Integrity in Practice
A Practical Guide for Medical Practitioners on Corruption Prevention
Foreword

Message from Commissioner,  
Independent Commission Against Corruption, HKSAR
Message from Chairman, The Medical Council of Hong Kong
Message from Chief Executive, Hospital Authority
Message from Director of Health, HKSAR
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As mentioned in the previous chapter, it is of great importance that doctors must maintain a high level of integrity so as to continue to gain the respect and trust of society. In this practical guide, we shall focus the discussion on how to uphold integrity by doctors in the pursuit of their profession. For a start, we are obliged to understand thoroughly the anti-bribery laws as well as the related conduct requirements specified in the codes of conduct of the medical profession.

2.1 Legal requirements

2.1.1 The Prevention of Bribery Ordinance (PBO)

The PBO is the piece of legislation against corruption in Hong Kong. The law, governing both the public and the private sectors, sets out the standards of behaviour for agents when they are conducting their principals' business. Major points of the Ordinance are listed below for ease of reference. Please refer to Appendix 1 for the full provisions of the relevant sections.

(a) Provisions governing the public sector

Doctors employed by the government or hospitals managed by the Hospital Authority are public servants who have to abide by the relevant provisions of the PBO, in particular Sections 4 and 5.

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| Section 4  
Preventing public servants from abusing official authority for private gain and safeguarding the interests of public bodies and community at large | • It is an offence for a public servant, in Hong Kong or elsewhere and without permission of the public body, to solicit or accept an advantage in relation to his official duties.  
• Any person offering such an advantage also commits an offence of corruption. |
| Section 5  
Maintaining fair play in the procurement of contracts with public bodies | • It is an offence for a public servant, without permission of the public body, to solicit or accept an advantage for giving assistance in securing contracts from the public body.  
• Any person who offers such an advantage also commits an offence of corruption. |
(b) Provision governing the private sector

Doctors in private practice are required to observe Section 9 of the PBO.

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| Section 9  
Maintaining fair play in the private sector and upholding market integrity | • It is an offence for an agent to solicit or accept an advantage when conducting his principal's affairs or business without the permission of his principal.  
• Any person who offers such an advantage is also guilty of an offence.  
• It is an offence for an agent to use any false document, receipt or account to deceive his principal. |

Points to note

1. **Public body** - includes the government and the organizations scheduled in the Prevention of Bribery Ordinance. Hospital Authority is one of such organizations.

2. **Principal** - generally refers to an employer.

3. **Agent** - is a person acting for, or employed by, the principal.

4. **Advantage** - refers to anything that is of value such as money, gift, employment, service or favour etc., but does not include entertainment which is defined as food or drinks provided for immediate consumption on the occasion.

5. **Principal's permission** - It is lawful for an agent to accept an advantage in relation to his official duties with his principal's permission. Such permission must be sought before the advantage is solicited or accepted. If the advantage is accepted without prior permission, the agent must apply for his principal's retrospective approval as soon as possible. In private organizations, the principal's permission should best be in writing. However, in the public sector, permission of the public body must be in writing.
2.2 Standards of behaviour

The Medical Council of Hong Kong (MCHK) has laid down the Professional Code and Conduct that sets out the expected standards of behaviour of doctors in their clinical practice. At the same time, the Hospital Authority (HA) has also formulated a Code of Conduct to provide guidance on good professional practice for its staff members. Doctors, whether in public or private service, should be aware of the integrity standards required by these two Codes. Non-compliance with these standards may lead to disciplinary action taken by the two authorities.

2.2.1 MCHK’s Professional Code and Conduct

All registered doctors should comply with the following major conduct requirements specified in the Professional Code and Conduct. The relevant clauses are extracted at Appendix 2 for reference:

(a) Patient's privacy and confidentiality

A doctor should keep all medical records in safe custody. Moreover, he should not disclose a patient's medical information to a third party without the patient's prior consent.
(b) **Issue of medical certificates and professional documents**

A doctor should not issue untrue, misleading or improper certificates and documents. The signing of blank certificate is strictly prohibited.

(c) **Improper financial transactions**

A doctor should not accept any advantages from another doctor or organization for referring a patient for consultation or treatment. Offering advantages to another doctor for canvassing clientele is also prohibited. Moreover, a doctor should not share his fees with any other person other than the bona fide partners of that practice.

(d) **Relationship between doctors and organizations**

A doctor who recommends a patient to receive medical care in an organization should not accept advantages from that organization which might compromise the exercise of his independent professional judgement. If the doctor has a financial interest in the organization, he should also disclose such an interest to his patient before making the referral.

(e) **Relationship between doctors and the pharmaceutical and the allied industries**

A doctor when prescribing the drug or choosing to use the appliance for his patient should not accept any advantages from pharmaceutical and related companies that might compromise the exercise of his independent professional judgement. It is also improper for a doctor to accept monetary gifts, loans, equipment or other expensive items from a pharmaceutical company for his personal use.

(f) **Relationship with other practitioners**

A doctor should not receive any monetary advantages from another medical practitioner for referring a patient for diagnostic or therapeutic services. Moreover, referrals to medical specialists should be based on their individual competence and ability to perform the services needed by the patient.

2.2.2 **HA's Code of Conduct**

The Code of Conduct promulgated by the HA establishes a set of benchmark standards of ethical behaviour expected of its staff members. Doctors employed by the HA can access the document at [http://ha.home/hr](http://ha.home/hr). The major integrity standards are summarized below for ease of reference:
(a) Handling of proprietary information
The HA’s doctor has an obligation to protect the HA’s and his patients’ information, records and property from misuse or damage. He should not disclose any confidential information obtained in his official capacity to outsiders without prior permission of the HA.

(b) Acceptance of advantages
The HA’s doctor should not accept advantages, gifts or entertainment from any person in the course of his duty, or due to his official capacity which could or could be reasonably seen to compromise his official position in any way.

(c) Conflict of interest
The HA’s doctor should declare any actual or potential conflict of interest and abstain from engaging in situations that may lead to perceived bias in the business decision making process.

(d) Relations with suppliers and contractors
The HA’s doctor should procure goods and services based on the best value for money purchases in terms of price, quality, delivery time and service.

The Code of Conduct provides the guiding principles only. Doctors concerned should refer to the relevant sections of HA’s Human Resources Policies Manual and the Human Resources Administration Manual, and relevant circulars for detailed guidance.
Doctors may encounter various common legal and integrity issues in the pursuit of their profession. These can take the form of bribery, improper acceptance of sponsorship and donation, fraud, conflict of interest and mishandling of proprietary information.

The following scenarios, based on a mixture of past prosecutions and hypothetical cases, aim to illustrate how dishonest situations can develop, and how doctors can apply the professional codes of conduct in daily practice in order to avoid breaching the laws and regulations.

3.1 Offering and acceptance of illegal advantages

A doctor owes an obligation of fidelity to his patients and, at the same time, may have an undivided loyalty to the organization he is working for. The offering and acceptance of illegal advantages in the course of clinical practice can compromise the doctor’s professional judgement, erode patients’ trust and impair the interest of his employer. It is thus of great importance that we should comply with the legal and the conduct requirements governing corruption.

3.1.1 Case studies

Corruption in the procurement of medicine

Dr A is a medical consultant of the Medical Unit in a public hospital. His assessment of the effectiveness of medicine will have a strong bearing on the final selection of the drug for use in his department which would also mean major business for the supplier. On one occasion, Dr A attended an annual ball hosted by a pharmaceutical company on behalf of the hospital and came to know its CEO, Terry.

They then maintained close ties and Terry spent considerable sums of money entertaining Dr A by way of lunches and dinners. Lately, Terry called Dr A for dinner in a private club where he disclosed that his company had successfully developed a new antibiotic and requested for Dr A’s assistance in recommending the drug for use in his hospital. Terry suggested to offer shares of his company, each of a nominal value of US$1, to Dr A if he agreed to help. Dr A found this an attractive offer as he had been giving serious consideration to planning for his retirement due in five years’ time.
Chapter 3 Legal and Integrity Issues Faced by Medical Practitioners

Analysis

- In this case, Dr A is a public servant. He and Terry would violate Section 4 of the PBO\(^1\) if Dr A accepted an advantage from Terry in the form of company shares at nominal value for providing assistance in recommending the new drug to his hospital without the permission of the Hospital Authority (HA).

- Dr A might breach Section 16.1 of the Professional Code\(^2\) which prohibits doctors from accepting pecuniary inducement from commercial firms that might compromise the independent exercise of their professional judgement.

- Generally speaking, entertainment is an accepted form of social behaviour and does not constitute an advantage under the PBO. However, Dr A should avoid accepting frequent and excessive levels of entertainment because his objectivity in dealing with Terry would be affected or perceived by outsiders to be affected in view of their close relationship.

Scenario 2

Providing untrue statements in professional documents

Dr B is a psychiatrist in a public hospital. Very often, he is called upon by government prosecutors to examine defendants in court and the expert medical opinion he provided has always been respected. Dr B has a golfing partner, Mr CHEUNG who recently was accused of many charges of false accounting involving almost five million dollars and the case would come to trial. In the absence of knowledge about their relationship, the prosecution requested Dr B to provide expert medical opinion on Mr CHEUNG’s health condition in court.

Mr CHEUNG begged for the assistance of Dr B. Although Dr B knew that Mr CHEUNG’s mental condition was normal, he decided to help his friend out by testifying that Mr CHEUNG was suffering from a serious deterioration in his intellectual and memory functions. He would state that Mr CHEUNG was suffering from an onslaught of dementia which could only be proved conclusively after post mortem. In return, Mr CHEUNG presented a diamond ring worth $80,000 to Dr B’s wife as she was fond of jewellery as revealed by Dr B. Finally, the court accepted Dr B’s expert medical opinion and Mr CHEUNG was acquitted.

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\(^1\) Prevention of Bribery Ordinance

\(^2\) The Professional Code and Conduct issued by the Medical Council of Hong Kong (Nov. 2000)
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Analysis

- Dr B and Mr CHEUNG would breach Section 4 of the PBO as Dr B accepted an advantage i.e. a diamond ring from Mr CHEUNG for abusing his official position in providing a medical report containing untrue statements in favour of Mr CHEUNG. In addition, Dr B might also commit an offence of perverting the course of public justice for providing a false statement in court.

- Despite the fact that the diamond ring was presented to Dr B’s wife by Mr CHEUNG, Dr B would commit the offence of corruption because he had knowledge of the offer. Under the PBO, a person is considered to have accepted an advantage even though another person acting on his behalf receives the advantage.

- Moreover, Dr B might breach Section 3.1 of the Professional Code by giving the professional document containing untrue statements. He would render himself liable to disciplinary proceedings taken by the Medical Council of Hong Kong (MCHK).

Accepting rebates from diagnostic laboratories

Shortly after starting his private practice, Dr C was approached by Ms WONG, the proprietor of a medical laboratory and X-ray service, who requested for the referral of all his patients to her. Ms WONG suggested that an arrangement could be made for a sum to be offered to Dr C by the laboratory for each patient referred. She emphasized that it was in no way unfair to the patients since they had to do the tests somewhere in any case. She also said that a number of other doctors in the same building had already made such arrangement with her.

Prior to the referral of patients to Ms WONG’s laboratory, their agreement was brought to light by the nurse of Dr C’s clinic and the case was then reported to the ICAC.

Analysis

- A principal and agent relationship exists between Dr C and his patients. As such, Dr C would breach Section 9 of the PBO by accepting payments from Ms WONG for referring his patients to her laboratory if Dr C did not have the permission of his patients.
• Although Dr C and Ms WONG have not executed the “under-the-table” deal, they would still be liable to prosecution. Under the PBO, both parties can be found guilty of an offence when the agreement on solicitation and acceptance of advantages have been reached even though the purpose of bribery has not been carried out.

• Dr C might also violate Section 15.3 of the Professional Code which prohibits doctors from receiving rebates from diagnostic laboratories for referring patients.

3.1.2 Tips to handle issues of offering and acceptance of advantages

(a) Understand the law and the professional code of conduct

The best solution is to have full understanding of the PBO and the conduct requirements on integrity stipulated in the Professional Code and Conduct of the MCHK to avoid accepting advantages that will lead to loss of objectivity and honesty in the course of clinical practice.

(b) Follow the company policy

Whether we are employed by the government, the HA or private medical institutions, we should always seek guidance from the organization concerned in the matter of acceptance of advantages. The government and the HA have respectively formulated rules and regulations on this issue for their staff to follow. As in the private sector, we should clarify with our employer whether we can accept advantages from patients or business associates in the discharge of our official duties.

(c) Avoid the "sweetener"

Many ICAC cases reflect that corruption always begins with a "sweetening up" process instead of a direct bribe at the outset. It usually starts with the offering of entertainment or small gifts which appear not to be related to the recipient's official duties at the time of offer. Hence, the recipient would easily be trapped in an embarrassing or compromising situation when being asked to return a favour later on. Therefore, we should avoid accepting benefits or favours from persons with whom we have official dealings if the advantages are:

• unreasonably generous and offered frequently;
• likely to cause embarrassment in the discharge of our duties;
• likely to make us feel obliged to the offerer; and
• likely to bring us or our organization into disrepute.
3.2 Improper acceptance of sponsorship and donation

Sponsorships and donations can contribute towards the advancement of medicine and supplement patient care. However, they may also easily lead to actual or perceived conflict of interest situations if the issues are handled without prudence.

3.2.1 Case studies

Hidden agenda in sponsorship

Dr E is a consultant ophthalmologist in a public hospital who is often involved in the procurement of high value medical equipment for his department. The procurement department of the hospital will seek Dr E’s views while drafting the specifications and in the course of purchase. He has a strong influence on the final selection of supplier through his assessment on the performance of the equipment.

During the procurement of equipment for oculoplastics, Billy, the sales director of a potential supplier, earnestly asked Dr E to comment favourably on the equipment produced by his company. He proposed to pay for the passage and accommodation for Dr E to visit the company’s laboratory in New York and take the convenience to attend an important medical conference there. After the trip, Dr E recommended the hospital to offer the contract to Billy’s company.

Analysis

- Dr E would violate Section 4 of the PBO as he accepted an advantage i.e. the sponsorship for attending a conference without the permission of his employer and in return recommended the medical equipment of Billy’s company to the hospital. Billy would also commit an offence of corruption for offering the bribe to Dr E.

- Dr E might breach Section 16.1 of the Professional Code which specifies that doctors should avoid accepting pecuniary inducement from commercial firms that might compromise the independent exercise of their professional judgement.

- According to the “Guidelines on Acceptance of Donation and Sponsorship” issued by the HA, the commercial organization (sponsor) should not designate any specific candidate for attending the conference. On receipt of any such offer of sponsorship, the hospital should make the nomination and seek the prior written approval of the Hospital Chief Executive for accepting the sponsorship for attending the conference. In any case, it is inappropriate to accept sponsorship from the potential supplier for the overseas visit relating to the selection of medical equipment.
Conflict of interest in donations

Mr MA, a wealthy businessman, suffered from a sore throat for a prolonged period. Recently, his family doctor found out that there was a sign of cancer in his throat and advised him to receive treatment as soon as possible.

Mr MA is acquainted with Dr G, the Chief of Service of the Radiotherapy and Oncology Unit in a public hospital. Because of this connection, he was admitted to the hospital without having to wait. The treatment was well conducted and Mr MA recovered rapidly. Before being discharged from hospital, he proposed to donate a big sum of money to Dr G's Department for the benefits of his staff members. Dr G thought that he could maximize the benefit by setting up a welfare fund for subscribing medical journals, subsidizing part of the expenses for overseas visits and sponsoring staff functions in festive seasons. Eventually, he thanked Mr MA for his generous offer.

Analysis

- In hospitals under the HA, the acceptance of a donation for staff welfare without prior permission may violate the guidelines on acceptance of donation and sponsorship. It also requires that the donation should predominantly be for or of benefit to patient care.

- Moreover, a donation from a patient still under treatment should be declined as this involves an obvious conflict of interest situation. Under no circumstances should patients be given preferential treatment because of their connection with staff members of the hospital or the offer of a donation to the hospital. The reputation of the HA would be ruined if outsiders were to perceive that there is an exchange of advantages between the patient and the hospital in the provision of health care service.

- For medical schools in the universities, donations and sponsorships should mainly be for teaching and research activities, and under no circumstances should personal benefits be involved.

3.2.2 Tips to deal with sponsorships and donations

To guard against conflict of interest situations arising from improper acceptance of sponsorship and donation, medical practitioners should take into account the following principles:

(a) Value of the benefit must be commensurate with the purpose of sponsorship/donation;
(b) Due consideration must be given to the nature of the sponsor/donor's business and its relationship with the department/hospital;
(c) There should be no conditions attached to a donation or sponsorship that could affect the hospital's ability to carry out its activities fairly;
(d) The recipient of the sponsorship/donation must not be involved in any acquisition procedures or decision making processes which may affect the commercial interests of the offerer; and
(e) When the situation in (d) is unavoidable, the recipient concerned should make a declaration of interest to his department/hospital.

3.3 Fraud

Fraud is the process of obtaining financial advantages by deception and it often comes hand in hand with corruption. Fraud in clinical practice will not only bring devastating damage to the career of the doctor committing the crime but also to the reputation of the medical profession as a whole.

3.3.1 Case studies

**Fraud in procurement of medical equipment**

Dr M, the Chief of Service of the Paediatric Department of a public hospital, has the approving authority for purchases not exceeding $100,000. He has a girlfriend Phoebe who is a sales manageress of a large medical equipment company.

Recently, David, the Department Operations Manager, recommended a replacement of a small piece of equipment and the sourcing was in progress. As Dr M knew that Phoebe was subjected to pressure by her boss to secure more business for the company, he offered to help his girlfriend. After going through the quotations obtained by David, Dr M found that Phoebe's was not the lowest. He thus suggested to David that those quotations with lower price were marked up so that he could endorse the purchase of the medical equipment from Phoebe's company after manipulation of the quotations. In order to please Dr M, David agreed to the proposal.

**Analysis**

- Dr M would violate Section 9 (3) of the PBO for producing the false quotation breakdown to deceive his employer i.e. the HA. Besides, as David agreed to take part in the fictitious quotation plot with Dr M, he might also be charged with an offence of conspiracy.
Dr M might face disciplinary action taken by the MCHK and his fitness to practise might be questioned.

At the same time, the HA would also take follow-up action against Dr M who might breach the HA’s Code of Conduct\(^3\) which requires the procurement of goods to be the best value for money in terms of price, quality, delivery time and service.

**Scenario 2**

**Fraudulent insurance claims**

Dr J is practising in a private clinic. On one occasion, his friend Tony, an insurance agent, suggested to him a plan for earning quick money. The Personal Accident Insurance Policy (PAI) offered by his company would provide insurance compensation for an injury caused by an accident resulting in death, permanent or temporary disability to an insured. All claims under the PAI had to be supported by a form issued and signed by a registered doctor in Hong Kong. Tony knew many construction workers and, as a first step, he would suggest to them to buy PAI policies from him. These individuals would make claims later, even though they just suffered from minor injuries. What Dr J could help was to issue the medical attendant forms to support the claims and exaggerate the seriousness of the injuries, thus resulting in higher compensation payments. The "profit" could then be split among all parties.

**Analysis**

- Dr J, Tony and the construction workers would commit an offence of conspiracy to defraud by colluding in making bogus insurance claims to deceive Tony’s insurance company for personal gain.

- Dr J might violate Section 3.1 of the Professional Code for issuing untrue medical certificates.

- The scenario is developed from a real case uncovered in the 90s. The doctor involved was found guilty.

\(^3\) The Code of Conduct issued by the Hospital Authority (1997)
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False sick leave certificates

Dr N operates a clinic with many large corporate clients offering medical benefits to their employees. He is usually busiest on Mondays as many patients from these companies visit him on that day complaining about soreness in different parts of the body. It is obvious that after their escapades over the weekend, the "patients" actually do not like working on Mondays and want one day's sick leave.

Winnie, the secretary of one of the companies and a regular "patient" of Dr N, visited the clinic on a Monday morning. As usual, she brought imaginary ailments to Dr N to get a day off. Dr N suggested a "win-win deal" to Winnie that she did not really have to show up at his clinic. She could simply tell him her complaint over the phone. Without actually seeing or treating Winnie, Dr N could issue a certificate to certify that Winnie was unfit for work. He would then claim the consultation fee from Winnie's company. Dr N further asked Winnie to introduce the scheme to her colleagues. Being unaware of the plot, Winnie's company wasted a large amount of medical expenses.

Analysis

- Dr N would commit an offence of deception as he obtained by deceit consultation fees from Winnie's company by issuing false sick leave certificates to its staff without conducting any consultation or diagnosis. Moreover, Dr N and those staff joining in the scam would also commit an offence of conspiracy to defraud the company.

- Dr N might also violate Section 3.1 of the Professional Code which prohibits doctors from signing untrue certificates. The doctor would be subject to disciplinary action for failing to comply.

- Dr N not only puts his own career at stake but his misconduct will also undermine public confidence in the medical profession.

3.4 Conflict of interest

A conflict of interest situation arises when the personal interest of a doctor is in conflict with the interests of his patients or the organization he works for. It will lead to divided loyalty and, in its most serious form, can result in corruption. Whether the conflict of interest is actual or perceived, the consequences can be grave. The integrity of the doctor's professional judgement may be compromised, patients may suffer from severe harm and, the trust in the individual doctor and in the medical profession as a whole will be impaired.
3.4.1 Case studies

Professionalism vs Entrepreneurship

Dr Y is a geriatrician of a public hospital. Recently, he joined his friend to invest in an elderly home. He was confident that this was a profitable business as he anticipated that there would be a huge growth of clientele due to the increased subsidy for the elderly care service by the government. However, totally against his expectation, their elderly home faced keen competition. Apart from cutting lodging fees and improving the facilities, they were also trying hard to canvass customers from every possible source. Dr Y himself even made use of the opportunity to promote the elderly home to his patients’ family members. He agreed to give them a big discount if they sent their relatives to his elderly home after discharge from the hospital.

Analysis

- This is an apparent conflict of interest situation. Dr Y might breach Section 14.1.3 of the Professional Code which requires a doctor to take into consideration of the best medical interests of the patient when referring him to other institutions. If the doctor has a financial interest in that institution, he should disclose the interest before making the referral.

- Dr Y might also violate the HA's Code of Conduct which specifies that the HA's doctors should refrain from acquiring any investment that may lead to a conflict of interest situation. Doctors concerned are obliged to declare their own or their relation’s investments to the HA if they perceive that such investments would conflict with their official duties.

- In this case, family members seeking medical attention for their relatives can be particularly vulnerable to persuasive influence. If Dr Y promotes his elderly home in consideration solely of his own private interest, the trust placed on the doctor by patients and their family members would be undermined.
**Fee splitting with non-professionals**

Dr T is a plastic surgeon in private practice. He always goes to a fitness centre for exercise and gets to know the proprietor of a beauty parlour, Joanne. On one occasion, Joanne suggested to Dr T a partnership. She could recommend Dr T to her female customers who were perpetually dissatisfied with their looks and sought minor surgery. Dr T agreed to share part of the operation fees with Joanne for each successful referral. He thought that his income would not be seriously affected as he could charge patients higher operation fees.

**Analysis**

- *Dr T might contravene Section 15.2 of the Professional Code because fee splitting with persons other than the bona fide partners of that practice is not permitted.*

- *Dr T attempted to compensate his reduced profit by unreasonably increasing the operation fees. Such behaviour of placing personal interest above patients’ interest would undercut public confidence in the medical profession.*

**3.4.2 Tips to maintain objectivity at work**

At all times in the course of clinical practice, we should abstain from engaging in actions that may lead to actual or perceived conflicts of interest. If we suspect there is a conflict of interest, we should promptly declare it to the organization we are working for and, in some circumstances, to our patients as well. Such situations include:

(a) any private interest which may affect our judgement in the discharge of our official duties;

(b) any investment held by ourselves and our close relatives which may lead to conflict of interest situations; or

(c) any decision made which may ultimately prejudice the interests of other stakeholders such as patients and clients of our organization.
3.5 **Mishandling of proprietary information**

There is a strong tradition in the medical profession to respect confidentiality. Keeping medical information confidential helps to generate the trust of patients in medical practitioners. People are encouraged to confide to doctors sensitive issues relating to their illness for medical care.

### 3.5.1 Case studies

#### Disclosing medical information of celebrities

Dr P, an obstetrician of a renowned private hospital, is in charge of the fertility centre there. Clientele includes wives of tycoons and famous actresses. One day, Dr P received a telephone call from her best friend Amy who was a columnist for a tabloid. She told Dr P that she was writing a feature article on infertility and wanted to know the success rate of her clinic. She even made enquiries about a few celebrities rumoured to be infertile and their prognosis. She assured Dr P that she would not disclose the source of information. With the help of Dr P, Amy completed the feature article which eventually aroused much public interest. As a token of thanks, she treated Dr P to a lavish meal in a famous restaurant.

**Analysis**

- *Although Dr P would not violate Section 9 of the PBO as entertainment is not defined an advantage under the law, she had ruined the doctor-patient relationship by disclosing her patients' confidential information to outsiders.*

- *Dr P should be aware of the provisions of the Personal Data (Privacy) Ordinance which do not allow data users to use the personal data in contravention of the purpose of collection without the consent of data subjects.*

- *Dr P might breach Section 1.4.1 of the Professional Code that requires a doctor to obtain the patient's consent before disclosing medical information to a third party.*

#### Lax security in maintaining medical records

Dr K is a partner of a large medical centre. Computerized medical records are maintained to enhance efficiency in the storage and retrieval of patients' information. Every employee has access to the records as there is no password installed in the computer system.
Robert, a private detective, was entrusted by Mrs CHAN to keep surveillance on her husband who was suspected to have an affair with a woman. Discovering that Mr CHAN’s mistress paid frequent visits to Dr K recently, Robert tried to approach the clinic assistant Eva to seek assistance in accessing the relevant medical records. Robert agreed to offer Eva $2,000 as a reward. Subsequently, Eva passed to Robert a copy of the medical record of Mr CHAN’s mistress who had been confirmed pregnant. Eva accepted the money from Robert in return.

Analysis

- Eva would breach Section 9 of the PBO. It is unlikely that her employer would permit her to accept an advantage i.e. $2,000 for disclosing patients’ information to a third party. In addition, she might commit an offence of accessing the computer with criminal or dishonest intent, contrary to Section 161 of the Crimes Ordinance.

- Since Dr K and his partners failed to adopt security measures to protect patients’ information, they might have liabilities under the Personal Data (Privacy) Ordinance which requires that appropriate security measures have to be applied to personal data.

- Section 1.1.3 of the Professional Code also requires doctors to take every step to strengthen the control system to protect patients’ information from misuse.

3.5.2 How to draw the line in maintaining confidentiality?

Doctors may face a dilemma that they have a fiduciary duty to preserve patients' confidentiality but, at the same time, are obliged to expose information that would endanger public health. If we are in doubt of whether we should disclose our patients' information to a third party, we may ask ourselves the following questions to structure our decision making process:

(a) Is the potential harm to other parties serious e.g. contracting infectious diseases by our patient?
(b) Will the breach of confidentiality prevent harm to other people?
(c) Will the disclosure minimize the harm to the patient?
(d) Is there any alternative for warning or protecting those at risk?