



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

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Urgent by fax and email

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7 December 2005

Miss Monna LAI
Assistant Legal Adviser
Legislative Council Secretariat

Dear Miss Lai,

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

Thank you for your letter dated 17 November 2005. Our reply to your questions is set out below.

A complaint or information involves a suitability issue

2. We would like to clarify the purposes for which the proposed section 2(4) is made before we deal with the specific questions you raised under this head. The proposed section 2(4), as drafted in the interpretation section, is not an empowering provision but a construction clause to decide the **nature of a complaint or information** (collectively called “a complaint”). It does not set out conditions that a registered dentist is required to satisfy in order that his name is to be included or retained in the Specialist Register. It only sets out a construction formula that if *a complaint* concerns the question of Y (i.e. whether the name of a registered dentist should be included in or removed from the Specialist Register), *the complaint* then involves the issue of X (i.e. involves a suitability issue). As a matter of fact, a complaint involving a suitability issue is a concept which appears in various places in the Ordinance and in the subsidiary legislation, especially after this amendment exercise. The construction of such expression in section 2 only serves as an abbreviation to

avoid tedious repetition of what the meaning is when it comes up in the Ordinance and subsidiary legislation.

3. Paragraphs (a), (b) and (c) of section 2(4) are some instances or examples (though not exhaustive) that where any of those grounds exists, the complaint concerns the question of Y and hence it amounts to a suitability issue. In the context of section 2(4)(c), suppose an act of a dentist would be reasonably regarded by registered dentists of good repute and competency, which is fictional, as affecting the question of Y, the complaint against the act of the dentist amounts to a suitability issue for the purposes of the Ordinance. The paragraph does not carry the effect that the name of the dentist should not be included in, or should be removed from, the Specialist Register. Whether to include or retain a dentist's name on the Register is governed by substantive provision in the proposed sections 12B(3) and 15A(1) or (2) respectively. Section 2(4) is not relevant in this respect and is not a new condition.

4. To determine whether a complaint concerns a suitability issue as against a 'disciplinary issue' under regulation 13 of the Dentists (Registration and Disciplinary Procedure) Regulations (Cap. 156 sub. leg. A), or both, would be important for users of the legislation to understand (a) which authority is to handle the complaint and (b) what route is to be taken in dealing with the complaint.

5. (A) "Registered dentists of good repute and competency" is a wholly impersonal fiction. The concept is similar to the "reasonable man" test. The wording "which would be reasonably regarded" indicates that this is a hypothetical case only. The registered dentists who have satisfied the qualification requirements set out under section 8 and registered under section 9 are, however, not fictional.

6. For the purpose of section 18(2), the Dental Council will make their best judgment whether an act or omission of a registered dentist would be reasonably regarded as disgraceful or dishonourable in the eyes of registered dentists of good repute and competency.

7. (B) The two statements represent two distinct criteria. Statement (a) as cited in your letter is not the effect of section 2(4)(c). Section 2(4)(c) reads "would be reasonably regarded by registered dentists of good repute and competency as affecting the question of...". The wording is not "would be reasonably regarded by registered dentists of good repute and competency that

his name should be included in, or removed from, the Specialist Register.” The former makes it a question of suitability for EAC’s consideration whereas the latter is decisive.

8. As regards statement (b), it comes from the definition of “unprofessional conduct” which is one of the grounds for removal of name from the General Register. Unprofessional conduct is defined as “acts and omissions reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency” (your statement (b) refers) in section 18(2), which is an existing provision. Attempts have been made to go into the meaning of “unprofessional conduct”.¹ This ends up with the decision of the Court of Appeal in 2000² that, inter alia, the words of section 18(2) are entirely clear and that it is not necessary to go beyond them (see paragraph 12 of the judgment).

Complaints or information referred to EAC

9. Our previous letter clarified that the complaints or information referred to the EAC in the proposed section 12F are the complaints or information referred to the EAC under the proposed section 12E(3)(b) and (4). Apart from the statutory power provided in the proposed section 12(E), the EAC has no residue power to receive complaints.

Exhibition of certificate of registration

10. At the moment, dentists who are on the administrative list of specialist dentists can identify themselves as a specialist on signboards, visiting cards and stationery, etc. Consumers, if in doubt about a specialist’s professional status, can check with the Dental Council or its website . The Dental Council therefore does not see a strong need to require dental specialists to display their specialist certificate in their clinics. This is in fact in line with practice of the medical profession in Hong Kong and international practices. Since 1959, there has not been any disciplinary action against misuse of specialist titles administratively granted by the Dental Council.

Appeals

11. This is addressed in a separate submission.

¹ Doughty V General Dental Council [1988] AC 164 (PC) and Koo Kwok Ho V Medical Council of Hong Kong, unreported CA 23/88

² Dr Lam Kwok Pun V Dental Council of Hong Kong CACV 137

Penalty

12. You may wish to note that the term “certificate of registration” is defined in section 2 to mean such certificate or its duplicate issued under the Dental Council under section 10. Displaying a false certificate of registration is therefore not caught under section 14. Displaying a “genuine” certificate of registration as in section 14(2) is a matter of fact. The ingredients of the offence are specifically defined in the section. The offence does not involve any mental element. Section 25, however, involves both the physical elements (i.e. actus rea) as well as fault elements of “wilfully” or “falsely” (i.e. mens rea) which pose a greater hurdle for the prosecution to prove its case and warrant a higher penalty.

Preliminary Investigation Committee (“PIC”)

13. The authority for the proposed amendments to regulation 13 and the new regulation 13A of the Dentists (Registration and Disciplinary Procedures) Regulations lies in section 29(1C)(b) as amended. The Administration is of the view that the complaints are, after this amendment exercise, capable of being construed as including any complaints and not only restricted to the complaints under the purview of PIC. Having considered your concern, the Administration is prepared to expand that paragraph by CSAs to specifically empower the chairman of the PIC to ascertain whether a complaint or information involves a suitability issue and if so, refer it to the EAC.

Yours sincerely,

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

(Jeff LEUNG)

for Secretary for Health, Welfare and Food