



## **Guidance Notes for Assessing Fitness and Properness of Applicants / Chief Medical Executives for Licence Application**

### **Introduction**

Under the Private Healthcare Facilities Ordinance (“PHFO”), a person who is, or is applying, to operate or exercise control over a facility (including a person who is a partner or a director of a partnership, company or other body corporates where applicable), or appointed as the chief medical executive (“CME”) for a licensed facility, is required to satisfy the requirement that he/she is a fit and proper person. The Director of Health (“Director”) may refuse to issue licence for a facility if the Director is not satisfied that the applicant, or the person whom the applicant states to be appointed as the CME for the facility, is a fit and proper person.

This document outlines the criteria and matters that the Director will normally consider in determining fitness and properness. The criteria and matters set out in this document are not intended to be exhaustive, and should be read in conjunction with the relevant provisions of the PHFO. This document also does not constitute legal advice. Applicant should seek professional advice if he/she has any question relating to the interpretation of the relevant provisions of the PHFO or other Ordinances.

### **Principles in the Assessment**

In considering whether a person is a “fit and proper” person, the term may be considered to cover whether there is history of (i) violation of law in Hong Kong or elsewhere, (ii) professional incompetence, and (iii) financial status. When an applicant (including sole proprietor, one or more partner(s) for a partnership, or one or more director(s) of a company or other body corporate) or CME is considered not fit and proper, such decision will usually remain valid for a period of three to five years, depending on nature and severity of circumstances.

CME / Applicant's History of Violation of Laws / Professional Incompetence and Financial Status which could result in Refusal of Application:

	Applicant <sup>1</sup>	CME	No. of years prior to the date of application <sup>2</sup>
<b>Violation of Law in Hong Kong or Elsewhere</b>			
Criminal offences	Conviction of any criminal offence <sup>3</sup> for which the person has been sentenced to imprisonment (whether suspended or not) in Hong Kong or elsewhere		5 years
	Has been released from imprisonment <sup>4</sup>		3 years
	Is currently on non-custodial sentence e.g. probation order or community service order		Not applicable
PHFO related offence	Conviction of any offence under PHFO for which the person has been sentenced to imprisonment <sup>5</sup> (whether suspended or not) <sup>6</sup>		5 years
	Conviction of any offence under PHFO for which the person is fined at level 6 or above <sup>7</sup>		3 years
<b>Professional Incompetence</b>			
Professional incompetence	Not applicable	Has been found guilty of professional misconduct by DCHK, MCHK or similar authorities outside Hong Kong, resulting in removal, or removal with suspension, from the register <sup>8</sup>	5 years
Non-compliance with the Codes of Practice / condition of licence / direction issued under PHFO	Has non-compliances that resulted in suspension or cancellation of licence of a facility <sup>9</sup>		5 years
<b>Financial Status</b>			
Financial status	Is currently in bankruptcy or made a voluntary arrangement with the individual's creditor within the meaning of the Bankruptcy Ordinance (Cap. 6)	Not applicable	Not applicable
	The company has commenced to be wound up (for applicant which is a company)	Not applicable	Not applicable

DCHK: The Dental Council of Hong Kong; MCHK: The Medical Council of Hong Kong

<sup>1</sup> Applies to sole proprietor, any partners of an applicant which is a partnership, and any directors of an applicant which is a company or other body corporate

<sup>2</sup> Where there is more than one sentence given for an offence, or there is overlapping period in case of multiple offences, the longer period shall prevail.

<sup>3</sup> Count from the date of the conviction for which the person has been sentenced to imprisonment.

<sup>4</sup> Count from the date of the release from imprisonment.

<sup>5</sup> Count from the date of the conviction for which the person has been sentenced to imprisonment.

<sup>6</sup> A person is ineligible for appointment as CME if the person has been convicted of an offence under the PHFO for which the person has been sentenced to imprisonment (whether suspended or not) for a term exceeding 3 months without the option of a fine [PHFO s49(3)].

<sup>7</sup> Count from the date of the conviction of an offence fined at level 6 or above under PHFO.

<sup>8</sup> Count from the date of removal from the register.

<sup>9</sup> Count from the date of suspension or cancellation of licence of a facility.