances there is no need for the Council to call for the complainant to present evidence or the Council to frame any charges.

5.2.8 Cases of disciplinary proceedings by Dental Regulatory Authorities from other jurisdictions

Where the complaint/information involves any disciplinary proceedings against practitioner by Dental Regulatory Authorities from other jurisdictions (such as the General Dental Council UK), the PIC shall ensure the Secretariat obtains information from the relevant regulatory authority of the outcome of such disciplinary proceedings.

5.2.9 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.

5.2.10 Oaths and affirmations

There is no provision for an oath under the Regulations and there is no need to record statements under oath, save and except as provided under Regulation 52(2).

5.2.11 Use of Interpreters

If a requirement for an interpreter arises, any person who is able to interpret (preferably a qualified interpreter) may assist in the proceedings. Consent or agreement from the relevant parties involved must be obtained.

5.2.12 Transfer of cases from one PIC to another PIC

In instances where, for reasons to be stated, a complaint/information is transferred from one PIC to another by the President, the new PIC has to treat the complaint/information as a new one and commence a fresh inquiry disregarding whatsoever which was discussed by the previous PIC.

5.2.13 Commencement of Inquiries

An inquiry commences when the PIC convenes on the date set for that inquiry and begins examining the complainant.

5.3 REGULATION 52, DENTAL REGULATIONS 2021

This Regulation lays down the procedure to be followed by the PIC once the President directed the PIC to investigate the complaint or information. The PIC may request from the complainant, informant or any other person to submit within the period as determined by the PIC the following documents:

- (a) Relevant document relating to the complaint or information; or
- (b) A statutory declaration, documents or evidence to support the complaint or information.

(Sample of statutory declaration – Appendix A)

If the document is not received within the period specified, the PIC may decide no action to be taken.

If the document is received within the period specified, the PIC shall notify and submit a copy of the complaint or information including any documents received by the PIC to the respondent practitioner.

The PIC may request the respondent practitioner to submit an explanation, a treatment card and any other records pertaining to the treatment of the patient which are relevant to the complaint or information received within thirty (30) days from the date of the receipt of the notification. The patient must consent for the release of his treatment card and any other records pertaining to his treatment to the PIC. If it is a computer-generated document, it must be computer dated.

Where the documents are insufficient, the PIC may request the respondent practitioner to submit further explanation, documents or records within fourteen (14) days from the date of the receipt of the request.

5.4 REGULATION 53 & 54, DENTAL REGULATIONS 2021

This Regulation clearly lays down the procedure to be followed once the PIC decides to hold any inquiry. Regulation 53 (1), (2) and (3) is completely related to adducing statement by the complainant, his witnesses, the cross-examination of complainant and his witnesses and the examination of the complainant or his witnesses by the PIC.

5.4.1 Access to information

The complainant and respondent must be given copies of:

- a. Complaint letter and all other documents received from the complainant.
- b. Any statutory declaration, if any.

- c. All other documents related to the complaint/information.
- d. Any other statement or communication sent to the Secretariat/Council except for any written advice given by the legal practitioner.

Exhibits will not be copied but will be available at the Secretariat for inspection.

Complainant/informant/respondent practitioner are to be advised to bring all original documents and enough copies of such documents and authorities to be distributed to all parties concerned.

(Sample of call letter- Appendix B1 – complainant. Appendix B2 – respondent practitioner)

It is important to remember that at this stage only the complainant is involved. It is advisable that the respondent practitioner not be questioned on any aspect of the substantive issue at this point, if need be only minimum clarification on factual issues be sought.

5.4.2 Right to legal counsel

Both the complainant and the respondent have the option to be present with or without counsel and both the counsels have equal rights of representation.

5.4.3 Adducing evidence

The primary responsibility and authority of the PIC is to find out whether there are “sufficient grounds” to support the “allegation” or facts in issue.

The PIC shall examine the complainant and the persons in support of the allegations. The PIC may at the request of the complainant, request the presence

of any persons who may have knowledge of the complaint.

At the end of the preliminary hearing or examination, the PIC after taking the statements of the complainant and the persons in support of the allegation shall: -

- (a) if it finds that there are not sufficient grounds to support the allegation, recommend to the Council that no action be taken;
- (b) if it finds that the statements support the allegation, frame the charge and explain to the respondent practitioner that he is at liberty to state his defence on the charge framed against him.

(Sample of call letter attached – Appendix C1 – Complainant. Appendix C2 – respondent practitioner)

If the respondent practitioner after being informed of his right elects not to make a statement, the PIC shall recommend that there shall be an inquiry by the Council.

After the charge is formulated and the respondent practitioner elects to defend himself before the PIC, the PIC shall record his statement as far as possible “word for word”. The respondent practitioner cannot call witnesses at the PIC stage in support of his defence. Should the Council decide to hold an inquiry, the respondent will be given this opportunity to call witnesses in support of his defence. In addition to this, the respondent can present additional statements at the Council inquiry.

At the material time the PIC is at liberty to call for any witness to carry out its investigation.

The complainant is also called and has the right of cross-examination. Both the parties may be represented by counsel.

Here the respondent as well as the complainant/informant can be represented by counsel again, having equal rights of representation.

After taking the respondent practitioner's statement the PIC shall:-

- (a) if it finds that there are not sufficient grounds to support the charge, recommend to the Council that no action be taken, or
- (b) if it finds that there are grounds to support the charge, recommend to the Council that there shall be an inquiry by the Council.

5.4.4 Withdrawal of Complaint/ Information

In the event the complainant/ informant wishes to withdraw the complaint/ information after he has adduced evidence and been cross examined, if the PIC finds that there are sufficient grounds to support the allegation against the respondent practitioner, the PIC may proceed with the inquiry.

5.4.5 Submissions

Submission is made at the end of the inquiry highlighting salient points the Council wants to focus on. Hence, neither the respondent practitioner nor the complainant shall have the right of submission before the PIC.

5.4.6 Report

The PIC shall submit the report of preliminary investigation and its recommendation to the Council within sixty (60) days after the completion of the investigation.

6. COUNCIL INQUIRIES

6.1 REGULATIONS 55 & 56, DENTAL REGULATIONS 2021

When a report is submitted by the PIC to the Council, the Council will deliberate on it and make its decision. Under Regulations 55 the Council is empowered to overturn the recommendation of PIC.

Once it decides to hold an inquiry, The Council will frame the charge. It may use the charges framed at the PIC level or it has the liberty to frame new charges if it thinks fit. In framing the charges, the principles in Section 7.9 (without limiting the powers of the Council) will apply.

The respondent practitioner is called on a fixed date for the inquiry with the charge clearly stated. The call letter from the Council will also contain stipulations as it may deem appropriate. If further witnesses are giving evidence, the complainant has the right to hear and cross-examine. Both the parties may be represented by counsel. The roles of the counsels are the same as at the PIC level.

(Sample of call letter attached – Appendix D1 – respondent practitioner Appendix D2 – Complainant)

The quorum for an inquiry at the Council level is nine (9).

No further statements are normally taken from the Complainant. However, the Council, may on its own volition, call for and shall record any statements from any such persons

who have made statement before the PIC, if it is of the opinion that it would be fair and just to do so.

The Council, may on its own volition, call for and shall record any statements from any other persons or expert witness, if it is of the opinion that it would be fair and just to do so.

If the Council still feels that there are grounds to support the charge, call upon the respondent practitioner to make any further statements and to call witnesses to support his defence.

The respondent practitioner may make a submission before the Council makes its decision.

At the close of the inquiry, if the Council finds that no case has been made out against the respondent practitioner, it shall dismiss the charge(s) and inform the respondent practitioner accordingly.

If at the close of the inquiry it finds the respondent practitioner guilty as charged of any disciplinary matter as specified in Section 51(2) of the Act, it shall inform the respondent practitioner of its findings and the grounds for its decision. It will then request the respondent practitioner to make any plea in mitigation.

In deciding on the appropriate punishment, the Council should be guided by:-

- a) the severity of the offences (the laws have not specified punishment for different types of offences)
- b) admission of remorse during mitigation, and
- c) precedents of identical or similar cases.

The processes of decision-making by Council members, following the practitioner's plea in mitigation, should follow the principles stated in Section 7.12 of this Standing Orders. This will ensure individual, independent judgement of each Council member.

The decision of the Council shall be conveyed to the practitioner in writing within fourteen (14) days, and his right of appeal may be exercised within one month of the date of the letter.

After the Council has finally disposed of the inquiry, the Secretariat is to report the decision made to the respective PICs.

7. RELATED MATTERS

7.1 FACTS: ITS MEANING

The word “fact” means and includes:-

- (i) anything, state of things or relating of things capable of being perceived by the senses
- (ii) any mental condition of which any person is conscious.

Fact in issue means any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any inquiry or proceeding, necessarily follows.

It is important, right at the beginning of the processes under Regulation 53, for the PIC to seek “clarification” from the complainant so that the facts in issue are “specific” and “explicit” to enable it to conduct the inquiry around them. The intention is to “clarify”, “not to lead” the complainant. This is to facilitate the PIC thinking process. Under no circumstance should “coaching” be allowed.

7.2 PROOF OF FACTS

Proof of facts may be by (1) oral evidence, (2) documentary evidence and exhibits, and (3) circumstantial evidence.

7.2.1 Oral evidence

Oral evidence in all cases must be direct. The witness may say he saw it, experienced it, heard it, or had perceived it by any other senses. Details of what he saw or experienced, heard or perceived must match the facts in issue alleged to have existed. If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds e.g. in the case of an expert witness.

7.2.2 Documentary evidence and exhibits

a) Primary Evidence

Primary evidence means the document/exhibit itself produced for the inspection of the PIC/Council. All documents for the complainant and the respondent practitioner are to be marked either as P., D. or I.D. depending on its admissibility by the PIC. Normal practice is to admit documents by the complainant when the complaint is being heard and to admit documents by the respondent practitioner at the stage when and if his defence is called.

However, if circumstances warrant it, when the complainant is presenting his complaint, in order for the respondent practitioner to rebut certain facts, the PIC at its discretion, may allow certain specific documents from the respondent practitioner to be admitted at this stage of the inquiry.

b) Secondary evidence

These include:-

- Certified copies attested by an Advocate & Solicitor or a Commissioner for Oaths;

- copies made from the original by mechanical processes;
- copies made from or compared with the original;
- counterfoils and copies of documents;
- oral accounts of the contents of a document given by some person who has himself seen it.

c) Circumstantial evidence

The essential things are: -

- (i) the circumstances from which the conclusion is drawn should be fully established;
- (ii) all the facts should be consistent with the hypothesis;
- (iii) the circumstances should be of a conclusive nature and tendency;
- (iv) the circumstances should, to moral certainty, actually exclude every hypothesis but the one proposed to be proved.

d) Other Evidence

When the PIC is acting on information or documents made available to it, the information must be verified to establish the truth of the information. However, the evidence can be accepted if the circumstances show that the contents are not forged.

7.3 BURDEN OF PROOF

He who alleges must prove. In a disciplinary inquiry, the burden of proof on the facts in issue lies with the complainant. The evidence (oral, documentary, or circumstantial) provided by him must be able to convince the PIC/Council.

An informant is there only to inform the PIC/Council of the wrongdoing/malpractice by the respondent practitioner.

7.4 PROVING OF FACT

A fact is said to be “proved” when, after considering the matters before it, the PIC/Council either **believes it to exist or considers its existence so probable** that a **prudent** man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

A fact is said to be “disproved” when, after considering the matters before it, the PIC/Council either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

In considering whether the facts in issue have been “proved” or “disproved”, the PIC/Council must take into account other facts brought in to support or rebut the allegations. Such other facts could be, but are not limited to: -

- (i) facts forming part of same transactions;
- (ii) facts which are the occasion, cause or effect of facts in issue;
- (iii) motives, preparation and previous or subsequent conduct;
- (iv) facts necessary to explain or introduce relevant facts;
- (v) facts not otherwise relevant become relevant e.g. inconsistency with facts in issue or relevant fact, or make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable;
- (vi) facts which enable PIC/Council to determine amount of damages;
- (vii) facts showing existence of state of mind or of body or bodily feeling;

- (viii) facts bearing on question whether act was accidental or intentional;
- (ix) existence of any course of business when relevant;
- (x) confession caused by inducement, threat or promise;
- (xi) entries in books;
- (xii) opinion of experts.

Each of these other facts must be scrutinised or verified with the same vigour as facts in issue. They must be “relevant”, and “proved” or “disproved” to the same level of conviction as the facts in issue and grounded on adequate evidence (oral, documentary/exhibit, and circumstantial) of adequate quality. The intention is to ensure consistency of standards in adducing evidence throughout the inquiry.

7.5 WITNESSES

7.5.1 Who may testify

All persons shall be competent to testify unless the PIC/ Council considers that they are prevented from understanding the questions put to them, or from giving rational answers to questions put to them, because of tender years, extreme old age, and disease of body or mind.

7.5.2 Number of witnesses

No particular number of witnesses shall in any case be required for the proof of any fact. It is not a question of number but the quality (or truth) of the witnesses.

7.6 ORDER OF COSTS BY COUNCIL

Under Regulation 57, for the purpose of subsection 58(3) of the Act, the Council may make an order for the payment of costs if –

- (a) the complainant withdraws the complaint after the commencement of investigation by the Preliminary Investigation Committee; or
- (b) the complainant or respondent practitioner delays the proceedings.

The costs referred may include –

- (a) any expenses incurred by any legal practitioner appointed by the Council for proceedings of the Preliminary Investigation Committee;
- (b) any reasonable expenses of any witness, in case the hearing is postponed; and
- (c) any reasonable expenses as may be incurred during the conduct of proceedings of the Preliminary Investigation Committee.

The complainant should be informed of this upon the acknowledgement of the complaint and this should be stated in the call letters to complainant and respondent practitioner.

7.7 CALL LETTERS TO THE COMPLAINANT

The PIC will have to call the complainant to appear before it for the purpose of Regulation 53(1), (2) and (3) and at later stage for Regulation 54 (5).

The call letters must be sent by A.R. Register or through a courier service or email. There have been instances where the complainant has failed to attend the inquiry though instructed by the PIC, leading to considerable delay in the inquiry. A maximum limit of two (2) chances to appear before the PIC is to be allowed for both complainant and respondent practitioner. If the complainant still fails to appear, the case should be

closed and the complainant and respondent practitioner informed accordingly.

7.8 PROCEDURES AND PROTOCOLS

Before starting the examination, the PIC/Council should be satisfied with the following:

- (a) The inquiry room is comfortable, and private enough.
- (b) The PIC/Council Inquiry Chairman introduces members of the PIC/Council, its legal counsel and secretary. Similarly, the complainant and his party, and the respondent practitioner and his party will be asked to identify themselves.
- (c) Ensure that all participants in the inquiry are in possession of all and similar documents which will be the basis of examination.
- (d) PIC/Council Inquiry Chairman is to explain inquiry procedures, and responsibility and authority of PIC.
- (e) If the complainant or a witness cannot understand Malay or English a certified interpreter should be appointed.
- (f) On all procedural matters, including objections raised, the Chairman has the prerogative to make a decision.
- (g) The complainant and respondent practitioner may call his witness at any time with the Chairman's permission. Statements by witness/witnesses should be "material" and "relevant" to the facts in issue. Others should be disallowed. Before finishing with a witness/witnesses, both parties should be asked whether they will need to recall the witness. If not, the witness can be released to go back, but not back to

the witness holding room. Secretariat should make sure of this.

- (h) Whilst the examination session is going on, participants should not be allowed to leave the room. If remotely needed, the entire session can stop a while and be resumed a few minutes later.

7.9 FRAMING THE CHARGE

Regulation 54(1)(b) states that if the PIC finds that the statements “support the allegation, frame the charge and explain to the respondent practitioner that he is at liberty to state his defence on the charge framed against him”. Regulation 55 states that the Council may, after considering the records of the investigation by the PIC, frame a charge against the respondent practitioner and the Council shall serve an order containing the date, time and place of the inquiry and copy of the charge to the respondent practitioner.

The PIC/ Council should record the rationale of its findings i.e. the evidence which have “proved” or “disproved” the facts in issue and other facts in full, and in clearly understood language.

The charge would be contained in the call letter to the respondent practitioner to appear before the PIC under Regulation 54(4), 54(5) and 55(4). A legal practitioner should help to draft the call letter, which amongst others should state the following: -

- (a) the **circumstances** surrounding the case in specific, clear, precise and accurate terms. These circumstances will have to be “proved” in the course of the inquiry.
- (b) the **offences committed** in specific, clear, precise and accurate terms. The PIC must decide specifically as regards the offences; and should err on the side of being

detailed. Each element of the offences will have to be “proved”. The standards to be measured against are contained in the Code of Professional Conduct.

(c) names of the offences of infamous conduct in any professional respect. Here the PIC should be guided by the Code whose terminologies should be used as far as possible; but the names chosen should be as specific as possible. The name for e.g. “neglect or disregard of professional responsibilities” may be further deconstructed or broken into (without limitation) : -

- (i) failure to conscientiously assess the history, symptoms and signs of a patient’s condition,
- (ii) failure to be sufficiently thorough in professional attention, examination and, where necessary, diagnostic investigation,
- (iii) failure to provide competent and considerate professional management,
- (iv) failure to provide appropriate and prompt action upon evidence suggesting the existence of a condition requiring urgent dental/medical intervention,
- (v) failure to consult appropriate professional colleagues.

Similar breakdown can be made for: -

- (i) Abuse of professional privileges.
- (ii) Conduct derogatory to the reputation of the dental profession, and
- (iii) Advertising and related professional offences.

7.10 SERVING THE LETTER OF CHARGE

The letter of charge would be the call letter signed and dated either by the Chairman of the Inquiry or by the PIC Chairman. Normally a grace period of one month before the inquiry date by the Council or PIC is given. All such letters should be sent by A.R. Register, or courier service or email to the last known address (principal practicing address or residential address), of the respondent practitioner. If undelivered, the good office of the Deputy State Director of Health (Dental) may be used to get it delivered and duly acknowledged. Failing all of the above, the call letter should be posted in a prominent position at his last known practising address.

Apart from specifying the date, time and place of inquiry, the call letter would also have mentioned the respondent practitioner's right to bring documentary/exhibit evidence, witnesses, and legal counsel and to cross-examine and re-examine persons appearing in the inquiry.

There have been instances in the past of respondent practitioners failing to attend inquiries by PIC or even by Council, or otherwise abusing the inquiry processes, by resorting to the following: -

- (a) sending a last-minute letter or fax to say that they are otherwise committed;
- (b) saying that they are suddenly taken ill;
- (c) saying that they have just engaged a legal counsel who needs time to prepare for the inquiry, or otherwise is committed to another case in Court;
- (d) not bringing the necessary documentary/exhibit evidence; or witness.
- (e) Requesting an injunction from High Court for stay of Inquiry

These failures, injunctions or abuses have resulted in long delays in the inquiry and hence a waste of time of the PIC or Council.

Both the PIC and Council have taken a serious view of this, and have taken the following stand: -

- (a) Barring exceptional circumstances, only two (2) chances are given to the respondent practitioner to defend himself; and
- (b) At the second chance, if the respondent practitioner is still absent, the inquiry should proceed in his absence, right up to Regulation 54 (5) in the case of PIC and Regulation 56 (2) in the case of the Council.
- (c) Notwithstanding the respondent practitioner's failure to attend, he should be given an opportunity to mitigate.
- (d) In the case of High Court injunctions, the PIC or Council has no choice but to postpone the inquiry until the injunction has been removed.

7.11 REPORT OF PIC TO COUNCIL – REGULATION 54

The records of the preliminary inquiry must be complete with ALL documents arranged in sequential and proper order.

7.12 DECISION MAKING BY MEMBERS OF PIC/ COUNCIL

Decision is by a simple majority of members present and voting. The Chairman has a casting or deciding vote in the event of a "tie" in the voting.

Decision-making by PIC and Council is by a show of hands including for disciplinary matters. It is important for each member to consider all relevant facts of the case in an inquiry and to identify which among them has been "proved" or "disproved" before deciding.

7.13 ROLE OF LEGAL PRACTITIONER

Section 88 of the Act states that the Council may appoint legal practitioners who shall have the following functions:

- (a) To assist the Council, the Board or any of their committees during any inquiry relating to disciplinary matters;
- (b) To institute and conduct any civil proceedings on behalf of the Council or the Board; and
- (c) To assist the Council, the Board or any of their committees in any matter relating to this Act or subsidiary legislations made under this Act.

The legal practitioner may assist the PIC or Council during any inquiry touching on disciplinary matter, specifically to advise on

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

The PIC/ Council Chairman may request the legal practitioner to explain legal matters at an inquiry, to facilitate in marking of documents, assisting in correctly formulating questions intended or posed by the PIC/Council, assisting the PIC/ Council in summarizing the legal aspects presented at the inquiry.

7.14 CONFIDENTIALITY

The disciplinary proceeding is confidential and should be so treated as such in recording and communication with outside parties.

The discussion by the PIC or Council in private (without the respondent practitioner and his counsel, and the defendant and his counsel) is also totally private and confidential and proceedings of such discussions are also confidential.

7.15 RECORDING OF PROCEEDINGS OF PIC AND COUNCIL

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

- (i) records of PIC under Regulation 53(3) and of Council under Regulation 55(5); and
- (ii) certified copies of all documentary evidence used by the PIC or Council.

These records would be the basis of appeal to the High Court under Section 60 of the Act. Hence they must be properly prepared and kept in an orderly manner. The responsibility for this rests with the Secretary of PIC/Council.

Currently examinations, cross examinations, and re-examinations are conducted through questions and answers and are recorded. Occasionally the complainant and/or the respondent practitioner may make written statements, which will have to be signed.

The recording is merely to facilitate the PIC/Council for its records of the inquiry, which will have to be confirmed by their members at subsequent meetings, accordingly they do not constitute part of the records.

The Council has decided that both the complainants and the respondent practitioners involved in any inquiry be furnished with copies of record of proceedings at all levels of the inquiry.

7.16 PRIVATE DELIBERATIONS OF PIC/COUNCIL

In the course of the inquiry the PIC/Council may deliberate in private e.g.:-

- (i) to summarize outcome of earlier sessions in a long inquiry;

- (ii) to seek advice of legal practitioner;
- (iii) to make decisions or arrive at judgements; or
- (iv) to consider preliminary issues raised by complainant or the respondent practitioner.

The decision or judgement at these sittings will be communicated to the complainant and respondent practitioner at open session, and duly recorded in the record of inquiry proceedings.

7.17 RECUSAL

As the members of the PIC/Council 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 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 PIC/Council. 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.

7.18 STATUS REPORT OF DISCIPLINARY INQUIRIES

The Secretary of the Council must table a report on disciplinary inquiries at the Council meetings. The format is to be decided by the Council.

PART D
DISCIPLINARY PROCEEDINGS UNDER
MALYSIAN DENTAL THERAPISTS BOARD

8. PROCESS OF INQUIRIES

Each Disciplinary Committee (DC) has both a right and duty to deal with a complaint/information according to the Act, Dental Regulations 2021 (the “Regulations”) and these Standing Orders (the “Orders”), its own rules, upon evidence placed before it and according to its own reasonable judgment of the case without any outside influence or interference.

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

- a. Preliminary Investigation conducted by the DC.
- b. Inquiries conducted by the Board itself.

Inquiries at the DC level are governed by Regulations 59 to Regulation 63 of the Regulations, whereas inquiry at the Council level is provided for in Regulation 64 to Regulation 67 of the same Regulations.

Rules of Natural Justice have to be observed by bodies conducting the inquiries, which have a duty to act judicially. It is paramount that justice is meted out to both parties, i.e. the complainant and the respondent dental therapist.

The DC, being an independent entity, shall conduct its inquiries independently, without the need to seek advice or guidance from the Board.

9. DISCIPLINARY COMMITTEE

9.1 SECTION 56, DENTAL ACT 2018 AND REGULATION 59 & 60, DENTAL REGULATIONS 2021

The membership of the DC shall consist of the following seven members who shall be appointed by the President:

- (a) five dental therapists;
- (b) one dental surgeon; and
- (c) one lay person.

The President shall also appoint a Chairman from amongst them. The quorum for meeting of DC shall be not less than half of the members. Decisions on any issue by the DC are by a majority of those present and voting.

It is mandatory to have all the members of a quorum continuously present throughout an inquiry. If need be, a short break can be granted by the Chairman.

New members or members who have not been present at the commencement of the inquiry or at any one subsequent inquiry, are disallowed from participating at any continued inquiry.

9.2 REGULATION 61, DENTAL REGULATIONS 2021

9.2.1 Complaint or information

A disciplinary inquiry starts with a complaint or information alleging certain facts against a dental therapist. All complaints or information made or received which fall into any of the 15 categories stated under Section 51(2)(a) to (o) of the Act shall be classified and managed by the Complaints Committee and shall be forwarded to the President for his decision. All complaint or information shall be in writing. Any further decision on the complaint or

information rests solely on the decision of the DC or the Board.

A complaint could originate from any parties as mentioned in 9.2.3. His identity and *locus standi* should be verified and confirmed by documentary evidence e.g. identity card, Mykad, birth certificate, marriage certificate, passport and so on. The Secretary of the DC is responsible for this process; but the DC must ensure that the record of its proceeding contains this verification and confirmation. This is to avoid *mala fide* claims.

9.2.2 Information for disciplinary inquiry

A disciplinary inquiry can be held on information received in respect of a named dental therapist alleging professional misconduct at a specified place, which may or may not be his place of practice.

For information received in relation or pursuant to an enforcement activity, it is important that the DC or the Board ensures the following: -

- (a) the information is made by the person directly involved in the enforcement activity, though the report itself can 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) that either the person in (a) and (b) is regarded as the complainant in the inquiry;
- (d) the party to the enforcement activity is legally empowered to do enforcement.

9.2.3 Identity of the complainant

The complainant can be: -

- (a) the injured party;
- (b) a member of his family;
- (c) his lawyer;
- (d) an interested party e.g. insurance agent;
- (e) estate of the injured party;
- (f) anybody from the government department in his official capacity;
- (g) professional bodies; or
- (h) others

The DC must be satisfied with the following: -

- i) For (a) to (h)
 - Name in full;
 - I.C. / Mykad / Passport No.
- ii) For (b), relationship to the injured party should be verified and confirmed by documentary evidence e.g. marriage or birth certificate, and a letter under the hand of the injured party if not deceased or incapacitated, that the complainant is acting on his behalf.
- iii) For (c), a letter of authority to act.
- iv) For (d), his personal details and details of his interest to establish *locus standi*.
- v) For (e), letter of administration.

9.2.4 Identity of registered person/ dental therapist complained against

It is important that the right dental therapist is being called for investigation. To ensure this, the DC must be satisfied with the following:-

- Name in full
- I.C. / Mykad/ Passport No
- Place of practice
- Registration No. & Date
- Annual Practising Certificate No. & Date

It is the responsibility of the Secretary of the DC to ensure that these particulars are made available to DC and recorded in the DC record of proceedings.

9.2.5 Facts in issue or substance of the complaint

If the facts in issue constitute a “disciplinary matter” and the DC believes that the complaint or information is “probably true”, the DC must proceed along the provisions of Regulation 61 and 62. Whilst the details for each case, which should be described in full, will differ, the facts in issue will fall under any of the headings, sub-headings and sub-sub-headings of the Code of Professional Conduct, Guidelines or Directives. Please refer to the Code, Guidelines or Directives. The facts in issue (without limitation) may be the following as examples: -

- **neglect or disregard of professional responsibilities;**
- **failure to conscientiously assess history, symptoms and signs of patients;**

- failure to be sufficiently thorough in professional attention, examination and where indicated diagnostic investigations;
- delay in attending to patient(s);
- failure to refer to or consult appropriate professional colleagues when indicated;
- employment of unqualified or unregistered person;
- covering of unregistered person or association with unqualified or unregistered person;
- failure to protect the life and health of a person on whom biomedical research is being carried out;
- conflict of interest with pharmaceutical or dental /medical equipment industry;
- abuse of professional privileges e.g. in prescribing, use and sale of poisons and dangerous drugs, issuing untrue, misleading or improper certificate, notification, and reports including sick certificate;
- abuse of trust, confidence, undue influence and personal relationship with patient;
- conduct derogatory to the reputation of the profession such as disrespect for human life, indecency and violence;
- personal misuse or abuse of alcohol or other drugs,
- incompetency to practise

- **dishonest financial transactions, and conflict of interest with commercial undertakings; and**
- **advertising, canvassing and related professional offences.**

To be fair to the complainant and the respondent dental therapist 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 understood to enable DC members to form appropriate conclusions, rather than getting lost in “immaterial” or “irrelevant” details which frequently emerge at examinations and cross examinations.

9.2.6 Litigations pending at the Courts

If there are complaints received regarding issues which are at the same time being contested in the courts, it is incumbent on the DCs to study each individual situation to ascertain whether issues raised may be subjudicial which may fall foul of the law leading to contempt of court. If there is no duplication of issues then the DC may decide to continue with the inquiry. On the other hand, if there are issues which may be tantamount to interfering with the due processes of the courts, then it is advisable to postpone the inquiry till the final disposal by the courts. The DC may seek the learned opinion of the legal practitioners in such instances.

9.2.7 Cases of conviction by the Courts under Section 51(2)(k) Dental Act 2018

If a dental therapist has been convicted in Malaysia or elsewhere of any offence punishable with imprisonment (whether in itself or in addition to or in lieu of a fine) the Board can hold an inquiry on the

conviction itself without having to prove the allegations for which he had been found guilty.

In such instances there is no need for the Board to call for the complainant to present evidence or the Board to frame any charges.

9.2.8 Cases of disciplinary proceedings by Dental Regulatory Authorities from other jurisdictions

Where the complaint/information involves any disciplinary proceedings against the dental therapist by Dental Regulatory Authorities from other jurisdictions (such as the General Dental Council UK), the DC shall ensure the Secretariat obtains information from the relevant regulatory authority of the outcome of such disciplinary proceedings.

9.2.9 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.

9.2.10 Oaths and affirmations

There is no provision for an oath under the Regulations and there is no need to record statements under oath, save and except as provided under Regulation 52(2).

9.2.11 Use of Interpreters

If a requirement for an interpreter arises, any person who is able interpret (preferably a qualified interpreter) may assist in the proceedings. Consent or agreement from the relevant parties involved must be obtained.

9.2.12 Transfer of cases from one DC to another DC

In instances where, for reasons to be stated, a complaint/information is transferred from one DC to another by the President, the new DC has to treat the complaint/information as a new one and commence a fresh inquiry disregarding whatsoever which was discussed by the previous DC.

9.2.13 Commencement of Inquiries

An inquiry commences when the PIC convenes on the date set for that inquiry and begins examining the complainant.

9.3 REGULATION 61, DENTAL REGULATIONS 2021

This Regulation lays down the procedure to be followed by the DC once the President directed the DC to investigate the complaint or information. The DC may request from the complainant, informant or any other person to submit within the period as determined by the DC the following documents:

- (a) Relevant document relating to the complaint or information;
or
- (b) A statutory declaration, documents or evidence to support the complaint or information.

(Sample of statutory declaration – Appendix A)

If the document is not received within the period specified, the DC may decide no action to be taken.

If the document is received within the period specified, the DC shall notify and submit a copy of the complaint or information including any documents received by the DC to the respondent dental therapist.

The DC may request the respondent dental therapist to submit an explanation, a treatment card and any other records which are relevant to the complaint or information received within thirty (30) days from the date of the receipt of the notification. The patient must consent for the release of his treatment card and any other records pertaining to his treatment to the DC. If it is a computer-generated document, it must be computer dated.

Where the documents are insufficient, the DC may request the respondent dental therapist to submit further explanation, documents or records within fourteen (14) days from the date of the receipt of the request.

9.4 REGULATION 62 & 63, DENTAL REGULATIONS 2021

This Regulation clearly lays down the procedure to be followed once the DC decides to hold any inquiry. Regulation 62 (1), (2) and (3) is completely related to adducing statement by the complainant, his witnesses, the cross-examination of complainant and his witnesses and the examination of the complainant or his witnesses by the DC.

9.4.1 Access to information

The complainant and respondent must be given copies of:

- a. Complaint letter and all other documents received from the complainant.
- b. Any statutory declaration, if any.
- c. All other documents related to the complaint/information.
- d. Any other statement or communication sent to the Secretariat/Board except for any written advice given by the legal practitioner.

Exhibits will not be copied but will be available at the Secretariat for inspection.

Complainant/informant/respondent dental therapist are to be advised to bring all original documents and enough copies of such documents and authorities to be distributed to all parties concerned.

**(Sample of call letter- Appendix E1 – complainant.
Appendix E2 – respondent dental therapist)**

It is important to remember that at this stage only the complainant is involved. It is advisable that the respondent dental therapist not be questioned on any aspect of the substantive issue at this point, if need be only minimum clarification on factual issues be sought .

9.4.2 Right to legal counsel

Both the complainant and the respondent have the option to be present with or without counsel and both the counsels have equal rights of representation.

9.4.3 Adducing evidence

The primary responsibility and authority of the DC is to find out whether there are “sufficient grounds” to support the “allegation” or facts in issue.

The DC shall examine the complainant and the persons in support of the allegations. The DC may at the request of the complainant, request the presence of any persons who may have knowledge of the complaint.

At the end of the preliminary hearing or examination, the DC after taking the statements of the complainant and the persons in support of the allegation shall: -

- (a) if it finds that there are not sufficient grounds to support the allegation, recommend to the Board that no action be taken;

- (b) if it finds that the statements support the allegation, frame the charge and explain to the respondent dental therapist that he is at liberty to state his defence on the charge framed against him.

(Sample of call letter attached – Appendix F1 – Complainant. Appendix F2 – respondent dental therapist)

If the respondent dental therapist after being informed of his right elects not to make a statement, the DC shall recommend that there shall be an inquiry by the Board.

After the charge is formulated and the respondent dental therapist elects to defend himself before the DC, the DC shall record his statement as far as possible “word for word”. The respondent may call witness in support of his defence.

At the material time the DC is at liberty to call for any witness to carry out its investigation.

The complainant is also called and has the right of cross-examination. Both the parties may be represented by counsel.

Here the respondent as well as the complainant/informant can be represented by counsel again, having equal rights of representation.

After taking the respondent dental therapist’s statement the DC shall:-

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

- (b) if it finds that there are grounds to support the charge, recommend to the Board that there shall be an inquiry by the Board.

9.4.4 Withdrawal of Complaint/ Information

Where the complainant has withdrawn the complaint after he has adduced evidence and been cross examined, if the DC finds that there are sufficient grounds to support the allegation against the respondent dental therapist, the DC may proceed with the inquiry.

9.4.5 Submissions

Submission is made at the end of the inquiry highlighting salient points the Board wants to focus on. Hence, neither the respondent dental therapist nor the complainant shall have the right of submission before the DC.

9.4.6 Report

The DC shall submit the report of preliminary investigation and its recommendation to the Board within sixty (60) days after the completion of the investigation.

10. BOARD INQUIRIES

10.1 REGULATIONS 64 & 65, DENTAL REGULATIONS 2021

When a report is submitted by the DC to the Board, the Board will deliberate on it and make its decision. Under Regulations 64 the Board is empowered to overturn the recommendation of DC.

Once it decides to hold an inquiry, the Board will frame the charge. It may use the charges framed at the DC level or it has the liberty to frame new charges if it thinks fit. In framing the charges, the principles in Section 11.9 (without limiting the powers of the Board) will apply.

The respondent dental therapist is called on a fixed date for the inquiry with the charge clearly stated. The call letter from the Board will also contain stipulations as it may deem appropriate. If further witnesses are giving evidence, the complainant has the right to hear and cross-examine. Both the parties may be represented by counsel. The roles of the counsels are the same as at the DC level.

(Sample of call letter attached – Appendix G1 – respondent practitioner Appendix G2 – Complainant)

The quorum for an inquiry at the Board level is seven (7).

No further statements are normally taken from the complainant. However, the Board, may on its own volition, call for and shall record any statements from any such persons who have made statement before the DC, if it is of the opinion that it would be fair and just to do so.

The Board, may on its own volition, call for and shall record any statements from any other persons or expert witness, if it is of the opinion that it would be fair and just to do so.

If the Board still feels that there are grounds to support the charge, call upon the respondent dental therapist to make any further statements and to call witnesses to support his defence.

The respondent dental therapist may make a submission before the Board makes its decision.

At the close of the inquiry, if the Board finds that no case has been made out against the respondent dental therapist, it shall

dismiss the charge(s) and inform the respondent dental therapist accordingly.

If at the close of the inquiry it finds the respondent dental therapist guilty as charged of any disciplinary matter as specified in Section 51(2) of the Act, it shall inform the respondent dental therapist of its findings and the grounds for its decision. It will then request the respondent dental therapist to make any plea in mitigation.

In deciding on the appropriate punishment, the dental therapist should be guided by:-

- a) the severity of the offences (the laws have not specified punishment for different types of offences)
- b) admission of remorse during mitigation, and
- c) precedents of identical or similar cases.

The processes of decision-making by Board members, following the respondent dental therapist's plea in mitigation, should follow the principles stated in Section 11.12 of this Standing Orders. This will ensure individual, independent judgement of each Board member.

The decision of the Board shall be conveyed to the respondent dental therapist in writing within 14 days, and his right of appeal may be exercised within thirty days of the date of the making of the order.

After the Board has finally disposed of the inquiry, the Secretariat is to report the decision made to the respective DCs.

11. RELATED MATTERS

11.1 FACTS: ITS MEANING

The word “fact” means and includes:-

- (i) anything, state of things or relating of things capable of being perceived by the senses
- (ii) any mental condition of which any person is conscious.

Fact in issue means any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any inquiry or proceeding, necessarily follows.

It is important, right at the beginning of the processes under Regulation 62, for the DC to seek “clarification” from the complainant so that the facts in issue are “specific” and “explicit” to enable it to conduct the inquiry around them. The intention is to “clarify”, “not to lead” the complainant. This is to facilitate the DC thinking process. Under no circumstance should “coaching” be allowed.

11.2 PROOF OF FACTS

Proof of facts may be by (1) oral evidence, (2) documentary evidence and exhibits, and (3) circumstantial evidence.

11.2.1 Oral evidence

Oral evidence in all cases must be direct. The witness may say he saw it, experienced it, heard it, or had perceived it by any other senses. Details of what he saw or experienced, heard or perceived must match the facts in issue alleged to have existed. If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that

opinion on those grounds e.g. in the case of an expert witness.

11.2.2 Documentary evidence and exhibits

a) Primary Evidence

Primary evidence means the document/exhibit itself produced for the inspection of the DC/Board. All documents for the complainant and the respondent dental therapist are to be marked either as P., D. or I.D. depending on its admissibility by the DC. Normal practice is to admit documents by the complainant when the complaint is being heard and to admit documents by the respondent dental therapist at the stage when and if his defence is called.

However, if circumstances warrant it, when the complainant is presenting his complaint, in order for the respondent dental therapist to rebut certain facts, the DC at its discretion, may allow certain specific documents from the respondent dental therapist to be admitted at this stage of the inquiry.

b) Secondary evidence

These include:-

- Certified copies attested by an Advocate & Solicitor or a Commissioner for Oaths;
- copies made from the original by mechanical processes;
- copies made from or compared with the original;
- counterfoils and copies of documents;
- oral accounts of the contents of a document given by some person who has himself seen it.

c) Circumstantial evidence

The essential things are: -

- (i) the circumstances from which the conclusion is drawn should be fully established;
- (ii) all the facts should be consistent with the hypothesis;
- (iii) the circumstances should be of a conclusive nature and tendency;
- (iv) the circumstances should, to moral certainty, actually exclude every hypothesis but the one proposed to be proved.

d) Other Evidence

When the DC is acting on information or documents made available to it, the information must be verified to establish the truth of the information. However, the evidence can be accepted if the circumstances show that the contents are not forged.

11.3 BURDEN OF PROOF

He who alleges must prove. In a disciplinary inquiry, the burden of proof on the facts in issue lies with the complainant. The evidence (oral, documentary, or circumstantial) provided by him must be able to convince the DC/Board.

An informant is there only to inform the DC/Board of the wrongdoing/malpractice by the respondent dental therapist.

11.4 PROVING OF FACT

A fact is said to be “proved” when, after considering the matters before it, the DC/Board either **believes it to exist or considers its existence so probable** that a **prudent** man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

A fact is said to be “disproved” when, after considering the matters before it, the DC/Board either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

In considering whether the facts in issue have been “proved” or “disproved”, the DC/Board must take into account other facts brought in to support or rebut the allegations. Such other facts could be, but are not limited to: -

- (i) facts forming part of same transactions;
- (ii) facts which are the occasion, cause or effect of facts in issue;
- (iii) motives, preparation and previous or subsequent conduct;
- (iv) facts necessary to explain or introduce relevant facts;
- (v) facts not otherwise relevant become relevant e.g. inconsistency with facts in issue or relevant fact, or make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable;
- (vi) facts which enable DC/Council to determine amount of damages;
- (vii) facts showing existence of state of mind or of body or bodily feeling;
- (viii) facts bearing on question whether act was accidental or intentional;
- (ix) existence of any course of business when relevant;
- (x) confession caused by inducement, threat or promise;
- (xi) entries in books;

(xii) opinion of experts.

Each of these other facts must be scrutinised or verified with the same vigour as facts in issue. They must be “relevant”, and “proved” or “disproved” to the same level of conviction as the facts in issue and grounded on adequate evidence (oral, documentary/exhibit, and circumstantial) of adequate quality. The intention is to ensure consistency of standards in adducing evidence throughout the inquiry.

11.5 WITNESSES

11.5.1 Who may testify

All persons shall be competent to testify unless the DC/Board considers that they are prevented from understanding the questions put to them, or from giving rational answers to questions put to them, because of tender years, extreme old age, and disease of body or mind.

11.5.2 Number of witnesses

No particular number of witnesses shall in any case be required for the proof of any fact. It is not a question of number but the quality (or truth) of the witnesses.

11.6 ORDER OF COSTS BY BOARD

Under Regulation 66, for the purpose of subsection 58(3) of the Act, the Board may make an order for the payment of costs if –

- (a) the complainant withdraws the complaint after the commencement of investigation by the Disciplinary Committee; or
- (b) the complainant or respondent dental therapist delays the proceedings.

The costs referred may include –

- (a) any expenses incurred by any legal practitioner appointed by the Board for proceedings of the Disciplinary Committee;
- (b) any reasonable expenses of any witness, in case the hearing is postponed; and
- (c) any reasonable expenses as may be incurred during the conduct of proceedings of the Disciplinary Committee.

The complainant should be informed of this upon the acknowledgement of the complaint and this should be stated in the call letters to complainant and respondent dental therapist.

11.7 CALL LETTERS TO THE COMPLAINANT

The DC will have to call the complainant to appear before it for the purpose of Regulation 62 (1), (2) and (3) and at later stage for Regulation 63 (5).

The call letters must be sent by A.R. Register or through a courier service or email. There have been instances where the complainant has failed to attend the inquiry though instructed by the DC, leading to considerable delay in the inquiry. A maximum limit of two (2) chances to appear before the DC is to be allowed for both complainant and respondent dental therapist. If the complainant still fails to appear, the case should be closed and the complainant and respondent dental therapist informed accordingly.

11.8 PROCEDURES AND PROTOCOLS

Before starting the examination, the DC/Board should be satisfied with the following:

- (a) The inquiry room is comfortable, and private enough.
- (b) The DC/Board Inquiry Chairman introduces members of the DC/Board, its legal counsel and secretary.

Similarly, the complainant and his party, and the respondent dental therapist and his party will be asked to identify themselves.

- (c) Ensure that all participants in the inquiry are in possession of all and similar documents which will be the basis of examination.
- (d) DC/Board Inquiry Chairman is to explain inquiry procedures, and responsibility and authority of DC.
- (e) If the complainant or a witness cannot understand Malay or English a certified interpreter should be appointed.
- (f) On all procedural matters, including objections raised, the Chairman has the prerogative to make a decision.
- (g) The complainant and respondent dental therapist may call his witness at any time with the Chairman's permission. Statements by witness/witnesses should be "material" and "relevant" to the facts in issue. Others should be disallowed. Before finishing with a witness/witnesses, both parties should be asked whether they will need to recall the witness. If not, the witness can be released to go back, but not back to the witness holding room. Secretariat should make sure of this.
- (h) Whilst the examination session is going on, participants should not be allowed to leave the room. If remotely needed, the entire session can stop a while and be resumed a few minutes later.

11.9 FRAMING THE CHARGE

Regulation 63(1)(b) states that if the DC finds that the statements "support the allegation, frame the charge and explain to the respondent dental therapist that he is at liberty to state his defence on the charge framed against him".

Regulation 64 states that the Board may, after considering the records of the investigation by the DC, frame a charge against the respondent dental therapist and the Board shall serve an order containing the date, time and place of the inquiry and copy of the charge to the respondent dental therapist.

The DC/Board should record the rationale of its findings i.e. the evidence which have “proved” or “disproved” the facts in issue and other facts in full, and in clearly understood language.

The charge would be contained in the call letter to the respondent dental therapist to appear before the DC under Regulation 63(4), 63(5) and 64(4). A legal practitioner should help to draft the call letter, which amongst others should state the following: -

- (a) the **circumstances** surrounding the case in specific, clear, precise and accurate terms. These circumstances will have to be “proved” in the course of the inquiry.
- (b) the **offences committed** in specific, clear, precise and accurate terms. The DC must decide specifically as regards the offences; and should err on the side of being detailed. Each element of the offences will have to be “proved”. The standards to be measured against are contained in the Code of Professional Conduct.
- (c) names of the offences of infamous conduct in any professional respect. Here the DC should be guided by the Code whose terminologies should be used as far as possible; but the names chosen should be as specific as possible. The name for e.g. “neglect or disregard of professional responsibilities” may be further deconstructed or broken into (without limitation) : -
 - (i) failure to conscientiously assess the history, symptoms and signs of a patient’s condition,

- (ii) failure to be sufficiently thorough in professional attention, examination and, where necessary, diagnostic investigation,
- (iii) failure to provide competent and considerate professional management,
- (iv) failure to provide appropriate and prompt action upon evidence suggesting the existence of a condition requiring urgent dental/medical intervention,
- (v) failure to consult appropriate professional colleagues.

Similar breakdown can be made for: -

- (i) Abuse of professional privileges.
- (ii) Conduct derogatory to the reputation of the dental profession, and
- (iii) Advertising and related professional offences.

11.10 SERVING THE LETTER OF CHARGE

The letter of charge would be the call letter signed and dated either by the Chairman of the Inquiry or by the DC Chairman. Normally a grace period of one month before the inquiry date by the Board or DC is given. All such letters should be sent by A.R. Register, or courier service or email to the last known address (principal practicing address or residential address), of the respondent dental therapist. If undelivered, the good office of the Deputy State Director of Health (Dental) may be used to get it delivered and duly acknowledged. Failing all of the above, the call letter should be posted in a prominent position at his last known practising address.

Apart from specifying the date, time and place of inquiry, the call letter would also have mentioned the respondent dental therapist's right to bring documentary/exhibit evidence, witnesses, and legal counsel and to cross-examine and re-examine persons appearing in the inquiry.

There have been instances in the past of dental practitioners failing to attend inquiries by PIC or even by Council, or otherwise abusing the inquiry processes, by resorting to the following: -

- (a) sending a last minute letter or fax to say that they are otherwise committed;
- (b) saying that they are suddenly taken ill;
- (c) saying that they have just engaged a legal counsel who needs time to prepare for the inquiry, or otherwise is committed to another case in Court;
- (d) not bringing the necessary documentary/exhibit evidence; or witness.
- (e) Requesting an injunction from High Court for stay of Inquiry

These failures, injunctions or abuses have resulted in long delays in the inquiry and hence a waste of time of the PIC or Council.

Taking into account the experience faced by PIC and the Council, both the DC and Board take a serious view of this, and take the following stand: -

- (a) Barring exceptional circumstances, only two (2) chances are given to the respondent dental therapist to defend himself; and
- (b) at the second chance, if the respondent dental therapist is still absent, the inquiry should proceed in his absence, right up to Regulation 63 (5) in the case of DC and Regulation 65 (2) in the case of the Board.

- (c) Notwithstanding the respondent dental therapist failure to attend, he should be given an opportunity to mitigate
- (d) In the case of High Court injunctions, the DC or Board has no choice but to postpone the inquiry until the injunction has been removed.

11.11 REPORT OF DC TO BOARD – REGULATION 63

The records of the preliminary inquiry must be complete with ALL documents arranged in sequential and proper order.

11.12 DECISION MAKING BY MEMBERS OF DC/BOARD

Decision is by a simple majority of members present and voting. The Chairman has a casting or deciding vote in the event of a “tie” in the voting.

Decision-making by DC and Board is by a show of hands including for disciplinary matters. It is important for each member to consider all relevant facts of the case in an inquiry and to identify which among them has been “proved” or “disproved” before deciding.

11.13 ROLE OF LEGAL PRACTITIONER

Section 88 of the Act states that the Council may appoint legal practitioners who shall have the following functions:

- (a) To assist the Council, the Board or any of their committees during any inquiry relating to disciplinary matters;
- (b) To institute and conduct any civil proceedings on behalf of the Council or the Board; and
- (c) To assist the Council, the Board or any of their committees in any matter relating to this Act or subsidiary legislations made under this Act.

The legal practitioner may assist the DC or Board during any inquiry touching on disciplinary matter, specifically to advise on

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

The DC/ Board Chairman may request the legal practitioner to explain legal matters at an inquiry, to facilitate in marking of documents, assisting in correctly formulating questions intended or posed by the DC/Board, assisting the DC/Board in summarizing the legal aspects presented at the inquiry.

11.14 CONFIDENTIALITY

The disciplinary proceeding is confidential and should be so treated as such in recording and communication with outside parties.

The discussion by the DC or Board in private (without the respondent dental therapist and his counsel, and the defendant and his counsel) is also totally private and confidential and proceedings of such discussions are also confidential.

11.15 RECORDING OF PROCEEDINGS OF DC AND BOARD

The records of proceedings of the DC and Board consist of:-

- (i) records of DC under Regulation 62(3) and of Board under Regulation 64(5); and
- (ii) certified copies of all documentary evidence used by the DC or Board.

These records would be the basis of appeal to the Council under Section 60 of the Act. Hence they must be properly

prepared and kept in an orderly manner. The responsibility for this rests with the Secretary of DC/Board.

Currently examinations, cross examinations, and re-examinations are conducted through questions and answers and are recorded. Occasionally the complainant and/or the respondent dental therapist may make written statements, which will have to be signed.

The recording is merely to facilitate the DC/Board for its records of the inquiry, which will have to be confirmed by their members at subsequent meetings, accordingly they do not constitute part of the records.

The Board has decided that both the complainants and the respondent dental therapists involved in any inquiry be furnished with copies of record of proceedings at all levels of the inquiry.

11.16 PRIVATE DELIBERATIONS OF DC/BOARD

In the course of the inquiry the DC/Board may deliberate in private e.g.:-

- (i) to summarize outcome of earlier sessions in a long inquiry;
- (ii) to seek advice of legal practitioner;
- (iii) to make decisions or arrive at judgements; or
- (iv) to consider preliminary issues raised by complainant or the respondent dental therapist.

The decision or judgement at these sittings will be communicated to the complainant and respondent dental therapist at open session, and duly recorded in the record of inquiry proceedings.

11.17 RECUSAL

As the members of the DC/Board 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 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 DC/Board. 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.

11.18 STATUS REPORT OF DISCIPLINARY INQUIRIES

The Secretary of the Board must table a report on disciplinary inquiries at the Board meetings. The format is to be decided by the Board.

APPENDIX A

STATUTORY DECLARATION

I do hereby solemnly affirm and declare as follows:

The complaint letter as attached datedduly submitted to the Malaysian Dental Council/ Malaysian Dental Therapists Board is true to its contents.

And I make this solemn declaration believing the same to be true and by virtue of the provision of the Statutory Declaration Act, 1960.

AFFIRMED BY[Name].....]

AT.....[Place]....., ON THIS DAY OF]

.....[Date].....]

Before me,

Commissioner of Oaths

APPENDIX B1

**SAMPLE OF CALL LETTER TO THE COMPLAINANT FOR
INVESTIGATION BY THE PIC**

A.R. REGISTER / EMAIL / COURIER

Name & Address of Complainant

**Inquiry Under the Dental Act 2018 and the Dental Regulations
2021 Enacted Thereunder by the Preliminary Investigation
Committee Of the Malaysian Dental Council on a Matter of
Case No. Being Complaint against DR.
.....NRIC No. Registration No.
..... Dated APC No.**

Reference is made to the above matter.

2. I have been instructed to inform you that the Preliminary Investigation Committee ... of the Malaysian Dental Council will hold an inquiry in connection with the aforesaid complaint under Regulation 53(1) of the Dental Regulations 2021 made pursuant to the Dental Act 2018, as follows:

Date :
Time :
Venue :

3. The above inquiry is in regard to a complaint made by you, (name of complainant) against (name of respondent) a registered practitioner under the Dental Act 2018, practising at (address).

4. You are required by virtue of the Regulation 53(1) of the Dental Regulations 2021, Dental Act 2018 to be present at this inquiry on the date and at the time and place mentioned above to appear before the Committee. You are allowed to cause to be present, any person who from the complaint appears to be acquainted with the circumstances, or to present any material evidence in support of your complaint.

5. **Please be informed that you may be represented by counsel.** If you exercise your right to engage a counsel please do so and hand a copy of the complaint letter and all other relevant documents to your counsel to give your counsel sufficient time to prepare for the inquiry. Please be informed that no adjournment will be granted on the grounds that your counsel is not free on the given date or the counsel needs time to prepare.

6. You are hereby advised to bring along **all original documents and exhibits** which are relevant to this complaint to be presented as exhibits.

7. Please note that the inquiry cannot proceed in your absence. Should you withdraw the complaint after the commencement of investigation or delay the proceedings of inquiry, the Council may make an order for the payment of costs.

8. If you have any enquiries regarding this matter, please contact the Secretary of the Preliminary Investigation Committee ... at the above address and telephone number.

Thank you.

Yours sincerely

Secretary
Preliminary Investigation Committee
Malaysian Dental Council

c.c : Chairman
Preliminary Investigation Committee

Legal practitioner
Malaysian Dental Council

APPENDIX B2

**SAMPLE OF CALL LETTER TO THE RESPONDENT
PRACTITIONER FOR INVESTIGATION BY THE PIC**

A.R. REGISTER / EMAIL / COURIER

Name & Address of Respondent

Inquiry Under the Dental Act 2018 and the Dental Regulations 2021 Enacted Thereunder by the Preliminary Investigation CommitteeOf the Malaysian Dental Council on a Matter of Case No. Being Complaint against DR.NRIC No. Registration No. Dated APC No.

Reference is made to the above matter.

2. I have been instructed to inform you that a complaint dated _____ has been lodged with the Malaysian Dental Council by (name of complainant) of (address) and the said complaint being against you, (name of respondent) a registered practitioner under the Dental Act 2018, practising at (address) (a copy of the letter of complaint is enclosed for you attention and perusal).

3. The Preliminary Investigation Committee ... of the Malaysian Dental Council will hold an inquiry in connection with the aforesaid complaint under Regulation 53(1) of the Dental Regulations 2021 made pursuant to the Dental Act 2018, as follows:

Date :
Time :
Venue :

4. Please note that you have the right under Regulation 53(2) of the aforementioned Dental Regulations to be present with or without counsel, to cross-examine such persons who may be called at the inquiry.

5. If you exercise your right to engage a counsel please do so and hand a copy of the complaint letter and all other documents enclosed therewith to your counsel to give your sufficient time to prepare for the inquiry. Please be informed that no adjournment will be granted on the grounds that your counsel is not free on the given date or the counsel needs time to prepare.

6. Please bring all relevant documents including all patient's records for the inquiry.

7. Please also be informed that should you fail and/or neglect to attend the inquiry at the aforementioned date, time and place, the Committee shall proceed in your absence. Should there be any delays in the inquiry, the Council may make an order for the payment of costs.

8. If you have any enquiries regarding this matter, please contact the Secretary of the Preliminary Investigation Committee ... at the above address and telephone number.

Thank you.

Yours sincerely

Secretary
Preliminary Investigation Committee
Malaysian Dental Council

c.c : Chairman
Preliminary Investigation Committee

Legal practitioner
Malaysian Dental Council

APPENDIX C1

SAMPLE OF CALL LETTER TO THE COMPLAINANT

A.R. REGISTER / EMAIL / COURIER

Name & Address of Complainant

Inquiry under the Dental Act 2018 and the Dental Regulations 2021 Enacted Thereunder by the Preliminary Investigation Committee Of the Malaysian Dental Council on a Matter of Case No. Being Complaint against DR.NRIC No. Registration No. Dated APC No.

I refer to the above matter.

2. I have been instructed to inform you that the Preliminary Investigation Committee ... of the Malaysian Dental Council will continue with the disciplinary proceedings in connection with the aforesaid complaint under Regulation 54 of the Dental Regulations 2021 made pursuant to the Dental Act 2018, as follows:

Date :
Time :
Venue :

3. The above inquiry is in connection with a complaint made by you, (name of complainant) against (name of respondent), a registered practitioner under the Dental Act 2018, practising at (address)

4. The practitioner will be called upon to make his defence and you are entitled to be present at the inquiry. Should you withdraw the complaint after the commencement of investigation or delay the proceedings of inquiry, the Council may make an order for the payment of costs.

5. Please find attached a copy of the charge letter.

Thank you.

Yours sincerely

Secretary
Preliminary Investigation Committee
Malaysian Dental Council

c.c : Chairman
Preliminary Investigation Committee

Legal practitioner
Malaysian Dental Council

APPENDIX C2

SAMPLE OF CALL LETTER TO THE RESPONDENT **PRACTITIONER INVESTIGATION BY THE PIC** **(CHARGE FRAMED)**

A.R. REGISTER / EMAIL / COURIER

Name & Address of Respondent

Inquiry under the Dental Act 2018 and the Dental Regulations 2021 Enacted Thereunder by the Preliminary Investigation CommitteeOf the Malaysian Dental Council on a Matter of Case No. Being Complaint against DR.NRIC No. Registration No. Dated APC No.

I refer to the above matter.

2. I am to inform you that the Preliminary Investigation Committee ... of the Malaysian Dental Council will proceed with the disciplinary against you, (name of respondent), on the charge framed under Regulation 54 of the Dental Regulations 2021 made pursuant to the Dental Act 2018, as follows:

That you Dr. (name of respondent) (practising address), being a practitioner registered under the Dental Act 2018, ("the Act")

Circumstances

- 1.
- 2.
- 3.

Charge

Head 1

Head 2

And in relation to the facts alleged you may be found guilty of infamous conduct in a professional respect under Section 51(2)(a) and punishable under Section 58 of the Act.

3. You are thereby at liberty under Regulations 54 of the Dental Regulations 2021 to state your defence before the Preliminary Investigation Committee, and are required to be present with or without counsel, as follows:

Date :
Time :
Venue :

4. Please be informed that you are not to bring any witness at this stage.

5. Should you fail and/or neglect to attend the inquiry at the aforementioned date, time and place, the Council shall proceed in your absence. Should there be any delays in the inquiry, the Council may make an order for the payment of costs.

Thank you.

Yours sincerely

Chairman
Preliminary Investigation Committee
Malaysian Dental Council

c.c : Legal practitioner
Malaysian Dental Council

Secretary
Preliminary Investigation Committee
Malaysian Dental Council

SAMPLE OF CALL LETTER TO THE RESPONDENT
PRACTITIONER FOR INQUIRY BY THE COUNCIL

A.R. REGISTER / EMAIL / COURIER

Name & Address of Respondent

Dear Sir

Inquiry under the Dental Act 2018 and Regulation 55 of the Dental Regulations 2021 by the Malaysian Dental Council on a Matter of Case No. being Complaint against DR.NRIC No. Registration No. Dated APC No.

I refer to the above matter.

2. I am to inform you that the Malaysian Dental Council will hold an inquiry under Regulation 55 of the Dental Regulations 2021 made pursuant to the Dental Act 2018 in connection with the charge under Section 51(2)(a) and punishable under section 58 of the aforesaid Act, against you, (name of respondent) being a registered practitioner under the Dental Act 2018 as follows:

Date :
Time :
Venue :

3. Charge under Section 51(2) (a) of the Dental Act 2018:

Circumstances

- 1.
- 2.
- 3.

Charge

Head 1

Head 2

And in relation to the facts alleged you may be found guilty of infamous conduct in a professional respect under section 51(2) (a) of the Dental Act 2018 and punishable under section 58 of the said Act.

4. You are thereby required under Regulation 55 (3) of the Dental Regulations 2021 to put your defence to the aforesaid charges before the Malaysian Dental Council. You are able to put up any further statement as you deem necessary and call upon such other persons as you may require to support your defence under Regulation 55(5)-(6) Dental Regulations 2021.

5. Please take note of your right to be present with or without counsel and that should you be absent on the above referred date, the inquiry will proceed notwithstanding your absence.

6. If you exercise your right to engage a counsel please do so and hand a copy of the complaint letter and all other relevant documents to your counsel to give your counsel sufficient time to prepare for the inquiry. Please be informed that no adjournment will be granted on the grounds that your counsel is not free on the given date or the counsel needs time to prepare.

7. Should there be any delays in the inquiry, the Council may make an order for the payment of costs.

Thank you.

Yours faithfully

Chairman
Malaysian Dental Council Inquiry against Dr. (name of respondent)
Malaysian Dental Council

c.c : Legal practitioner
Malaysian Dental Council

Secretary
Malaysian Dental Council

APPENDIX D2

**SAMPLE OF CALL LETTER TO THE COMPLAINANT FOR
INQUIRY BY THE COUNCIL**

A.R. REGISTER / EMAIL / COURIER

Name & Address of Complainant

Inquiry under the Dental Act 2018 and the Dental Regulations 2021 Enacted Thereunder by the Malaysian Dental Council on a Matter of Case No. Being Complaint against DR.NRIC No. Registration No. Dated APC No.

I refer to the above matter.

2. I have been instructed to inform you that the Malaysian Dental Council will conduct a disciplinary inquiry in connection with the aforesaid complaint under Regulation 55 of the Dental Regulations 2021 made pursuant to the Dental Act 2018, as follows:

Date :
Time :
Venue :

3. The above inquiry is in connection with a complaint made by you, (name of complainant) against (name of respondent), a registered practitioner under the Dental Act 2018, practising at (address). The practitioner will be called upon to make his defence. He will be bringing in further witness to give evidence and you are entitled to be present at the inquiry to hear and cross-examine.

4. Please find attached a copy of the charge letter.

Thank you.
Yours sincerely

Secretary
Malaysian Dental Council

c.c : Legal practitioner
Malaysian Dental Council

**SAMPLE OF CALL LETTER TO THE COMPLAINANT FOR
INVESTIGATION BY THE DC**

A.R. REGISTER / EMAIL / COURIER

Name & Address of Complainant

Inquiry Under the Dental Act 2018 and the Dental Regulations 2021 Enacted Thereunder by the Disciplinary Committee Of the Malaysian Dental Therapists Board on a Matter of Case No. Being Complaint against NRIC No. Registration No. Dated APC No.

Reference is made to the above matter.

2. I have been instructed to inform you that the Disciplinary Committee ... of the Malaysian Dental Therapists Board will hold an inquiry in connection with the aforesaid complaint under Regulation 62(1) of the Dental Regulations 2021 made pursuant to the Dental Act 2018, as follows:

Date :
Time :
Venue :

3. The above inquiry is in regard to a complaint made by you, (name of complainant) against (name of respondent) a registered dental therapist under the Dental Act 2018, practising at (address)

4. You are required by virtue of the Regulation 62(1) of the Dental Regulations 2021, Dental Act 2018 to be present at this inquiry on the date and at the time and place mentioned above to appear before the Committee. You are allowed to cause to be present, any person who from the complaint appears to be acquainted with the circumstances, or to present any material evidence in support of your complaint.

5. **Please be informed that you may be represented by counsel.** If you exercise your right to engage a counsel please do so and hand a copy of the complaint letter and all other relevant documents to your counsel to give your counsel sufficient time to prepare for the inquiry. Please be informed that no adjournment will be granted on the grounds that your counsel is not free on the given date or the counsel needs time to prepare.

6. You are hereby advised to bring along **all original documents and exhibits** which are relevant to this complaint to be presented as exhibits.

7. Please note that the inquiry cannot proceed in your absence. Should you withdraw the complaint after the commencement of investigation or delay the proceedings of inquiry, the Board may make an order for the payment of costs.

8. If you have any enquiries regarding this matter, please contact the Secretary of the Disciplinary Committee ... at the above address and telephone number.

Thank you.

Yours sincerely

Secretary
Disciplinary Committee
Malaysian Dental Therapists Board

c.c : Chairman
Disciplinary Committee

Legal practitioner
Malaysian Dental Therapists Board

**SAMPLE OF CALL LETTER TO THE RESPONDENT DENTAL
THERAPIST FOR INVESTIGATION BY THE DC**

A.R. REGISTER / EMAIL / COURIER

Name & Address of Respondent

Inquiry Under the Dental Act 2018 and the Dental Regulations 2021 Enacted Thereunder by the Disciplinary CommitteeOf the Malaysian Dental Therapists Board on a Matter of Case No. Being Complaint against NRIC No. Registration No. Dated APC No.

Reference is made to the above matter.

2. I have been instructed to inform you that a complaint dated _____ has been lodged with the Malaysian Dental Therapists Board by (name of complainant) of (address) and the said complaint being against you, (name of respondent) a registered dental therapist under the Dental Act 2018, practising at (address) (a copy of the letter of complaint is enclosed for your attention and perusal).

3. The Disciplinary Committee ... of the Malaysian Dental Therapists Board will hold an inquiry in connection with the aforesaid complaint under Regulation 62(1) of the Dental Regulations 2021 made pursuant to the Dental Act 2018, as follows:

Date :
Time :
Venue :

4. Please note that you have the right under Regulation 62(2) of the aforementioned Dental Regulations to be present with or without counsel, to cross-examine such persons who may be called at the inquiry.

5. If you exercise your right to engage a counsel please do so and hand a copy of the complaint letter and all other documents enclosed therewith to your counsel to give your sufficient time to prepare for the inquiry. Please be informed that no adjournment will be granted on the grounds that your counsel is not free on the given date or the counsel needs time to prepare.

6. Please bring all relevant documents including all patient's records for the inquiry.

7. Please also be informed that should you fail and/or neglect to attend the inquiry at the aforementioned date, time and place, the Committee shall proceed in your absence. Should there be any delays in the inquiry, the Board may make an order for the payment of costs.

8. If you have any enquiries regarding this matter, please contact the Secretary of the Disciplinary Committee ... at the above address and telephone number.

Thank you.

Yours sincerely

Secretary
Disciplinary Committee
Malaysian Dental Therapists Board

c.c : Chairman
Disciplinary Committee

Legal practitioner
Malaysian Dental Therapists Board

SAMPLE OF CALL LETTER TO THE COMPLAINANT

A.R. REGISTER / EMAIL / COURIER

Name & Address of Complainant

Inquiry under the Dental Act 2018 and the Dental Regulations 2021 Enacted Thereunder by the Disciplinary Committee ... Of the Malaysian Dental Therapists Board on a Matter of Case No. Being Complaint against NRIC No. Registration No. Dated APC No.

I refer to the above matter.

2. I have been instructed to inform you that the Disciplinary Committee ... of the Malaysian Dental Therapists Board will continue with the disciplinary proceedings in connection with the aforesaid complaint under Regulation 63 of the Dental Regulations 2021 made pursuant to the Dental Act 2018, as follows:

Date :
Time :
Venue :

3. The above inquiry is in connection with a complaint made by you, (name of complainant) against (name of respondent), a registered dental therapist under the Dental Act 2018, practising at (address)

4. The dental therapist will be called upon to make his defence and you are entitled to be present at the inquiry. Should you withdraw the complaint after the commencement of investigation or delay the

proceedings of inquiry, the Board may make an order for the payment of costs.

5. Please find attached a copy of the charge letter.

Thank you.

Yours sincerely

Secretary
Disciplinary Committee
Malaysian Dental Therapists Board

c.c : Chairman
Disciplinary Committee

Legal practitioner
Malaysian Dental Therapists Board

APPENDIX F2

**SAMPLE OF CALL LETTER TO THE RESPONDENT DENTAL
THERAPIST INVESTIGATION BY THE DC (CHARGE FRAMED)**

A.R. REGISTER / EMAIL / COURIER

Name & Address of Respondent

Inquiry under the Dental Act 2018 and the Dental Regulations 2021 Enacted Thereunder by the Disciplinary Committee Of the Malaysian Dental Therapists Board on a Matter of Case No. Being Complaint against NRIC No. Registration No. Dated APC No.

I refer to the above matter.

2. I am to inform you that the Disciplinary Committee ... of the Malaysian Dental Therapists Board will proceed with the disciplinary against you, (name of respondent), on the charge framed under Regulation 63 of the Dental Regulations 2021 made pursuant to the Dental Act 2018, as follows:

That you Dr. (name of respondent) (practising address), being a dental therapist registered under the Dental Act 2018, ("the Act")

Circumstances

- 1.
- 2.
- 3.

Charge

Head 1

Head 2

And in relation to the facts alleged you may be found guilty of infamous conduct in a professional respect under Section 51(2)... and punishable under Section 58 of the Act.

3. You are thereby at liberty under Regulations 63 of the Dental Regulations 2021 to state your defence before the Disciplinary Committee, and are required to be present with or without counsel, as follows:

Date :
Time :
Venue :

4. Please be informed that you are not to bring any witness at this stage.

5. Should you fail and/or neglect to attend the inquiry at the aforementioned date, time and place, the Disciplinary Committee shall proceed in your absence. Should there be any delays in the inquiry, the Board may make an order for the payment of costs.

Thank you.

Yours sincerely

Chairman
Disciplinary Committee
Malaysian Dental Therapists Board

c.c : Legal practitioner
Malaysian Dental Therapists Board

Secretary
Disciplinary Committee
Malaysian Dental Therapists Board

**SAMPLE OF CALL LETTER TO THE RESPONDENT DENTAL
THERAPIST FOR INQUIRY BY THE BOARD**

A.R. REGISTER / EMAIL / COURIER

Name & Address of Respondent

Dear Sir

Inquiry under the Dental Act 2018 and Regulation 55 of the Dental Regulations 2021 by the Malaysian Dental Therapists Board on a Matter of Case No. being Complaint against NRIC No. Registration No. Dated APC No.

I refer to the above matter.

2. I am to inform you that the Malaysian Dental Council will hold an inquiry under Regulation 64 of the Dental Regulations 2021 made pursuant to the Dental Act 2018 in connection with the charge under Section 51(2)... and punishable under section 58 of the aforesaid Act, against you, (name of respondent) being a Registered Dental Therapist under the Dental Act 2018 as follows:

Date :
Time :
Venue :

3. Charge under Section 51(2)... of the Dental Act 2018:

Circumstances

- 1.
- 2.
- 3.

Charge

Head 1

Head 2

And in relation to the facts alleged you may be found guilty of infamous conduct in a professional respect under section 51(2)... of the Dental Act 2018 and punishable under section 58 of the said Act.

4. You are thereby required under Regulation 64(3) of the Dental Regulations 2021 to put your defence to the aforesaid charges before the Malaysian Dental Therapists Board. You are able to put up any further statement as you deem necessary and call upon such other persons as you may require to support your defence under Regulation 64(5)-(6) Dental Regulations 2021.

5. Please take note of your right to be present with or without counsel and that should you be absent on the above referred date, the inquiry will proceed notwithstanding your absence.

6. If you exercise your right to engage a counsel please do so and hand a copy of the complaint letter and all other relevant documents to your counsel to give your counsel sufficient time to prepare for the inquiry. Please be informed that no adjournment will be granted on the grounds that your counsel is not free on the given date or the counsel needs time to prepare.

7. Should there be any delays in the inquiry, the Board may make an order for the payment of costs.

Thank you.

Yours faithfully

Chairman

Malaysian Dental Therapists Board Inquiry against Dr. (name of respondent)

Malaysian Dental Therapists Board

c.c : Legal practitioner
Malaysian Dental Therapists Board

Secretary
Malaysian Dental Therapists Board

APPENDIX G2

SAMPLE OF CALL LETTER TO THE COMPLAINANT

A.R. REGISTER / EMAIL / COURIER

Name & Address of Complainant

Inquiry under the Dental Act 2018 and the Dental Regulations 2021 Enacted Thereunder by the Malaysian Dental Therapists Board on a Matter of Case No. Being Complaint against DR. NRIC No. Registration No. Dated APC No.

I refer to the above matter.

2. I have been instructed to inform you that the Malaysian Dental Therapists Board will conduct a disciplinary inquiry in connection with the aforesaid complaint under Regulation 64 of the Dental Regulations 2021 made pursuant to the Dental Act 2018, as follows:

Date :
Time :
Venue :

3. The above inquiry is in connection with a complaint made by you, (name of complainant) against (name of respondent), a registered dental therapist under the Dental Act 2018, practising at (address). The dental therapist will be called upon to make his defence. He will be bringing in further witnesses to give evidence and you are entitled to be present at the inquiry to hear and cross-examine.

4. Please find attached a copy of the charge letter.

Thank you.

Yours sincerely

Secretary
Malaysian Dental Therapists Board

c.c : Legal practitioner
Malaysian Dental Therapists Board

WORKING COMMITTEE

1. Prof. Dr. Adam bin Husein - Chairman
2. Dato' Prof. Dr. Ishak bin Abdul Razak
3. Dr. Teerunavookarasu a/l Rajaratnam
4. Dr. Ng Woan Tyng
5. Kolonel (Dr.) Mohamad Asri bin Din
6. Dr. Jeyalan a/l P T Samanther
7. Dr. Lee Wei Zin
8. Puan Woon Siong Lee
9. Tuan Jason Reginald Gomez
10. Dr. Sofiah binti Mat Ripen

MDC Secretariat:

1. Dr. Nurul Syakirin binti Abdul Shukor
2. Dr. Noorhidayah binti Mohd Arof
3. Dr. Nur Hamizah binti Abu Bakar
4. Dr. Navina a/p Nagaratnem
5. Cik Siti Nur Zaimah binti Zainudin