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中華人民共和國香港特別行政區政府總部衛生福利及食物局
Health, Welfare and Food Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
The People's Republic of China

(28775029)

Urgent by fax and through email

Your ref.: LS/B/38/04-05

Tel.: 2973 8103

Our ref.: HWF CR 1/V/3261/92 Pt.12

Fax: 2840 0467

15 November 2005

Miss Monna LAI
Assistant Legal Adviser
Legislative Council Secretariat

Dear Miss Lai,

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

⑨ Pt 11

Thank you for your letter dated 26 August 2005. Our reply to your questions is set out below.

Re-numbering of sections

When the Bill was published in Gazette Supplement No. 3, the Statute Law (Miscellaneous Provisions) Bill was yet to become enacted as law. We will propose a Committee Stage Amendment to re-number the proposed sections 2(3) and 2(4) and make other consequential amendments to the Bill.

A complaint or information involves a suitability issue

(A) We consider that it is not necessary to define “registered dentists of good repute and competency” as we rely on the natural and ordinary meaning of the expression. The same expression can be found in section 18(2) of the existing Dentists Registration Ordinance and no definition has been provided. The question as to what the perception “registered dentists of good repute and competency” is should be left to the Dental Council to decide. It

should be noted that in other legislation relating to professionals, no definition has been provided for the expression. See section 10(3) of the Midwives Registration Ordinance (Cap. 162) and section 17(3) of the Nurses Registration Ordinance (Cap. 164).

(B) A dentist's name may appear (a) both on the General Register and Specialist Register or (b) only on the General Register. It is a policy decision that once a dentist's name is removed from the General Register, his name must also be removed from the Specialist Register. Such approach is the same as that adopted in section 19B(1) of the Medical Registration Ordinance (Cap. 161). This is because a removal of name from the General Register is considered a more serious matter than a removal from the Specialist Register. If, however, a dentist's name is removed from the Specialist Register, his name may still be retained on the General Register and the dentist may continue to practise as a registered dentist.

If a dentist has been guilty of “unprofessional conduct” (i.e., acts and omissions “reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency” as in section 18(2)), such an act could trigger disciplinary procedures/actions by the Dental Council under section 18(1)(b) and lead to the removal of the dentist’s name from the General Register, and hence barring the dentist from practising. If the dentist happens to be a specialist and he is not allowed to practise dentistry generally, it naturally follows that his name should also be removed from the Specialist Register under the proposed section 15A(1).

On the other hand, removal from the Specialist Register on the ground of the proposed section 2(4)(c), i.e. where a dentist’s act is “regarded by registered dentists of good repute and competency that his name should be removed from the Specialist Register” concerns only “suitability issue”, i.e. whether the dentist is suitable to become or continue to be a specialist having regard to all the circumstances of the case. Such an act can lead to removal of the dentist’s name from the Specialist Register, but does not necessarily cause the dentist to be considered unsuitable to practise as a general dental practitioner.

Form of Specialist Register

The fact that the Specialist Register shall be kept by the Registrar in such form as he thinks fit, as stipulated under the proposed section 7(3), is to provide the Council with the flexibility in refining the Register to fit changing circumstances. It should be noted that it is a current trend of law making that forms are not to be prescribed by legislation for the reason of enabling changes to be made in a timely manner.

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

The proposed section 12B(6) is to cater for the situation when an application for inclusion in the Specialist Register is being processed by the Education and Accreditation Committee (“EAC”), there is at the same time a complaint/information received relevant to the applicant’s suitability which is being looked into by the EAC. The intention is to ensure that recommendation made regarding the application will have regard to EAC’s consideration of the relevant complaint/information received. If no complaint/information is received, the proposed section 12B(6) does not come into play.

Complaints or information referred to EAC

All complaints and information received by the Secretary of the Council will be first submitted to the Chairman of the Preliminary Investigation Committee (“PIC”). If the complaint or information received also involves suitability issue concerning a specialist, it will be referred to the EAC for action. The complaints or information referred to the EAC in the proposed section 12F(1)(b) are the complaints or information referred to the EAC under the proposed sections 12E(3)(b) and (4).

Exhibition of certificate of registration

Section 14(1) requires every registered dentist to exhibit in a conspicuous place in any premises in which he practises dentistry for gain the certificate of registration. As the certificate shows that the holder is a registered dentist who is allowed to practise dentistry in Hong Kong, the Dental Council considers it not necessary to impose a statutory requirement to require the dentist to display other additional qualifications and titles.

Appeals

(A) Currently 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 on the ground of conviction of an offence punishable with imprisonment or unprofessional conduct.

As for Council's decision of not entering an applicant's name in the General Register on the ground of qualification, there is currently no provision in the Ordinance providing for an appeal against such a decision to the Court. It is considered that the Dental Council, being a statutory body mainly comprising dental professionals, is in a better position to determine matters relating to professional qualifications.

As the deliberation on whether to include a person in the Specialist Register is essentially a qualification issue, it is considered that as far as appeal procedures are concerned, arrangements adopted for registration in the General Register should be followed.

(B) Under the proposed section 15A(1), a dentist's name will be removed from the Specialist Register if his name is removed from the General Register. As far as removal from the General Register is concerned, aggrieved dentists can appeal to the Court of Appeal and further to the Court of Final Appeal. The Dental Council is of the view that the above appeal mechanism is an appropriate channel for the aggrieved dentists to seek legal redress.

Penalty

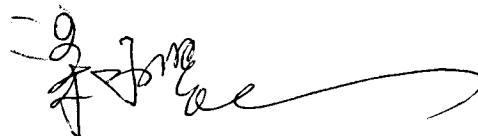
While section 25 deals with the act of a person falsely pretending to be a dentist, section 14(2) concerns the display of a certificate of registration by a person who is not on the General Register. The latter can be invoked to deal with the act of a person who has retired from the dental profession or ceased practice for other reasons and hence his name is not on the General Register but he continues to display his certificate of registration. The penalty associated with section 14(2) is lesser than that under section 25. The two provisions enable the Dental Council to deal with cases of different degree of seriousness.

It should be noted that the proposed section 25 is only a re-write of the existing section 25 to improve readability. There is no change of policy or penalty level.

Preliminary Investigation Committee

For the purpose of performing PIC's function as described under section 29(1C)(b), it is the policy intention that the chairman of PIC shall be empowered, under the new section 12E(2) of the Ordinance to conduct a preliminary screening on whether the complaint or information falls within the ambit of the PIC. If the complaint or information does not involve anything within PIC's ambit, it will be referred to the EAC and, in such case, neither the chairman of PIC nor the PIC will deal with it.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Leung', with a long, sweeping horizontal flourish extending to the right.

(Jeff LEUNG)

for Secretary for Health, Welfare and Food