

立法會
Legislative Council

LC Paper No. CB(2)394/18-19
(These minutes have been
seen by the Administration)

Ref : CB2/BC/8/16

Bills Committee on Private Healthcare Facilities Bill

**Minutes of the fifth meeting
held on Friday, 12 January 2018, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

- Members present** :
- Hon CHAN Han-pan, JP (Chairman)
 - Hon Tommy CHEUNG Yu-yan, GBS, JP
 - Prof Hon Joseph LEE Kok-long, SBS, JP
 - Hon WONG Ting-kwong, GBS, JP
 - Hon Starry LEE Wai-king, SBS, JP
 - Hon CHAN Kin-por, GBS, JP
 - Hon Paul TSE Wai-chun, JP
 - Hon YIU Si-wing, BBS
 - Hon CHAN Chi-chuen
 - Hon Alice MAK Mei-kuen, BBS, JP
 - Dr Hon Elizabeth QUAT, BBS, JP
 - Dr Hon CHIANG Lai-wan, JP
 - Hon Andrew WAN Siu-kin
 - Dr Hon Junius HO Kwan-yiu, JP
 - Hon SHIU Ka-fai
 - Dr Hon Pierre CHAN
- Members absent** :
- Hon Steven HO Chun-yin, BBS
 - Dr Hon KWOK Ka-ki
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Dr Hon Helena WONG Pik-wan
 - Hon HO Kai-ming
 - Hon SHIU Ka-chun
- Public Officers attending** :
- Mr FONG Ngai
 - Head, Healthcare Planning and Development Office
 - Food and Health Bureau

Mr Bill LI Chi-pang
Deputy Head, Healthcare Planning and Development
Office
Food and Health Bureau

Mr Michael LI Chi-lung
Assistant Secretary for Food and Health (Health) 6
Food and Health Bureau

Dr Amy CHIU Pui-yin, JP
Head, Office for Regulation of Private Healthcare
Facilities
Department of Health

Dr FUNG Ying
Principal Medical and Health Officer (Private Healthcare
Facilities) 2
Department of Health

Ms Rayne CHAI Chih-hui
Senior Assistant Law Draftsman
Department of Justice

Miss Elaine NG Pui-kei
Senior Government Counsel
Department of Justice

**Clerk in
attendance** : Ms Maisie LAM
Chief Council Secretary (2) 5

**Staff in
attendance** : Ms Clara TAM
Assistant Legal Adviser 9

Miss Kay CHU
Senior Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration

[File Ref: FH CR 3/3231/16, LC Paper Nos. CB(3)687/16-17, LS82/16-17, CB(2)1823/16-17(02) to (03), CB(2)454/17-18(03) and CB(2)629/17-18(01) to (03)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Admin

2. The Bills Committee requested the Administration to:

- (a) in respect of its proposal to exclude from the Private Healthcare Facilities Bill ("the Bill") any day procedure centre, clinic or health services establishment which was managed or controlled by The University of Hong Kong ("HKU") or The Chinese University of Hong Kong ("CUHK") and primarily used for teaching or research relating to medicine or dentistry, provide further information, which should include, among others, sample consent forms for participation in teaching or research for completion by patients of each facility, to substantiate the Administration's view that the 14 facilities as set out in the Annex to LC Paper No. CB(2)196/17-18(02) would meet the proposed criterion of being primarily used for teaching or research relating to medicine or dentistry;
- (b) in respect of its advice that patient safety was a matter of prime concern in formulating the regulatory regime for private healthcare facilities ("PHFs"), and that HKU and CUHK had already put in place for the relevant facilities under their aegis a three-tier complaints management system at the service delivery, the Faculty and the university levels respectively, as well as medical incident reporting and handling systems,
 - (i) provide the supporting documents on these systems issued by HKU and CUHK respectively;
 - (ii) advise whether any appeal channels were in place to hear appeals from any parties aggrieved by the decisions made in this regard;
 - (iii) provide the membership of the committee(s), if any, formed under these systems; and

Action

- (iv) provide the name and contact information (e.g. phone number and mailing address) of the parties responsible for receiving complaints against and handling medical incidents of the relevant facilities;
- (c) provide response to the following suggestions raised by a member:
 - (i) by making reference to the licensing requirements for banks as specified in the Banking Ordinance (Cap. 155), specifying in the Bill that the licensee of a PHF, if being a legal person, had to be subject to a minimum capital requirement so as to ensure that a PHF would have enough capital base to cover civil liability claims by patients; or
 - (ii) requiring that the licensees of PHFs other than a hospital had to be a natural person in order to deter serious non-compliance under the new regulatory regime as they would be personally held liable. Under the Bill, the applicant for a licence to be issued for a PHF other than a hospital or a scheduled clinic could be either a legal person or a natural person;
- (d) in respect of its advice that depending on the circumstances, the administration of local anaesthetics to a person for the purpose of pain control was an act of practising Western medicine which was regulated under the Medical Registration Ordinance (Cap. 161) and members' concern as to whether in such cases beauty service providers had to engage registered medical practitioners to administer local anaesthetics before the performance of tattooing for cosmetic purposes (e.g. eyebrow tattooing), advise whether any prosecutions had been made against the beauty service providers in this regard. Under the Bill, premises involving the practice of registered medical practitioners were proposed to be regulated; and
- (e) provide response to the suggestion raised by the Hong Kong College of Pathologists in its submission (LC Paper No. CB(2)628/17-18(01)) that medical laboratories should be subject to regulation under the Bill.

Action

II. Any other business

3. Members agreed that the next meeting of the Bills Committee would be held on 13 February 2018 at 10:45 am.
4. There being no other business, the meeting ended at 10:29 am.

Council Business Division 2
Legislative Council Secretariat
5 December 2018

**Proceedings of the fifth meeting of
the Bills Committee on Private Healthcare Facilities Bill
held on Friday, 12 January 2018, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
001448 - 001525	Chairman	Opening remarks	
001526 - 001909	Chairman Admin	<p>Briefing by the Administration on its response to the follow-up actions arising from the discussion at the meeting on 12 December 2017 [LC Paper No. CB(2)629/17-18(02)].</p> <p>The Administration advised that as undertaken at the meeting on 12 December 2017, it had met with the representatives of The Hong Kong Federation of Insurers on 2 January 2018 to understand the Federation's concerns on the Private Healthcare Facilities Bill ("the Bill").</p>	
001910 - 002608	Chairman Mr SHIU Ka-fai ALA9 Admin	<p>Mr SHIU Ka-fai's concern that given the stance of the Administration was that it was not feasible to define "medical procedure" in the Bill with precision for reasons set out in its reply to the letter dated 1 December 2017 from Assistant Legal Adviser ("ALA") [LC Paper No. CB(2)629/17-18(03)], it would not be clear as to which beauty procedures might be regarded as medical procedures.</p> <p>The Legal Adviser to the Bills Committee drew the attention of members to clause 12 of the Bill which made it an offence for a person who was not a healthcare professional to purportedly perform, on premises other than certain excepted premises, a medical treatment or medical procedure causing personal injury to another person who was (or might be) suffering from a disease, injury or disability of mind or body, and the scope of "medical procedure" was relevant to the prosecution of the offence.</p> <p>The Administration's advice that day procedure centres, which were defined in the Bill, were a new type of private healthcare facilities ("PHFs") that would be subject to regulation upon the passage of the Bill. Schedule 2 to the Bill had set out the scheduled medical procedures which could be carried out in an ambulatory facility covered by a day procedure centre licence.</p>	
002609 - 003135	Chairman Mr CHAN Kin-por Admin	Mr CHAN Kin-por's call for the Administration to consider extending the requirements proposed in the Bill for enhancing price transparency in private hospitals to day procedure centres and clinics so as to enhance consumer protection; and his concern over the malpractices of some PHFs to introduce unreasonable service charges or charge patients with health insurance protection with a higher service fee.	

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		<p>The Administration's advice that under the Bill, the licensee of a PHF had to make available to the public information about the prices of specified chargeable items and services provided in the facility. For private hospitals, the licensees of which had to, apart from the above, put in place a budget estimate system to provide estimates of the hospital fees and charges and publish historical statistics on the fees and charges for the specified treatments and procedures.</p>	
003136 - 003825	Chairman Dr Pierre CHAN Admin	<p>Dr Pierre CHAN's concerns over the Administration's proposal to exclude from the Bill day procedure centres, clinics or health services establishments which were managed or controlled by The University of Hong Kong ("HKU") or The Chinese University of Hong Kong ("CUHK") and were primarily used for teaching or research relating to medicine or dentistry ("the exclusion proposal"), and the lack of information in Annex B to LC Paper No. CB(2)629/17-18(02) to support the position of the Administration that the great majority of patients of the 14 listed facilities of HKU and CUHK ("the 14 facilities") were involved in teaching or research relating to medicine or dentistry.</p> <p>The Administration's advice that HKU and CUHK had already put in place for the relevant facilities under their aegis a robust governance structure with one of the purposes for protecting patient safety. Patients of the 14 facilities were requested to complete a consent for the purpose of teaching or research. As a reference, similar exclusion was in place in the Medical Clinics Ordinance (Cap. 343) that relevant premises maintained or controlled by HKU and CUHK were excluded from the definition of "clinic". If it came to the knowledge of the Department of Health ("DH") that an excluded facility no longer met the proposed criteria for exclusion, DH would request the operator of the facility concerned to apply for a licence.</p> <p>At the request of Dr Pierre CHAN in respect of the three-tier complaint management system put in place by HKU and CHUK for the relevant facilities under their aegis, the Administration agreed to:</p> <ul style="list-style-type: none"> (a) provide the supporting documents on the system issued by the two universities; (b) provide the membership of the committee(s), if any, formed under the system; and (c) provide the name and contact information (e.g. phone number and mailing address) of the parties responsible for receiving complaints against the relevant facilities. 	Admin
003826 - 004445	Chairman Mr CHAN Chi-chuen Admin	<p>In response to Mr CHAN Chi-chuen's concern that the day procedure centres, clinics and health service establishments of HKU and CUHK that met the criteria of the exclusion proposal would have no obligation to make available to the public information about the prices of chargeable items and services provided in the facility, the Administration undertook to discuss</p>	

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		with HKU and CUHK to encourage them to make such information available to the public.	
004446 - 010800	Chairman Mr SHIU Ka-fai Admin Dr Elizabeth QUAT Mr Tommy CHEUNG	<p>Mr Tommy CHEUNG, Dr Elizabeth QUAT and Mr SHIU Ka-fai's concern about whether the administration of local anaesthetic, which had been registered with the Pharmacy and Poisons Board of Hong Kong and was legally obtained, at a beauty centre to a person for preventing pain during eyebrow tattooing would constitute a medical procedure and subject to regulation of the Bill.</p> <p>The Administration's advice that premises where practice of registered medical practitioners or registered dentists took place would be subject to the new regulatory regime. It should be noted that traditional body tattooing was exempted from being considered as a medical procedure, whereas depending on the circumstances, the administration of local anaesthetics to a person for the purpose of pain control was an act of practising Western medicine which was regulated under the Medical Registration Ordinance (Cap. 161).</p> <p>In response to Dr Elizabeth QUAT's view that the requirement that the chief medical executive of a day procedure centre or a clinic could not serve at the same time as the chief medical executive of more than two day procedure centres or clinics should be relaxed, the Administration advised that more time was needed to fully assess the implications of the proposal in consultation with relevant stakeholders.</p>	
010141 - 010801	Chairman Dr Pierre CHAN Admin	<p>At the request of Dr Pierre CHAN in respect of the medical incident reporting and handling system put in place by HKU and CUHK for the relevant facilities under their aegis, the Administration undertook to advise in writing as to whether any appeal channels were in place to hear appeals from any parties aggrieved by the decisions made in this regard.</p> <p>The Administration's undertaking to provide a written response to the view of the Hong Kong College of Pathologists that medical laboratories should be subject to regulation of the Bill, details of which were set out in its submission [LC Paper No. CB(2)628/17-18(01)].</p>	Admin Admin
010802 - 010816	Chairman Dr Elizabeth QUAT	Dr Elizabeth QUAT's declaration that some of her family members were involved in beauty business.	
010817 - 012534	Chairman Mr Tommy CHEUNG Admin Mr SHIU Ka-fai Ms Alice MAK	Mr Tommy CHEUNG and Mr SHIU Ka-fai's concern that if the administration of local anaesthetics to a person for the purpose of pain control was an act of practising Western medicine, beauty service providers had to engage registered medical practitioners to administer local anaesthetics before the performance of cosmetic tattooing. Mr Tommy CHEUNG requested the Administration to advise in writing whether any prosecutions had been made against the beauty service providers in this regard.	Admin

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		<p>Ms Alice MAK's view that the new regulatory regime for PHFs had not taken into account the evolving development of beauty sector and the operation of beauty service providers; and her call for the Administration to step up communication with the beauty sector to better understand their concerns on the Bill, and consider regulating the beauty sector under a separate regime. The Chairman suggested that the Administration should meet with Mr Tommy CHEUNG, Ms Alice MAK, Dr Elizabeth QUAT and Mr SHIU Ka-fai as well as other interested members to join the discussion.</p>	
012535 - 014002	<p>Chairman Dr Pierre CHAN Admin Dr Elizabeth QUAT Dr CHIANG Lai-wan</p>	<p>In respect of the exclusion proposal, Dr Pierre CHAN requested the Administration to provide the sample consent forms for participation in teaching or research for completion by patients of each of the 14 facilities.</p> <p>In reply to Dr CHIANG Lai-wan and Dr Elizabeth QUAT's enquiries about the justifications for the exclusion proposal, the Administration advised that HKU and CUHK had already put in place for the relevant facilities under their aegis a robust governance structure. Duplicating relevant efforts in this regard simply to ensure that these facilities also complied with another set of regulatory requirements under the Bill might not be an optimal use of resources by HKU and CUHK.</p> <p>Dr Elizabeth QUAT's expression of concern over the possible negative impact of the implementation of the new regulatory regime for PHFs and the regulation for the use of local anaesthetics in cosmetic tattooing on the development of the beauty sector, in particular small beauty parlours.</p>	Admin
014003 - 014627	<p>Chairman Dr Pierre CHAN Admin</p>	<p>On Dr Pierre CHAN's concern over the meaning of "small practice clinic" which was proposed to be exempted from the licensing requirement, the Administration advised that:</p> <p>(a) under clause 41 of the Bill, a small practice clinic referred to a clinic that was operated by not more than five registered medical practitioners or registered dentists, who were all – and also the only ones – responsible for the management of the clinic as well as practicing in the clinic; and</p> <p>(b) in accordance with clause 43(1)(b) of the Bill, none of the individuals who made a request for exemption could for the time being in any of the following capacities (in whatever combination) for three or more other exempted clinics – (i) the sole proprietor of an exempted clinic; (ii) a partner of a partnership operating an exempted clinic; and (iii) a director of a company operating an exempted clinic.</p>	
014628 - 015526	<p>Chairman Dr CHIANG Lai-wan Admin Mr WONG Ting-kwong</p>	<p>Dr CHIANG Lai-wan's concern over the safeguarding of patients' interests if a licensee of a PHF other than a hospital or a scheduled clinic, which was required to be wholly responsible for the operation of the PHF, could be a legal person, such as a limited company. She requested the Administration to provide a written response to her suggestions as follows:</p>	Admin

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		<p>(a) by making reference to the licensing requirements for banks as specified in the Banking Ordinance (Cap. 155), specifying in the Bill that the licensee of a PHF, if being a legal person, had to be subject to a minimum capital requirement so as to ensure that a PHF would have enough capital base to cover civil liability claims by patients; or</p> <p>(b) requiring that the licensees of PHFs other than a hospital had to be a natural person in order to deter serious non-compliance under the new regulatory regime as they would be personally held liable.</p>	
015527 - 015947	Chairman Mr WONG Ting-kwong Admin	<p>On Mr WONG Ting-kwong's concern that medical clinics operated by charitable institutions or non-governmental organizations would be subject to the regulation of the Bill, the Administration advised that non-profit-sharing medical clinics were currently regulated under the Medical Clinics Ordinance.</p> <p>In reply to Mr WONG Ting-kwong's question about whether the meaning of "premises" in relation to PHF covered mobile medical or dental clinics, the Administration replied that "premises" included, among others, any vehicle or vessel (other than a sea-going ship as defined in the Merchant Shipping (Seafarers) Ordinance (Cap. 478)) and any part of such vehicle or vessel.</p>	
015948 - 020254	Chairman Mr SHIU Ka-fai Admin	Mr SHIU Ka-fai remarked that it was not uncommon that the carrying out of those cosmetic procedures that had to be performed by registered medical practitioners (e.g. injection of Botox) only accounted for a small proportion, say, a few hours per week, of the services provided by those beauty parlours which would fall into the meaning of day procedure centres or clinics, as the case might be, under the Bill. He was concerned about the manpower requirement for the implementation of the proposal to require the licensee of each PHF to appoint a chief medical executive to take charge of the day to day administration of the PHF concerned.	
<i>Agenda item II: Any other business</i>			
020255 - 020322	Chairman	<p>Closing remarks</p> <p>Date of next meeting</p>	