

立法會
Legislative Council

LC Paper No. CB(2)1367/01-02

Ref : CB2/BC/22/00

**Paper for the House Committee meeting
on 22 March 2002**

**Report of the Bills Committee on
Medical and Health Care (Miscellaneous Amendments) Bill 2001**

Purpose

This paper reports on the deliberations of the Bills Committee on the Medical and Health Care (Miscellaneous Amendments) Bill 2001 (the Bill).

Background

2. In order to improve the operation of the regulatory schemes prescribed in seven ordinances related to the regulation of health care professionals, institutions and products, the Administration introduced the Medical and Health Care (Miscellaneous Amendments) Bill 2000 into the Legislative Council on 19 June 2000 (the 2000 Bill). The 2000 Bill lapsed at the end of the 1999-2000 session because no vacant slot was available to activate the Bills Committee concerned.

3. The Administration had since reviewed the amendments proposed in the 2000 Bill and removed certain controversial amendments, which will be dealt with separately in other bills to be introduced later.

The Bill

4. The Bill proposes minor amendments to the following six Ordinances -
- (a) the Dentists Registration Ordinance (Cap. 156);
 - (b) the Midwives Registration Ordinance (Cap. 162) and its subsidiary legislation;
 - (c) the Nurses Registration Ordinance (Cap. 164) and its subsidiary legislation;
 - (d) the Hospitals, Nursing Homes and Maternity Homes Registration

- Ordinance (Cap. 165);
- (e) the Radiation Ordinance (Cap. 303); and
- (f) the Chinese Medicine Ordinance (Cap. 549).

The Bills Committee

5. At the House Committee meeting on 29 June 2001, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in the **Appendix**.

6. Under the chairmanship of Dr Hon LO Wing-lok, the Bills Committee has held two meetings with the Administration. It has also met with representatives of the Dental Council of Hong Kong, the Midwives Council of Hong Kong, the Nursing Council of Hong Kong and the Radiation Board, and the relevant professional associations.

Deliberations of the Bills Committee

The Dentists Registration Ordinance (Cap. 156)

7. Schedule 1 of the Bill proposes miscellaneous amendments to sections 4(2)(d), 4(3), 4A(3), 4A(4), and 8 of the Dentists Registration Ordinance. Representatives of the Hong Kong Dental Association have expressed their full support for the proposed amendments.

8. Two of the amendments are related to the Licensing Examination conducted by the Dental Council of Hong Kong. The existing section 4A(3) of the Dentists Registration Ordinance provides that the Council may prohibit a person from sitting the Licensing Examination if the person has sat any one part of the Licensing Examination five consecutive times and has failed each time. Section 4A(4) provides the Dental Council with the discretion to allow a person who holds a qualification of a standard not lower than the passing of its Licensing Examination to be registered as a dentist without taking the examination. Item 2 in Schedule 1 to the Bill proposes to delete the word "consecutive" in section 4A(3) and the entire section 4A(4).

9. Hon CHAN Kwok-keung and Dr Hon TANG Siu-tong have expressed concern about the amendment to section 4A(3). They share the view that a person should be allowed to sit any part of the Licensing Examination no matter how many times he has failed in it, since that person already holds a degree in dentistry acquired outside Hong Kong. Members have asked the Administration to provide information on the number of attempts allowed in the licensing examinations conducted by regulatory bodies of other health care professions.

10. By way of comparison, the Administration has pointed out that candidates are allowed to sit five consecutive times in any one part of the Licensing Examination conducted by the Medical Council of Hong Kong. However, the Medical Council also intends to amend the Medical Registration Ordinance (Cap. 161) to the effect that a person may be prohibited from sitting the Licensing Examination if the person has made five attempts (not necessarily consecutive) in any part of the Licensing Examination and failed each time. Such amendment to the Medical Registration Ordinance is similar to the proposed amendment to section 4A(3) of the Dentists Registration Ordinance. As to other health care professions, whilst there is no limitation on the number of times a candidate may sit for the Licensing Examination for pharmacists, two to three consecutive attempts are allowed for persons sitting for examinations held by the statutory boards of the relevant professions.

11. The Chairman of the Dental Council has explained that the deletion of the word "consecutive" is actually to the advantage of the candidates as they will not be obliged to take any part of the Licensing Examination consecutively, which is the case at present. Instead they can sit out any part of the Licensing Examination until they are ready. Members note that the Licensing Examination, which is held annually, comprises three parts. Thus even under the existing provision, it is possible for a candidate to take up to 15 years to complete the three parts. Representatives of the Hong Kong Dental Association have pointed out that unless the person is already registered elsewhere and practising there or undertaking continuing education, the knowledge he acquired in his university studies will become outdated with the passage of time. The lack of practice also adds to his disadvantage. As it will become increasingly more difficult for him to pass the Licensing Examination, the representatives are of the view that allowing five attempts in each part is already a reasonable arrangement.

12. Members note that a person who has failed any one part of the Examination five times but has since undertaken further studies can apply to the Dental Council to retake the Examination. As regards costs and subsidy, at present, a candidate only pays \$4,395 for sitting any part of the Examination, against the cost of \$8,310 for conducting such part, and thus there is a subsidy of \$3,915 for each attempt. Members also note that many of the candidates are from overseas who wish to obtain registration with the Dental Council of Hong Kong as an additional qualification.

13. As to the removal of discretionary power allowed under section 4A(4), the Chairman of the Dental Council has pointed out that since the Dental Council does not have the necessary resources to assess the standards of overseas dental programmes, it has never exercised such discretion. This being the case, the Dental Council has decided to give up this discretionary power.

The Midwives Registration Ordinance (Cap. 162)

14. Members note that the Midwives Council of Hong Kong supports all the miscellaneous minor amendments to the Midwives Registration Ordinance and its subsidiary legislation as set out in Schedule 2 to the Bill. The Bills Committee accepts the proposed amendments.

The Nurses Registration Ordinance (Cap. 164) and The Radiation Ordinance (Cap. 303)

15. Representatives of the nurses' associations have all indicated their support for the various miscellaneous amendments to the Nurses Registration Ordinance and its subsidiary legislation as set out in Schedule 3 to the Bill.

16. Members note that the objective of the proposed amendments to section 4(4) of the Nurses Registration Ordinance is to improve the readability and clarity of the provisions relating to determination by the Nursing Council of matters by circulation of papers. At the same time, members note that Schedule 5 of the Bill adds a new section 3A to the Radiation Ordinance to provide that the Radiation Board may transact its business by circulation of papers without a meeting.

17. Some members have expressed concern about the transaction of business by circulation of papers without a meeting. The Chairman of the Nursing Council of Hong Kong has explained that such a procedure will only be used to deal with minor issues while major decisions will be made at meetings. The representative of the Radiation Board has pointed out that the new provision is aimed at allowing flexibility in dealing with simple items of business to cater for the operational need of the Board. The Administration has also clarified that in practice, only matters of minor or routine nature will be decided by circulation of papers.

18. Despite the explanations provided above, a few members still have reservation about the issue. In particular, Hon Eric LI Ka-cheung maintains the view that such a provision allows considerable power for the chairman and the secretary of the relevant council/board. He has suggested that the Secretary for Health and Welfare should state the circumstances under which the Nursing Council and the Radiation Board would transact their business by circulation of papers in his speech to be delivered during the resumption of the Second Reading debate on the Bill. The Administration has agreed to Mr LI's suggestion.

19. Some members have expressed concern that the expression "restoration of the name of the person to the register or roll" in the proposed section 27(3)(c) of the Nurses Registration Ordinance might be too restrictive as only the

"name" of the relevant nurse would be restored to the register. They have asked the Administration to review the drafting of the proposed amendment to see whether it is necessary to state that all particulars which should be entered in the register or roll would be restored.

20. Having reviewed the wording of the proposed amendment, the Administration has obtained further legal advice and explained that the word "name" does not merely mean the name of the person but the professional status of a person in the nursing profession. Section 5(1) of the Nurses Registration Ordinance provides that the Nursing Council shall cause a register to be kept which shall contain such particulars as may from time to time be prescribed. Under section 17 of the Ordinance, if a person commits a disciplinary offence, the Nursing Council may order that the "name" of the nurse be removed from the register or roll. Under section 21(4) of the Ordinance, the Nursing Council may also restore the "name" of the person to the register. Therefore to place a person's name on the register actually means that the person is allowed to practise the profession. The Administration has further pointed out that the reference to the "name" of a person in the register is commonly used by other professionals. In view of the above, the Administration does not consider it necessary to change the wording of the proposed section 27(3)(c).

21. Members have no comments on the other proposed amendment to the Radiation Ordinance which seeks to rationalise the period of appointment and the removal or resignation provisions in respect of non-ex officio members.

The Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165)

22. Members note that at present all private hospitals are charged the same level of registration fee, irrespective of their capacity. The proposed amendment to section 3(3A) of the above Ordinance seeks to provide flexibility for charging different registration fees for different groups of hospitals, nursing homes and maternity homes, having regard to their capacity. Members accept this amendment and the other minor amendment to the Ordinance.

The Chinese Medicine Ordinance (Cap.549)

23. According to the Administration, the proposed amendment to section 98(2)(b) of the above Ordinance is intended to remove doubts in the existing wording. The existing wording of section 98(2)(b) provides that the Practitioners Board of the Chinese Medicine Council of Hong Kong may conduct an inquiry into a complaint against a Chinese medicine practitioner and discipline him if he "has been found guilty" in Hong Kong or elsewhere of professional misconduct. The proposed amendment seeks to delete the word

"has been found" and replace it by "is" in order that the Practitioners Board of the Chinese Medicine Council of Hong Kong may conduct an inquiry into a complaint against a Chinese medicine practitioner and discipline him on the same occasion. Members have no comments on the proposed amendment.

Committee Stage amendment

24. No Committee Stage amendments have been proposed by members or the Administration.

Follow-up action by the Administration

25. Regarding the Nurses Registration Ordinance and the Radiation Ordinance, the Administration has undertaken to include in the speech to be delivered by the Secretary for Health and Welfare during the resumption of the Second Reading debate on the Bill the circumstances under which the Nursing Council and the Radiation Council would transact their business by circulation of papers (paragraphs 16 to 18 above refer).

Recommendation

26. The Bills Committee supports the Bill and recommends that the Second Reading debate on the Bill be resumed at the Council meeting on 24 April 2002.

Advice Sought

27. Members are invited to note the recommendation of the Bills Committee in paragraph 26 above.

Council Business Division 2
Legislative Council Secretariat
21 March 2002

**Bills Committee on Medical and Health Care
(Miscellaneous Amendments) Bill 2001**

Membership List

Chairman	Dr Hon LO Wing-lok
Members	Hon Cyd HO Sau-lan
	Hon Eric LI Ka-cheung, JP
	Hon CHAN Kwok-keung
	Hon CHAN Yuen-han, JP
	Hon LAW Chi-kwong, JP
	Dr Hon TANG Siu-tong, JP
	Hon Michael MAK Kwok-fung
	(Total : 8 Members)
Clerk	Ms Doris CHAN
Legal Adviser	Mr LEE Yu-sung
Date	26 February 2002