

Social Workers Registration Board
Rules in respect of Disciplinary Proceedings

1. Interpretation

- (1) “Ordinance” means the Social Workers Registration Ordinance (Cap. 505), Laws of Hong Kong.
- (2) “Legal practitioner” means a practicing solicitor or barrister within the meaning of the Legal Practitioners Ordinance (Cap. 159), Laws of Hong Kong.
- (3) “Registrar” means the Registrar appointed under section 15 of the Ordinance including the staff assisting him in connection with a hearing.

2. Hearing in Public or in Camera

- (1) At the discretion of the Disciplinary Committee, a hearing may be open to the public or partly open to the public and partly held in camera with due regard to:-
 - (a) the interests of the complainant(s)
 - (b) the interests of the registered social worker, i.e. the respondent of the hearing
 - (c) the interests of the witnesses
- (2) At any stage of a hearing, the Disciplinary Committee may decide that the remainder of the hearing should be open to the public or be held in camera, as the case may be.
- (3) The Disciplinary Committee may deliberate in private (with or without the legal practitioner appointed pursuant to section 28 of the Ordinance and the Registrar) at any time and for any purpose at any stage of the hearing, before or after it.

3. Representation

- (1) Any party to a hearing may be represented by a legal practitioner.
- (2) The Board may appoint a legal practitioner to advise the Disciplinary Committee pursuant to section 28 of the Ordinance.

4. Adjournment of Hearing

- (1) The presiding member of the Disciplinary Committee may adjourn a hearing to such date as he thinks fit.

- (2) The Registrar shall, where appropriate, give notice of an adjournment to the parties of the complaint.

5. Record of Proceedings

- (1) The Registrar may cause the proceedings to be recorded on tape and may arrange for the transcription of the tape recording into a verbatim record in writing.
- (2) If a verbatim record of the proceedings or any part of it has been prepared, the presiding member of the Disciplinary Committee, on application to him by any party to the proceedings and on payment to the Board of the appropriate prescribed fee for the issue of the record, shall furnish the party with a copy of the record or part.

6. Withdrawal of Complaints

The Disciplinary Committee may proceed with a disciplinary hearing notwithstanding the withdrawal of a complaint prior to or at any stage of the proceedings when the circumstances warrant the Disciplinary Committee to do so.

7. Opening of Hearing

- (1) At the opening of a hearing the legal practitioner appointed pursuant to sub-rule (2) of rule 3 above shall read the complaint as recorded on the section 27(1) notice of the Ordinance to the respondent of the hearing.
- (2) If the respondent of hearing is not present, whether represented by his/her legal representative or not, the Registrar shall furnish to the Disciplinary Committee such evidence as the Disciplinary Committee may require to prove that a section 27(5) notice of hearing of the Ordinance has been served on the respondent of hearing.
- (3) On the Disciplinary Committee being satisfied as to the evidence under sub-rule (2) of rule 7 and at the discretion of the Disciplinary Committee, the Disciplinary Committee may proceed with the hearing in the absence of the respondent of hearing.
- (4) If the respondent of hearing is present at the hearing, the presiding member of the Disciplinary Committee, immediately after the complaint has been read, shall inform him/her of his/her right to cross-examine witnesses, to give evidence and to call witnesses on his/her behalf.

- (5) After a hearing has been opened under this rule, at the discretion of the Disciplinary Committee, it may be proceeded with to its conclusion notwithstanding the absence of the complainant and/or the respondent of hearing.

8. Absence

If a party has failed to appear at the hearing, the presiding member or the Disciplinary Committee may take such steps as they consider appropriate including dismissing the complaint or hearing and determining the complaint without hearing from the complainant or the respondent.

9. Objections on Point of Law

- (1) After the reading of the above said complaint, the respondent of hearing, in person or his/her legal representative, may object to the complaint on a point of law and, upon such objection, any other party to the hearing may reply thereto and, if any such party replies to such objection, the respondent of hearing or his/her legal representative may answer such reply.
- (2) If such objection is upheld by the Disciplinary Committee, the complaint to which such objection relates shall be considered only subject to such objection.

10. Order of Procedure

- (1) Subject to rules 7, 8 and 9, the following order of procedure must be observed in a hearing:-
 - (a) the complainant, or his/her legal representative, shall present the case against the respondent of hearing and adduce evidence in support thereof and shall close the case against the respondent of hearing;
 - (b) at the conclusion of the presentation of the case against the respondent of hearing, the respondent of hearing in person, or his/her legal representative, may make either or both of the following submissions in relation to any complaint in respect of which evidence has been adduced-
 - (i) that sufficient evidence has not been adduced upon which the Disciplinary Committee can find that the facts alleged in that complaint have been proved;
 - (ii) that the facts alleged in the complaint are not such as to constitute the offence complained of,

and where such submission is made, a reply thereto may be made by the

complainant, or his/her legal representative, and the respondent of hearing may answer such reply;

- (c) if a submission is made under paragraph (b), the Disciplinary Committee shall consider and determine whether the submission shall be upheld and -
 - (i) the presiding member of the Disciplinary Committee shall announce the determination of the Disciplinary Committee; and
 - (ii) if the Disciplinary Committee upholds the submission in respect of any complaint, the finding shall be recorded that the complaint is not proven; and
 - (iii) if the Disciplinary Committee rejects the submission, the presiding member of the Disciplinary Committee shall call upon the respondent of hearing to state his case;
 - (d) the respondent of hearing, in person or by his/her legal representative may then adduce evidence in support of his/her case and may make one and only one address to the Disciplinary Committee, and where evidence has been adduced by or on behalf of the respondent of hearing such address may be made either before or after such evidence has been adduced;
 - (e) at the conclusion of the case of the respondent of hearing, the complainant, or his/her legal representative, may address the Disciplinary Committee in reply, and if there is such a reply, the respondent of hearing or his/her legal representative may make one and only one address to the Disciplinary Committee in reply.
- (2) The Disciplinary Committee may permit the complainant or his/her legal representative to present the case against the respondent of hearing if the Disciplinary Committee thinks it appropriate in the circumstances of the case.

11. Postponement of Decision

- (1) The Disciplinary Committee shall postpone decision as to whether the disciplinary offence complained of has been committed only if it is fair, just and necessary to do so.
- (2) If the Disciplinary Committee decides to postpone its decision, the decision of the Disciplinary Committee shall stand postponed until such future meeting of the Disciplinary Committee as the Disciplinary Committee may decide. The Disciplinary Committee may postpone its decision and pronounce the decision in writing if the Disciplinary Committee so decides.

- (3) If the Disciplinary Committee decides not to postpone its decision, the Disciplinary Committee shall consider and determine whether the facts alleged in any complaint before the Disciplinary Committee have been proved to its satisfaction and whether the respondent of hearing is guilty of the offence complained of.

12. Notice of Postponement of Decision

- (1) When, under sub-rule (2) of rule 11, the decision of the Disciplinary Committee in respect of a complaint stands postponed to a future meeting of the Disciplinary Committee, the Registrar shall serve on the respondent of hearing a notice specifying the date, time and place fixed for the meeting of the Disciplinary Committee and invite him/her to appear at the meeting.
- (2) The Registrar shall send the complainant a copy of the notice served under sub-rule (1) of rule 12.
- (3) At the future meeting, the presiding member of the Disciplinary Committee may invite the complainant, or his/her legal representative, to recall, for the information of the Disciplinary Committee, the position in which the case stands.
- (4) The Disciplinary Committee shall then consider and determine its decision in the manner set out in sub-rule (3) of rule 11.

13. Evidence

- (1) The rules of evidence do not apply to the proceedings of a hearing save where clearly and expressly stated as applicable.
- (2) Evidence may be taken by the Disciplinary Committee by oral statement on oath and the presiding member of the Disciplinary Committee may administer an oath.
- (3) Every witness shall be examined by the party calling him and may then be cross-examined by the other party and only upon matters arising out of the cross-examination may be re-examined by the party calling him.
- (4) The Disciplinary Committee may decline to admit the evidence of any deponent to a document who is not present for, or who declines to submit to cross-examination.
- (5) At any stage during the hearing, the Disciplinary Committee may put such questions to the parties and the witnesses as the Disciplinary Committee think expedient.

- (6) The Disciplinary Committee may at the hearing admit or take into account any statement, document, information or matter whether or not it would be admissible in a court of law.

14. Voting

- (1) In the taking of votes of the Disciplinary Committee on any question to be determined by it, the presiding member of the Disciplinary Committee shall call upon the members, if any, to signify their votes by raising their right hands, and shall thereupon declare the determination of the Disciplinary Committee in respect of such question.
- (2) Members of the Disciplinary Committee shall consider all evidence and findings and all relevant circumstances when casting their respective vote.
- (3) Where the determination of the Disciplinary Committee so declared by the presiding member of the Disciplinary Committee is challenged by any member of the Disciplinary Committee, the presiding member of the Disciplinary Committee shall call upon each member severally to declare his vote, announce his own vote and announce the number of members of the Disciplinary Committee who have voted each way, and the result of the vote.
- (4) No person other than members of the Disciplinary Committee, the legal practitioner appointed under sub-rule (2) of rule 3 above and the Registrar may be present when the Disciplinary Committee votes on any matter related to disciplinary decision.

15. Mitigation to Disciplinary Committee before Announcement of Recommendation Disciplinary Order(s)

- (1) After a hearing, if a Disciplinary Committee finds and announces that a disciplinary offence has been committed, it shall advise the respondent of hearing of the procedures pertaining to mitigation before the Disciplinary Committee makes recommendation on disciplinary order(s).
- (2) If the respondent of hearing chooses to mitigate, the Disciplinary Committee shall postpone its recommendation to a date the Disciplinary Committee sees fit.
- (3) Within five working days after the Disciplinary Committee announces its decision under sub-rule (1) of rule 15, a written submission on mitigation is to be submitted to the Disciplinary Committee by the respondent of hearing.
- (4) At a meeting fixed pursuant to sub-rule (2) of rule 15 above, the Disciplinary

Committee shall hear the plea of mitigation by the respondent of hearing before recommending disciplinary order(s) to the Board.

- (5) After hearing the mitigation, the Disciplinary Committee shall announce its recommendation on disciplinary order(s) or shall postpone announcement as it sees fair, just and necessary to do so.

16. Submission of Report to the Board

- (1) After the Disciplinary Committee has reached a decision on the advice to be given to the Board as to whether the disciplinary offence complained of has been committed and any appropriate disciplinary order that it would recommend in respect of the complaint, it shall submit a report to the Board.
- (2) If the Disciplinary Committee recommends a disciplinary order of written reprimand to be made under section 30(1)(c) of the Ordinance, it may, if it considers it appropriate, set out in the report to the Board its recommendation as to the duration of keeping the record of such a reprimand on the Register of registered social workers.
- (3) The report prepared shall be dispatched by hand under confidential cover to Board members before the Board meeting in which the report is to be presented.
- (4) The presiding member of the Disciplinary Committee shall then orally present the report in the Board meeting.
- (5) The minimum number of members at any meeting of the Board to consider a disciplinary case is ten.
- (6) If the Board decides to make a disciplinary order of written reprimand under section 30(1)(c), it shall order the Registrar to record the reprimand on the Register of registered social workers with or without prescribing the duration of keeping such a record on the Register. In the absence of such prescription, the record shall be kept on the Register indefinitely (subject to any further order made by the Board in future upon the application of the respondent of hearing or on its own motion).

17. Notification of Decision and Disciplinary orders to the Respondent of Hearing

- (1) After the Board has decided that a disciplinary offence has been committed, the Registrar shall notify the same to the parties of the hearing.
- (2) The Board shall consider and determine whether or not to postpone the

announcement of disciplinary orders under section 30 of the Ordinance.

- (3) If the Board decides to postpone the announcement of disciplinary orders, the same stands postponed until such future meeting of the Board as the Board may decide. The parties of the hearing would be notified by the Registrar.

18. Submission of Fresh Grounds of Mitigation to the Board before Announcement of Disciplinary Orders

- (1) After a Disciplinary Committee has announced its recommendation, if there exists fresh grounds of mitigation which have not earlier been submitted to the Disciplinary Committee under sub-rules (3) and (4) of rule 15 above, the respondent of hearing can submit such grounds to the Board within five working days after the Disciplinary Committee has announced its recommendation on disciplinary order(s).
- (2) The respondent of hearing shall provide reasons as to why such fresh grounds of mitigation have not earlier been submitted to the Disciplinary Committee under rule 15 sub-rules (3) and (4) above.
- (3) The Board shall hear such fresh grounds of mitigation of the respondent of hearing before it decides on disciplinary order(s) and the Chairperson of the Board shall announce the decision in such manner as the Board may approve.

Social Workers Registration Board
(revised on 19 April 2017)