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Secretary for Health, Welfare and
Food Bureau
Health, Welfare and Food Bureau
Health Division
(Attn: Mr Jeff LEUNG, PAS (H)1)
19/F, Murray Building
Garden Road, Hong Kong

By Fax (2840 0467) and By Post

26 August 2005

Dear Mr LEUNG

Dentists Registration (Amendment) Bill 2005 (“the Bill”)

Re-numbering of sections

As sections 2(3) and 2(4) have been added to the Dentists Registration Ordinance (Cap. 156) (“the Ordinance”) by virtue of the Statute Law (Miscellaneous Provisions) Ordinance (No. 10 of 2005), the proposed sections 2(3) and 2(4) of the Bill should be re-numbered.

A complaint or information involves a suitability issue

The proposed section 2(4)(c) provides that a complaint or information involves a suitability issue if the complaint or information concerns the question of whether the name of a registered dentist should be included in, or removed from, the Specialist Register, on any grounds including, but not limited to, the dentist’s act which would be reasonably regarded by registered dentists of good repute and competency as affecting the question of whether the name of the first-mentioned dentist should be included in, or removed from, the Specialist Register.

(A) Please define the meaning of “registered dentists of good repute and competency”. Are all registered dentists who have satisfied the qualification requirements set out under section 8 and registered under section 9 “registered dentists of good repute and competency”?

(B) Section 18(1)(b)(i) provides that if, after due inquiry into any case referred to it by the Preliminary Investigation Committee (“PIC”) in accordance with regulations made under section 29, the Dental Council of Hong Kong (“the Council”) is satisfied that any registered dentist has been guilty of unprofessional conduct, the Council may, in its discretion order the name of the registered dentist to be removed from the General Register.

Section 18(2) provides that for the purposes of subsection (1), “unprofessional conduct” means an act or omission of a registered dentist which would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency.

The proposed section 15A(1) provides, inter alia, that if the Council orders a removal of the name of a registered dentist from the General Register under section 18(1) and the dentist’s name is also included in the Specialist Register, the Registrar shall, at the same time when he removes the dentist’s name from the General Register, also remove the dentist’s name from the Specialist Register.

In these circumstances, it appears that the name of a registered dentist will be removed from the Specialist Register if his act-

- (a) “would be reasonably regarded by registered dentists of good repute and competency that his name should be removed from the Specialist Register”; or
- (b) his “act or omission would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency”.

Please clarify the meaning of these two statements and the difference between them.

Form of Specialist Register

Section 7(1) provides that the General Register shall be kept by the Registrar in the form prescribed under the Dentists (Registration and Disciplinary Procedure) Regulations (Cap. 156 sub. leg. A) (“the Regulations”). The proposed section 7(3) provides that the Specialist Register shall be kept by the Registrar in such form as he thinks fit. Please account for the policy intent regarding the different manners in which the General Register and the Specialist Register are kept.

Application by a registered dentist to have his name included in the Specialist Register

Under the proposed section 12B(1), a registered dentist who wishes to

have his name included in the Specialist Register under a specialty may apply to the Council for the inclusion.

The proposed section 12B(4) provides that on receiving a registered dentist's application made under section 12B(1), the Council shall refer the application to the Education and Accreditation Committee ("EAC") for a recommendation as to whether the dentist satisfies the conditions in section 12B(3).

The proposed section 12B(6) stipulates that in making the recommendation referred to in section 12B(4), the EAC shall take into account its recommendation made under section 12F(1)(d).

The proposed section 12F(1)(d) provides that where a complaint or information in respect of a registered dentist is referred to the EAC, the Committee, after considering all the circumstances of the case, may, where the dentist is applying for the inclusion of his name in the Specialist Register, recommend to the Council that the dentist does not satisfy the conditions in section 12B(3).

As EAC is required under the proposed section 12B(4) to make its recommendation as to whether the applicant satisfies the conditions set out in section 12B(3), what is the purpose of the proposed section 12B(6) which requires the EAC to take into account of its recommendation made under the proposed section 12F(1)(d) that the applicant does not satisfy the conditions in section 12B(3)?

Complaints or information referred to EAC

The proposed section 12F(1)(b) provides that where a complaint or information in respect of a registered dentist is referred to the EAC, the Committee, after considering all the circumstances of the case, may, where the complaint or information also falls within regulation 13 of the Regulations, refer it to the Secretary of the Council to be dealt with in accordance with those regulations.

Please clarify the meaning of "the complaints or information referred to the EAC". Are they the same as "the complaint or information involving suitability issue" referred to the EAC by the Chairman of the PIC in accordance with the proposed section 12E(3)(b) after these complaint or information have been dealt with in accordance with the Regulations?

Exhibition of Certificate of Registration

Section 14(1) requires every registered dentist to exhibit in a conspicuous place in any premises in which he practices dentistry for gain the certificate of registration issued to him under section 10(1).

Please account for the policy intent that a registered dentist whose

named is included in the Specialist Register is not required to exhibit the certificate to the effect that the his name has been included in the Specialist Register issued by the Council under the proposed section 12B(10)(b) in the premises in which he practices dentistry for gain.

Appeals

Section 23(1) provides that any person whose name has been ordered not to be entered in the General Register under section 9(3) or any registered dentist who is aggrieved by any order made in respect of him under section 15, 15A(2) or 18 may appeal to the Court of Appeal and the Court of Appeal may thereupon affirm, reverse or vary the order appealed against.

(A) If an applicant for registration in the General Register is allowed to appeal to the Court of Appeal against the Council's order not to enter his name in the General Register made under section 9(3), why an applicant to include his name in the Specialist Register is not granted the same right to appeal against the Council's rejection of his application under the proposed section 12B(11)?

(B) If a person whose name in the General Register is removed by the Council under sections 15(3) and 18(1) has the right to appeal against the Council's order, why a registered dentist whose name in the Specialist Register is removed by the Council under the proposed section 15A(1) due to the Council's order of removal of his name from the General Register under sections 15(3) or 18(1) does not have the right of appeal?

Penalty

The proposed section 25 provides that a person commits an offence if he falsely pretends to be or takes or uses the name or title of a dentist and shall be liable on summary conviction to a fine at level 6 and to imprisonment for 3 years.

Section 14(2) provides that any person who displays or causes or permits to be displayed in any premises a certificate of registration or a certified copy of a certificate of registration bearing his name or photograph at any time when his name does not appear on the General Register commits an offence and is liable on summary conviction to a fine of \$1,000.

Please clarify the policy intent regarding the difference in penalties imposed on a person who falsely pretends to be or takes or uses the name or title of a dentist and a person who falsely pretends to be a dentist by exhibition of a false certificate of registration.

Preliminary Investigation Committee

Section 29(1C)(b) provides that the Council may by regulation provide for the receipt of complaints or information about any registered dentist or any applicant for registration and the establishment and functions of a committee to be known as the Preliminary Investigation Committee to make such preliminary investigation as it considers appropriate regarding any such complaint or information and to determine whether or not there shall be an inquiry under section 9 or 18.

It appears that the PIC is established to make preliminary investigation regarding complaint or information about dentists registered in or applicants for registration in the General Register and determine whether or not there shall be an inquiry under section 9 or 18. Doubt arises as to whether the PIC is empowered to deal with the complaint or information involving a suitability issue i.e. the question of whether the name of a registered dentist should be included in, or removed from, the Specialist Register submitted to it under the proposed section 12E(1) in the manners provided under the proposed sections 12E(2) and 12E(3). Please clarify.

It is appreciated that your reply in both Chinese and English could reach us by close of play, 2 September 2005.

Yours sincerely

(Monna LAI)
Assistant Legal Adviser