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26 August 2010

Urgent By Fax: 3020 0205

Dr Hon LEUNG Ka-lau
Room 309, West Wing
Central Government Offices
Hong Kong

Dear Dr LEUNG

The Medical Registration (Amendment) Bill 2010

Thank you for your letter dated 26 July 2010.

In your letter, you referred to my ruling dated 25 June 2010 that the Medical Registration (Amendment) Bill 2010 (“the Bill”) relates to Government policies within the meaning of Rule 51(4) of the Rules of Procedure and requested my reconsideration. The grounds you put forward were that you considered the statement which I made in my ruling, which is quoted below for easy reference, was new and you had not had the opportunity to respond to it. You pointed out that the statement first appeared in the Government’s response dated 18 February 2010 to your proposed Bill and you regarded the statement as the Government’s objective and not its policy. You also referred to my predecessor’s view that “government policies” should not be used interchangeably with “policy aims or objectives”, and “policy objectives” should not be regarded as “government policies” which my predecessor had defined for the purpose of forming an opinion under Rule 51(4).

The statement you quoted from my ruling is as follows: “.... it is Government policy to rely on the professional obligation of private doctors themselves to ensure that their medical services are up to the professional standards stipulated by the Medical Council, and not to regulate the business mode under which such services are provided”.

In my ruling on the Bill, I have stated that I agree to my predecessor's view that Government policies within the meaning of Rule 51(4) of the Rules of Procedure include policies promulgated in the Legislative Council or its committees by public officers designated by the Chief Executive. The abovesaid statement is made on the basis of the Government's response which was passed to you for comment on 19 February 2010. When making its response, the Government referred to its paper on Regulation of Health Maintenance Organizations ("HMOs"), which was presented to the Panel on Health Services ("HS Panel") on 12 March 2007 and also discussed on 11 June 2007. The purpose of this paper was to brief members of the HS Panel on the progress of the Administration's study on the regulation of HMOs, which are now referred to as Managed Care Organizations ("MCOs"), with particular emphasis on how to take forward the medical director concept. The views of the Administration on the regulation of HMOs are set out in paragraphs 6 and 7 of the paper. I find paragraph 6 particularly relevant. Paragraph 6 reads: "Recognizing the concerns of the professional bodies as well as the impact of quick evolution of group practices and scheme administrators, the Administration agreed that there was scope for strengthening the present regime, which is anchored in the regulation of individual healthcare professionals. The objective of any enhanced regulation should be to provide better quality assurance of medical services to safeguard patient's welfare while facilitating the further development of the primary healthcare market".

In my view, the Administration has set out very clearly in paragraph 6 of the paper its policy and the objective of its policy on the regulation of HMOs which are now referred to as MCOs. The present regime is anchored in the regulation of individual healthcare professionals and not of the business mode under which services are provided. The Government agrees that there is scope for strengthening, rather than changing, the present regime, and the objective of any enhanced regulation should be to safeguard patients' welfare, still through the assurance of the professional standard of medical services at the service delivery tier. Against this background, paragraphs 9 to 13 of the Administration's paper explain in detail the proposal of requesting group practices that employ frontline doctors to appoint medically-qualified personnel as medical director of the group, including how this proposal meets the objective of enhanced regulation.

The statement I made in paragraph 30 of my ruling expresses the view that I have formed on the basis of my reading of the relevant paragraphs in the Administration's paper.

As I have stated in my ruling, since the Bill seeks to regulate the operation or business mode of MCOs by requiring a majority of the directors of MCOs to be registered medical practitioners, it has a substantive effect on the Government's policy on MCOs and therefore relates to Government policies within the meaning of Rule 51(4) of the Rules of Procedure.

I remain of the opinion that the Bill relates to Government policies within the meaning of Rule 51(4) of the Rules of Procedure and the Chief Executive's written consent is required for its introduction.

Yours sincerely

(Jasper TSANG Yok-sing)
President
Legislative Council

c.c. All other Legislative Council Members

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