

## MASTERY OF PATIENT MEDICAL RECORD ACCESS AS EVIDENCE TOOL MEDICAL DISPUTE CASES IN PERSPECTIVE FAIR AND TRANSPARENT LAW ENFORCEMENT

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### Abstract

Medical records are documents containing patient identity data, examinations, treatments, actions, and other services that have been provided to patients that are made using an electronic system intended for organizing medical records. Related to medical records is the confidentiality of health documents that contain the patient's personal health secrets. Medical records are currently one of the five pieces of evidence that determine the resolution of medical disputes. The problem that arises is what is the legal position of patient medical record evidence in proving medical dispute cases in court? and how can legal justice be upheld in relation to restrictions on access to control of patient medical records by hospitals? This research is basically a normative legal research, namely a scientific approach that uses written legal materials as the main source in analyzing legal problems, and enforcing legal norms. The conclusion is that medical records must be made in electronic form or using digital means. That in the implementation of medical services can also be done in two ways, namely through conventional medical service facilities such as in health facilities and medical services carried out digitally, namely telemedicine. Thus, the position of medical records as evidence in medical disputes is very important, especially in realizing transparent justice both at the MDP level and in court. Medical records, both electronic and non-electronic, have an important position as evidence in medical disputes. The presence of transparent medical records is very important in realizing justice, both at the Professional Disciplinary Enforcement Council (MDP) level and in court.

**Keywords:** Control of Access to Patient Medical Records, Evidence in Justice, Transparent Law

## INTRODUCTION

A medical record is a document containing the patient's identity data, examination findings, treatment, actions, and other services provided to the patient, created using an electronic system designated for medical record keeping. If a healthcare facility cannot maintain electronic medical records due to technical obstacles, non-electronic medical records may be used until the obstacle is resolved, with subsequent re-entry of medical record data into the electronic medical record system, as intended by the Elucidation of Article 173 paragraph 1 letter c of Law Number 17 of 2023 concerning Health. This provision revokes the old regulation in Minister of Health Regulation Number 24 of 2022, which mandated that by December 31, 2023, healthcare facility medical records must be electronic medical records (Endradita, 2023).

Related to medical records is the confidentiality of health documents that contain the patient's personal health secrets. A patient's personal health secret is anything related to what is found by medical and healthcare personnel in the course of treatment and recorded in the patient's medical record, and which is confidential in accordance with the Elucidation of Article 177 paragraph 1 of Law Number 17 of 2023 concerning Health (abbreviated as Health Law). This provision underlines that aspects of medical records not related to treatment are not categorized as private patient secrets. The problem that arises is that one of the obligations of healthcare facilities is to maintain medical records (Article 173 paragraph 1 letter c of the Health Law). For hospitals, the obligation to maintain medical records is carried out as part of the hospital's obligations (Article 189 paragraph 1 letter h of the Health Law). Medical record and health information are managed by healthcare personnel in the medical technical group (Article 199 paragraph 10 of the Health Law). From the perspective of patient rights and obligations, the right to access information contained in medical records is a patient's right as stated in Article 276 letter e of the Health Law. However, hospitals sometimes refuse to show medical records to patients. Furthermore, if a medical dispute occurs between a patient and medical or healthcare personnel and the hospital, the hospital is often reluctant to disclose the patient's medical records.

Patients, medical personnel, healthcare personnel, and healthcare facilities (including hospitals) are supporting elements of development in the health sector. Development in the health sector fundamentally concerns all aspects of life, both physical, mental, and social. This is consistent with the meaning of "health" according to the World Health Organization (WHO), which includes physical, mental, and social well-being for every person. In its development, health sector development has undergone changes in orientation, concerning both values and public thought, due to political, economic, religious, socio-cultural factors, as well as developing science and technology in society. These changes in orientation are in line with the shift in public perception regarding the relationship between medical personnel and patients. Initially, society believed that medical personnel could not be wrong in carrying out their professional duties; therefore, patients usually fully trusted the medical personnel's ability to cure their illness. This type of relationship between medical personnel and patients is vertical-paternalistic in nature (Francoeur, 2010).

The relationship between medical personnel and patients in medical services is entirely based on trust (fiduciary relationship). In this sense, the patient surrenders and fully trusts the doctor who performs medical actions (treatment) on them. However, due to the development of science and technology, including issues concerning Human Rights (HAM), the human mindset has been influenced. Nowadays, medical personnel must first explain what is to be done to the patient, what the risks are, and what the consequences are if it is not done. Society (in this case: patients) is becoming more critical, aware, and understanding of their rights and obligations, so the relationship between doctors as medical personnel and patients is seen as an equal (horizontal) contractual relationship.

There is a fundamental difference between the paternalistic vertical relationship pattern and the contractual horizontal relationship pattern. Previously, in traditional societies that were still paternalistic, the view was that the relationship between healthcare providers (medical personnel) and healthcare recipients (patients) was vertical (superior-subordinate), meaning the patient's position was below that of the medical personnel (untergeordnet). However, in modern society, which prioritizes contracts in social or business relationships, the position between healthcare providers (medical personnel) and healthcare service recipients (patients) is equal (nebengeordnet) or horizontal (Koeswadiji, 1998). The relationship between doctors as medical personnel and hospitals with patients in a horizontal nature has been regulated in the Health Law and Government Regulation Number 28 of 2024 concerning the Implementation Regulations of Law Number 17 of 2023 concerning Health.

Indonesia is a rule of law nation as stated in Article 1 paragraph (3) of the 1945 Constitution. Therefore, law becomes an important pillar of state administration to ensure that all citizens have equal standing before the law, and at the same time receive legal protection as should be the right of citizens.

Based on this, the law must reflect values of justice, or in other words, the law formed must be based on considerations of justice (*gerechtigkeits*). In addition to considerations of justice, law is also formed based on the principles of legal certainty (*rechtssicherheit*) and utility (*zweckmassigkeit*) (Darmodiharjo & Shidarta, 2006).

In the legal system established in Indonesia, based on Pancasila and the 1945 Constitution as sources of legal norms, the value of justice is embodied in every legal product, including laws. The aforementioned laws are intended to provide legal certainty for all citizens in all aspects of community, state, and national life. This means that every aspect of civic and state life is regulated through these laws. Therefore, the scope of laws as a legal product also covers all fields related to the relationship between citizens and citizens, the state and citizens, as well as the relationship between the state and other countries.

One aspect of state life that is also regulated through law is the issue of Medical Practice. Comprehensively, the Health Law serves as the basis for the overall development of patient health, both in terms of improving the quality of public health in aspects of administration, financing, and improving the quality of the medical/dental profession as medical personnel. Currently, the implementation of the Health Law is Government Regulation Number 28 of 2024 concerning the Implementation Regulations of Law Number 17 of 2023 concerning Health.

Health law refers to all legal regulations directly related to the provision of healthcare and its application in civil law, administrative law, and criminal law. Health law encompasses all legal provisions directly related to healthcare maintenance/services and their implementation. This involves the rights and obligations of individuals and all segments of society as recipients of healthcare services, as well as those of the providers in all their aspects, organization, facilities, medical service standards guidelines, health science, judges, and other sources. Health law consists of many disciplines, including: medical law, nursing law, pharmacy law, dispensary law, public health law, therapeutic law, and others. Each of these disciplines generally has a code of professional ethics that its members must practice. Similarly, hospitals as healthcare institutions also have ethics, which in Indonesia are compiled in the Indonesian Hospital Ethics (ERSI) (Agung, 2021).

Every activity and effort to achieve the highest possible degree of public health is carried out based on the principles of non-discrimination, participation, protection, and sustainability, which are very important for the formation of Indonesian human resources, increasing national resilience and competitiveness, and national development (Setiadi, 2020).

Health is a state that includes physical, spiritual (mental), and social well-being, but not a state free from disease, disability, and weakness (Machmud, 2008). Furthermore, in Article 1 point 1 of the Health Law, Health is defined as a state of well-being, physically, mentally, spiritually, and socially, that enables everyone to live a socially and economically productive life (Asyhadie, 2018).

This is one parameter for measuring the success of human development. Without health, humans will not be productive to live a decent economic life and receive a good education. Likewise, without a good economy, humans will not be able to obtain good health services and a good education. Without a good education, humans also cannot understand health and achieve a good economy. These three parameters are interconnected and cannot be separated from each other. Health is based on legal provisions, including health law (Siswati, 2013). Furthermore, in the development of the discipline of health law, there is medical law. Medical law is doctor's law. Meanwhile, health law is different from medical law. The object of health law is health care/health maintenance, while the object of medical law is medical services. Medical law is the most important part of health law, covering provisions directly related to medical services. So, Medical Law is Health Law in a narrow sense (Situmorang, 2022).

According to Zaini Asyhadie, the definition of health law is as follows: Health Law is "a series of legal provisions, both written and unwritten, directly or indirectly related to health, the relationship between patients/or society with healthcare personnel in the effort to implement healthcare" (Asyhadie, 2018). From the above understanding, the following elements can be drawn: (1) A series of legal provisions directly or indirectly related to health; (2) the relationship between patients and society with healthcare personnel; and (3) efforts to implement healthcare.

According to M. Nasser, health law is: "Health law is the law that regulates the rights and obligations regarding health. The right to health is a fundamental and important right for every person who includes the right to health services, and the right to determine themselves. The legal basis is Article 5 paragraphs (1), (2), (3) of Law Number 36 of 2009 concerning Health. Article 5 paragraph (1) which states, that: Every person has equal rights in obtaining access to resources in the health sector. Article 5 paragraph (2) which states, that: Every person has the right to obtain safe, quality, and affordable health services. Article 5 paragraph (3) which states, that: Every person has the right

independently, and responsibly determine the health services needed for themselves. It can be concluded that patient rights will be achieved if doctors fulfill their obligations (Nasser, n.d.).”

Meanwhile, according to Risma Situmorang, medical law is all regulations related to medical services, both from doctors and dentists. The terms medical law and health law are still used interchangeably as if they were synonyms. However, if we look at some definitions from the Netherlands, then it is clear that there is a difference, health law is much broader than medical law.

In the relationship between medical personnel, hospitals, and patients, medical disputes sometimes occur. The dispute resolution process can be done through litigation and non-litigation methods. Previously, the resolution of medical disputes or health disputes through non-litigation (Mediation) was regulated in the provisions of Article 29 of Law Number 36 of 2009 concerning Health and Article 60 letter f of Law Number 44 of 2009 concerning Hospitals. However, until the revocation and invalidation of the said Health Law and Hospital Law when the Health Law was enacted on August 8, 2023, the Government had not established a Mediation Institution as a forum for resolving medical disputes and/or health disputes. Currently, the process of resolving medical disputes and/or health disputes through non-litigation (Alternative Dispute Resolution) is explicitly regulated in the provisions of Article 310 of the Health Law, which reads as follows: “In the event that Medical Personnel or Healthcare Personnel are suspected of committing errors in carrying out their profession that cause losses to the Patient, disputes arising from such errors shall first be resolved through alternative dispute resolution outside of court” (Situmorang, 2023).

In both litigation and non-litigation dispute resolution, the role of the Professional Disciplinary Council is required, as regulated in the provisions of Article 304 of the Health Law, namely: (1) In order to support the professionalism of Medical Personnel and Healthcare Personnel, professional disciplinary enforcement needs to be implemented. (2) In order to enforce professional discipline as referred to in paragraph (1), the Minister forms a council that carries out duties in the field of professional discipline. (3) The council as referred to in paragraph (2) determines whether or not a professional disciplinary violation has been committed by Medical Personnel and Healthcare Personnel. (4) The council as referred to in paragraph (2) can be permanent or ad hoc. (5) Further provisions regarding the duties and functions of the council as referred to in paragraph (2) are regulated by Government Regulation.

Furthermore, Article 305 regulates the following provisions: (1) Patients or their families whose interests are harmed by the actions of Medical Personnel or Healthcare Personnel in providing Health Services may file a complaint with the council as referred to in Article 304. (2) The complaint as referred to in paragraph (1) must at least contain: a. complainant's identity; b. name and address of the practice of the Medical Personnel or Healthcare Personnel and the time the action was taken; and c. reason for the complaint.

The Professional Disciplinary Council is granted authority based on the provisions of Article 306 to impose disciplinary sanctions for disciplinary violations committed by Medical Personnel or Healthcare Personnel by issuing a reprimand in the form of a written warning as a mild sanction. Meanwhile, moderate sanctions include the obligation to attend education or training at an educational institution in the health sector or the nearest teaching hospital that has the competence to conduct such training. Furthermore, severe sanctions include temporary deactivation of the STR (Registration Certificate); and/or a recommendation for revocation of the SIP (Practice Permit). The results of the examination are binding on Medical Personnel and Healthcare Personnel. Medical Personnel or Healthcare Personnel who have served the imposed disciplinary sanctions but are then suspected of committing a criminal act, law enforcement officials shall prioritize dispute resolution with the mechanism of restorative justice in accordance with the provisions of laws and regulations.

In Article 307, the decision of the council can be reviewed by the Minister in the event of new evidence, errors in the application of disciplinary violations, or suspected conflicts of interest between the examiner and the examined party. One of the pieces of evidence in resolving medical disputes is the medical record. Evidence forms the basis for the Professional Disciplinary Council to provide recommendations for litigation dispute resolution, namely to the police or filing a civil lawsuit in the District Court as stipulated in Article 308 of the Health Law.

In the medical (doctor) field, 5 (five) types of documentary evidence are known that can help prove the existence or non-existence of error or negligence of a doctor in carrying out his professional duties, namely (Rokhim, 2020):

1. Medical card;
2. Informed consent;
3. Medical record;

4. Notes (or records, depending on context, assuming "Catatan" refers to general notes in medical context)
5. Medical prescription.

This study examines medical record evidence, because medical records are one of the means required (mandated) by laws and regulations in carrying out the medical profession, functioning as a basis for planning patient care and containing records of the patient's illness and the treatment provided as a basis for evaluating the medical care given to the patient. In addition, medical records containing medical service data, from the anamnesis stage, diagnosis, consent for medical action to the therapy performed by the doctor on the patient, can legally function as evidence in court proceedings, especially in cases of medical malpractice.

The questions that arise are: what is the legal standing of patient medical record evidence in proving medical dispute cases in court? and how can legal justice be upheld in relation to the limited access to patient medical records by hospitals?

## RESEARCH METHOD

This research is fundamentally a normative legal study, which is a scientific approach that uses written legal materials as the primary source for analyzing legal problems and enforcing legal norms (judicial practice) (Diantha, 2016). The normative approach is used to obtain theoretical aspects, namely: principles, legal concepts, legal doctrines, and the content of legal rules.

The term "method" comes from the Greek word "methods," meaning "path" or "way," referring to the "path to knowledge" or a scientific way of working. The field that studies scientific work is called "methodology" (Diantha, 2016).

Law is normative, consisting of norms/rules written in the form of legislation enacted by the governing authority. Although various specialized fields of study exist within legal science, such as Constitutional Law, Civil Law, and others, they remain within one program and share a common characteristic, namely their "juridical normative" nature. Therefore, the approach method used in this research is "juridical normative." The purpose of normative legal research is to understand what and how positive law applies to a specific issue (Hartono, 1994).

The normative approach includes legal principles, legal systematics, and synchronization (legal adjustment), with the intention that this research is expected to provide detailed, systematic, and comprehensive answers regarding medical law in Indonesia to examine the mastery of patient medical record access as evidence in medical dispute cases from the perspective of fair and transparent law enforcement. To support and complete this research, it will examine materials related to medical record evidence. Therefore, the description and presentation of research data will describe medical record evidence that can be accessed by hospital patients.

## RESULTS AND DISCUSSION

### The Legal Standing of Patient Medical Record Evidence in Proving Medical Dispute Cases in Court

In the Health Law, medical records are regulated in Articles 296, 297, 298, and 299. Meanwhile, Article 300 regulates health service notes integrated with the patient data system. Given the crucial function of medical records for doctors from a legal perspective, medical records created by doctors according to standards and well-kept by the doctor or hospital can legally be used as evidence in their defense in court that the medical actions they have taken meet professional standards. Conversely, for the Public Prosecutor, if it turns out that in the medical service relationship there are no medical records made by the doctor or they are not made according to the stipulated standards, then this can corner or harm the doctor or hospital. Even with medical records that were not made or made but not according to standards, the doctor can be accused of unprofessional conduct or violating professional standards (Machmud, 2008).

Since the formation of the Professional Disciplinary Council based on the Decree of the Minister of Health of the Republic of Indonesia Number Hk.01.07/Menkes/1630/2024 concerning the Dismissal of Members of the Indonesian Medical Disciplinary Honorary Council for the 2022-2027 Term and the Appointment of Members of the Professional Disciplinary Council for the 2024-2028 Period, no medical disputes have been resolved through this institution under the Minister of Health. The role of the Professional Disciplinary Council (hereinafter abbreviated as PDC) in resolving medical disputes is

very important because the PDC's recommendation determines the criminal and civil process if mediation fails to produce a peaceful settlement as intended by Article 310 of the Health Law.

The resolution of medical disputes through criminal and civil processes certainly requires evidence. Medical records as a form of evidence can be electronic medical records as stipulated in Article 552 of Government Regulation Number 28 of 2024 concerning the Implementation Regulations of Law Number 17 of 2023 concerning Health, namely (1) Every organizer of Health Services that utilizes information and communication technology must use electronic medical records and have interoperability standards in accordance with guidelines stipulated by the Minister. (2) The formulation of interoperability standards as referred to in paragraph (1) shall be carried out in accordance with the provisions of laws and regulations.

Article 778 of Government Regulation Number 28 of 2024 concerning the Implementation Regulations of Law Number 17 of 2023 concerning Health regulates the obligation of every medical personnel and healthcare personnel who provide individual health services to create medical records. Furthermore, in the event that individual health services are carried out at a Health Service Facility other than an independent practice, the management of medical records is the responsibility of the Health Service Facility. It is then stated that medical records are documents containing patient identity data, examinations, treatments, actions, and other services that have been provided to the patient, including consent for health service actions. Medical records must be stored and kept confidential by Medical Personnel, Healthcare Personnel, and the leadership of the Health Service Facility.

There are two medical dispute resolution methods that can be pursued under the Health Law, with the following mechanisms:

1. Through the provisions of Article 304, patients can report medical personnel or healthcare personnel to the MDPTM/TK (Medical and Healthcare Professional Disciplinary Council) regarding violations of medical discipline or health science discipline. Article 308 regulates that the recommendation from the MDPTM/TK hearing can be used to proceed with legal processes, both civil and criminal. Without this recommendation, the court is obliged not to accept lawsuits for unlawful acts from patients against medical personnel, except as per the provisions of Article 308 paragraph (8) of the Health Law, in the event that the council does not provide a recommendation within the period referred to in paragraph (7), the council is deemed to have given a recommendation for a criminal investigation to be carried out.
2. Through the provisions of Article 310, medical disputes between patients and medical personnel or healthcare personnel must first be resolved through alternative dispute resolution.

For both medical dispute resolution processes, medical record evidence plays an important role because it contains data about the medical actions taken by medical personnel.

Article 779 of Government Regulation Number 28 of 2024 concerning the Implementation Regulations of Law Number 17 of 2023 concerning Health stipulates that medical records as referred to in Articles 777 and 778 must be maintained electronically in accordance with the provisions of laws and regulations. If a Health Service Facility cannot maintain electronic medical records due to technical obstacles, non-electronic medical records may be used until the obstacles are resolved. Thus, medical records must be created in electronic form or using digital means. Furthermore, medical services can also be carried out in two ways: through conventional medical service facilities such as healthcare facilities, and medical services performed digitally, namely telemedicine. Therefore, the position of medical records as evidence in medical disputes is very important, especially in realizing transparent justice both at the PDC level and in court.

The Health Law stipulates that evidence in medical disputes includes: medical card; informed consent; medical record; doctor's notes; and medical prescription.

### **Legal Justice Related to the Limitation of Patient Medical Record Access by Hospitals**

The limitation of medical record access by hospitals can create issues of legal justice, as patients have the right to access their own health information. Relevant laws and regulations govern these patient rights, but their implementation in the field has not always been consistent.

Medical records contain patient data, and in PMK No. 24 of 2022 concerning Medical Records, the content of medical records is the property of the patient. Therefore, it is an obligation for those who have access to medical records to maintain the medical secret related to the information contained therein. Article 301 paragraph (1) of Law Number 17 of 2023 concerning Health states that every medical personnel and healthcare personnel in performing health services must maintain the privacy of patient health. The definition of a medical secret is everything known by healthcare personnel and medical personnel on duty in the field who conduct examinations, treatments, and/or care, at the time or during the performance of their work in the medical field. This understanding is contained in Government Regulation Number 10 of 1966 concerning the Obligation to Keep Medical Secrets. In the same regulation, Article 4 states that if there is a violation of the provisions concerning the obligation to keep medical secrets that are not or cannot be prosecuted under Article 322 or Article 112 of the Criminal Code, the Minister of Health may take administrative action.

Patients, as individuals whose health information is contained in medical records, have the right to have their confidentiality maintained. This right is regulated in Law Number 17 of 2023 concerning Health in Article 4 paragraph (1) letter I, which states, to obtain confidentiality of their personal health data and information. This confidentiality is also a human right regulated in Law Number 39 of 1999 concerning Human Rights in Article 29 paragraph (1), which states, every person has the right to protection of personal self, family, honor, dignity, and property. The obligation to maintain patient confidentiality is also regulated in Law Number 27 of 2022 concerning Personal Data Protection in Article 36, which states that in processing personal data, the personal data controller must maintain the confidentiality of personal data.

Medical secrets are also regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 36 of 2012 concerning Medical Secrets, Article 4 paragraph (1), which states that all parties involved in medical services and/or using patient data and information must keep medical secrets. The disclosure of medical secrets is regulated in the same regulation in Article 5, which states that medical secrets may only be disclosed for the patient's health interests, to fulfill requests from law enforcement officials in the context of law enforcement, at the patient's own request, or based on the provisions of laws and regulations.

The disclosure of confidential personal data and information is explained in Article 4 paragraph (4) of Law Number 17/2023 concerning Health. This article explains that the confidentiality of personal health data and information can be disclosed in circumstances to fulfill requests from law enforcement officials in the context of law enforcement, to support the management of extraordinary occurrences (KLB), epidemics, or disasters, for limited educational and research purposes, as an effort to protect against threats to the safety of others individually or the community, for the purposes of health maintenance, treatment, cure, and patient care, at the patient's own request, as well as to support administrative interests, insurance payments, and health financing guarantees. Article 17 letter h of Law Number 14 of 2008 concerning Public Information Disclosure regulates access to public information that is exempted from disclosure, namely the history, condition, and care, physical and psychological health treatment of a person.

Specifically, provisions regarding the disclosure of medical record content are explained in PMK 24 of 2022 concerning Medical Records in Article 33 concerning the Disclosure of Medical Record Content. This article explains that the disclosure of medical record content can be done with the patient's consent and/or without the patient's consent, where requests to disclose medical record content must be made in writing or electronically to the head of the healthcare facility. Furthermore, for the disclosure of medical records that require patient consent, it is for the purposes of health maintenance, treatment, cure, and patient care, at the patient's own request, and/or for administrative purposes, insurance payments, or health financing guarantees. Article 26 explains that medical records can be provided to close family or other parties, but it does not explain the limitations or definition of close family or other parties.

Legal Justice Related to the Limitation of Patient Medical Record Access by Hospitals is rooted in the patient's right to access their own medical information, which is regulated by the Health Law.

Although hospitals have the responsibility to maintain medical confidentiality, this patient right must still be respected. Limitations on access must be balanced with the hospital's needs in managing information and services, and there must be clear mechanisms for patients who wish to access their medical records.

## CONCLUSION

A medical record is a document containing patient identity data, examinations, treatments, actions, and other services provided to the patient, including consent for healthcare actions. Medical records must be stored and kept confidential by medical personnel, healthcare personnel, and the leadership of the healthcare facility. Article 779 of Government Regulation Number 28 of 2024 concerning the Implementation Regulations of Law Number 17 of 2023 concerning Health stipulates that medical records, as referred to in Articles 777 and 778, must be maintained electronically in accordance with the provisions of laws and regulations. If a healthcare facility cannot maintain electronic medical records due to technical obstacles, non-electronic medical records may be used until the obstacles are resolved. Thus, medical records must be created in electronic form or using digital means. Furthermore, medical services can also be provided in two ways: through conventional medical service facilities like healthcare centers and digital medical services like telemedicine. Therefore, the position of medical records as evidence in medical disputes is very important, especially in realizing transparent justice at both the Professional Disciplinary Council (PDC) level and in court.

Medical records, both electronic and non-electronic, hold an important position as evidence in medical disputes. The presence of transparent medical records is crucial in achieving justice, both at the Professional Disciplinary Council (PDC) level and in court.

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