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21 March 2006

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8 Jackson Road
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Dear Miss Ho,

Dentists Registration (Amendment) Bill 2005

Thank you for your letter dated 7 March 2006.

Clause 12 – new section 13A(1) and (2)

New sections 13A(1) and (2) relate to the publication of particulars (including the address) of registered dentists whose names appear on the Specialist Register. Under section 2(1) of the Dentists Registration Ordinance (DRO), “registered address” is defined as the address appearing upon the certificate of registration which is issued to a registered dentist after his name is included in the General Register. Having consulted the Dental Council, we agree that the word “registered” may be added before the word “address” in new sections 13A(1) and (2). Consequential amendments will be made to the new sections 7(4) and 15(1A). Committee Stage Amendments will be introduced.

New section 13A(2) only requires the Registrar to publish in Gazette a list of registered dentists whose names have been added to the Specialist Register subsequent to the publication under new section 13A(1). The power to remove names from the Specialist Register is to be exercised by

the Registrar under new section 15A(1) or pursuant to an order made by the Dental Council under new section 15A(2). When a decision of the Council makes it necessary for the Registrar to amend the General Register or Specialist Register, the Registrar will have to do so under the amended section 15(2). The public can have access to the latest registration information from the Dental Council Secretariat or through its website.

Clause 17 – new section 22(2A)

We are aware of the consequential amendments necessitated by the Statute Law (Miscellaneous Provisions) Ordinance 2005. Appropriate Committee Stage Amendments will be introduced, which are set out in our reply to the Clerk to the Bills Committee of even date.

Clause 24 – new section 32

New section 32 is drafted as a grandfather clause, the substance of which lies with subsection (1). While subsection (1) deals with circumstances existing at the time the relevant provision is brought into operation, subsection (2) is also part of the transitional arrangement that flows from the arrangement under subsection (1). In our view, new section 32(2) is not permanent as it only applies to the dentists concerned, and the duration of that subsection is limited by the career life of the relevant dentists. In the event that the last dentist in the group retires or deceases, the provision will be spent.

According to the *Cobuild English – Chinese Dictionary* of Collins, “in force” and “in effect” carry the same meaning and are interchangeable. As a matter of fact, both expressions have been commonly used in our legislation. A recent example where “in effect” is used in similar context appears in section 13(c) and (d) of Part 1 to Schedule 10 of the Securities and Futures Ordinance (Cap. 571).

Clause 34

We agree that the words “I have the honour to be your obedient servant” are archaic. A Committee Stage Amendment will be introduced.

General observation

(A) Forms 2 and 2A are the prescribed application forms for registration as a dentist. The application forms require the applicants to declare, amongst other things, whether they have been *found guilty* of misconduct in a professional respect in Hong Kong or elsewhere.

The provision relates to a finding of guilt made by a competent authority relating to the applicants' misconduct in a professional respect. The scope of the words "misconduct in a professional respect" is wider than "unprofessional conduct" in that the latter is defined with reference to the standard of professional practice adopted by dentists registered in Hong Kong and that the former may include any misconduct in a professional respect.

The choice of word in the prescribed forms requires the applicants to disclose all findings of guilt made against them for misconduct in a professional respect by competent authorities outside Hong Kong or by the Dental Council of Hong Kong. This choice of word is necessary as the criteria for disciplinary action used in places outside Hong Kong may be different e.g. "professional misconduct", "infamous conduct" etc.

(B) Section 18(4) of the DRO mirrors section 21(4) of the Medical Registration Ordinance (Cap. 161), which in turn followed the wording used in section 33(2) of the Medical Act in U.K. of the time when it was enacted. The legislative intent of section 18(4) is to provide for findings of fact in matrimonial proceedings in courts of the Commonwealth having unlimited jurisdiction in civil matters to be made conclusive proof in disciplinary proceedings. It creates a bar to any evidence being tendered to show that the finding of facts made by the Divorce Court are not correct.

Under the current section 18(4), the Dental Council may treat a decision by a Divorce Court of the Commonwealth as conclusive evidence of the facts found. Decisions made by Divorce Courts in Hong Kong are treated as prima facie evidence of the facts found. In the latter case the Council cannot refuse to hear any evidence tendered by the respondent to show that he is not guilty of the facts found proved by the Divorce Court.

According to the records kept by the Dental Council since 1997, no inquiries have been held which required the Dental Council to rely on facts found proved in Divorce courts. We will review the provision in the next legislative exercise to determine whether amendments to that provision are required to meet the needs of the society.

Yours sincerely,

(Jeff LEUNG)
for Secretary for Health, Welfare and Food