

Panel on Health Services
Meeting on 16 November 2015

Medical Registration (Amendment) Bill 2015
Briefing Notes

PURPOSE

This paper briefs Members on the Medical Registration (Amendment) Bill 2015 (the Bill) proposed by me, Tommy Cheung Yu-yan, Legislative Council Member, and seeks support from fellow Members on passing the said Bill into law. The Bill is set out in Annex A appended hereto.

BACKGROUND

The Medical Council

2. The Medical Council (the Council) is established under section 3 of the Medical Registration Ordinance (Cap. 161)(the Ordinance). At present, the Council consists of 28 members; among them, 24 are registered doctors (14 elected, 10 appointed) while the remaining 4 are lay members (appointed by the Chief Executive). The ratio of professional members to lay members in the Council is 6:1.¹

3. Empowered by the Ordinance, the Council administers the Licensing Examination (includes setting up standards for examination and internship assessment), maintains a registrar of eligible medical practitioners, determines and promulgates from time to time the type of employment in respect of which “limited registration” is appropriate or necessary, establishes the “Licentiate Committee”, the “Education and Accreditation Committee”, the “Ethics Committee”, the “Preliminary Investigation Committee” and the “Health Committee” in accordance with the Ordinance², appoints the “panel of assessors”, and exercises regulatory and

¹ Before 1987, there was no lay member in the Council. The 1987 amendment to the Ordinance introduced for the first time 1 lay member to the Council; the 1996 amendment to the Ordinance introduced another 3 lay members to the Council, making a total of 4 lay members in the Council. The number of lay members in the Council remains unchanged up to this day.

² The Council is required by the Ordinance to appoint 1 lay member of the Council to become member of the “Preliminary Investigation Committee” and the “Health Committee” respectively. The Ordinance makes no similar requirement for the other 3 Committees.

disciplinary powers for the profession.

Criticisms

4. All along, there have been strong criticisms in society that the Council has imposed too stringent a standard for the Licensing Examination, making it grossly difficult, if not impossible, for local Hong Kong students who have chosen to study medicine abroad to be medically qualified in Hong Kong. Even worse, those who have already been qualified as registered doctors in overseas jurisdictions also find it difficult to pass the Licensing Examination. This poses considerable hindrance and obstruction to any attempt to alleviate the problem of manpower shortage in the public health sector by importation of overseas-trained doctors. Society has strong expectation that these overseas-trained Hongkongers should be able to be qualified and come back to serve Hong Kong. Concerning this issue, the number of lay members in the Council is considered as being too meagre and inadequate to reflect effectively society's urge to alter the current unreasonably stringent examination and assessment policy.

5. Moreover, the Council has repeatedly been accused of causing serious delay in the handling of medical complaints. This attracts stern social criticism. Under the present arrangement, all complaints against registered medical practitioners have to be filtered by the Preliminary Investigation Committee (the PIC).³ However, in accordance with the Ordinance, the quorum of a PIC meeting is 3, among whom 1 must be a lay member (the only appointed lay Council member to the Committee), subject to the majority being registered medical practitioners, including the Chairman or Deputy Chairman, or both. Accordingly, the appointed lay Council member must taken part in each and every PIC meeting, inevitably making him/her a bottleneck that causes serious delay. On the other hand, the permanent majority of professional members in the PIC conjure up strong image of doctors shielding and covering up each other against lay complaints.

6. Fair to the Council, it had in fact made concrete response to criticisms by suggesting reforms. In 2001, a Working Group established by the Council

³ The Preliminary Investigation procedure is a 2-step screening procedure. In accordance with it, all complaints have to go to the Chairman and Deputy Chairman of the PIC for them to agree whether the complaint in issue is frivolous or groundless. If either of them says "No", the complaint will then be sent to the PIC itself to decide, on the materials submitted, whether a formal inquiry should be held. If the PIC says "Yes", the complaint will either be referred to the Council for disciplinary inquiry or, alternatively, sent to the Health Committee (for hearing into matters concerning the health or mental fitness to practise of any registered medical practitioner).

recommended that the number of lay members in the Council should be doubled from 4 to 8; that the number of lay members in the PIC should be increased from 1 to 3 (forming 1/3 of the Committee), and that no complaint should be rejected unless there was unanimous agreement between the PIC Chairman, Deputy Chairman and a lay member. In response, the then Health and Welfare Bureau openly endorsed the said reforms on paper.⁴ However, nothing happened to implement the reform proposals into concrete action. In 2005, the then Secretary for Health, Welfare and Food Bureau manifested an open and sudden U-turn in attitude, asserting that the Council's complaint handling mechanism had been working well, and that the Administration did not see an immediate need to take forward the said proposals.⁵ The Legislative Council followed up the Medical Council reform issue on various occasions but had hitherto achieved no result.

7. Recently, the High Court had made severe criticisms of the Council's way of handling complaints in a judicial review case. Upon careful analysis and review, the Court pointed out the actual chaotic situations in the Council's handling of complaints. It concluded that the Council must implement urgent reforms to comply with the law's requirements.⁶

Global Trend

8. According to one study conducted by the Chinese University of Hong Kong (commissioned by the Food and Health Bureau), many jurisdictions are undergoing regulatory reforms. Increasingly, healthcare professional regulation is moving from the premise of professional self-regulation to protect its own interests to one of co-regulation in partnership with the public for better protection of public health. There is a global trend for more openness and accountability, including greater involvement of laypersons in regulatory bodies and relevant panels for review and inquiries.⁷ The urge to increase the number of lay members in the Medical Council and to increase the proportion of lay Council members in the PIC is nothing novel but consistent with the latest development of the global trend.⁸

9. In February 2014, the Liberal Party and the Democratic Party in Hong Kong

⁴ See LC Paper No.CB(2)990/01-02(01).

⁵ Answer to Member's Question, Legislative Council Meeting, 6th July 2005.

⁶ Law Yiu Wai Ray vs. Medical Council of Hong Kong (HCAL 46/2015), 12th October 2015.

⁷ See LC Paper No.CB(2)219/13-14(03).

⁸ In Hong Kong, the ratio of professional members to lay members in the Dental Council is 3:1; in the Veterinary Surgeons Board 2:1, in the Pharmacy and Poisons Board and in the Chiropractors Council 1:1.

had jointly submitted reform proposals to the Administration, suggesting ways to alleviate the problem of doctor shortage in the public health sector.⁹ Both Parties agreed that the ratio of lay members to professional members in the Medical Council must be increased. In light of this cross-party consensus, the Bill's reform proposal to increase the number of lay members in the Council has firm social foundation.

LEGISLATIVE PROPOSAL

To Raise the Proportion of Lay Membership of the Medical Council

10. In light of the aforesaid reasons, I propose to open up the Medical Council to wider public participation by increasing the number of lay members in the Council, with a view to strengthen the public's role in co-regulating the medical profession. The composition of the reformed Council shall be as follows:

Council	Existing	Proposed
Professional Members	2 doctors, nominated by Director of Health, appointed by the Chief Executive	No change
	2 doctors, nominated by the University of Hong Kong, appointed by the Chief Executive	No change
	2 doctors, nominated by the Chinese University of Hong Kong, appointed by the Chief Executive	No change
	2 doctors, nominated by the Hospital Authority, appointed by the Chief Executive	No change
	2 doctors, nominated by the Academy of Medicine, appointed by the Chief Executive	No change
	7 member doctors, nominated by the Hong Kong Medical Association, elected by Council members of the Association	No change
	7 doctors registered in Part I of the General Registry, elected by all Part I and Part III registered doctors	No change
Lay	4 lay members, appointed by the Chief Executive	8 lay members, appointed by the Council

⁹ Entitled 《紓緩香港公共醫療系統的醫生不足問題建議書》, in Chinese only.

Members	Executive	the Chief Executive
Total	28 Members	32 Members

The ratio of lay members in the Council increased from 6:1 to 3:1.¹⁰

To Make Adjustments to the Composition of the Preliminary Investigation Committee and the Health Committee

11. Both the Preliminary Investigation Committee and the Health Committee are required by the Ordinance to appoint 1 lay member of the Council to become members of the said Committees. In accordance with the principle of enlarging public participation, I propose that the number of lay members appointed to both Committees shall be increased from 1 to 2, with a view to release the bottleneck and help alleviating the delay problem in handling complaints.¹¹

THE BILL

12. The main provisions are –

- (a) Clause 3 amends section 3 of the Ordinance by increasing the number of lay members of the Council from 4 persons to 8 persons;
- (b) Clause 4 amends section 20S of the Ordinance by adjusting the number of lay members of the Council appointed to the Preliminary Investigation Committee from 1 person to 2 persons;
- (c) Clause 5 amends section 20U of the Ordinance by adjusting the number of lay members of the Council appointed to the Health Committee from 1 person to 2 persons.

IMPLICATIONS OF THE PROPOSAL

13. I believe the proposal is in conformity with the Basic Law, including the provision that professional organizations may on their own assess and confer professional qualifications. It will not affect the binding effect of existing provisions of the Ordinance and its subsidiary legislation. It has no civil service, economic,

¹⁰ In line with the 2001 Medical Council reforms proposal.

¹¹ In principle, I support the Council's 2001 proposal to increase the number of lay members in the Preliminary Investigation Committee from 1 to 3, but find it worthwhile to give the Administration the benefit of a doubt. However, if the Administration can give no reason as to why there should be no greater change than adding 1 more lay member to the PIC, I would support amendment to increase the number from 1 to 3 or even more.

productivity, environmental, sustainability or family implications.

Tommy Cheung Yu-yan
Legislative Council Member
12th November 2015

Medical Registration (Amendment) Bill 2015**A BILL****To**

Amend the Medical Registration Ordinance to raise the proportion of lay membership of the Medical Council of Hong Kong; and to make incidental adjustments to the composition of the Preliminary Investigation Committee and the Health Committee.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Medical Registration (Amendment) Ordinance 2015.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette.

2. Medical Registration Ordinance amended

The Medical Registration Ordinance (Cap. 161) is amended as set out in sections 3, 4 and 5.

3. Section 3 amended (establishment and composition of Council)

Section 3(2)(g)—

Repeal

“4”

Substitute

“8”.

4. **Section 20S amended (Preliminary Investigation Committee)**

Section 20S(1)(g)—

Repeal

“1 of the 4”

Substitute

“2 of the 8”.

5. **Section 20U amended (Health Committee)**

Section 20U(1)(g) —

Repeal

“1 of the 4”

Substitute

“2 of the 8”.

Explanatory Memorandum

The objects of this Bill are to amend the Medical Registration Ordinance (Cap. 161) (*Ordinance*) to increase the number of lay members of the Medical Council of Hong Kong (*Council*); and to adjust the number of lay members of the Council appointed to the Preliminary Investigation Committee and the Health Committee as established by the Council in accordance with the Ordinance.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 amends section 3 of the Ordinance by increasing the number of lay members of the Council from 4 to 8.
4. Clause 4 amends section 20S of the Ordinance by adjusting the number of lay members of the Council appointed to the Preliminary Investigation Committee from 1 to 2.
5. Clause 5 amends section 20U of the Ordinance by adjusting the number of lay members of the Council appointed to the Health Committee from 1 to 2.