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Panel on Health Services and Panel on Commerce and Industry

Background brief prepared by the Legislative Council Secretariat for the joint meeting on 23 June 2015

Regulation and development of beauty services

Purpose

This paper summarizes the concerns of the members of the Panel on Health Services ("the HS Panel") and the Panel on Commerce and Industry ("the CI Panel") on issues relating to the regulation and development of beauty services.

Background

2. At present, there is no specific legislation to regulate the provision of beauty services. Various aspects of these services, such as professional conduct of the personnel (including registered medical practitioners) providing the services, premises, devices, and advertising and sales practices are regulated under different pieces of legislation enforced by different Government departments such as the Department of Health ("DH") and the Customs and Excise Department. With a view to encouraging industry self-regulation and protecting consumer rights, the Consumer Council joined hands with industry representatives and prepared a Code of Trade Practices for the beauty industry in 2006. On the learning pathways and competency requirements for different levels of qualifications for beauty practitioners, the beauty sector has developed the Specification of Competency Standards ("SCS") under the Qualifications Framework ("QF").

3. In recent years, beauty services have grown in prevalence in Hong Kong. As at March 2014, there were 9 935 establishments and 39 151 people engaged in the beauty sector. The provision of "medical cosmetic services" or invasive

cosmetic procedures by some beauty service providers has, however, aroused public concerns about the health risks of these services. In October 2012 and June 2014, two adverse incidents took place causing casualties resulting from the performance of high-risk invasive procedures offered by a beauty service company and a surgical procedure called liposuction provided by a hair transplant centre respectively.

4. Separately, the Government established a Steering Committee on Review of the Regulation of Private Healthcare Facilities[1] ("the Steering Committee") in October 2012 to conduct a holistic review of the regulation of private healthcare facilities. The Working Group on Differentiation between Medical Procedures and Beauty Services and the Working Group on Defining High-risk Medical Procedures/Practices Performed in Ambulatory Setting set up under the Steering Committee were respectively tasked to study the regulation of cosmetic services that should only be performed by registered medical practitioner or registered dentists, and the regulation of ambulatory facilities where high-risk medical procedures were performed. The Steering Committee has completed its review. The Administration has also been examining the various options for introducing a new piece of legislation to regulate medical devices. Devices used in beauty parlours that are classified as medical devices will be subject to regulation under the proposed legislation.

Deliberations of the Panels

5. The HS Panel discussed various issues relating to cosmetic procedures at a number of meetings between 2012 and 2015, and received views from deputations on the recommendations of the Working Group on Differentiation between Medical Procedures and Beauty Services at a meeting. Separately, the issue of development of the beauty industry was raised at a meeting of the CI Panel in the context of discussing the policy initiatives in respect of commerce and industry matters. The deliberations and concerns of members are summarized in the following paragraphs.

<u>Differentiation between medical procedures and beauty services</u>

6. Members noted the recommendations put forth by the Working Group on Differentiation between Medical Procedures and Beauty Services as endorsed by the Steering Committee that procedures involving injections, mechanical or

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[1] The Steering Committee is underpinned by four working groups, namely (a) Working Group on Differentiation between Medical Procedures and Beauty Services; (b) Working Group on Defining High-risk Medical Procedures/Practices Performed in Ambulatory Setting; (c) Working Group on Regulation of Premises Processing Health Products for Advanced Therapies; and (d) Working Group on Regulation of Private Hospitals.

chemical exfoliation of the skin below the epidermis and hyperbaric oxygen therapy should be performed by registered medical practitioners, and dental bleaching should be performed by registered dentists. Members in general agreed that beauty service providers who were not themselves registered medical practitioners or registered dentists should refrain from performing these procedures in view of their inherent risks. Some members drew to the Administration's attention that the adverse incidents in 2012 was caused by professional misconduct on the part of the medical practitioner concerned, and enforcement actions against persons who practised medicine or surgery or dentistry without registration should be stepped up. They also urged the Administration to ensure that registered medical practitioners and registered dentists, in particular those associating with beauty service companies, would act in the patients' best interests when performing the above procedures.

7. According to the Administration, the Working Group had recommended that 15 out of the 35 cosmetic procedures identified as having potential safety concerns should be performed by registered medical practitioners or dentists because of the health risks involved. DH would strengthen market surveillance and collaborate with the Consumer Council to identify suspected violation of the Medical Registration Ordinance (Cap. 161) and the Dentists Registration Ordinance (Cap. 156). DH would also issue letters to registered medical practitioners and registered dentists reminding them to strictly observe the Code of Professional Conduct issued by their Councils when they provided cosmetic procedures in their professional practice, and issue an advisory note to beauty service providers to remind them to refrain from these procedures. As regards the remaining 20 procedures, most of them were cosmetic procedures involving the use of medical devices, particularly energy emitting devices. It was agreed that the regulation of these procedures should be deliberated within the proposed regulatory framework for medical devices currently under review.

8. Concern was raised about the mechanism in place to regulate the practice of medicine involving injection (such as Botox). The Administration advised that the performance of those cosmetic procedures that were classified as medical procedures (such as procedures involving injections) by non-medical practitioners would render oneself liable for offences under the Medical Registration Ordinance. DH would refer any suspected illegal practice of medicine to the Police for further investigation.

Regulation of cosmetic-related medical devices

9. For those cosmetic procedures involving the use of medical devices, particularly energy-emitting devices, members noted in the context of discussing the latest development of the proposed regulatory framework for medical devices that the Administration's original proposal was to restrict the operation

of Class 3B and Class 4 high-power medical laser to statutorily registered healthcare professionals; and allow only trained personnel who had passed the intense pulsed light ("IPL") trade test run by authorized institutes to operate IPL equipment if they were not statutorily registered healthcare professionals. Taking on board the Working Group's recommendation, the Administration would engage an external consultant to conduct a more detailed study to examine overseas experience and practices of, and the scope of control on the use of, these medical devices.

10. Members noted that the study conducted by the external consultant would aim to develop a set of criteria for determining the type of personnel and the level of competence required to operate specified types of devices. Given that many of the cosmetic-related devices were commonly used by trained beauticians in the local beauty industry, some members suggested that beauticians fulfilling a set of skills and competency requirements should be allowed to operate IPL equipments when certain conditions were satisfied, say, they were working under the supervision of registered medical practitioners. They were concerned that over regulation would reduce consumer choice of affordable cosmetic procedures which involved the use of devices without a medical purpose. The Administration undertook to report to the HS Panel on the outcome of the consultancy study and the details of the legislative proposal upon the completion of the study in 2015.

Regulation of facilities providing high-risk medical procedures in ambulatory setting

11. Members expressed grave concern about the adverse incidents causing casualties resulting from advanced therapies and liposuction performed in ambulatory setting. They called on the Administration to expedite the introduction of a comprehensive regulatory regime, covering the premises, the personnel and the devices, to regulate the facilities providing high-risk medical procedures.

12. The Administration advised that given the increasing trend for ambulatory surgery procedures performed outside the hospital setting, it was proposed under the recent review on regulation of private healthcare facilities that medical procedures classified as high-risk should be performed only by qualified health professionals. Ambulatory facilities where high-risk medical procedures were performed should be regulated by a statutory registration system. These regulated ambulatory facilities should be subject to a set of core facility standards and requirements that covered the management of the facility, physical conditions, service delivery and care process, infection control and resuscitation and contingency. An administrative listing system for facilities providing high-risk medical procedures in ambulatory setting would be put in place before the introduction of the mandatory registration system.

Regulation over beauty services companies and its practices

13. Concern was raised about the measures to be put in place by the Administration to combat unscrupulous beauty services companies which employed medical practitioners to improperly perform high-risk procedures under the cover of "medical beauty services". Members were advised that apart from proposing regulating the facilities providing high-risk medical procedures in ambulatory setting, another proposal put forward under the review on regulation on healthcare facilities was that premises providing non-high-risk medical services for aesthetic purpose and employing medical practitioners who did not have full control of the premises concerned in ensuring effective governance and maintaining quality of medical services should be regulated as facilities providing medical services under the management of incorporated bodies.

14. There was a view that the Administration should proactively inspect those beauty services companies. Efforts should also be made to screen those beauty services advertisements suspected of involving in the provision of high-risk medical treatments/procedures.

15. The Administration advised that DH had stepped up screening of advertisements of beauty services and inspections on beauty services companies. DH also worked with the Consumer Council to analyze complaints, conduct inquiries, carry out proactive inspections and where necessary, take enforcement action. During the period of October 2012 to June 2014, DH screened more than 16 000 advertisements, which involved some 90 beauty services companies, relating to the provision of cosmetic procedures with potential safety concerns. DH also issued over 490 warning letters and initiated four prosecutions in relation to advertisements of beauty centres that had contravened the Undesirable Medical Advertisements Ordinance (Cap. 231). Members were advised that warning letters would first be issued to persons who had published or caused to publish the advertisements contravening the Undesirable Medical Advertisements Ordinance, and prosecution actions would then be taken in case of repeated non-compliance.

16. There was a suggestion that apart from stepping up inspections and enforcement actions against unscrupulous beauty services companies, consideration should be given to increasing the penalties for offences under the Undesirable Medical Advertisements Ordinance in order to enhance deterrent effect. Members also called on the Administration to strengthen its publicity and educational efforts to raise public awareness of the inherent risks involved in cosmetic procedures and how to select safe beauty services.

17. Some members considered that consumers who were dissatisfied with the results of the beauty treatments or procedures received should be entitled to refund or compensation. In addition, a seven-day cooling-off period to cover consumer transactions involving beauty services should be introduced.

18. The Administration advised that during the public consultation on the legislative proposals to combat unfair trade practices from 2010 to 2011, the community widely discussed the issue of cooling-off period. While general consumers welcomed the proposal for a mandatory cooling-off period, the trades expressed concern about the practical issues involved, such as the refund and cancellation arrangements. Meanwhile, the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 ("the Amendment Ordinance"), which came into operation on 19 July 2013, had enhanced the scope of consumer protection by amending the Trade Descriptions Ordinance (Cap. 362) to extend its coverage to services (including beauty services), prohibit certain unfair trade practices and enhance enforcement mechanisms. The Administration would keep in view the implementation of the Amendment Ordinance and examine the need to introduce cooling-off arrangements as and when necessary.

Development of a regulatory regime for the beauty industry

19. At its meeting on 26 October 2012, the HS Panel passed a motion expressing serious disappointment that the Administration had failed to provide effective measures to ensure that the health and life of people receiving medical beauty therapy would not be threatened, and urging the Government to comprehensively review the medical beauty industry and expeditiously launch effective measures to safeguard the public, including introducing legislation and a licensing system to regulate the medical beauty industry.

20. Some members considered that in the absence of regulation over the operation of beauty services companies, the Administration's current proposal of identifying those high-risk cosmetic procedures that could only be performed by qualified personnel could not address the problem. These members stressed the need to introduce more stringent control on the beauty services companies.

21. While supporting the enhancement of regulation over high-risk cosmetic procedures for better protection of consumers undergoing cosmetic procedures, some other members considered that due regard should be given to the impact of the enhanced regulation of these procedures and the use of energy-emitting devices on the livelihood of the frontline beauticians, many of whom had acquired recognition in respect of their expertise for performing certain advanced cosmetic procedures. Members noted that the Beauty Industry Training Advisory Committee had developed a set of SCS to serve as a guide on the competency standards required of employees of the beauty industry at

different levels under QF. The qualifications conferred by those SCS-based training programmes, if the quality of which was assured by the Hong Kong Council for Accreditation of Academic and Vocational Qualifications, would be recognized under QF. In addition, a Recognition of Prior Learning mechanism was in place to enable employees of the beauty industry to seek formal recognition of the knowledge, skills and experience they acquired at the workplace. The practitioners' participation in QF, however, was voluntary. These members relayed the view of the beauty industry that it was necessary for the Administration to formulate a regulatory regime for the profession in order to promote the sustainable development of the industry.

22. At its meeting on 18 November 2013, the HS Panel passed a motion urging the Government to set up a "Steering Committee on Regulation of Beauty Industry" to assist the beauty industry in formulating a comprehensive set of regulatory and training regime for the profession, so as to sustain the healthy development of the industry and enhance the competence of practitioners, in order to ensure the safety and confidence of people in using beauty services. Separately, the CI Panel passed a motion at its meeting on 21 January 2014, urging the Government to establish a "Beauty Industry Development Council" to promote the industrialization of the beauty industry.

23. According to the Administration, the beauty industry ran and evolved in a free-market environment subject to laws and regulations of a general nature. Most of the practices of the beauty industry were non-intrusive and involved no or very little health risks that called for direct regulatory intervention. Instead of regulating the beauty industry indiscriminately, the Administration had adopted a risk-based approach focusing on those procedures or treatments that were intrinsically risky and could cause considerable harm to clients if not properly administered by qualified personnel.

24. To facilitate the long-term development of the beauty industry, members saw the need for the Food and Health Bureau, the Commerce and Economic Development Bureau, the Education Bureau and the Security Bureau to join hands in enhancing the regulation and professionalism of the beauty industry and its practitioners.

Recent developments

25. The Administration conducted a three-month public consultation exercise on 15 December 2014 to receive views from the public on the Consultation Document on Regulation of Private Healthcare Facilities. The consultation exercise ended on 16 March 2015. Subject to the outcome of the consultation exercise, the Administration will introduce a new regulatory regime for private

healthcare facilities. Its plan is to introduce the legislative proposal to the Legislative Council in the 2015-2016 legislative session.

Relevant papers

26. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
22 June 2015

Appendix

Relevant papers on the regulation and development of beauty services

Committee	Date of meeting	Paper
Panel on Health Services	26.10.2012 (Item I)	Agenda Minutes CB(2)143/12-13(01) CB(2)315/12-13(01)
	18.11.2013 (Item IV)	Agenda Minutes CB(2)532/13-14(01)
	23.12.2013 (Item I)	Agenda Minutes CB(2)902/13-14(01)
	16.6.2014 (Item IV)	Agenda Minutes
	21.7.2014 (Item II)	Agenda Minutes
	13.1.2015	Agenda
	16.3.2015 (Item IV)	Agenda

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