

## Selected Updates on Hong Kong Health Law in 2021

Date: 22 February 2022



Prepared by Ms Jane Or (LLB) for the Webinar on “Annual Review of Hong Kong Health Law in 2021”, organised by the Centre for Medical Ethics and Law of The University of Hong Kong on 23 February 2022 (Wed) at 6:30 pm (HKT)

No.	Update	Link(s)
1	<p><b>Expert evidence for medical negligence:</b> <i>SUN MING LOK v CHOY WING HO AND ST TERESA’S HOSPITAL</i> [2021] HKCFI 852</p> <p>Extracts from decision:</p> <p>“85. ... the <i>Bolam</i> standard of reasonable care and skill is established by reference to the general practice of the relevant specialty of the responsible clinician, who is not guilty of negligence if he has acted in accordance with a practice accepted as proper by “a responsible body of medical men” “skilled in that particular art”. So if the responsible clinician is a paediatrician, whether his acts/omissions are acceptable or unacceptable will be assessed against responsible body(ies) of medical opinion in “that particular art”, ie the specialty of paediatrics ...</p> <p>86. The true question was whether Prof PT as a paediatric surgeon had the requisite expertise to give relevant and admissible opinion evidence for establishing in the present action the practice of a responsible body of medical men “skilled in that particular art”, ie that of paediatrics and not paediatric surgery ....</p> <p>...</p> <p>100. ... relevance and admissibility do not turn on matching professional discipline between expert and clinician, but on matching the particular expertise of the expert to the “precise character of the question” on which he/she is to give opinion in the particular context of the case.</p> <p>...</p> <p>112. ... The expert issues were essentially whether there had been delay in diagnosis and/or delay in referral by D1 when measured against the standard of a reasonably competent paediatrician ...</p>	<p>Court of First Instance’s Decision: <a href="https://legalref.judiciary.hk/lrs/commons/ju/ju_frame.jsp?DIS=134662">https://legalref.judiciary.hk/lrs/commons/ju/ju_frame.jsp?DIS=134662</a></p>

\*Please note that the law changes from time to time and that each case turns on its own facts. This document is for general reference only (not a complete statement of the law) and cannot be relied upon as legal/ professional advice in any individual case. No warranty is given to the accuracy of the information in this document. No liability shall arise from any errors or omissions in the information in this document. The webinar will not address all the selected updates.

	<p>... 115. ... paediatrics was the relevant specialty for delay in diagnosis when the responsible clinician was a paediatrician.</p> <p>... 120. ... on the “precise character of the question” of timely referral to a relevant specialist, it was the views of paediatrician ... and not those of the paediatric surgeon ... that would be relevant and admissible because the latter would only be able to say what he knew from the receiving end and not from the requisite standard at the referring end ...”</p>	
2	<p><b>Limitation period for medical negligence:</b> <i>MOMIN LOK v HOSPITAL AUTHORITY</i> [2021] HKCA 1075</p> <p>The issue in this medical negligence action for damages for personal injuries was whether the plaintiff brought the present action against the defendant within the time limit of 3 years from the date on which the plaintiff first had knowledge of the facts specified in section 27(6)(a)-(d) of the Limitation Ordinance (Cap. 347).</p> <p>The Court of Appeal held that, probably by August 2010 and certainly by July 2011, the plaintiff acquired the requisite knowledge under section 27(6)(b) of the fact that her injury was attributable to the “anticoagulation medication and treatment”. The plaintiff’s misguided belief in the precise manner in which the medication and treatment resulted in injury was not so fundamental as to mean that she did not possess such requisite knowledge.</p> <p>In view of the above and given that there was no dispute that the plaintiff had knowledge of the facts specified in section 27(6)(a), (c) and (d), the plaintiff certainly acquired the requisite knowledge of the facts specified in section 27(6)(a)-(d) by July 2011. The present action was brought in September 2014 after the expiration of the 3-year limitation period running from the date of the plaintiff’s knowledge and was time-barred. The Court of Appeal, however, exercised its discretion to disapply the time limit.</p>	<p>Court of Appeal’s Judgment: <a href="https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=137434">https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=137434</a></p>
3	<p>Appeal in the “DR Beauty” <b>gross negligence manslaughter</b> case: <i>HKSAR v CHOW HEUNG WING, STEPHEN AND CHAN KWUN CHUNG</i> [2021] HKCA 1655</p> <p>In this infamous “DR Beauty” case, the deceased died after she was infused blood at a clinic</p>	<p>Court of Appeal’s Judgment: <a href="https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=137434">https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=137434</a></p>

	<p>of the DR Group as part of an experimental treatment known as “CIK” treatment. The blood was extracted from her and became contaminated by bacteria during the processing stage.</p> <p>D1, the person in charge of the DR Group, and D2, the person in charge of the laboratory who processed the blood in question, were convicted of gross negligence manslaughter and sentenced to 12 and 10 years’ imprisonment respectively.</p> <p>The Court of Appeal refused to grant D1 or D2 leave to appeal against conviction but allowed their appeals against sentence, reducing the sentences, in the case of D1, to 10 years’ imprisonment and, in the case of D2, to 8 years’ imprisonment.</p> <p>CMEL’s briefing: <a href="https://www.cmel.hku.hk/resources-detail.php?id=63">https://www.cmel.hku.hk/resources-detail.php?id=63</a></p>	<p><a href="https://www.legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=139866">mon/ju/ju_frame.jsp?DIS=139866</a></p>
4	<p>Doctor imprisoned for <b>gross negligence manslaughter</b> of a liposuction patient: <i>HKSAR v KWAN HAU CHI, VANESSA</i> [2021] HKCFI 2978</p> <p>A doctor was convicted of gross negligence manslaughter and sentenced to 6 years’ imprisonment in respect of the death of her liposuction patient.</p> <p>CMEL’s briefing: <a href="https://www.cmel.hku.hk/resources-detail.php?id=64">https://www.cmel.hku.hk/resources-detail.php?id=64</a></p>	<p>Court of First Instance’s Reasons for Sentence: <a href="https://www.legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=139188">https://www.legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=139188</a></p>
5	<p>Doctors acquitted of “<b>misconduct in public office</b>” charges arising from the provision of <b>information on specific private doctors/ clinic to public hospital patients</b>: <i>香港特別行政區 訴 邱承建、朱東麒及朱東恒</i> [2021] HKDC 515 (<i>HKSAR v YAU SHING KIN, CHU TUNG KI AND CHU TUNG HANG</i>) [Reasons for Verdict in Chinese]</p> <p>Facts: D1, D2 and D3 were charged with “conspiracy to commit misconduct in public office”. D1 was also charged with “theft”. All of them were ophthalmologists.</p> <p>The particulars of the “conspiracy to commit misconduct in public office” charges (paragraphs 489 and 504 of the Reasons for Verdict) in effect alleged, <i>inter alia</i>, that it was conspired by D1 and/ or D2 and/ or D3, as the case may be, that:</p>	<p>District Court’s Reasons for Verdict: <a href="https://www.legalref.judiciary.hk/doc/judging/pdf/vetted/other/ch/2018/DCCC01092_2018.pdf">https://www.legalref.judiciary.hk/doc/judging/pdf/vetted/other/ch/2018/DCCC01092_2018.pdf</a></p>

- i. D1/ D3, as the case may be, whilst a doctor of the Hospital Authority (“HA”), without reasonable excuse or justification, would wilfully misconduct himself in the course of or in relation to his public office by referring his patients at a public hospital to a private clinic in Tsim Sha Tsui (“the Private Clinic”) and, as the case may be, D2 and/or D3 (who were private doctors at the time) in breach of HA’s “General Guidelines on Referring Patients for Private Health Services” (“HA’s Referral Guidelines”); and
- ii. D1, whilst a HA doctor, without reasonable excuse or justification, would wilfully misconduct himself in the course of or in relation to his public office by engaging in outside work at the Private Clinic in breach of HA’s policy.

The “conspiracy to commit misconduct in public office” charges did not refer to HA’s circular on “conflict of interest” or HA’s circular on “acceptance of advantages, entertainment and sponsorship” (paragraphs 489 and 527).

Significantly, the judge held that, since neither “acceptance of advantages” nor “conflict of interest” was listed as misconduct in the charges, neither of them shall be regarded as elements of the “conspiracy to commit misconduct in public office” charges in the present case (paragraph 537).

The elements of the offence of “misconduct in public office”, including but not limited to the element of “willfulness” (“wilfully misconducts himself”) (“明知故犯”) and the element of “seriousness” (“whether the misconduct was so serious that it should be regarded as a criminal offence”) (“所犯嚴重得應被視為刑事罪行”), were set out in paragraph 540.

In relation to the “theft” charge, the prosecution alleged that D1 dishonestly obtained HA’s medicine by falsely prescribing medicine.

Acquitting D1, D2 and D3 of all the charges, the judge held:

- I. For the “conspiracy to commit misconduct in public office” charges, the prosecution could not rebut the claim of D1, D2 and D3 that they did not know about the prohibition imposed by HA’s Referral Guidelines. The prosecution could not prove that the referral of the public hospital patients were made “willfully” in breach (“明知故犯地轉介病人”) so as to constitute “willful” misconduct, although there was an agreement among D1/ D2/ D3 on the referral of patients. The prosecution could not prove that D1 worked at the Private Clinic or that

there was an agreement in that regard. These were sufficient for disposal of the matter. [paragraphs 595 and 596]

(a) However, for the sake of completeness, the judge considered, *inter alia*, if the element of “seriousness” was proved on the assumption that, contrary to his findings, (i) D1 and D3 “willfully” misconducted themselves in referring patients and (ii) D1 worked at the Private Clinic and “willfully” misconducted himself in so doing. [paragraph 597]

(b) On the issue of “seriousness”:

Referral of the patients by D1/ D3 helped the patients identify suitable specialist doctors and was in the benefit of the patients. Assuming that D1/ D3 “willfully” misconducted themselves in referring patients (item (a) of charges nos. 1-3), PROVIDED that no conflict of interest or bribery was involved, so referring patients on one or two occasions shall not be so “serious” as to constitute a criminal offence and shall be a matter of discipline to be dealt with internally by HA. So referring patients in breach on multiple occasions shall still be a matter of discipline to be dealt with by HA internally PROVIDED that no conflict of interest or bribery was involved. In a similar vein, assuming that D1 “willfully” misconducted himself in engaging in outside work (item (c) of charge no. 3), PROVIDED that no conflict of interest or bribery was involved, doing so on one or more occasions shall still be a matter of discipline to be dealt with by HA internally. [“D1/D3 轉介病人行為本身的確可以幫助病人容易找到合適的專科醫生，這有利病人，所以假使 D1/D3 是明知故犯控罪一至控罪三的(a)項，但若然不涉及收賄或觸犯利益衝突，那麼一兩次這樣轉介病人都不應被視為嚴重得成為刑事罪行，只是紀律問題，由醫管局內部處理已可。即使是多次如此違規，若不涉及收賄或觸犯利益衝突，仍屬紀律問題，由醫管局內部處理已可……同樣，假使 D1 作出控罪三(c)項行為：在外間工作，並是明知故犯，但若不涉及利益衝突或收賄……那麼一次或多次觸犯(c)項，亦只屬紀律問題，由醫管局內部處理已可。】 [paragraphs 602 and 603]

If any of the defendants paid or received any advantage in respect of item (a) of charges nos. 1-3 or item (c) of charge no. 3, doing so on just one occasion constituted a criminal offence. [“假若有被告人因控罪一至控罪三的(a) 項或控罪三(c)項而支付/收取利益……一次觸犯已屬刑事罪行。”] [paragraph 605]

	<p>If the defendants deliberately allowed conflict of interest to exist and ignored it and so “willfully” and repeatedly misconducted themselves over a significant period of time, the conduct would be more serious and would constitute a criminal offence. [“若 D1 至 D3 存心讓利益衝突……存在而置之不理……若是長時間重覆地明知固(sic)犯，嚴重性便加深，可被視為犯罪。”] [paragraph 618]</p> <p>II. The charge of “theft” hinged on the allegations of a witness who was neither honest nor reliable. [paragraph 624]</p>	
6	<p>Court held Chairman and Deputy Chairman of MCHK’s PIC had no power to <b>compel disclosure by HA of documents relating to treatment which formed the subject of complaints to MCHK:</b>  <i>CHAIRMAN AND DEPUTY CHAIRMAN OF THE PRELIMINARY INVESTIGATION COMMITTEE OF THE MEDICAL COUNCIL OF HONG KONG v HOSPITAL AUTHORITY</i>  [2021] HKCA 1793; [2022] 1 HKLRD 16</p> <p>Extracts from judgment:</p> <p>“2. These were two appeals by the plaintiffs (respectively the Chairman and Deputy Chairman of the Preliminary Investigation Committee of the Medical Council of Hong Kong (referred to jointly as “the Chairman” …)) against the decision of Au-Yeung J (“the Judge”) … by which she dismissed the Chairman’s applications for a mandatory injunction compelling the Hospital Authority to produce certain documents relating to the treatment of two patients which formed the subject of complaints to the Medical Council.</p> <p>…</p> <p>35. In view of my conclusion that the Chairman has no power to compel disclosure, it is unnecessary to consider whether ordering disclosure in the present case would involve a disproportionate interference with the fundamental rights to privacy of the subject patients, and I do not propose to do so.”</p>	<p>Court of Appeal’s Judgment:  <a href="https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=140546">https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=140546</a></p>

7	<p>Court refused leave to apply for <b>judicial review</b> of section 5.2.1.2(d) of the <b>Code of Professional Conduct</b> promulgated by the Medical Council of Hong Kong, which stipulated that information provided by a doctor to the public or his patients in respect of his services must not “aim to solicit or canvass for patients”:  <i>LEUNG KA LAU v THE MEDICAL COUNCIL OF HONG KONG</i> [2021] HKCFI 2914</p> <p>Extracts from judgment:</p> <p>“66. ... the question of the validity of Section 5.2.1.2(d) ... can be determined in the disciplinary process, including a possible appeal to the Court of Appeal ...  ...  68. Leave to apply for judicial review is refused.”</p>	<p>Court of First Instance’s Judgment:  <a href="https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=139205">https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=139205</a></p>
8	<p>Selected judgments of the <b>Inquiry Panel of the Medical Council of Hong Kong</b>: please refer to the table on p.14-17</p>	<p>Please refer to the table on p.14-17</p>
9	<p><b>Patient’s disability discrimination</b> action:  <i>LEE CHI BUN v NOVARTIS PHARMACEUTICALS (HK) LIMITED</i> [2021] HKDC 1101</p> <p>This is a discrimination action brought by a patient against his former employer. The patient was diagnosed with end-stage renal failure and/or chronic kidney disease and had to undergo transplant surgery. His employment was terminated.</p> <p>Extracts from judgment:</p> <p>“4. Lee’s claim is brought on ground that his employment was terminated due to his illness ...  ...  22. ... In <i>Leung Kwok Hung (Long Hair) v Commissioner of Correctional Services</i> (2020) [23 HKCFAR 456, [15]], the Court of Final Appeal laid down a four-step approach in determining whether there was sex discrimination under [Sex Discrimination Ordinance] s.5(1)(a). I am of the view that the same approach would also be applicable in determining whether there was disability discrimination under DDO s.6(a). In the light of the ... judgment in <i>Leung Kwok Hung</i> case, I suggest that the four-step approach in the context of DDO s.6(a) should be as follows:-</p>	<p>District Court’s Judgment:  <a href="https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=138396">https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=138396</a></p>

	<p>(1) There must be a difference in treatment between one person with a particular disability (i.e. the complainant) and another person, real or hypothetical, without that disability, (i.e. the compared person).</p> <p>(2) The relevant circumstances between the complainant and the compared person are the same or at least not materially different.</p> <p>(3) It must then be shown that the treatment given to the complainant is less favourable than that given to the compared person.</p> <p>(4) The difference in treatment is on the basis of the presence or absence of the disability.</p> <p>...</p> <p>46. My findings include the following:-</p> <p>...</p> <p>(8) Novartis HK's decision to terminate Lee's employment is not related to Lee's medical condition, but is solely due to the integration exercise in 2016.</p> <p>...</p> <p>50. ... Lee has not been discriminated by Novartis HK ... by reason of his disability."</p>	
10	<p>Court refused to give prior authorisation of expenses to be incurred under a contemplated <b>commercial surrogacy arrangement</b> in breach of section 17 of the Human Reproductive Technology Ordinance (Cap.561):  <i>LH V LW</i>[2021] 3 HKLRD 707, [2021] HKCFI 1998</p> <p>Summary on <i>Hong Kong Lawyer</i>:  <a href="http://www.hk-lawyer.org/content/lh-v-lw">http://www.hk-lawyer.org/content/lh-v-lw</a></p>	<p>Court of First Instance's Decision:  <a href="https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=137319">https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=137319</a></p>
11	<p>The new regulatory regime introduced by the <b>Private Healthcare Facilities Ordinance</b> (Cap. 633)</p>	<p>Cap. 633:  <a href="https://www.elegislation.gov.hk/hk/cap633!en?ref=P13_D8&amp;xpid=ID15617065394261287">https://www.elegislation.gov.hk/hk/cap633!en?ref=P13_D8&amp;xpid=ID15617065394261287</a></p> <p>Website of the Office for Regulation of</p>



		Private Healthcare Facilities: <a href="https://www.orphf.gov.hk/en/regulatory_regime/new_licensing_scheme">https://www.orphf.gov.hk/en/regulatory_regime/new_licensing_scheme</a>
12	The Medical Registration (Amendment) Ordinance 2021 has put in place a legal framework for a new pathway for <b>non-locally trained medical practitioners to obtain registration</b> in Hong Kong	Update in the newsletter of the Medical Council of Hong Kong: <a href="https://www.mchk.org.hk/files/New_sletter2021.pdf">https://www.mchk.org.hk/files/New_sletter2021.pdf</a>
13	The Smoking (Public Health) (Amendment) Ordinance 2021 was gazetted in 2021 and will ban, <i>inter alia</i> , the import, manufacture and sale of " <b>alternative smoking products</b> " with effect from 30 April 2022	Bilingual pamphlet of the Tobacco and Alcohol Control Office: <a href="https://www.taco.gov.hk/t/english/downloads/files/smoking_ordinance_2021pamphlet.pdf">https://www.taco.gov.hk/t/english/downloads/files/smoking_ordinance_2021pamphlet.pdf</a>
14	The Personal Data (Privacy) (Amendment) Ordinance 2021 came into effect in 2021. It is hoped that the new law will help curb <b>doxxing acts</b> .	Media Statement of the Office of the Privacy Commissioner for Personal Data and Implementation Guideline issued

		by the Privacy Commissioner for Personal Data: <a href="https://www.pcpd.org.hk/english/news_events/media_statements/press_20211008.html">https://www.pcpd.org.hk/english/news_events/media_statements/press_20211008.html</a>
15	The Office of the Privacy Commissioner for Personal Data issued the “Guidance on the Ethical Development and Use of <b>Artificial Intelligence</b> ” in 2021	“Guidance on the Ethical Development and Use of Artificial Intelligence”: <a href="https://www.pcpd.org.hk/english/resources_centre/publications/files/guidance_ethical_e.pdf">https://www.pcpd.org.hk/english/resources_centre/publications/files/guidance_ethical_e.pdf</a>
16	The PRC <b>Personal Information Protection Law</b> (“PIPL”), which contained provisions on <b>extraterritorial</b> application, came into effect in 2021	PIPL webpage on the website of the Office of the Privacy Commissioner for Personal Data: <a href="https://www.pcpd.org.hk/english/data_privacy_law/mainland_law/mainland_law.html">https://www.pcpd.org.hk/english/data_privacy_law/mainland_law/mainland_law.html</a>  <i>Introduction to the Personal Information</i>

		<p><i>Protection Law of the Mainland</i>, a book published by the Office of the Privacy Commissioner for Personal Data [Chinese only]: <a href="https://www.pcpd.org.hk/tc_chi/resources_centre/publications/books/files/pcpd_china_pipl_book2021.pdf">https://www.pcpd.org.hk/tc_chi/resources_centre/publications/books/files/pcpd_china_pipl_book2021.pdf</a></p>
17	<p>Appeal against Privacy Commissioner’s refusal to investigate <b>MCHK’s refusal of a Data Access Request</b>:</p> <p><i>LEUNG TSAN CHUNG v PRIVACY COMMISSIONER FOR PERSONAL DATA</i> Administrative Appeal No. 11/2021</p> <p>Extracts from the decision of the Administrative Appeals Board:</p> <p>“1. This is the Appellant's appeal against the Respondent's ("PCPD") decision ... ("Decision") in which the PCPD refused to carry out an investigation against the Medical Council of Hong Kong ("MCHK") for refusing to accede to his data access request ... ("DAR").</p> <p>2. ... The Appellant ... lodged a complaint against the Doctor with MCHK for alleged professional misconduct and negligence.</p> <p>3. ... the Preliminary Investigation Committee ("PIC") of MCHK informed the Appellant that it considered there to be insufficient evidence to substantiate his complaints against the Doctor, and had decided that "<i>the case should not be pursued further and no inquiry was to be held</i>". MCHK expressly referred to having considered all the information presented, including "<i>written explanation by the solicitors on behalf of [the Doctor] and opinion of an independent expert ...</i>".</p> <p>...</p> <p>5. ... the Appellant submitted the DAR ... to MCHK demanding the following documents:</p>	<p>Decision of the Administrative Appeals Board: <a href="https://www.pcpd.org.hk/english/enforcement/decisions/files/AAB_11_2021.pdf">https://www.pcpd.org.hk/english/enforcement/decisions/files/AAB_11_2021.pdf</a></p>

- a. All PIC meeting minutes discussing the Appellant's complaint;
- b. The independent expert report obtained by the PIC in relation to the Appellant's complaint; and
- c. All replies from the Doctor's solicitor to the Appellant's complaint.

...

7. MCHK refused to comply with the DAR ... the Appellant lodged a complaint with the PCPD against MCHK for refusing to accede to his DAR ("Complaint").

...

12. ... the PCPD issued the Decision stating that the PCPD will not carry out an investigation into the Complaint pursuant to s.39(2)(ca) and s.39(2)(d) of the Personal Data (Privacy) Ordinance (Cap 486) ("PDPO"). The Appellant now appeals against the Decision.

...

15. In the Decision, the PCPD decided "*not to carry out an investigation*" into the Complaint by relying on its discretion under s.39(2)(ca) and s.39(2)(d) of the PDPO ...

...

19. We would stress that the Decision did not in any way decide whether MCHK was right ... in refusing to comply with the DAR.

...

22. ... This appeal is limited only to the PCPD's decision to refuse to carry out an investigation against MCHK, and not to the merits of MCHK's refusal.

...

26. It is trite that a data access request is not intended to allow the applicant to obtain information for the commencement of legal proceedings. In *Wu Kit Ping v Administrative Appeals Board* [2007] 4 HKLRD 849 ...

27. *Wu Kit Ping* is a reflection of the wider principle that the PDPO is intended to protect the privacy of a person. Data access requests are designed to allow applicants to find out how their personal data is being used (or misused), and to correct any inaccuracies in his/her data. It would be contrary to the spirit of the PDPO to allow an applicant to obtain all documents that merely contain his personal information for purposes that are unconnected with his privacy ...

28. The PCPD made the Decision on the basis that the Appellant had sought the information specified in the DAR in order to commence legal proceedings against the Doctor and/or MCHK ...

...

35. ... the Appellant stated ... that he made the DAR to "find out the truth" about MCHK's refusal of his complaint against the Doctor. Even if that was true, the Appellant's concerns

<p>"about the truth" are not related to his privacy or data protection, such as how his medical data was being retained, used or misused by the MCHK. Accordingly, the PCPD was entitled to refuse to investigate the Appellant's complaint pursuant to s.39(2)(ca) and 39(2)(d) of the PDPO.</p>	
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36. For the reasons given above, the Board would dismiss the appeal.

37. ... the PDPO is designed only to deal with information requests that relate to the *privacy* of a person, nothing more ..."

**Selected Judgments handed down by the  
Inquiry Panel of the Medical Council of Hong Kong (MCHK) in Year 2021**

No.	Case Reference No.	Judgment	Remarks
Information missing in records of vaccination patients; counterfeit vaccine			
1	MC 20/2461	<a href="#">Download</a>	<p>Convicted of the offence of possession for sale or for purpose of trade or manufacture goods to which a forged trade mark was applied; failed to maintain adequate and contemporaneous medical records of his patients who received HPV vaccination</p> <p>Extract from Judgment:  <i>“17. ... the records kept by the Defendant ... were far from being adequate and contemporaneous records. Essential information like the age and medical history (in particular, any drug allergy) of the HPV Clients were missing.”</i></p>
Nasopharyngeal Carcinoma and persistent ear and nose symptoms			
2	MC 16/211	<a href="#">Download</a>	<p>Failed to take appropriate follow-up action(s) and/or arrange further investigation(s) when the Patient suffered from persistent ear and/or nose symptom(s); failed to timely refer to a specialist</p> <p>Extract from Judgment:  <i>“27. Doctors in Hong Kong need to have a high index of suspicion of NPC [nasopharyngeal carcinoma] because it is a common cancer among Southern Chinese, particularly in male. Persistent OME [otitis media with effusion] associated with blocked nose since 22 June 2009 were red flag symptoms of NPC, and particularly so when the Patient’s OME did not resolve after more than two weeks of treatment with oral steroids and antibiotics since 30 June 2009.</i></p> <p><i>28. ... the Defendant should have offered the Patient an EBV IgA test when the Patient suffered from persistent ear and/or nose symptoms ...</i></p>

			29. We are also satisfied that the Defendant had not timely referred the Patient to the specialist.”
Urinary tract infection and pregnancy			
3	MC 18/579	<a href="#">Download</a>	Failed to properly explain the potential impact of urinary tract infection on pregnancy; failed to arrange a follow-up consultation after arranging a urine culture test and/or timely inform the test result
X-ray findings			
4	MC 14/189	<a href="#">Download</a>	Failed to timely investigate the cardiac conditions; failed to ensure that appropriate follow-up action was taken in respect of abnormal findings in the X-ray report of markedly enlarged heart
5	MC 17/456	<a href="#">Download</a>	Failed to initiate appropriate follow-up actions in light of the abnormal chest X-ray finding; failed to properly identify appropriate follow-up actions in the A&E notes
Anesthesia/ operation			
6	MC 16/188 MC 16/267	<a href="#">Download</a>	Failed to provide appropriate intraoperative and/or perioperative management and care; left the operating theatre without handing over the responsibility during anesthesia; failed to advise the surgeon to discontinue the ankle arthroscopy operation and transfer the patient to an intensive care unit
Removal of foreign body (consent, etc.)			
7	MC 19/413	<a href="#">Download</a>	Failed to properly wash and/or sterilize his hands before the procedure of removal of foreign body (“the Procedure”); failed to properly explain the Procedure to the Patient’s mother; failed to properly keep operation records of the Procedure, including the details of the foreign body and local anaesthesia
Prescription of medicine			
8	MC 19/117	<a href="#">Download</a>	Inappropriately prescribed “Diclofen” when he knew or ought to have known that the Patient was allergic

9	MC 17/176	<a href="#">Download</a>	Inappropriately prescribed Colchicine and Methotrexate when he knew or ought to have known the Patient had renal failure
10	MC 18/114	<a href="#">Download</a>	Inappropriately Prescribed “Augmentin” without proper and/or sufficient examination; did not measure body weight when dosage for children was calculated based on body weight
11	MC 19/293	<a href="#">Download</a>	Prescribed “Etoricoxib” where he should have known about an allergy
12	MC 15/402	<a href="#">Download</a>	Prescribed medication without medical examination and/or consultation of the patient beforehand
13	MC 13/099	<a href="#">Download</a>	Failed to properly and/or sufficiently warn about the potential complications or the side effects of the carbimazole (NeoMercazole); failed to properly advise the Patient to stop taking carbimazole (NeoMercazole) when the Patient developed the signs of agranulocytosis; altered medical record without justifiable reason and/or without clear documentation of the reason
14	MC 18/376	<a href="#">Download</a>	Failed to prescribe anti-hepatitis B prophylaxis when the Patient was treated with high dose steroid for IgA nephropathy and he knew or ought to have known that the Patient was a hepatitis B carrier
Expired vaccine			
15	MC 20/120	<a href="#">Download</a>	Injected vaccine which had expired; convicted of the offence of selling drug not of the quality demanded
Restraint of patients			
16	MC 17/049	<a href="#">Download</a>	Signed on consent forms for the use of physical restrainer in residential care homes without proper assessment records made; failed to take adequate steps to ensure information in the Use of Restraint Forms were properly filled in before signing the same
Details not recorded on medical examination forms			
17	MC 19/095	<a href="#">Download</a>	Failed to exercise adequate care in issuing Medical Examination Forms in that the names and personal details of the persons examined were not recorded on the Forms



More than one original receipt			
18	MC 19/1711	<a href="#">Download</a>	On 3 occasions issued more than one original receipt in respect of the same payment regarding a medical consultation

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