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Legislative Council

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**Paper for the House Committee meeting
on 28 April 2006**

**Report of the Bills Committee on the
Dentists Registration (Amendment) Bill 2005**

Purpose

This paper reports on the deliberations of the Bills Committee on the Dentists Registration (Amendment) Bill 2005.

Background

2. Since its establishment in 1959, the Dental Council of Hong Kong has been granting specialist titles to registered dentists through administrative arrangements. The names of dentists granted with a specialist title are included in a non-statutory specialist list, which is made available for information of the public.

3. According to the Administration, the current administrative arrangements, however, lack legal backing and fail to provide clarity and certainty on the requirements and the procedures to become specialists. Establishing a Specialist Register in the Dentists Registration Ordinance (Cap. 156) will provide a firm legal basis for the accreditation arrangements. Such a statutory Specialist Register will also provide useful information to the public and the dental profession as a dentist whose name has been included in the Register under a specialty means that he has completed his post-graduate dental training in a given field to the satisfaction of the Dental Council.

The Bill

4. The Bill seeks to establish -
- (a) a Specialist Register for registered dentists qualified in various specialist fields of dentistry; and

- (b) an Education and Accreditation Committee.

The Bills Committee

5. At the House Committee meeting on 8 July 2005, Members formed a Bills Committee to study the Dentists Registration (Amendment) Bill 2005. The membership list of the Bills Committee is in **Appendix I**.

6. Under the chairmanship of Dr Hon KWOK Ka-ki, the Bills Committee has held four meetings with the Administration. The Bills Committee has also met with representatives of the College of Dental Surgeons of Hong Kong (CDSHK) and the Hong Kong Dental Association.

Deliberations of the Bills Committee

Transitional arrangements for existing Specialist Dentists

7. Clause 24 adds a new section 32 which is drafted as a grandfather clause providing for transitional arrangements.

8. Members note that since its establishment on 1 October 1959, the Dental Council has adopted an administrative system to grant permission for the use of “specialist title” to registered dentists who have met the minimum level of training and experience requirements in particular areas of dental practice. Starting from 1982, the Dental Council has adopted a set of guidelines for considering dentists’ applications to use specialist titles. The guidelines have been updated from time to time to reflect the developments of the profession, including the setting up of the Hong Kong Academy of Medicine (HKAM) and CDSHK, one of HKAM’s constituent colleges, in 1993.

9. Under the existing guidelines adopted by the Dental Council in 2004, only a Fellow of HKAM and CDSHK, or an applicant whose qualification is deemed to be of an equivalent status by the Dental Council, would be considered for the granting of specialist titles by the Council. All applicants also have to satisfy the continuing education requirements set by HKAM and CDSHK.

10. As at 1 December 2005, there were 138 registered dentists who had been given approval by the Dental Council to use specialist titles in seven specialties. Many of those given permission to use specialist titles before the setting up of HKAM in 1993 subsequently became Fellows of HKAM and CDSHK. There were only eight dentists, who have been given approval to use specialist titles by the Dental Council, but who are not in possession of a

HKAM and CDSHK Fellowship. As they met the criteria set by the Dental Council at the time they applied to use the specialist titles, they are eligible to continue using the specialist titles.

11. In order not to cause undue hardship to dentists who aspire to become specialists before enactment of the proposed legislative amendments, the Dental Council does not consider it appropriate to impose a cut-off date for granting specialist titles prior to the enactment of this Ordinance.

12. Members of the Bills Committee support the proposed transitional arrangements.

Legislative intent of the proposed section 12B(3)(b)

13. The proposed section 12B(3) sets out the conditions an applicant must satisfy for inclusion of his name in the Specialist Register. Members have asked the Administration to clarify the legislative intent of the condition set out in the proposed section, which requires the dentist to be of good character, and its difference from section 9(3)(b), which stipulates that the Dental Council should take into account any unprofessional conduct, for registration as a dentist.

14. The Administration has explained that the public would expect a higher standard of service when they seek dental treatment from a specialist dentist in his field of specialty. The Administration is of the view that academic qualifications alone cannot sufficiently determine whether a dentist is suitable for inclusion in the Specialist Register. In the interest of public health, it is also necessary to consider other factors pertinent to the applicant's competence and performance in relation to the concerned specialty.

15. The Administration has stressed that a dentist must first have his name included in the General Register before he can apply for inclusion in the Specialist Register. On this basis, the Dental Council considers that the expected level of moral/conduct standard should be the same for all dentists, regardless of whether they are included in the Specialist Register or not. Therefore it is intended that the moral/conduct element will not be re-examined in applications for inclusion in the Specialist Register.

16. As regards section 9(3)(b), the Administration has pointed out that its purpose is different from that of the proposed section 12B(3)(b). In considering an application for inclusion in the General Register, the Dental Council should not rely on academic qualifications alone. Under section 9(3)(b), the Dental Council should also consider non-academic factors which may have bearing on inclusion in the General Register, including moral/conduct standard expected of a dentist. As explained above, the non-academic consideration under the proposed section 12B(3)(b) is used to

determine whether an applicant is suitable for being granted a specialist title, that is whether he can meet the higher standard expected specific to that particular specialty in terms of competence and performance.

17. The Administration has highlighted the basic differences of the policy intent behind the two sections as follows -

- (a) section 9(3)(b) involves broader consideration whereas the proposed section 12B(3)(b) intends to cover considerations relating to competence and performance directly relevant to the specialty only;
- (b) as far as competence and performance are concerned, the proposed section 12B(3)(b) involves a higher requirement specific to that specialty; and
- (c) section 9(3)(b) covers moral/conduct considerations, while the proposed section 12B(3)(b) does not.

18. In view of members' concern about the legislative intent of the proposed section 12B(3)(b), the Administration will move an amendment to the proposed section to replace "of good character" with "competent in the specialty" to reflect the legislative intent that the non-academic factors to be considered by the Education and Accreditation Committee in vetting an application for inclusion in the Specialist Register are related to an applicant's competence, instead of his moral standard or conduct.

19. The Administration will also move an amendment to the proposed section 2(4) to enhance its clarity as a construction clause so that the suitability grounds for the name of a registered dentist to be included in, or removed from, the Specialist Register are to be based on the conditions set out in the proposed section 12B(3).

Policy intent of appeal to Court arrangements

20. Clauses 15, 17 and 18 of the Bill provide for the power of the Dental Council to order for the removal of names of specialists from the Specialist Register and an appeal mechanism for aggrieved dentists.

21. Members have asked the Administration to set out the policy intent of appeal to Court arrangements regarding the Dental Council's decision to not include a name in or remove a name from the General Register or the Specialist Register on the following considerations -

- (a) disciplinary grounds (sections 9(3) and 18);

- (b) qualification grounds for the General Register (section 8) and conditions for inclusion in the Specialist Register (proposed sections 12B and 12E); and
- (c) correction of General Register and Specialist Register (section 15).

22. The Administration has explained that whether or not appeal to Court is provided for in different non-inclusion or removal scenarios depends on two factors. One is the strength of peer-review element in formulating the decision, and the other is the degree of seriousness of the impact of such a decision on the subject person.

23. The Administration emphasises that deliberations concerning inclusion in and removal from the registers are essentially peer-review decisions within the profession. Generally speaking, the Dental Council, being a statutory body mainly comprising representatives from the dental profession, is in a better position to articulate the professional standard expected of their peers and hence is considered more competent in making inclusion/removal decisions. When in some circumstances, decisions are made on grounds that take into account elements such as, but not limited to, misconduct or malpractice, right of appeal to Court is considered appropriate.

24. The Administration has pointed out that the Dental Council's non-inclusion/removal decisions can cause varying degree of hardship to the subject person. The Administration considers that generally speaking, the more such hardship, the stronger the case for the subject person to seek redress through appeal to Court. Factors affecting the degree of seriousness include whether the decision would cause a dentist to be barred from practising and hence deprive him of a way to earn a living, and how far such a decision may defy a dentist's reasonable expectation, etc.

Non-inclusion and removal decisions on disciplinary grounds

25. As the decisions of not entering an applicant's name in and removing a dentist's name from the General Register or Specialist Register on disciplinary grounds take into account elements such as, but not limited to, misconduct or malpractice, the Administration considers that the provision of the right to appeal to Court is necessary. The four different possible scenarios are set out in paragraphs 26 to 29 below.

26. For inclusion in the General Register, the Dental Council may, under section 9(3), refuse to admit the name of an applicant in the General Register if it is satisfied, after due enquiry, that the applicant -

- (a) has been convicted in Hong Kong or elsewhere of any offence

punishable with imprisonment; or

- (b) has been guilty of unprofessional conduct; or
- (c) is the subject of an existing order made under section 17(1)(i) or (ii) of the repealed Ordinance.

Decisions of non-inclusion on these grounds can be appealed against pursuant to section 23(1).

27. A dentist's name may be removed from the General Register after due enquiry under section 18. Section 23(1) provides for an appeal channel to the Court of Appeal.

28. If during the processing of an application for inclusion in the Specialist Register, the concerned dentist is removed from the General Register, his application for inclusion in the Specialist Register will not be considered, as he is no longer a registered dentist. The dentist may appeal to Court against the removal from the General Register. If his name is subsequently restored to the General Register, he may apply for inclusion of his name in the Specialist Register again.

29. If a dentist's name is removed from the General Register on disciplinary grounds, it will be automatically removed from the Specialist Register by virtue of the proposed section 15A(1), because the dentist is in effect barred from practising dentistry. In such circumstances, the redress is also to rely on section 23(1) which provides for appeals against the Dental Council's decision concerning removal from the General Register. If his name is subsequently restored to the General Register, he may apply for inclusion of his name in the Specialist Register again.

Non-inclusion decisions on qualification grounds

30. Members have asked the Administration why there is no appeal mechanism for non-inclusion decisions on qualifications grounds.

31. The Administration has explained that for inclusion in the General Register, the Dental Council should not entertain such applications if the applicants are not qualified. The Dental Council, being a statutory body mainly comprising representatives from the dental profession, is in a better position to determine matters relating to professional qualifications, which are primarily peer-review in nature. The Administration considers that the right of appeal to Court for such cases is not necessary.

32. In the case of an application for inclusion in the Specialist Register, the applicant has to be a registered dentist, who is allowed to practise in all areas of

dentistry by virtue of his comprehensive training. Whether a registered dentist should be granted a specialist title is primarily a question of whether he is qualified and hence is a peer-review decision. The Dental Council is therefore in the best position to make such a judgement. In terms of hardship caused to the subject dentist if his application for inclusion is rejected, the Administration considers that such a decision should cause relatively less suffering when compared with a removal case.

33. Members do not agree with the Administration's view and suggest that an appeal mechanism should be provided for an applicant seeking inclusion of his name in the Specialist Register to appeal to Court against the Dental Council's rejection of his application. After consulting the Dental Council, the Administration has agreed to move amendments to section 23 to allow such an appeal to be made.

Decision of removing a dentist's name from the Specialist Register on section 12E considerations

34. The Administration has pointed out that the decision to remove a dentist from the Specialist Register is against the expectation of the dentist. The action is considered more serious than non-inclusion, because it takes away a title that the dentist is already enjoying. The Administration therefore considers that the right of appeal to Court should be granted, as in all other removal cases.

Decision of removing a dentist's name from the General/Specialist Register on account of correction of register

35. As removal from the General Register/Specialist Register under section 15, i.e., for reason of correction of the General Register/Specialist Register, as in all other removal cases, defies a dentist's reasonable expectation and deprives him of a way to earn a living or takes away a title that the dentist is already enjoying, the Administration considers that the right of appeal to Court should be granted.

36. If a specialist's name is removed from the Specialist Register due to correction of the General Register, the redress is provided by section 23(1) against the removal order under section 15.

The rules of the appeal mechanism

37. Section 23(1), as amended, 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, which may thereupon affirm, reverse or vary the order appealed against. The appellant

may further appeal to the Court of Final Appeal from the judgment of the Court of Appeal.

38. Members have asked the Administration whether the rules on appeal provided under the amended section 23 are different from those provided under the Supplementary Medical Professions Ordinance (Cap. 359) and the Social Workers Registration Ordinance (Cap. 505) and the Rules of the High Court made under the High Court Ordinance (Cap. 4). Members have also asked the Administration to clarify the effect of “an appeal to the Court of Appeal shall be deemed to be finally determined when the specified period expires without an application for leave to appeal” under the amended section 2(3), taking into consideration that the Court of Appeal or the Court of Final Appeal, as the case may be, has the jurisdiction to extend the specified period for filing an appeal.

39. For an appeal to the Court of Appeal under section 23(1), the Administration has clarified that in general terms, the practice follows the Rules of High Court, except that a notice of appeal must be given within one month and that the period is not extensible.

40. The Administration has pointed out that the above arrangement limiting the time to lodge an appeal against a decision or an order of a regulatory body with the Court of Appeal is in line with those for other professions. Similar provisions include section 26 of Medical Registration Ordinance (Cap. 161), section 22 of Nurses Registration Ordinance (Cap. 164), section 25 of Supplementary Medical Professions Ordinance, and section 33 of Social Workers Registration Ordinance. In these cases, the time within which the notice of appeal shall be lodged is one month, 30 days, one and three months respectively.

41. In the context of dentists, the Administration considers that the appeal period of one month is appropriate, having regard to the need to strike a balance between providing a reasonable avenue of redress for dentists and ensuring sufficient protection of public health.

42. Since the enactment of the Statute Law (Miscellaneous Provisions) Ordinance 2005, an appellant may further appeal to the Court of Final Appeal from a judgement of the Court of Appeal. The Administration has pointed out that section 2(3) and (4) of the Ordinance was added by the Statute Law (Miscellaneous Provisions) Ordinance 2005, which also added similar provisions to 16 other Ordinances, including the Professional Accountants Ordinance (Cap. 50), Legal Practitioners Ordinance (Cap. 159) and Medical Registration Ordinance.

43. If an appellant wishes to appeal to the Court of Final Appeal, he should make an application for leave to appeal to the Court of Appeal within 28 days from the date of the judgment (Cap. 484 section 24(2)). If the application is

refused by the Court of Appeal, he should apply to the Court of Final Appeal for leave. The above period can be extended on application to the Court of Appeal or Court of Final Appeal, before and after the period expires (Cap. 484 section 24(5) and (6)).

44. The Administration has explained that because it is impracticable for the Registrar to wait indefinitely before he takes the relevant disciplinary actions (e.g. removal of a name from a Register), section 2(3) and 2(4) defines the earliest opportunity when he can do so in the case that an appeal has been made to the Court of Appeal (and as the case may be, further to the Court of Final Appeal). This, however, does not affect the jurisdiction of the Court of Appeal or the Court of Final Appeal to extend the period for applying for leave to appeal from the judgment of the Court of Appeal. The Court of Final Appeal may order that the removal be reversed.

Exhibition of Certificate of Registration

45. A registered dentist whose name is included in the Specialist Register is not required to exhibit his specialist certificate in the premises in which he practises dentistry for gain.

46. Members have asked the Administration to explain the reason for the absence of such a requirement. The Administration has pointed out that 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 does not see a strong need to require dental specialists to display their specialist certificates in their clinics. This is in line with the practice of the medical profession in Hong Kong and international practices.

Penalty for fraudulent registration and unauthorised use of specialist title

47. Clause 19 of the Bill repeals section 24 of the Ordinance and substitutes it with a new section 24 to add a criminal sanction against fraudulent act of procuring a person's name to be included in the Specialist Register. Under the new section 24, any person committing the offence is liable on conviction upon indictment to imprisonment for three years.

48. Members have asked the Administration to consider introducing a fine at an appropriate level for the conviction of fraudulent registration, as an alternative to the existing penalty of imprisonment for three years set out in the proposed section 24. Although the Dental Council has no objection to the proposal, the Administration has informed the Bills Committee that based on legal advice, a change to the level of penalty associated with the offence falls outside the scope of the Bill. The Administration will consult the Legal

Policy Division of the Department of Justice to see whether a change of penalty is suitable from a legal policy point of view, and if so, will include the relevant amendment in the revamp exercise of the Ordinance.

49. As regards the penalty for falsely pretending to be or taking or using the name or title of a dentist under the proposed section 25, the Administration has pointed out that the penalty of a fine at level 6 and imprisonment for three years is the same as that for a similar offence in section 28(1) of the Medical Registration Ordinance, whereas the penalty for a similar offence in section 35 of the Social Workers Registration Ordinance is a fine at level 5 only. The Administration considers that it is appropriate to impose a heavier penalty for one wilfully or falsely pretending to be a medical practitioner or dentist than that associated with one pretending to be a social worker, because public health is at stake in the former offence.

50. Members have also requested the Administration to give reasons for imposing different penalties on a person who exhibits a certificate of registration under section 14(2) and a person who wilfully or falsely pretended to be a dentist or a specialist under the proposed sections 25 and 25A.

51. The Administration has informed the Bills Committee that the Dental Council cannot trace the intent of section 14(2), which was enacted in 1959. The Dental Council is not aware of the provision having been invoked against any person. As there is already provision in section 25 for dealing with persons falsely pretending to be a dentist and since there does not seem to be a strong public health reason to retain section 14(2), the Administration would consider repealing the existing section 14(2) in the revamp exercise of the Ordinance.

Delineation of the role of the Education and Accreditation Committee and Preliminary Investigation Committee

52. The Administration will move amendments to the proposed section 29 to enhance the clarity about the power of the Chairman of the Preliminary Investigation Committee to ascertain whether a complaint or information involves a suitability issue, and if so, refers it to the proposed Education and Accreditation Committee.

Other amendments proposed by the Administration

53. Other amendments proposed by the Administration include -

- (a) an amendment to Form 6 (Notice of Inquiry) to repeal the words "I have the honour to be, Sir/Madam, your obedient servant." which are archaic;

- (b) consequential amendments necessitated by the Statute Law (Miscellaneous Provisions) Ordinance 2005; and
- (c) an amendment to add the word “registered” before the word “address” in the new sections 7(4), 13A(1), 13A(2), 15(1A) and the amended section 15(1).

Commencement date of the Amendment Ordinance

54. As to the commencement date of the Amendment Ordinance, members note that the Dental Council will need about three months after the passage of the Bill to complete the necessary administrative arrangements, including the setting up of the new Education and Accreditation Committee, drawing up the new application form and certificate, and announcement of the new arrangements to all registered dentists and dental professional bodies. The Administration will arrange commencement of the Bill after the Dental Council’s preparatory work has been completed.

Committee Stage amendments

55. The Committee Stage amendments (CSAs) to be moved by the Administration are in **Appendix II**. The CSAs are supported by the Bills Committee.

Resumption of the Second Reading debate

56. The Bills Committee supports the resumption of the Second Reading on the Bill at the Council meeting on 17 May 2006.

Advice sought

57. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
26 April 2006

Bills Committee on Dentists Registration (Amendment) Bill 2005

Membership List

Chairman	Dr Hon KWOK Ka-ki
Members	Hon Andrew CHENG Kar-foo Hon Audrey EU Yuet-mee, SC, JP Hon LI Kwok-ying, MH (Total : 4 Members)
Clerk	Ms Doris CHAN
Legal adviser	Miss Anita HO
Date	10 February 2006

DENTISTS REGISTRATION (AMENDMENT) BILL 2005

COMMITTEE STAGE

Amendments to be moved by the Secretary for Health, Welfare and Food

<u>Clause</u>	<u>Amendment Proposed</u>
3	<p>(a) The following is added after paragraph (a) –</p> <p>“(aa) in subsection (3), by adding “and (2A)” after “22(2);”.</p> <p>(b) In paragraph (b), by renumbering the proposed section 2(3) and (4) as section 2(5) and (6) respectively.</p> <p>(c) In paragraph (b), in the proposed section 2(6), by deleting everything after “Register” where it first appears and substituting a full stop.</p>
6(c)	In the proposed section 7(4), by adding “registered” before “addresses”.
10	In the proposed section 12B(3)(b), by deleting “of good character” and substituting “competent in the specialty”.
12	In the proposed section 13A(1) and (2), by adding “registered” before “addresses”.
14	<p>(a) By deleting paragraph (a) and substituting –</p> <p>“(a) in subsection (1) –</p> <p>(i) by repealing “register” and substituting “General Register”;</p> <p>(ii) by adding “registered” before “addresses”;”.</p>

(b) In paragraph (b), in the proposed section 15(1A), by adding “registered” before “addresses”.

17(c) In the proposed section 22(2A), by deleting everything after “concerned” and substituting “or, in the case of an appeal made to the Court of Appeal against the order under section 23, before the appeal is finally determined.”.

18 By deleting the clause and substituting –

“18. Appeals

Section 23 is amended –

(a) by repealing subsection (1) and substituting –

“(1) The following person may appeal to the Court of Appeal –

(a) any person whose name has been ordered not to be entered in the General Register under section 9(3);

(b) any registered dentist whose application under section 12B(1) to have his name included in the Specialist Register is rejected by the Council;

(c) any registered dentist who is aggrieved by an order made in respect of him under section 15, 15A(2) or 18,

and the Court of Appeal may affirm, reverse or vary the order or decision appealed against.”;

(b) in subsection (3), by repealing everything after “(Cap. 4)” and substituting a full stop;

(c) by adding –

“(3A) Despite subsection (3), the Court of Appeal has no power to –

(a) hear any appeal against an order made under section 9, 15A(2) or 18 unless notice of the appeal was given within 1 month of the order being served in accordance with section 22(1);

(b) hear any appeal against a decision made by the Council to reject an application under section 12B(1) unless notice of the appeal was given within 1 month of the notice of the rejection being given under section 12B(11).”.

22(b)

By deleting subparagraph (i) and substituting –

“(i) by adding –

“(ba) the ascertainment by the chairman of the Preliminary Investigation Committee as to whether a complaint or information about any registered dentist involves a suitability issue and the referral of such a complaint or information involving a suitability issue to the Education and Accreditation Committee;”.

34(d)

(a) In subparagraph (ii), by deleting the full stop and substituting a semicolon.

(b) By adding –

“(iii) in the English text, by repealing –
“I have the honour to be,
Sir/Madam,
Your obedient servant.””.