

立法會
Legislative Council

LC Paper No. CB(2)2063/15-16

(These minutes have been
seen by the Administration)

Ref : CB2/BC/4/15

Bills Committee on Medical Registration (Amendment) Bill 2016

Minutes of the eighth meeting
held on Monday, 23 May 2016, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Vincent FANG Kang, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon Cyd HO Sau-lan, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Mrs Regina IP LAU Suk-yea, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
Hon YIU Si-wing, BBS
Hon Charles Peter MOK, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon Dennis KWOK
Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, JP
Hon TANG Ka-piu, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

- Members absent** : Hon CHAN Han-pan, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEUNG Yiu-chung
Dr Hon LEUNG Ka-lau
Hon WONG Yuk-man
Hon Kenneth LEUNG
Hon KWOK Wai-keung
- Public Officers attending** : Mr Richard YUEN Ming-fai, JP
Permanent Secretary for Food & Health (Health)
Food and Health Bureau
- Mr Chris SUN Yuk-han, JP
Head, Healthcare Planning and Development Office
Food and Health Bureau
- Mr FONG Ngai
Principal Assistant Secretary for Food & Health (Health) 3
Food and Health Bureau
- Miss Natalie LAU Wai-kwan
Assistant Secretary for Food & Health (Health) 8
Food and Health Bureau
- Miss Maggie CHOW Wan-kam
Secretary, Medical Council of Hong Kong
Department of Health
- Mr Joseph SIU Wing-ho
Deputy Secretary (Medical Council) 1
Department of Health
- Miss Cindy CHEUK Chi-wing
Government Counsel
Department of Justice
- Clerk in attendance** : Ms Maisie LAM
Chief Council Secretary (2) 5
- Staff in attendance** : Ms Wendy KAN
Assistant Legal Adviser 6

Ms Priscilla LAU
Council Secretary (2) 5

Ms Louisa YU
Legislative Assistant (2) 5

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I. Meeting with the Administration

[File Ref.: FHCR1/F/3261/92, LC Paper Nos. LS44/15-16, CB(2)1118/15-16(02) to (04), CB(2)1131/15-16(01), CB(2)1349/15-16(02), CB(2)1468/15-16(04) to (05), CB(2)1495/15-16(01) to (02), CB(2)1541/15-16(01) to (02), CB(2)1547/15-16(01) to (02) and CB(3)422/15-16]

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

Clause-by-clause examination of the Bill

2. The Bills Committee completed clause-by-clause examination of the Chinese text of the Bill.

Committee stage amendments to the Bill

3. The Bills Committee considered the draft Committee stage amendments ("CSAs") to clause 4 of the Bill to be proposed by the Administration.

4. The Chairman invited members who intended to propose CSAs to the Bill and wished their CSAs to be considered by the Bills Committee to forward their CSAs to the Secretariat as soon as practicable for the Bills Committee's consideration at the next meeting.

Follow-up actions required of the Administration

- Admin
5. The Bills Committee requested the Administration to:
- (a) in respect of the proposed three additional lay members of the Medical Council of Hong Kong ("the Medical Council") who would be elected from the patient-related groups for appointment by the Chief Executive ("CE"),
 - (i) provide details of the nomination and election arrangement being formulated by the Administration in consultation with

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- the patient groups and patient-related groups. The Administration's view was that the arrangement should not be specified in the legislation so as to allow flexibility for the patient and patient-related groups to come up with the best arrangement among themselves; and
- (ii) consider a member's suggestion that the arrangement referred to in item (i) above, as well as the factors to be taken into account by the Secretary for Food and Health ("SFH") in recognizing organizations which were eligible for electing persons representing patients' interests, should be provided for in the legislation. For the latter, the current proposal of the Administration was that SFH might specify by notice published in the Gazette an organization that, in his or her opinion, represented the interests of patients;
- (b) in respect of those complaints against registered medical practitioners received by the Medical Council which required the provision of medical reports or records by the Hospital Authority ("HA"),
- (i) advise the number of cases which were at the stage of pending the provision of the relevant medical reports or records by HA and the average waiting time involved;
 - (ii) advise the details of the arrangement agreed by the Administration, the Medical Council and HA for the provision of the medical reports or records by HA when the obtaining of the patients' consent for such disclosure was not practicable, such as those cases involving a deceased patient; and
 - (iii) advise the circumstances when an application to the court to determine whether there was an overriding public interest for HA to disclose the relevant medical reports or records to the Medical Council would be required, and the estimated legal cost to be involved;
- (c) provide information on the rate of remuneration and annual remuneration of the former Legal Adviser to the Medical Council for each of the financial year he served the Medical Council; and
- (d) relay to the Medical Council the suggestion of a member that the clarification of the Medical Council on the purpose of

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sub-paragraph (3) of Standing Order No. 6 as set out in paragraph 3 of LC Paper No. CB(2)1495/15-16(02) should be incorporated into the Standing Order to improve its clarity. According to the Medical Council, the purpose of sub-paragraph (3) was to encourage members to make a declaration of interest in case there was any doubt about whether there was a potential conflict of interest and the Medical Council or committee or sub-committee would, upon a member's disclosure of such an interest, decide on whether the member concerned should participate in any deliberation or decision regarding the matter.

6. Members noted that the Administration would state during the resumption of the Second Reading debate on the Bill the factors to be taken into account by SFH in recognizing which organizations were eligible for nominating and electing candidates for CE's appointment to the Medical Council to represent patients' interests.

7. Members also noted that subject to the recommendations to be put forth by the Steering Committee on Strategic Review on Healthcare Manpower Planning and Professional Development in relation to the regulatory framework of the medical profession, the Administration would conduct another round of review of the Medical Registration Ordinance (Cap. 161). The review would look into, among others, the need to amend section 21(4A) of the Ordinance to provide expressly that an assessor, not being a member of the Medical Council, who had been involved in a Preliminary Investigation Committee should not participate in the subsequent inquiry of the Medical Council and the implications of such amendment on the operation of the various committees under the Medical Council.

II. Any other business

8. The Chairman reminded members that the next meeting of the Bills Committee would be held on Monday, 30 May 2016, at 4:30 pm.

9. There being no other business, the meeting ended at 4:33 pm.

**Proceedings of the eighth meeting of
the Bills Committee on Medical Registration (Amendment) Bill 2016
held on Monday, 23 May 2016, at 2:30 pm
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>			
000510 - 000650	Chairman	Opening remarks	
000651 - 001127	Chairman Admin	Briefing by the Administration on its response to issues arising from the discussion at the meeting on 16 May 2016 [LC Paper No. CB(2)1541/15-16(02) and CB(2)1547/15-16(01) and (02)].	
001128 - 001632	Chairman Mr Dennis KWOK Admin Clerk	In response to Mr Dennis KWOK's enquiry, the Administration's elaboration of its response on the purpose of sub-paragraph (3) of Standing Order No. 6 of the Medical Council of Hong Kong ("the Medical Council") as set out in paragraph 3 of LC Paper No. CB(2)1495/15-16(02). On Mr Dennis KWOK's view that sub-paragraph (3) of Standing Order No. 6 should be revised to state clearly its purpose and that upon a member's disclosure of an interest, the Medical Council or its committee or sub-committee would consider whether that member had brought or would bring an impartial mind to bear on the deliberation and/or decision of the matter and decide on whether the member concerned should participate in any deliberation or decision regarding that matter, the Administration agreed to relay the view to the Medical Council for consideration.	Admin
001633 - 001947	Chairman Ms Emily LAU Admin	On Ms Emily LAU's concern about whether the resignation of Dr CHOI Kin from the office of the chairman of the Preliminary Investigation Committee ("PIC") would adversely affect the operation of the Medical Council in handling the complaint cases, the Administration's advice that the Medical Council would elect a member to fill the vacancy at its forthcoming meeting on 1 June 2016. In the meantime, where necessary, the Medical Council Secretariat would seek the advice of the PIC deputy chairman. The Administration's emphasis that there were sufficient registered medical practitioner members to serve on the existing PIC and the additional PIC(s) to be established upon the passage of the Bill. The workload of the existing PIC could be shared out if more PICs were established.	
001948 - 003239	Chairman Dr KWOK Ka-ki Admin	Dr KWOK Ka-ki considered that the Legal Adviser to the Medical Council should be appointed on a full-time basis instead of a part-time basis. He requested the Administration to advise in writing the rate of remuneration and annual remuneration of the former Legal Adviser to the Medical Council for each of the financial year he served the Medical Council.	Admin

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		<p>Dr KWOK Ka-ki's concern over Dr CHOI Kin's view as set out in his submission [LC Paper No. CB(2)1516/15-16(01)] that under the tainted-member rule (i.e. overlapping membership among the different proceedings of the Medical Council and its committees relating to same underlying facts was prohibited), there was a need to increase the number of registered medical practitioner members in the Medical Council by four in order to take up the offices of chairman and deputy chairman of the additional PICs to be established upon the passage of the Bill.</p> <p>The Administration's advice that the eight registered medical practitioner members who were not serving on the five statutory committees under the Medical Council would be available to serve on the additional PIC(s) to be established upon the passage of the Bill. It was expected that with the establishment of additional PIC(s), the backlog of about 700 cases at the pre-PIC stage could be cleared within a reasonable time.</p>	
003240 - 003423	Chairman Mr James TO Admin	In response to Mr James TO's enquiry, the Administration's advice that the Bill did not cover issues relating to the operation of the Electronic Health Record Sharing System.	
003424 - 004154	Chairman Dr KWOK Ka-ki Admin	Dr KWOK Ka-ki's request for the Administration to advise in writing (a) the number of cases which were at the stage of pending the provision of the relevant medical reports or records by the Hospital Authority ("HA") and the average waiting time involved; (b) the details of the arrangement agreed by the Administration, the Medical Council and HA for the provision of the medical reports or records by HA when the obtaining of the patients' consent for such disclosure was not practicable; and (c) the circumstances when an application to the court to determine whether there was an overriding public interest for HA to disclose the relevant medical reports or records to the Medical Council would be required, and the estimated legal cost to be involved.	Admin
004155 - 004339	Chairman	Commencement of clause-by-clause examination of the Bill	
004340 - 004533	Chairman Admin	<u>Examination of the long title and clauses 1, 2, 3 and 4</u>	
004534 - 010511	Chairman Admin Ms Emily LAU Mr Tommy CHEUNG Dr KWOK Ka-ki	<u>Examination of clauses 5, 6 and 7</u> In response to Ms Emily LAU and Dr KWOK Ka-ki's enquiries, the Administration's advice that the Medical Council was in support of clause 5 which sought to enable the Medical Council to have more than one legal adviser. There would be no cap on the number of legal advisers to be appointed to the Medical Council upon the passage of the Bill and the Administration would provide additional resources to the Medical Council in this regard. In the Administration's view, it would be more desirable to engage several legal advisers on a part-time basis to provide more flexible support for the Medical Council to handle complaint cases.	

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		<p>Ms Emily LAU and Mr Tommy CHEUNG's expression of support to clause 6 which sought to extend the maximum term of limited registration and renewal of such registration from a period of not exceeding one year to a period of not exceeding three years. In response to the Chairman's enquiry, the Administration advised that it would be up to the Medical Council to decide, on a case by case basis, the term of limited registration or renewal of such registration for each application.</p> <p>In response to Ms Emily LAU's enquiry, the Administration's advice that clause 7 sought to enable the Medical Council to establish more than one PIC. It was expected that even the Medical Council continued to adhere to its tainted-member rule, there would be enough registered medical practitioner members to be elected as chairmen and deputy chairmen of two additional PICs if they were so established by the Medical Council upon the passage of the Bill. It should also be noted that there was no prohibition under the Medical Registration Ordinance (Cap. 161) ("the Ordinance") for the 16 registered medical practitioner members of the Medical Council currently serving on other statutory committees to serve concurrently on PIC. For instance, the five members serving on the Ethics Committee could serve on the additional PIC(s) to be established.</p>	
010512 - 010805	Chairman Admin Ms Emily LAU Miss Alice MAK	<p><u>Examination of clause 8</u></p> <p>In response to Ms Emily LAU's enquiry, the Administration's advice that the Medical Council and the medical profession raised no objection to increasing the number of lay persons on PIC from one to two; allow lay assessors to form part of the quorum of a PIC meeting; and extend the term of appointment of a lay person on PIC to not more than 12 months.</p> <p>In response to Miss Alice MAK's enquiry as to whether "relevant lay person" could be a lay member of the Medical Council or a lay assessor; the Administration's reply in the affirmative.</p>	
010806 - 010909	Chairman Admin Ms Emily LAU	<p><u>Examination of clause 9</u></p> <p>In response to Ms Emily LAU's enquiry, the Administration's advice that given that clause 4 sought to increase the number of lay members on the Medical Council to be appointed by the Chief Executive ("CE") from four to eight, it was proposed that the number of lay persons on the Health Committee should be correspondingly increased from one of the lay members of the Medical Council to two of the lay members of the Medical Council. This proposal was supported by the Medical Council.</p>	
010910 - 011803	Chairman Admin ALA6 Dr KWOK Ka-ki Mr Tommy CHEUNG Ms Emily LAU	<p><u>Examination of clause 10</u></p> <p>The Legal Adviser to the Bills Committee drew members' attention that it was desirable that section 21(4A) of the Ordinance should be amended to provide expressly that an assessor, not being a member of the Medical Council, who had been involved in a PIC should not participate in the subsequent</p>	

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		<p>inquiry of the Medical Council. However, in view of the possible implications on the operation of the various committees under the Medical Council, the Administration would need to conduct a comprehensive review of the Ordinance which would take time, and given the Administration's intention to have the Bill enacted in the current legislative session, subject to members' view and the Administration's undertaking that it would conduct the review in due course, she had no objection to dealing with the matter by way of administrative measure in the interim.</p> <p>In response to Dr KWOK Ka-ki's enquiry about the timetable of the Administration to conduct a comprehensive review of the Ordinance, the Administration's advice that a strategic review on the regulatory frameworks of the 13 healthcare professions subject to statutory regulation (including medical practitioners) was underway. It was expected that the review would be completed in around mid-2016. Subject to the recommendations to be put forth under the strategic review, the Administration would conduct a comprehensive review of the Ordinance.</p> <p>Mr Tommy CHEUNG agreed with the view of the Legal Adviser to the Bills Committee and requested the Administration to undertake, say, during the Second Reading debate on the Bill, to address the issue at the next round of review of the Ordinance.</p>	
011804 - 012404	Chairman Admin Ms Emily LAU	<p><u>Examination of clause 11</u></p> <p>In response to Ms Emily LAU's enquiry, the Administration's advice that the proposed refinement of the composition of the quorum of a meeting of the Medical Council held for the purpose of an inquiry and the proposed increase in the total number of assessors could provide more flexibility for the Medical Council to form the quorum of such meeting and facilitate the Medical Council to conduct inquiry meetings more frequently. As for the roster arrangement, it would be up to the Medical Council to decide on its own. Without prejudice to the Medical Council, it might decide to continue with the existing roster system under the refined quorum arrangement.</p>	
012405 - 012621	Chairman Admin	<p><u>Examination of clauses 12, 13 and 14 of, and Schedules 1 and 2 to, the Bill</u></p>	
012622 - 012752	Chairman Admin ALA6	<p>Scrutiny of the draft Committee stage amendments ("CSAs") to the Bill proposed by the Administration (version as of 23 May 2016) [LC Paper No. CB(2)1569/15-16(01)]</p>	
012753 - 015702	Chairman Admin Dr KWOK Ka-ki Dr Fernando CHEUNG Ms Emily LAU Mr Tommy CHEUNG ALA6	<p><u>Administration's proposed CSAs to clause 4</u></p> <p>The Legal Adviser to the Bills Committee's remarks that according to the Administration's proposed CSAs, the guidelines to be issued by the Secretary for Food and Health ("SFH") under the proposed amended section 3(2)(g) of the Ordinance, and the Gazette notice to be published by SFH under</p>	

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		<p>the new section 3(3AA) of the Ordinance for the purpose of specifying the organizations representing the interests of patients, were not subsidiary legislation and therefore not subject to amendment by the Legislative Council. It was for members to consider whether such arrangements would be acceptable.</p> <p>The Administration's elaboration of the factors to be taken into account by SFH in recognizing organizations which were eligible for electing the three lay persons representing patients' interests on the Medical Council and the proposed election arrangement as set out in paragraphs 4 to 10 of LC Paper No. CB(2)1495/15-16(01). It highlighted that as suggested by patient groups, the detailed and concrete considerations in recognizing patient groups or patient support groups as well as the election arrangement should not be prescribed in the Ordinance or the subsidiary legislation, but should instead be spelt out in relevant government papers and the speech by SFH on the resumption of the Second Reading debate of the Bill.</p> <p>Dr KWOK Ka-ki considered that the legislation should provide for a definition of what constituted an organization that represented the interests of patients and was eligible to elect three persons to fill the three proposed additional lay member seats of the Medical Council as well as the election arrangement. He was concerned that those patient-related groups not being recognized by HA, the Community Rehabilitation Network and the Social Welfare Department's Financial Support Scheme for Self-help Organizations of Persons with Disabilities/Chronic Illnesses could not become an eligible elector for the election.</p> <p>While agreeing that the Administration should allow sufficient flexibility to include as many patient-related groups as possible, Mr Tommy CHEUNG expressed concern that members of the medical profession might set up organizations in the name of patient-related groups in order to be an elector for the election.</p> <p>Dr Fernando CHEUNG and Ms Emily LAU's request that the Administration should at the very least provide in writing details of the nomination and election arrangement being formulated by the Administration in consultation with the patient groups and patient-related groups for consideration by the Bills Committee at the next meeting.</p>	Admin
015703 - 020358	Chairman Admin Ms Emily LAU Dr KWOK Ka-ki Mr Tommy CHEUNG	In response to Ms Emily LAU's enquiry, the Administration's advice that the proposed CSAs to amend section 3(2)(h), (3), (3A) and (5A) of, and to add a new section 35(10) to, the Ordinance to the effect that the two existing appointed seats to be nominated by the Hong Kong Academy of Medicine ("the Academy of Medicine") for appointment by CE be converted to two elected seats to be elected by the Academy of Medicine were supported by the Academy of Medicine but objected by the Hong Kong Medical Association. The proposed CSAs	

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		<p>would be able to achieve equal ratio of elected members and appointed members in the Medical Council.</p> <p>Dr KWOK Ka-ki's remark that to his understanding, Fellows of the Academy of Medicine had not been consulted on whether the Academy of Medicine should support the above proposal. In his view, the conversion was only a superficial change. To increase the elected element in the composition of the Medical Council, the two representatives from the Academy of Medicine on the Medical Council should be elected by all Fellows of the Academy of the Medicine. The representatives to be nominated by HA, the University of Hong Kong and The Chinese University of Hong Kong for CE's appointment on the Medical Council should also be respectively elected by the registered medical practitioners serving in HA and the schools of medicine of the two universities.</p> <p>The Administration's advice that the Academy of Medicine was governed by the Hong Kong Academy of Medicine Ordinance (Cap. 419). Having regard to the principle of professional and academic autonomy, it should be for the Academy of Medicine to determine how its two representatives on the Medical Council should be elected.</p>	
<i>Agenda item II: Any other business</i>			
020359 - 020422	Chairman	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
 22 September 2016