立法會
Legislative Council

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LC Paper No. CB(2)2574/06-07
(These minutes have been seen by the Administration)

Panel on Health Services

Minutes of meeting held on Monday, 11 June 2007, at 8:30 am in Conference Room A of the Legislative Council Building

Members present	:	Dr Hon Joseph LEE Kok-long, JP (Chairman) Dr Hon KWOK Ka-ki (Deputy Chairman) Hon Fred LI Wah-ming, JP Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP Hon CHAN Yuen-han, JP Hon Bernard CHAN, GBS, JP Hon LI Fung-ying, BBS, JP Hon Audrey EU Yuet-mee, SC, JP Hon Vincent FANG Kang, JP Dr Hon Fernando CHEUNG Chiu-hung
Members absent	:	Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP Dr Hon YEUNG Sum Hon Andrew CHENG Kar-foo Hon LI Kwok-ying, MH, JP
Public Officers attending	:	Item IV & V Mr Patrick NIP, JP Deputy Secretary for Health, Welfare and Food (Health)1 Item IV only Miss Pamela LAM Principal Assistant Secretary for Health, Welfare and Food (Health)1

Dr Gloria TAM
Assistant Director of Health (Health Administration and Planning)

Dr Monica WONG
Principal Medical and Health Officer
Department of Health

Item V only

Ms Ernestina WONG
Principal Assistant Secretary for Health, Welfare and Food (Health) 2

Mr Shane SOLOMON
Chief Executive
Hospital Authority

Dr FUNG Hong, JP
Cluster Chief Executive (New Territories East)
Hospital Authority

Dr P Y LEUNG
Director (Quality and Safety)
Hospital Authority

Item VI

Mr Stuart M I STOKER
Secretary
Law Reform Commission

Attendance by invitation : Item IV

Medical Council of Hong Kong

Professor Felice LIEH-MAK, CBE, JP
Chairman

Hong Kong Medical Association

Dr TSE Hung-hing
Council Member

Dr LAM Tzit-yuen
Council Member

Hong Kong Dental Association

Dr Vincent LEUNG
President

Dr Sigmund LEUNG
Vice-President

Hong Kong Doctors Union

Dr YEUNG Chiu-fat
President

Dr CHEUNG Wan-kit
Council Member

Association of Licentiates of Medical Council
of Hong Kong

Dr LI Sum-wo
President

Dr Alexander NG
Vice-President

Consumer Council

Ms Connie LAU Yin-hing
Chief Executive

Ms Vera TAM
Chief Research & Trade Practices Officer

Action Group on Medical Policy

Dr Louis SHIH
Representative

TY Medical Practice Limited

Dr Terence CHOW
Chairman & Chief Medical Officer

Clerk in attendance	:	Miss Mary SO Chief Council Secretary (2)5
Staff in attendance	:	Mr Stephen LAM Assistant Legal Adviser 4 Ms Amy YU Senior Council Secretary (2)3 Ms Sandy HAU Legislative Assistant (2)5

I. Confirmation of minutes
(LC Paper No. CB(2)2080/06-07)

The minutes of the special meeting held on 16 April 2007 were confirmed.

II. Information paper(s) issued since the last meeting
(LC Paper Nos. CB(2)2098/06-07(01) and (02))

2. Members noted the above letters from Hong Kong Doctors Union and The Association of Licentiates of Medical Council of Hong Kong respectively concerning mandatory continuing medical education for medical practitioners.

III. Items for discussion at the next meeting
(LC Paper Nos. CB(2)2077/06-07(01) and (02))

3. Members agreed to discuss the following items at the next regular meeting to be held on 9 July 2007 at 8:30 am -

(a) Shortage of medical staff in Hospital Authority; and

(b) Medical services in Tung Chung.

Members also agreed that deputations be invited to give views on the above two items.

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4. Members further agreed to remove the following items from the list of outstanding items for discussion (LC Paper No. CB(2)2077/06-07(01)), as these items would be covered under the discussion of items 3(a) and (b) above -

(a) New hospital on Lantau (item 12);

(b) Shortage of medical frontline staff in Hospital Authority (item 18); and

(c) Shortage of nurses (item 21).

IV. Regulation of "Health Maintenance Organisations"
(LC Paper Nos. CB(2)1238/06-07(04) and CB(2)2077/06-07(03))

5. The Chairman invited deputations to give their views on regulation of "Health Maintenance Organisations" (HMOs), summaries of which were set out in the ensuing paragraphs.

Views of deputations

Hong Kong Medical Association

6. Dr TSE Hung-hing and Dr LAM Tzit-yuen presented the views of the Hong Kong Medical Association (HKMA) as detailed in its submission (LC Paper No. CB(2)2077/06-07(05)). HKMA considered that the Administration's proposal of requesting group practices that employed frontline doctors to appoint medically-qualified personnel as medical director (MD) of the group was ineffective in safeguarding patient's welfare, as the appointment of such was not mandatory. Moreover, an MD, being an employee, would invariably be made scapegoat for any malpractices of the group that hired him/her. In the light of this, HKMA urged the Administration to expeditiously introduce a licensing system to regulate HMOs.

Hong Kong Dental Association

7. Dr Vincent LEUNG introduced the Hong Kong Dental Association (HKDA)'s submission (LC Paper No. CB(2)2096/06-07(02)) which considered that the MD concept proposed by the Administration was totally absurd in that it was not plausible for an MD to act against the interests of his/her employer. HKDA would only accept the MD concept if the MD was hired and paid for by an outside agency. HMOs might have to contribute funds to support the setting up of such agency. Despite the foresaid, HKDA was of the view that the best way to safeguard patient's welfare was to make HMOs come under the regulation of the Medical Council and/or the Dental Council of Hong Kong and

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that the majority owners of HMOs must be dentists and/or doctors, depending on the types of services provided by the groups.

Hong Kong Doctors Union

8. Dr YEUNG Chiu-fat and Dr CHEUNG Wan-kit presented the views of the Hong Kong Doctors Union (HKDU) as detailed in its submission (LC Paper No. CB(2)2077/06-07(06)). Specifically, HKDU was of the views that only by requiring HMOs be owned at least 90% by doctors and requiring HMOs to apply for a licence issued by the Medical Council which would examine the applicant's contract terms with his/her employee doctors could effectively safeguard the health of the public. A survey on the MD concept conducted by HKDU amongst its members revealed that 276 out of the 286 replies (or 96.5%) were not satisfied with the concept which was not legally binding and applied only to group practices and not parties involved in the healthcare delivery and financing of employer-financed healthcare such as insurance companies, brokers and scheme administrators, whilst 279 out of the 286 replies (or 97.6%) demanded more stringent and formal legislative control.

Association of Licentiates of Medical Council of Hong Kong

9. Dr LI Sum-wo said that the Association of Licentiates of Medical Council of Hong Kong concurred with HKMA, HKDA and HKDU on the inadequacy of the MD concept in safeguarding patient's welfare. To avoid making the MD a scapegoat for any medical malpractices of the group that hired him/her, MD should be made a board member of the group and all board members of the group should be held accountable for any medical malpractices of the group.

Consumer Council

10. Ms Connie LAU presented the views of Consumer Council (CC) as detailed in its submission (LC Paper No. CB(2)2118/06-07(01)). CC in principle supported the MD concept as the first step in enhancing the regulation of HMOs. To ensure the effectiveness of the MD concept in safeguarding patient's welfare, CC considered that all group practices should be required, instead of requested, to appoint medically-qualified personnel as MD and that the MD must be given the authority for overseeing both the medical and operation-related aspects of the group. The effectiveness of the MD as a gatekeeper would however be called into question if owners of group practices who were doctors themselves were allowed to act as MD of the groups. Hence, CC was of the view that regulation should be made to owners of group practices, regardless of whether they were doctors or otherwise, in the long run. To that end, CC recommended the Administration to consider establishing a licensing system for all organisations providing medical services, irrespective of their mode of operation.

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Action Group on Medical Policy

11. Dr Louis SHIH said that Action Group on Medical Policy was of the view that the Administration should not drag its feet on enacting legislation to regulate HMOs as the operation of HMOs, unlike other business activities, was closely related to the health of the public. Dr SHIH pointed out that the appointment of MD by group practices, being a voluntary scheme, would not be effective in safeguarding patient's welfare, as had been proven in the control of importation, sale and use of medical devices through administrative means.

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12. Dr Terence CHOW said that in regulating HMOs, it was necessary to make a distinction between HMOs owned by doctors and those which employed doctors to deliver services. Dr CHOW however considered it more effective to rely on market force to make HMOs practise in a responsible and ethical manner, rather than by introducing a statutory regime. If doctors employed by HMOs were asked by the management to engage in unethical or illegal acts in treating patients, they should simply refuse to do so or quit the employment.

Medical Council of Hong Kong

13. Prof Felice LIEH-MAK presented the views of the Medical Council of Hong Kong as detailed in its submission (LC Paper No. CB(2)2151/06-07(01)) tabled at the meeting. Notably, the Medical Council was of the view that the Administration should come up with a timeframe to regulate HMOs through legislation, albeit the proposal of requesting group practices that employed frontline doctors to appoint medically-qualified personnel as MD of the group was considered a step forward in regulating HMOs by some members of the Council. Other views expressed by the Medical Council were as follows -

(a) it was questionable whether the Medical Council would have jurisdiction under the Medical Registration Ordinance (Cap. 161) to take disciplinary action on a doctor who infringed the guidelines to be prepared by the Department of Health (DH) to cover extra requirements for MDs. It was also questionable whether the Professional Code and Conduct of the Medical Council could govern a doctor's employment as an MD if he/she did not practise medicine in the group that hired him/her;

(b) although the proposal was intended to hold MD liable for contravention of professional ethics committed by HMOs, holding an MD responsible for the misconduct of other doctors in the group only applied in the law of tort and not in the law of professional misconduct. Furthermore, an MD should not be held

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accountable for other activities of the HMO, such as business promotion, if he/she did not provide medical services in the group;

(c) the MD concept should also cover insurance companies offering healthcare plans, in view of the impact of the plans on the practice of participating doctors; and

(d) the proposal might give a false sense of security to the public that the quality of services provided by those HMOs with MD was better assured than those without MD.

Discussion

14. Dr KWOK Ka-ki said that he did not oppose to the MD proposal, but considered that such measure alone was far from adequate in safeguarding patient's welfare. Dr KWOK further said that he could not see why the Administration enacted legislation to regulate such business entities as travel agents and estate agents, but continued to dither on doing the same for HMOs when human lives were at stake. Dr KWOK demanded the Administration to expeditiously introduce legislation to regulate HMOs. Ms LI Fung-ying, Ms Audrey EU, Mr Fred LI and Dr Fernando CHEUNG echoed similar views. Ms LI also shared the concern expressed by some deputations about the effectiveness of the MD proposal in safeguarding patient's welfare if an owner of a group practice also took up as MD of the group. Even if an MD was an employee, he/she might be forced to compromise medical services to patients at the expense of containing cost and expanding business.

15. Deputy Secretary for Health, Welfare and Food (Health) 1 (DSHWF(H)1) responded as follows -

(a) the primary concern of the Administration was to ensure that medical services provided to members of the public were up to professional standard. From the public health perspective, the foremost objective was to safeguard patients' health and interests through ensuring that the service provided was of standard, regardless of the business mode under which such service was provided;

(b) there was no question of the Administration dragging its feet in taking forward the regulation of HMOs. The proposal of introducing MD to be held accountable for the medical decisions in group practices was a practical first step to enhance the current regulatory regime over medical services provided by HMOs;

(c) recognising the concerns of the professional bodies as well as the impact of quick evolution of group practices and scheme

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administrators, the Administration agreed that there was scope for strengthening the present regulatory regime over medical services provided by HMOs, which was anchored in the regulation of individual healthcare professionals;

(d) given the complexity of the local healthcare landscape and diverse views on how HMOs should be regulated, more time was needed to build up consensus on which types of HMOs should be subject to statutory regulation and to work out a regulatory proposal that could safeguard patients' interests on the one hand and not hamper the development of the private sector in the provision of primary healthcare services on the other;

(e) there was no cause for concern that MDs would sacrifice patient's welfare in the drive for more profits. Apart from the duty to be assumed by an MD as set out in paragraph 10 of the Administration's paper, the Medical Council's Professional Code and Conduct also delineated the appropriate conduct for doctors participating in contract medicine and managed care. The Code stipulated that, amongst other things, "Doctors should exercise careful scrutiny and judgement of medical contracts and schemes to ensure that they are ethical and in the best interests of patients. Doctors should dissociate themselves from organisations that provide substandard medical services, infringe patients' rights or otherwise contravene the Professional Code and Conduct"; and

(f) DH's Working Group on Regulation of HMOs would consult stakeholders, including the Medical Council, in hammering out the details of implementing the MD concept and in exploring other means to strengthen the current regulatory regime over medical services provided by HMOs.

16. Mrs Selina CHOW said that it was unfair to say that the Administration had done nothing to take forward the regulation of HMOs, albeit the pace might not meet the expectation of some stakeholders. Mrs CHOW urged the Administration to expedite work in regulating HMOs, but hoped that in so doing a level playing field for all private healthcare facilities could be assured.

17. Dr Fernando CHEUNG expressed dissatisfaction that despite calls from the medical sector and CC to introduce legislation to regulate HMOs through a licensing system, the Administration still failed to give a timeframe for implementing such. Responding to Ms Audrey EU's enquiry on which overseas places had put in place a licensing system to regulate HMOs, Dr CHEUNG Wan-kit of Hong Kong Doctors Union said that HMOs in the United States and Australia were subject to statutory regulation.

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18. Ms Audrey EU said that the Secretary for Health, Welfare and Food should have attended the meeting, as the regulation of HMOs entailed policy changes. Dr KWOK Ka-ki suggested holding another meeting to further discuss the regulation of HMOs and to invite the new Secretary for Food and Health, who would assume office on 1 July 2007, to come to the meeting.

19. The Chairman asked whether the Medical Council had held any hearings on complaints about the misconduct of doctors employed by HMOs. Prof LIEH-MAK replied in the affirmative.

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20. In closing, the Chairman requested the Administration to come up with a timeframe for establishing a statutory licensing regime to regulate HMOs, in view of the lack of adequacy of the MD concept to safeguard patient's welfare, and revert to members at a future meeting.

V. Mortuaries in public hospitals

(LC Paper No. CB(2)2077/06-07(04))

21. Members noted the Administration's paper detailing the investigation findings of the Hospital Authority (HA) in respect of the mortuary incident at Prince of Wales Hospital (PWH) and the improvement measures to be taken by HA to prevent recurrence of similar incidents in future.

22. Dr KWOK Ka-ki asked the following questions -

(a) in respect of the mortuary incident at PWH, whether the mortuary attendant who wrongly released the body of a deceased patient to another family would be allowed to return to work after undergoing retraining on mortuary operation and procedures;

(b) whether increasing the number of mortuary compartments in HA mortuaries from 1 532 to 2 080 by 2008-2009 would be able to meet demand during peak periods in the next 10 years; and

(c) whether consideration would be given to imposing storage charge in HA mortuaries for storage exceeding a reasonable period of time.

23. Responding to Dr KWOK's first question, Cluster Chief Executive (New Territories East), HA (CCE (NTE), HA) said that HA had no intention to allow the mortuary attendant to return to work at PWH mortuary immediately after he had completed the retraining programme. HA would decide at the later stage whether the mortuary attendant was suitable to resume his duties at PWH mortuary based on his work performance in other areas at HA.

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24. Regarding Dr KWOK's second question, Chief Executive, CE said that with the increase of 220 compartments in 2007-2008 and a further 330 compartments in 2008-2009, thereby making the total to 550 compartments, the capacity of mortuary in HA hospitals should be sufficient to meet demand for mortuary places in the next 10 years, provided that the average length of storage remained the same as at present.

25. As to Dr KWOK's last question, DSHWF(H)1 said that if the mortuary capacity remained tight despite implementation of all the improvement measures set out in paragraphs 7 to 16 of the Administration's paper, consideration might be given to introducing storage charges in public hospital mortuaries for storage exceeding a reasonable length of period.

26. Ms LI Fung-ying remarked that for HA to impose storage charges for deceased bodies would only increase financial burden to families of the deceased and not be helpful in alleviating heavy demand for mortuary places during peak periods. Ms LI then asked about the measures which would be taken by HA to avoid the recurrence of similar PWH incident due to human errors.

27. Cluster CE (NTE), HA responded that to minimise the risk of erroneous body identification, a bar-coding system to facilitate the correct identification of the bodies of the deceased patients would shortly be put in place in all 31 public hospital mortuaries. This would be followed closely by the implementation of a Mortuary Information System to facilitate the tracking of deceased bodies in all public hospital mortuaries. The overall completion date was about mid-2008. Before installation of the new bar-coding system, a number of measures to enhance the procedures for body collection and identification as set out in paragraph 14 of the Administration's paper, would be implemented by HA. In addition, HA would organise a train-the-trainer course in July 2007 to reinforce the importance of staff vigilance, compliance with established procedures, clear documentation, and proper use of signage on shared storage compartments.

28. Mr Fred LI asked the following questions -

(a) whether HA would inform families of the deceased that the body of their loved ones would be required to share a mortuary compartment with another body of a deceased patient due to lack of mortuary space; and

(b) whether there were any measures to assist elders who came alone to collect the bodies of their deceased relatives, as some elders were too afraid to look at the bodies of their loved ones before collection.

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29. Cluster CE (NTE), HA responded as follows -

(a) since the PWH incident, notices had been put up in all public hospital mortuaries to inform the public that sharing of compartments might be necessary if the mortuaries exceeded 100% utilisation. Notwithstanding, mortuary staff would personally inform families of the deceased patients if sharing of compartments was required. Should these families not wish the bodies of their deceased relatives to share the compartments, arrangement would be made to transfer the bodies to other HA mortuaries with spare capacity; and

(b) there was no need for any special measures to assist elders who came alone to collect the bodies of their relatives as erroneous body identification was not due to elders being too afraid to look at the bodies of their loved ones before collection. In the PWH incident, the wife of the deceased patient positively identified that the body was that of her husband. Rather, the cause of the mortuary mix up at PWH was due to the failure of one mortuary staff to follow the proper procedures for collection and identification, when he retrieved the body from the storage compartment. HA believed that with the implementation of the enhanced procedures for body collection and identification, the risk of erroneous body identification should be greatly minimised.

30. Dr Fernando CHEUNG urged HA to extend the opening hours of its mortuaries and offices which issued the Medical Certificate of the Cause of Death beyond five-day week to Saturdays, Sundays and public holidays to provide more convenience to families of the deceased patients. Dr CHEUNG pointed out that some low-income families of the deceased patients only had time to collect the bodies of their loved ones during rest days for immediate burial/cremation.

31. Cluster CE (NTE), HA responded that due to resource constraints, only the mortuaries in major acute hospitals operated on Saturdays, Sundays and public holidays, as the number of deaths in acute hospitals was much higher than those in non-acute and rehabilitation hospitals. Nevertheless, special arrangements would be made to allow families to collect bodies of their loved ones in non-acute and rehabilitation hospital mortuaries during weekends upon request. Similar special arrangements would be considered for offices which issued Medical Certificate of the Cause of Death.

32. The Chairman said that it was unacceptable for HA not to open its mortuaries in non-acute and rehabilitation hospitals on the grounds of lack of resources. In response, DSHWF(H)1 said that HA would look into the operating hours of mortuaries in public non-acute and rehabilitation hospitals

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and revert to members later.

VI. Consultation Paper on Enduring Powers of Attorney
(LC Paper No. CB(2)1798/06-07(01))

33. Mr Stuart STOKER of the Law Reform Commission took members through the background and main thrust of the above Consultation Paper. Specifically, the Law Reform Commission (LRC) proposed the following two options to amend the existing Enduring Powers of Attorney Ordinance (Cap. 501) in order to improve the low take-up rate of enduring power of attorney (EPA) in Hong Kong -

(a) abolish the need for medical certification altogether; and

(b) retain the medical certification requirement, but allow the doctor and solicitor to witness the EPA separately.

Section 5(2)(a) of Cap. 501 required that an EPA must be signed in the presence of a solicitor and a medical practitioner at the same time. LRC also proposed to amend the existing statutory EPA form and its explanatory note by drafting them in plain language in a more user-friendly format. Members' views/comments were invited on the questions set out in paragraph 3.30 of the Consultation Paper.

34. While supporting relaxing the execution requirement for EPA, Ms Audrey EU considered that the main reason for the low take-up rate of EPAs in Hong Kong was due to lack of public awareness and education about the EPA concept. Ms EU suggested that solicitors who were asked to prepare wills by their clients to also mention EPA to these clients. Another way to improve the low take-up rate of EPAs in Hong Kong was to extend the scope of EPAs to enable the attorney to make decisions relating to the donor's health care.

35. Mr Stuart STOKER responded that in many jurisdictions such as England and Wales, it was common practice that when a client came to a solicitor to make a will, the issue of EPA would be raised at the same time by the solicitor to the client. He saw no reason why the same could not be adopted in Hong Kong. LRC would be happy to ask the Law Society of Hong Kong to encourage its members to do so. Mr STOKER further said that LRC had considered extending the scope of EPAs to enable the attorney to make decisions relating to the donor's health care in its study on how to improve the take-up rate of EPAs in Hong Kong. For a variety of reasons, LRC had decided to keep advance directives in relation to medical treatment separate from the EPA. On 16 August 2006, LRC released its report on Substitute decision-making and advance directives in relation to medical treatment. In relation to advance directives, LRC had put forward a model form of advance

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directive which could be used by those wishing to make decisions as to their future health care. Although there were separate forms and procedures for EPAs and advanced directives in relation to medical treatment, there was no reason why a solicitor could not mention both EPA and advance directive to their clients when the latter came to him to make a will.

36. Ms Audrey EU said that in the event that the requirement of a medical practitioner be present at the execution of an EPA be removed should not prevent an attorney from seeking the opinions of a medical practitioner if in doubt. Mr STOKER responded that that in jurisdictions where there was no mandatory requirement of certification of EPAs by a medical practitioner, good practice demanded that medical certification should be obtained in cases of doubt.

37. Dr KWOK Ka-ki considered that the low take-up rate of EPAs in Hong Kong was not mainly due to the existing requirement that a solicitor and a doctor must both be present at the signing of an EPA, as most people who wished to make an EPA were probably staying in hospitals where they should have no difficulty in finding a medical practitioner to sign the EPA, but in the lack of public understanding about the EPA concept. To address such, Dr KWOK urged LRC to enlist the participation of doctors, patients' groups and medical social workers in raising public awareness and education about the EPA concept. Dr KWOK remained of the view that the scope of EPA should best be extended to cover advance directives in relation to medical treatment.

38. Mr Stuart STOKER agreed that people should not encounter much difficulty in finding a medical practitioner to sign an EPA while they were staying in hospital, but feedback from solicitors revealed that the existing execution requirement was a deterrent to people not in the hospital situation who contemplated making an EPA. Apart from the cost of enlisting a medical practitioner, there were logistical arrangements needed to be made to arrange for both a solicitor and a medical practitioner to be present at the same time to sign an EPA. Mr STOKER further said that in the course of preparing the Consultation Paper, LRC had consulted a number of patient groups on ways to promote public awareness and education on EPAs.

39. Mrs Selina CHOW opined that whilst it was important to simplify the execution process and make the EPA form more user-friendly, efforts should first and foremost be focused on promoting public awareness and understanding of the EPA concept.

40. The Chairman asked about the projected increase in the take-up rate of EPAs in Hong Kong should the need for a medical practitioner to also sign an EPA be removed. Mr Stuart STOKER replied that LRC had not conducted any projection in this regard. It was hoped that through the combined efforts of simplifying the procedure for making EPAs and stepping up public education

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and awareness on the concept, the take-up rate of EPAs in Hong Kong would increase significantly to the advantage of the community generally and not just the individual donors.

41. In summing up, the Chairman said that members generally supported abolishing the need for medical certification in the making of EPAs in Hong Kong.

VII. Any other business

42. Miss CHAN Yuen-han suggested that representatives from the Bauhinia Foundation Research Centre be invited to brief members on its recently published preliminary findings of a study on "Development and Financing of Hong Kong's Future Health Care". The Chairman instructed the Secretariat to seek members' views on holding a special meeting in this regard in July 2007 after the meeting.

43. There being no other business, the meeting ended at 10:38 am.

Council Business Division 2
Legislative Council Secretariat
30 July 2007