MEDICAL COUNCIL OF MALAWI

REGULATIONS AND PENALTIES ON DISCIPLINARY PROCESSES FOR HEALTHCARE PRACTITIONERS AND FACILITIES

DECEMBER, 2024

Regulations Highlights Dashboard

Name	Regulations and Penalties on Disciplinary Processes for Healthcare Practitioners and Facilities
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Stakeholders to whom this Regulation apply	• The Council and its Committees • Medical Council of Malawi Secretariat • Registered Practitioners • Complainants • The General public • Witnesses • Health facilities • Universities and Colleges
Responsible Officers	• Registrar and Chief Executive Officer • Director of Regulatory Enforcement • Director of Finance and Administration
Responsible Office(s)	• Registrar and Chief Executive Officer
Responsible Committees	• Disciplinary Committee

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Foreword

The Medical Council of Malawi (MCM) has remained steadfast in its mission of safeguarding the health and welfare of the Malawian population by upholding professional standards and regulating medical, dental, and allied health professions. As we reflect on the significant growth in Malawi's health sector since MCM's establishment in 1987, it is evident that our responsibilities have expanded substantially. Alongside this growth has come a notable increase in complaints regarding healthcare delivery, necessitating a more robust framework for managing disciplinary processes.

The development of the **Regulations and Penalties on Disciplinary Processes for Healthcare Practitioners and Facilities** marks a pivotal step in addressing these challenges. These regulations and penalties are designed to ensure consistency, fairness, and transparency in the management of disciplinary cases. They also serve to standardise processes and provide clear frameworks for penalties, thereby promoting trust in MCM's role.

As the Council Chairperson, I am proud to endorse these regulations, which strengthens the MCM's regulatory mandate. I am confident that these regulations and penalties will enhance the integrity and efficiency of our disciplinary processes while reaffirming the MCM's commitment to upholding professional standards in Malawi's health sector.

On behalf of the Council, I extend my gratitude to all those who contributed to the development of this document and to the healthcare professionals who continue to dedicate themselves to the well-being of our nation. Together, we can ensure that MCM remains a cornerstone of trust and accountability in Malawi's health system.

Professor John E. Chisi
Council Chairperson

Preface

The Medical Council of Malawi (MCM) recognises its critical responsibility of upholding the standards of healthcare delivery in Malawi. Over the years, the Council has witnessed an increase in public complaints and disciplinary cases, reflecting both the growing complexity of the health sector and the need for continuous improvement in how these cases are managed.

These **Regulations and Penalties on Disciplinary Processes for Healthcare Practitioners and Facilities**, represents a milestone in the Council's efforts to enhance the fairness, transparency, and consistency of its disciplinary mechanisms. It provides standardised procedures and clearly defined penalties that aim to address inconsistencies, and build public trust in the Council's decision-making processes.

I would like to commend the teams involved in the development of this document for their dedication and expertise. Their efforts have resulted in a comprehensive framework that aligns with the Council's mandate and ensures accountability in every disciplinary action undertaken.

As the Chief Executive Officer, I am committed to ensuring that these regulations and penalties are implemented effectively and that all stakeholders understand their roles within its framework. The Council will also invest in capacity-building initiatives to equip its staff and committees with the tools and knowledge required to uphold these guidelines.

Together, we look forward to a strengthened regulatory framework that reflects the highest standards of professionalism, fairness, and accountability, and that ensures the MCM continues to serve as a trusted guardian of health in Malawi.

Dr Davie B.S Zolowere
Registrar and Chief Executive Officer

List of Abbreviations and Acronyms

CEO:	Chief Executive Officer
CEPC:	Code of Ethics and Professional Conduct
CPD:	Continuous Professional Development
DORE:	Director of Regulatory Enforcement
MCM:	Medical Council of Malawi
MoH:	Ministry of Health
MPD Act:	Medical Practitioners and Dentist Act
PMRA:	Pharmacy and Medicines Regulatory Authority
SOP:	Standard Operating Procedure
ToRs:	Terms of References

Definition of Terms

Abandonment: occurs when a healthcare provider terminates the provider-patient relationship unilaterally and inappropriately, leaving the patient without necessary care and without ensuring an alternative source of care. This act violates professional and ethical standards as it can place the patient at risk of harm.

Complainant: an individual who complains to MCM about health care.

Complaint: is an expression of dissatisfaction or concern made by a patient, their representative, or other stakeholders regarding the quality of care, services, behaviour, or outcomes provided by a healthcare professional, facility, or organisation.

Council: means the Council of the Medical Council of Malawi as appointed in line with the Medical Practitioners and Dentists Act section 4.

Co-opted Expert: in a disciplinary case is a qualified individual with specialised knowledge, skills, training, or experience in a particular field who provides impartial and professional opinions or testimony to assist an investigation team in understanding technical or complex matters related to the case.

Disciplinary Committee: is the Committee of the Council appointed as per section 46 of the Medical Practitioners and Dentists Act. The Committee is directly responsible for conducting hearing sessions concerning practitioners consistent with the Act.

Improper and disgraceful conduct: refers to actions, behaviours, or omissions by a healthcare professional that violate ethical, professional, or legal standards and bring dishonor or disrepute to the profession.

Incompetence: the inability or lack of capacity of a healthcare professional to perform their duties to the required standard due to inadequate knowledge, skills, judgment, or application of professional competencies. This deficiency can lead to substandard care, patient harm, or a failure to meet the expectations of the profession

Misconduct definition: refers to any improper, unethical, or unprofessional behaviour or actions by a healthcare professional that deviate from established standards, regulations, or ethical principles governing their practice.

Private Practice: is the provision of medical, dental, or allied health services by a practitioner or group of practitioners who operate their own independent healthcare business, or they are employed but utilise their free time to engage in practice elsewhere. These practitioners are typically self-employed or part of a privately owned entity, and they offer services directly to patients, often on a fee-for-service basis.

Secretariat: is the administrative or executive arm of MCM, responsible for managing its operations, coordinating activities, and ensuring the implementation of decisions.

Witness: is an individual who provides evidence or testimony about events, actions, or circumstances relevant to the case.

1.0 Introduction

1.1 The Mandate of Medical Council of Malawi

The Medical Council of Malawi (MCM) is a parastatal organisation established under the Medical Practitioners and Dentists (MPD) Act. Its mandate is to support the health of Malawi's population by regulating medical, dental, and allied health professions to safeguard public welfare and uphold professional standards. MCM's responsibilities include regulating health practitioners, accrediting health facilities, handling patient and public complaints, and overseeing both pre-service and in-service training for its registrable cadres, including internship regulation.

Since commencing operations in 1987, MCM has seen significant expansion. Initially managing a modest number of registrants, health facilities, and training institutions, MCM's scope has grown alongside the health sector. As a result, the volume of health practitioners and institutions under its oversight has substantially increased. Healthcare delivery has become increasingly complex and multidisciplinary, necessitating robust safeguarding frameworks for both the public and healthcare professionals. Regulating standards for quality patient care and ensuring the competency of diverse healthcare professionals, while maintaining safe environments for all, has become more critical than ever. Unfortunately, there has been a significant rise in health-care related complaints from the public that need to be addressed with the appropriately fair procedure and environ.

The growing number of complaints has led to an increased need for investigations and disciplinary hearings for practitioners. However, the absence of written standard operating procedures, rules and guidelines has often resulted in inconsistencies in handling disciplinary cases. Moreover, the lack of a guiding framework to define minimum and maximum penalties has led to disparities in the penalties and fines imposed for similar cases. This variation often stems from differences in the composition of committees, leading to inconsistent conclusions. Additionally, some complainants and practitioners have raised concerns about perceived favouritism in the management of their cases by MCM.

These challenges underscore the urgent need for the development of **Regulations and Penalties on Disciplinary Processes for Healthcare Practitioners and Facilities**. These guidelines aim to ensure consistency, fairness, and transparency in the disciplinary process. The Regulations and Penalties complement the MPD Act, the Code of Ethics and Professional Conduct (CEPC), as well as other applicable laws and regulations.

1.2 Regulations Rationale

The MCM plays a crucial role in safeguarding public health by regulating health practitioners and institutions; accrediting training facilities; and addressing complaints from the public. However, the increasing volume of complaints and the absence of documented standardised procedures and guidelines for disciplinary processes as well as non-compliance by practitioners and health facilities have led to inconsistencies and perceived unfairness in case management. Variability in penalties, coupled with allegations of favouritism, undermines public confidence in MCM's ability to uphold professional standards. These regulations seek to bridge these gaps by providing clear, standardised guidelines for disciplinary processes and penalties, thereby enhancing fairness, consistency, and transparency.

1.3 Citation and Application

This document shall be known and referred to as the Medical Council of Malawi **Regulations and Penalties on Disciplinary Processes for Healthcare Practitioners and Facilities**.

The scope encompasses all individuals and groups involved in the administration and oversight of MCM's Disciplinary processes. These include Council members, members of the Disciplinary Committee, MCM Staff and all registered practitioners who participate in the Disciplinary process. Additionally, these regulations apply to everyone who submits complaints to the MCM, their witnesses, and health facilities where the incidents may have occurred.

1.4 Regulations Goal

To establish and implement standardised operational guidelines, rules and procedures for disciplinary processes, and penalties for ensuring consistent, fair, and transparent management of complaints and disciplinary actions against health practitioners regulated by the MCM.

1.5 Regulations Objectives

i. **Standardisation:** Develop and enforce clear procedures for investigating and adjudicating disciplinary cases to eliminate inconsistencies.
ii. **Fairness:** Ensure equitable treatment of all complainants and practitioners through objective and unbiased disciplinary processes.
iii. **Transparency:** Increase accountability and public trust by providing clear guidelines on the minimum and maximum penalties for various offenses.
iv. **Efficiency:** Streamline disciplinary processes to effectively handle the growing number of complaints within reasonable timeframes.
v. **Capacity Building:** Enhance the capacity of the secretariat and disciplinary committees to make consistent and informed decisions through standardised tools and training.

1.6 Regulations Outcomes

i. **Consistent Case Management:** Uniform application of disciplinary procedures, resulting in predictable and fair outcomes for similar cases.
ii. **Increased Public Confidence:** Enhanced perception of fairness and impartiality in the MCM's handling of complaints.
iii. **Clear Penalty Framework:** Establishment of a well-defined range of penalties for offenses, reducing variability in sanctions imposed.
iv. **Enhanced Accountability:** Greater transparency in disciplinary processes, ensuring that all stakeholders understand the rationale behind decisions.
v. **Strengthened Regulatory Framework:** A robust system that supports the MCM's mandate to uphold professional standards and safeguard public welfare.
vi. **Behaviour change among practitioners:** The stringent penalties will deter potential offenders and help prevent future violations.

2.0 Legal Framework

The MCM is vested with the authority to initiate investigations, conduct hearings, and convene Council meetings to determine the culpability of practitioners. It may impose fines and penalties as necessary, based on the outcome of such proceedings.

Section 46 of the MPD Act establishes the framework for the creation of the Disciplinary Committee, outlining its composition and mandate. Furthermore, Section 47 of the Act delineates the specific functions and responsibilities of the Disciplinary Committee, ensuring clarity in its role within the disciplinary process.

Section 50 (1) states that whenever an allegation is brought to the attention of the Council, which may warrant an inquiry by the Disciplinary Committee, the Council may refer the matter to the Disciplinary Committee for examination. In such cases, the Registrar shall investigate and present the charges, in the prescribed format, against the registered individual accused of the alleged misconduct.

Section 51 (1) provides that, following a thorough inquiry, the Disciplinary Committee shall report its findings to the Council along with any recommendations it deems appropriate.

Section 51 (2) stipulates that after reviewing the findings and recommendations of the Disciplinary Committee, the Council, if satisfied, may take action against the registered individual. Specifically, if it is established that the individual:

(i) has engaged in improper or disgraceful conduct, or conduct that is deemed improper or disgraceful when considering their profession, and such conduct warrants the cancellation of their registration; or

(ii) is grossly incompetent or has performed professional duties in a grossly incompetent manner, the Council shall impose penalties. These may include directing the Registrar to cancel the registration of the individual and, if deemed appropriate, ordering the individual to reimburse the Council for any costs or expenses incurred during the inquiry.

3.0 Code of Conduct for members of the Disciplinary Committee

Members of the Disciplinary hearing committee must adhere to principles of professionalism, impartiality, and respect to ensure a fair process. Here are guidelines on how they should conduct themselves:

3.1. Maintain Impartiality

Avoid Bias: Members should approach the hearing with an open mind, free from preconceived notions about the case or any of the parties involved.

Declare Conflicts of Interest: If a member has any close personal or professional relationship that might compromise their objectivity, they should recuse themselves from the voting process. Merely knowing a practitioner, complainant or institution does not constitute a conflict of interest.

3.2. Prepare Thoroughly

Understand the Case: Review the pack, all evidence and relevant documents beforehand.

Know the Process: Familiarise themselves with MCM's disciplinary procedures and the legal framework.

3.3. Conduct the Hearing Professionally

a. During the Hearing

Be Punctual: Start the disciplinary hearing on time to respect everyone's schedule.

Set the Tone: The chairperson should explain the process and ensure all participants understand their roles and rights.

Allow Fair Participation:

i. Give both parties equal opportunities to present their case.
ii. Remain impartial, avoiding any favouritism in tone or words, and protect the rights of all individuals to present their side.
iii. Avoid interrupting unless if it is necessary for clarification.
iv. Ensure that complainants, practitioners, and witnesses are treated with respect and are not intimidated.
v. Refrain from using demeaning or humorous names for any of the complainants, practitioners or their witnesses.

b. Communication

Listen Actively: Pay full attention to the arguments and evidence presented.

Ask Clarifying Questions: Seek clarification when necessary, but avoid aggressive or leading questions.

Remain Calm: Maintain composure and refrain from showing frustration or impatience, even during heated discussions.

3.4. Respect Confidentiality

i. Keep all discussions, evidence, and decisions strictly confidential.
ii. Do not disclose any information about the hearing to unauthorised persons.

3.5. Avoid Personal Judgment

i. Focus solely on the facts and evidence presented, not on personal opinions or assumptions.
ii. Refrain from making comments or decisions based on irrelevant factors such as the practitioner's past unrelated behaviour.

3.6. Ensure Fairness

Consistency: Treat all parties with equal respect and apply the rules uniformly.

Non-Discriminatory Behavior: Avoid language or actions that could be perceived as discriminatory or inflammatory.

3.7. Decision-Making

Collaborative Deliberation: Engage in constructive discussions with other panel members while reaching a decision.

Evidence-Based: Base the decision solely on the evidence presented, not on speculation or emotions.

Proportionality: Ensure the outcome is fair, reasonable, and aligns with the MPD Act, the CEPC, other MCM guiding documents, precedent and the laws of Malawi.

3.8. Post-Hearing Conduct

Document Accurately: Secretariat should ensure the hearing's minutes are accurate and impartial.

Respect Appeals: If an appeal is lodged, support a fair and transparent review process.

4.0 Procedure for handling complaints and conducting disciplinary hearings by the Council Disciplinary Committee

Ensuring fairness in disciplinary hearings requires adherence to the principles of natural justice and clear procedural guidelines. Below is a step-by-step guide to addressing complaints from the public and conducting disciplinary hearings at MCM:

4.1. Preliminary Steps

The Registrar receives complaints through various channels, including verbal reports (e.g., phone calls), walk-ins to the MCM premises, or written submissions. In cases where a verbal complaint is made and the complainant is unable to provide a written account, the complaint is documented on their behalf. Complaints should include all relevant details, such as a description of the issue, the events that occurred, the name of the health facility involved, the identities of the implicated practitioners, and any healthcare records in the complainant's possession.

Some sources of the complaints at MCM are:

i. Patients, clients, or their guardians.

ii. Institutions representing aggrieved patients: Human Rights Commission, Ombudsman, Human Rights Organisation, Anti-Corruption Bureau, the Legal Aid Bureau, and Legal Firms.

iii. Employers.

iv. Colleges and Universities.

v. The Media- Radios, Televisions, Newspapers.

vi. From a concerned practitioner.

4.2. Investigate the Matter

i. The matter shall undergo a screening process to determine if the practitioner is registered, and to establish whether the complainant has provided comprehensive details relating to the allegations.
ii. When the complaint is received, MCM will acknowledge receiving the complaint from the complainant immediately.
iii. Then the complaint is registered against the name of the practitioner and referred for further processing depending on the transgression.
iv. MCM will endeavour to commence the investigation within six months from the date of receiving the complaint.
v. A notice, along with the complaint, will be sent to the practitioner, requesting a response to the allegations as part of the investigation process.
vi. At a minimum, the investigation team should include a practitioner who meets or exceeds the qualifications and competencies of the practitioner being investigated. (**See Appendix 1** on selection of expert witnesses). Should the practitioner being investigated identify a reasonable conflict of interest against the selected expert witness, they must inform the Registrar to arrange for a change of the independent practitioner.
vii. The Secretariat conducts a thorough investigation to gather facts and evidence. The investigators ensure the investigation is unbiased and includes input from all relevant parties.
viii. The investigation team interviews the complainant and their witnesses, all involved practitioners and their witnesses, hospital management where applicable, and reviews the patient's records.
ix. Cases that do not clearly fall within the mandate of MCM should be referred relevant regulator or institution. These may include human resource issues, labour issues or cases that involve other regulators.

4.3. Decide on Next Actions

i. The final investigation report shall be submitted to the Registrar for review and further processing.
ii. The Registrar reviews the investigation findings to determine if a disciplinary hearing is warranted. This ensures the disciplinary issue aligns with the MPDA Act, the CEPC, and other relevant healthcare laws.

4.4. Notifying all the relevant stakeholders

Practitioner and the Institution

Provide at least two weeks' written notice, signed by the Registrar and CEO as stipulated in the MPD Act, to all practitioners and institution management complained of.

The notice should include:

a. The specific allegations or charges.

b. The date, time, and venue of the hearing.
c. A copy of the investigation report.
d. The right to representation (union representative, lawyer, or colleague).

The Complainant:

Provide at least two weeks' written notice, signed by the Registrar as stipulated in the MPD Act.

The notice should include:

a. The date, time, and venue of the hearing.
b. The right to representation (union representative, lawyer, or colleague).

Disciplinary Committee:

i. The Committee shall consist of permanent members and co-opted members.
ii. At least one co-opted member should be an expert with expertise relevant to the category of the complaint being addressed. For instance, in cases involving laboratory practice, a Laboratory Practitioner.
iii. MCM will endeavour to identify at least one co-opted member (expert) who meets or exceeds the qualifications and competencies of the practitioner being heard.
iv. Provide at least two weeks' written notice along with a committee pack. The Committee pack should include:
    a. Specific allegations or charges against each practitioner.
    b. The date, time, and venue of the disciplinary hearing.
    c. A copy of the investigation report which apart from the report includes:
        i. Complainant letter
        ii. The accused practitioner's response to the complaint.
        iii. Copy of the case notes
        iv. Any other relevant documents
    d. Terms and reference and Code of Conduct for the disciplinary hearing, particularly if a member is attending for the first time.

4.5. Preparation for the Hearing

i. The Secretariat shall ensure that all evidence is organised well, and that it is accessible.
ii. The Secretariat shall take all reasonable measures to avoid any conflicts of interest concerning co-opted members hearing the case.
iii. The Secretariat shall contact all complainants and practitioners to confirm their attendance at the Disciplinary hearing.

4.6. Conducting the Disciplinary Hearing

i. Administration of the Oath of Secrecy to Co-Opted Disciplinary Committee members.
ii. The members present shall declare conflict of interest before commencing the case.
iii. The complainant, practitioners and their witnesses are invited into the Disciplinary hearing.
iv. Opening Remarks
    a. The Chairperson welcomes the complainants, practitioner, their witnesses, and any

accompanying individuals.

b. The Chairperson facilitates introductions.
c. The Chairperson explains the purpose and format of the hearing
d. Confirm the complainant and practitioner understands their rights.
e. Inform the complainant of their right to:
    - Present their allegations and concerns.
    - Present their evidence and witnesses.
    - Seek clarification from the practitioner or institution
f. Inform the practitioners of their right to:
    - Respond to the allegations.
    - Seek clarification from the complainant and witnesses.
    - Present their evidence and witnesses.

v. **The Complainant** takes an oath.

vi. **The Complainant** presents their complaint and evidence to the Disciplinary Committee, including their expectations. The complainant witnesses also present their evidence. This is followed by the practitioner or their representative seeking clarification from the complainant. Finally, the Disciplinary Committee cross-examines the complainant to seek clarifications and explanations.

vii. **The Practitioner** takes an oath.

viii. The charge is read out to **the practitioner.**

ix. **The Practitioner** and or institution representative presents their response and evidence to the Disciplinary Committee. Their witnesses also present their evidence. This is followed by the complainant or their representative seeking clarification from the practitioner/institution. Finally, the Disciplinary Committee cross-examines the practitioner/ institution to seek clarifications and explanations.

x. **The Chairperson** asks the complainant, practitioner and or the institution for any last submissions.

xi. **The Chairperson** thanks both the Complainant and the practitioner and/or the institution for attending the hearing and informs them that the findings of the Committee will be presented to the Council for final decision making. The findings will be communicated to both parties in writing within three months of the Council concluding the matter.

xii. The Complainant and the practitioner and/or the institution leaves the hearing room.

xiii. Decision-Making Process by the Committee

The Committee in private, without the presence of the complainant, the practitioner, or institution representatives shall:

a. Review all evidence impartially.
b. Consider both mitigating and aggravating factors.
c. Ensures that the decision is proportionate to the issues and circumstances involved with reference to section 5 below. The decision must be consistent with the MPD Act, the CEPC and precedence.
d. Make decisions by voting, where every member, including co-opted members, have one vote. In the event of a tie, the Chairperson or presiding officer shall have a casting

vote in addition to their deliberative vote.

xiv. The Registrar, with support from other secretariat staff, documents the charges, findings, determinations and any decisions regarding penalties, including detailed reasons for these decisions in detail.

4.7. Presentation of Committee findings and decision to the Council

The findings of the Disciplinary Committee are presented to the Council for final decision making.

4.8. Communication of the outcome

i. The Registrar communicates the final outcome to both parties and all other relevant parties in writing within three months of Council concluding the matter. The communication includes:
   a. The allegations
   b. The charge
   c. Council findings
   d. Council determination
   e. The outcome (warning, or other disciplinary action consistent with the Act), and any penalties or corrective actions.
   f. The right to appeal and the procedure to follow.

ii. MCM publishes guilty findings and cases that have implications for practice to the public. This is in accordance with Section 53 of the MPD Act, which empowers MCM to publish the results of the disciplinary proceedings.

4.9. Post-Hearing Process

The Secretariat and all relevant parties implement the Council's decision.

5.0 List of possible disciplinary offences and their penalties

The outcome of a disciplinary case is determined by the severity of the offense. In some instances, the complaint may be dismissed by the Council. However, if the complaint is substantiated, various sanctions can be imposed on the practitioner. These may include a reprimand, warning, or caution.

Depending on the gravity of the misconduct, the practitioner could be suspended from the register for a specified period, required to pay a fine or the costs of the disciplinary proceedings, or, in severe cases, deregistered permanently or erased from the register indefinitely. Additionally, the complaint may be referred to other relevant institutions, such as the practitioner's employer or other health regulatory bodies. In certain cases, the practitioner may also be directed to undergo remedial attachment at an approved health facility to address identified gaps in their practice.

Table 1, summarises the possible disciplinary offences and their minimum and potential maximum penalties in line with the MPD Act.

Table 1: Disciplinary Offenses and their penalties

No	Offense	Minimum penalties and fines	Maximum penalties and fines
1	Defacing an MCM certificate	Fine and refer for criminal prosecution	
2	Practicing without registration	Fine and refer for criminal prosecution	
3	Impersonating a registered person	Fine and refer for criminal prosecution	
4	Registered person using unregistered title or qualification that is not theirs	Fine and Warning	Suspension maximum 4 years, refer for criminal prosecution
5	Practicing without a license	Fine, Warning	Suspension from private practice for a maximum of 5 years.
6	Providing false evidence to the MCM disciplinary committee	Fine and Warning	Suspension for maximum 1 year
7	Issuing fake or false medical reports, or internship reports	Suspension for 1 year, Fine	Erasure
8	Failure to appear before MCM as witness or to produce any book, document or other article of evidence in disciplinary proceedings	Fine	Suspension for 6 months
9	Improper and or disgraceful conduct, Abuse of drugs e.g. Alcohol, Opioids, Rude behaviour towards patients, e.g. shouting, swearing at patients, Physically assaulting patients or other practitioners, Engaging in unacceptable relationships with patients including sexually abusing patients or clients.	Fine and Warning, Suspension for a maximum of 4 years, CPD presentation on Ethics	De-registration, Erasure, Pay fine 30-100% of the investigation cost
10	Obstructing an officer performing MCM duties	Fine, Warning	Suspension from practice for a maximum 4 years, De-registration
11	Operating an unregistered health facility, outreach or medical camp	Fine	Fine, Closure
12	Treatment of patients without written informed consent or assent as outlined in the CEPC	Warning, CPD presentation on Ethics, Fine	Suspension for a maximum period of 4 years, De-registration, Withdrawal of license, Pay 30-100% of the investigation cost and/or disciplinary hearing cost
13	Incompetence in management of patients, including conducting a procedure incompetently or negligently	Re-orientation, or repeated internship, CPD presentation, Restriction in practice, Warning	Suspension for a maximum of 4 years, De-registration, Closure of Facility

No	Offense	Minimum penalties and fines	Maximum penalties and fines
14	Sharing patient information without informed consent (includes on social media).	Warning, CPD presentation, Counselling	Suspension for a maximum of 4 years, Fine-pay 30-100% of the investigation cost
15	Illegally charging for services meant to be free, practitioner giving or receiving kickbacks from patients.	Suspension for a maximum of 4 years, Pay 30-100% of the investigation cost	De-registration, Erasure, Pay 30-100% of the investigation cost
16	Criminal conviction.	Suspension for a maximum of 4 years	De-registration
17	Practicing beyond the scope of practice, Performing procedures beyond the level of the facility	Suspension for a maximum of 4 years, Fine	Closure, De-registration, Fine
18	Failing to refer patients to another practitioner or facility risking the patient to harm	Suspension for a maximum of 4 years,	Closure, De-registration, Erasure, Pay 30-100% of the investigation cost and/ or disciplinary hearing cost
19	Abandonment of a patient resulting in harm	Suspension for a maximum of 4 years , Pay 30-100% of the investigation cost and or disciplinary hearing cost	Erasure, Withdrawal of license, Pay 30-100% of the investigation cost and/ or disciplinary hearing cost.
20	Performing a procedure without supervision resulting in harm	Warning, Counselling, Fine	Suspension for a maximum of 4 years.
21	Failing to perform oversight functions towards other practitioners or students	Warning, Suspension for a maximum of 4 years, Fine- pay 30 - 100% of cost of the investigation.	De-registration, Fine-pay 30 - 100% of cost of the investigation
22	Delegating clinical functions to non-medicals	Fine-pay 30 - 100% of cost of the investigation, Suspension for a maximum of 4 years	De-registration, Erasure
23	Institutional medical negligence	Warning, pay fine 30-100% of investigation and or hearing cost	Closure of the facility
24	Altering, falsifying, hiding or destroying patient notes	Warning, CPD presentation, Fine, 30 to 100% of cost of investigation	Suspension for a maximum of 4 years,
25	Failure to adhere to standard operating procedures, policies and guidelines	Warning, CPD presentation, Fine.	Suspension for a maximum of 4 years, Pay 30 to 100% of investigation and or hearing cost
26	Prescribing high doses of medicines, administration of wrong drugs resulting in patient harm.	Warning, CPD presentation, pay fine 30-100% of investigation and or hearing costs	Suspension for a maximum of 4 years, Deregistration
27	Violation of privacy and confidentiality rights	Warning, CPD presentation, Fine	Suspension for a maximum of 4 years, Pay 30 to 100% of investigation and or hearing cost

No	Offense	Minimum penalties and fines	Maximum penalties and fines
28	Withholding services contributing to complications	Suspension for a maximum of 4 years, Warning, Fine	De-registration

The actual value of imposed fines shall be determined using the Fines and Conversions Act.

Cases with a criminal element shall be referred to the police for criminal investigation and prosecution.

Additionally, practitioners identified to have failed to meet the expectations of the profession due to illness will be referred for treatment. MCM shall require a medical report from the attending practitioner.

6.0 Implementation Arrangements

The document has identified various stakeholders who have crucial roles in processing complaints and conducting disciplinary hearings. Their respective roles shall be as follows:

6.1 Registrar and Chief Executive Officer

The Registrar and CEO is responsible for providing overall leadership in the implementation of these Regulations and Penalties. Specifically, the Registrar shall:

i. Lead all secretariat responsibilities in the implementation of these Regulations and Penalties.

ii. Receive complaints from the public.

iii. Appointing investigators and institute investigations for reported complaints.

iv. Review reports from the investigating team.

v. Serve as the Secretary to the Disciplinary Committee and Council.

vi. Publish outcomes of the conclusions for concluded cases, consistent with the MPD Act.

vii. Ensure timely notices are issued (at least two weeks in advance) for disciplinary hearings to the complainants, practitioners and committee members; Appoint investigators and experts as outlined in Appendix 1;

viii. Appoint appropriate co-opted members to the disciplinary committee.

ix. Safely store investigation reports while waiting for hearings.

x. Manage a database of complaints to track cases from receipt of the complaint to determination of conclusion.

xi. Present the Disciplinary Committee report to the Council for consideration.

xii. Monitor implementation of the disciplinary actions imposed by the Council against other stakeholders.

xiii. Receive and process appeals from complainants and practitioners from the high court.

xiv. Perform any other duties as delegated by the Disciplinary Committee and Council consistent with the MPD Act.

xv. Analyse the Council completed cases to inform regulations review.

6.2 The Disciplinary Committee

The specific roles and responsibilities of the Disciplinary Committee shall be as follows:

i. Attend the Disciplinary Committee hearing meetings.

ii. Receive and review committee packs and investigation reports before hearings.

iii. Actively participate and vote in proceedings of the Disciplinary hearing meetings.

iv. Adhere to the procedures and Code of Conduct of Disciplinary Committee meetings.

v. Be knowledgeable about the MPD Act

6.3 The Council

The Council shall be responsible for policy direction on issues related to the administration of disciplinary processes. The specific roles and responsibilities of Council members shall be as follows:

i. Attend Council meetings.

ii. Appoint the Registrar and CEO, management of the MCM, and permanent members of the Disciplinary Committee. The permanent members of the Disciplinary Committee shall be appointed for three consecutive years. The term of office shall correspond to the duration of the Council appointment.

iii. Review and approve findings and determinations of the Disciplinary Committee for further processing by the Secretariat.

iv. Approve Policies and Procedures of the Disciplinary Committee consistent with the MPD Act.

6.4 Practitioners

The specific roles and responsibilities of practitioners shall be as follows:

i. Familiarise themselves with the MPD Act, CEPC and other relevant regulations and rules.

ii. Submit adequate and all relevant and complete documents in support of their defence; See Appendix 4.

iii. Inform the Registrar and CEO in writing on any reservations with the team conducting the investigations prior to the investigation being conducted.

iv. Provide honest and complete details to the investigation team.

v. Report to the Registrar and CEO at the earliest possible moment before the start of the scheduled hearing, if unable to attend due to sudden illness or other sufficient cause. Failure to present at a hearing without a valid and acceptable reason may result in MCM deciding the case in absentia.

vi. Attend the disciplinary hearing session.

vii. Feel free to seek clarification from the complainant and their witnesses.

viii. Provide contact details through which they can be contacted.

ix. Lodge an appeal at the high court as indicated in the MPD Act if not satisfied with MCM's determination.

6.5 Complainants

The specific roles and responsibilities of complainants shall be as follows:

i. Submit adequate and all relevant and complete documents in support of their complaint.

ii. Provide honest and complete details to the investigation team, as follows:

   a. Full particulars and contact details of the complainant.

   b. Detailed complaint (if possible stating dates as well as the witnesses to the case).

   c. Names of the allegedly accused should be mentioned specifying what they did.

   d. Location where the incident occurred.

   e. Expectation of the complainant.

   f. Indicate where else the complaint has been reported or is being addressed.

iii. Report to the Registrar and CEO, at the earliest possible moment before the start of the scheduled hearing if unable to attend due to sudden illness or other sufficient cause. Failure to be present at a hearing without a valid and acceptable reason will result in MCM dismissing the complaint after two invitations.

iv. Attend the disciplinary hearing session.

v. Provide contact details through which they can be contacted.

vi. Lodge an appeal at the high court as indicated in the MPD Act if not satisfied with MCM determination.

7.0 Monitoring and Evaluation

7.1 Monitoring

Monitoring ensures that the Regulations are effectively implemented and remain aligned with the MCM's objectives. The Registrar and CEO shall have an overall responsibility for monitoring the implementation of these regulations by:

i. Collecting data for monitoring and evaluation of necessary processes.

ii. Periodically convening meetings to monitor and evaluate the effectiveness of the Regulations.

iii. Gathering feedback from various stakeholders to assess their satisfaction with the MCM's disciplinary process.

7.2 Regulations Evaluation

The Registrar and CEO shall arrange for an evaluation every three years to assess whether and to what extent the Regulations and Penalties have succeeded in making the intended impact.

7.3 Regulations Review

The Regulations shall be reviewed after three years or sooner if significant changes have been observed that necessitate improvement. MCM has the right not to review the regulations if no significant changes are observed after three years.

8.0 List of Appendices

Appendix 1: Selection of expert witnesses

The following issues shall be considered when selecting expert witnesses.

i. Use of expert witnesses is critical to ensure fairness in investigation.

ii. The expert witness should have specialised knowledge in the field under investigation.

iii. Expert witness should, as a minimum, have the same level of qualifications and competency or be above the practitioner being investigated. A practitioner with less qualifications and competency should not be an expert witness for their seniors.

iv. The investigation reports should be countersigned by both the expert witness and MCM employee.

v. More information is in the technical experts ToRs Appendix 2 below

Appendix 2: Roles of Technical Expert Investigators

Investigators are responsible for the investigation of complaints. To fulfil this role, investigators shall:

i. Fact-Finding and Evidence Collection

a. Gather relevant facts, data, and physical or digital evidence to establish the facts.
b. Conduct interviews with complainants, accused individuals as well as their witnesses, where applicable, or other relevant subjects involved in the investigation respectively.
c. Collect documents, records, or other materials pertinent to the case.

ii. Analysis and Evaluation

a. Analyse evidence to identify patterns, discrepancies, or links between findings.
b. Evaluate the reliability and credibility of witnesses, statements, and sources.
c. Use tools and techniques to verify the authenticity of collected evidence.
d. Examine clinical or procedural irregularities in healthcare.

iii. Documentation

a. Maintain detailed records of all investigation steps, including interviews, observations, and collected materials.
b. Write comprehensive reports summarising findings, methodologies, and conclusions. These reports shall adhere to the reporting format outlined in Appendix 3.

c. Ensure proper documentation to maintain the chain of custody for evidence.

iv. Compliance with Rules and Regulations

a. Adhere to applicable laws, policies, and ethical standards during the investigation.
b. Protect the confidentiality and rights of all parties involved.

v. Problem-Solving and Decision-Making

a. Identify the root cause of issues or disputes under investigation.
b. Recommend corrective actions or resolutions to prevent recurrence of the problem.

vi. Risk Management

a. Assess risks and anticipate challenges that may arise during the investigation.
b. Implement strategies to mitigate risks, ensuring the integrity and security of the investigation process.

vii. Declare potential conflict of interest

viii. Submit findings

a. Provide recommendations or insights based on investigation outcomes.
b. Submit findings to the Registrar and Chief Executive Officer

Appendix 3: Terms of Reference for Technical Expert Investigators in Disciplinary Processes for Medical Council of Malawi

The Expert medical, dental and allied health witness shall adhere to the following Terms of References (ToRs):

i. They should submit current Curriculum Vitae - *Optional*

ii. They shall be registered and in Good Standing with MCM.

iii. They shall limit the investigations on the alleged medical negligence/unprofessional conduct that may have contributed to harm and/or death.

iv. They should be engaged in the same field of practice as the Practitioner being investigated. The practitioner will be endorsed by the Director of Regulatory Enforcement (DORE) and approved by the Registrar and CEO.

v. They should, as a minimum, have the same level of qualifications, or be above the practitioner being investigated. A practitioner with lower qualifications should not be an expert witness for their seniors, unless where there is no option.

vi. The choice of technical experts should take into consideration costs, practicality and availability. The names should be included in the request for vetting by management to ensure the standards as per this ToR have been met.

vii. They should be in active practice.

viii. Ensure confidentiality, all information related to cases must be strictly confidential.

ix. Limit contact: Should not contact anyone under investigation after or before investigations, as all communications should be through the Secretariat.

x. The final reports for the investigation shall be submitted within two weeks from date of last interview.

xi. The technical experts shall rely on the standard of care in place at the time the service was rendered. The standard of care can be identified from practical expertise, clinical policies and guidelines, as well as literature.

xii. Use the standard of care principle "what a reasonably competent and prudent practitioner under similar circumstances would have done".

xiii. Experts must review the case material and medical records with sufficient care and diligence to be able to confidently defend the report under Oath during Disciplinary Hearing or Public Hearing if required.

vi. Experts' role is to investigate, review the interview reports, medical records and materials, and determine if there was a departure from the standard of care and ethical standards.

vii. Practitioners under investigation shall have an option of submitting written and signed report to form part of the main report. As an alternative, the MCM personnel may write a summary report of events as stated by the interviewee in ink on behalf of the individual, and the practitioner sign for it to acclaim ownership. This should be amalgamated as part of the report.

viii. Timeliness of submitting the report is within the two weeks of the last interview.

xiv. The investigation report shall follow the MCM standard outline for investigation. As a minimum, it shall contain:

a. the details of the complainant, medical practitioners under investigation.

b. the specific summary of the care at issue of the case.

c. explanation of what the standard of care was, in the case, at the time the case was provided.

d. explanation of whether the case was below or within the expected standard of care.

e. the technical expert is encouraged to include a technical opinion about the case.

f. recommendations to be submitted to the Disciplinary Committee.

Appendix 4: Sections of the investigation report

Investigation report sections

The investigation report as a minimum shall have the following sections:

i. Introduction

a. Summarise MCM mandate

b. Provide background to the investigation

c. Summarise the complaint or problem.

d. Clearly indicate who was (were) being complained against.

ii. Purpose

a. Outline what the investigation set out to establish

iii. Methodology

a. Explain methods used to conduct the investigation (e.g. interviewing key informants, review supporting document).

b. Comment on materials used- recorders, health care records etc.

c. Summarise the qualification, credentials and competence of the expert witness.

d. Indicate the key documents referred to.

iv. Findings

a. Provide details of the interviews.

b. This should include summaries of demographic details for each interviewed key informant.

c. Include own signed submissions by practitioner or signed summaries by the practitioner where the practitioner opts to submit own written statement in addition to the narrative by the team.

v. Discussion of findings

a. Summarise what the investigation set out to find.

b. Summarise key findings in relation to what the investigation set out to do.

c. Compare what standard practice versus what was provided by the accused practitioner/institution as per the summary.

d. This section should give a glimpse of whether what was done is in keeping with standard or good clinical practice.

e. Expert witnesses should give critical input in this section.

vi. Conclusions

a. The investigators give professional/personal opinion to the case under investigation.

b. Indicate the sections of the MPD Act and the CEPC that may have been breached.

vii. Recommendations

a. Make recommendations.

b. Management after going through the report may make additional recommendations to the Committee.

viii. References

a. Indicate reference documents here.

ix. Appendices.

a. Place all relevant client notes and or pictures.

b. Label the appendices as referenced to in the investigation report.

Appendix 5: Additional information

i. Personal details of the practitioner (s) against whom a complaint has been lodged

- Name
- Age (Date of birth)
- Gender
- Address
- Phone Number
- Email
- Religion
- Qualifications
- The Institution where the practitioner was trained
- Year qualification obtained
- Continuous Professional Development (CPD) Status (points accumulated)
- Name of Employer
- Identity No. (Passport/Driving licence/ Birth certificate etc.)
- MCM registration status of practitioner
- Designation

ii. Institutional details

- Head of Institution
- Name of facility (clinic/hospital/university etc.)
- Address
- Phone
- Email
- Location
- Owner (Contact details):
- Category of health institution
- Premises Licence

iii. Details of the complaint

- Name of the client/patient whom the case involves
- Age (Date of Birth)
- Gender (F/M)
- Weight (in case of child)
- Relationship of the person giving the information to the concerned patient
- Address
- Phone No, and phone of next of Kin.
- Email
- Narration of what happened
    - ✓ Why did they complain?
    - ✓ Detailed explanation of what happened
    - ✓ History
    - ✓ Physical examination findings (extract from case file)
    - ✓ Diagnosis
    - ✓ Investigations done and results
    - ✓ Management of case
    - ✓ Follow up notes if any
- Oral Interviews with any witnesses and other relevant stakeholders
- Autopsy report (verbal or post-mortem) if available or current status of patient/client

iv. Case analysis (provide narrative of case)

- Comment on standard operating procedures (treatment protocols observed, investigations, referral and consultations, follow ups, and counselling done etc.)
- Practitioner's eligibility and competency to practice.
- Evaluate whether the condition was within the scope of practice of the practitioner.

v. Collection of relevant documents

- Take photocopies or scans of original documents
- Attach all relevant documents /information collected during the investigation.

Some Sources of information

- Code of Ethics and Professional Conduct
- Medical Practitioners and Dentists Act and Regulations

- Standard Treatment Guidelines
- The Malawi National Drug Formulary
- Other relevant laws and Acts (PMRA Act etc.)
- Patients Charter
- Ministry of Health (MoH) Clinical Guidelines, Policies and Strategic Plans
- Relevant Published literature.

vi. Critical skills required for the investigators and technical experts

- Investigative skills
- Report writing skills
- Human rights skills
- Rights of patients and responsibilities
- Ethics