

立法會 *Legislative Council*

LC Paper No. CB(2)1118/15-16(05)

Ref : CB2/BC/4/15

Bills Committee on Medical Registration (Amendment) Bill 2016

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information and summarizes relevant discussions of the Panel on Health Services ("the Panel") on the proposed amendments to the Medical Registration Ordinance (Cap. 161) ("the Ordinance") and its two subsidiary legislation which seek to increase lay participation in the Medical Council of Hong Kong ("the Medical Council") and two of its committees; introduce changes to the complaint investigation and disciplinary inquiry mechanism of the Medical Council; and extend the term of registration of medical practitioners with limited registration.

Background

Composition of the Medical Council

2. The Medical Council is an independent statutory body established under the Ordinance. Its major functions include, among others, maintaining a register of eligible medical practitioners; administering the Licensing Examination; determining and promulgating from time to time the employment or type of employment in respect of which limited registration is appropriate or necessary; handling complaints received against registered medical practitioners; conducting investigations into allegations of professional misconduct; and taking disciplinary actions.

3. The Medical Council currently comprises a total of 28 members, with 24 members being registered medical practitioners and four lay members appointed by the Chief Executive ("CE"). Among the 24 members of the Medical Council who are registered medical practitioners, seven are elected by registered

medical practitioners with full and limited registration, seven others are members of the Hong Kong Medical Association ("HKMA") nominated by the Association, and the remaining 10 included two registered medical practitioners nominated by the Department of Health ("DH"), the University of Hong Kong ("HKU"), the Chinese University of Hong Kong ("CUHK"), the Hospital Authority ("HA") and the Hong Kong Academy of Medicine ("HKAM") respectively and appointed by CE.

Registration of medical practitioners

4. At present, persons who have been awarded a degree of medicine and surgery by HKU or CUHK and have undergone a year of internship training at HA are qualified to be registered as medical practitioners. All non-locally trained medical graduates are required to pass the Licensing Examination administered by the Medical Council and complete a prescribed period of internship at HA before they can register for practice in Hong Kong. Separately, specified institutions (including DH, HA, and the medical schools of HKU and CUHK) may apply to the Medical Council on behalf of non-locally trained doctors with proven experience and knowledge for limited registration in Hong Kong for the purpose of teaching, conducting research or performing clinical work for the institutions. The registration is valid for up to one year subject to annual renewal by the Medical Council. As at the end of 2015, there were 13 726 medical practitioners with full registration and 150 medical practitioners with limited registration in Hong Kong.

Complaint investigation and disciplinary inquiry by the Medical Council

5. The Preliminary Investigation Committee ("PIC") is established by the Medical Council to, among others, make preliminary investigations into complaints or information touching any matter that may be inquired into by the Medical Council or heard by the Health Committee and give advice on the matter to any registered medical practitioner. PIC currently comprises a chairman and a deputy chairman elected from among members of the Medical Council; one of the four lay members of the Medical Council; and four others who are registered medical practitioners not being members of the Medical Council, each nominated by HKMA, DH, HA and any member of the Medical Council respectively¹. The quorum of a PIC meeting is three, at least one of whom shall be a lay member of the Medical Council, subject to the majority being registered medical practitioners, including the chairman or deputy chairman, or both.

¹ All members of PIC shall hold office for 12 months, except for the lay member of the Medical Council appointed to PIC whose term of appointment shall be not exceeding three months. Under the existing arrangement, the four lay members of the Medical Council are required to serve on PIC on a rotational basis.

6. The Health Committee is another committee established by the Medical Council. One of the functions of the Health Committee is to conduct a hearing into any case or matter concerning the health or physical or mental fitness to practise of any registered medical practitioner. At present, the Health Committee comprises a chairman and two members elected from among members of the Medical Council; one of the four lay members of the Medical Council; one to three persons who are not members of the Medical Council, whom the Medical Council considers appropriate; and four others who are registered medical practitioners not being members of the Medical Council, with two nominated by HKMA and the other two each nominated by DH and HA respectively². The quorum of a Health Committee meeting is five (including the chairman), at least one of whom shall be a lay member of the Medical Council, subject to the majority being registered medical practitioners.

7. According to the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E) and the established procedures, complaints concerning professional conduct of registered medical practitioners will be considered by the chairman and deputy chairman of PIC to determine whether a complaint should be referred to PIC or the Health Committee for consideration. For those complaints which are considered groundless or frivolous, and hence should not be proceeded further, the chairman and deputy chairman of PIC will consult the lay member of PIC before a decision is made to dismiss the complaints. For those cases which are referred to PIC for full consideration, PIC will examine each complaint and explanation of the medical practitioner concerned at meetings to decide whether or not there is a prima-facie case to refer the complaint to the Medical Council for a formal inquiry. The quorum of a meeting of the Medical Council held for the purpose of an inquiry is five members³; or not less than three members and two assessors⁴, at least one of whom shall be a lay member but subject to the majority being registered medical practitioners.

The Medical Registration (Amendment) Bill 2016

8. In November 2015, the Panel discussed Hon Tommy CHEUNG's proposal to introduce a Member's Bill to amend the Ordinance to increase the number of

² All members of the Health Committee shall hold office for 12 months, except for the one to three persons who are not members of the Medical Council and are appointed by the Medical Council to the Health Committee, whose term of appointment shall be six to 12 months.

³ Under the existing arrangement, any lay member who has taken part in PIC will be debarred from attending the subsequent disciplinary inquiry in respect of the same case.

⁴ At present, the panel of assessors appointed by the Medical Council for the purpose of conducting an inquiry comprises 10 registered medical practitioners, two each are nominated by DH, HA, HKAM, HKU and CUHK respectively; and four lay persons nominated by the Secretary for Food and Health.

lay members appointed by CE to the Medical Council from four to eight, and the respective number of lay members of the Medical Council appointed to PIC and the Health Committee from one to two. Members generally supported the proposal of Hon Tommy CHEUNG but expressed certain concerns.

9. The Administration introduced the Medical Registration (Amendment) Bill 2016 ("the Bill") into the Legislative Council ("LegCo") on 2 March 2016 to amend the Ordinance, the Medical Registration (Miscellaneous Provisions) Regulation (Cap. 161D) and the Medical Practitioners (Registration and Disciplinary Procedure) Regulation. The legislative proposals covers Hon Tommy CHEUNG's proposal, and seek to enable the Medical Council to establish more than one PIC; extend the term of reference of registration of medical practitioners with limited registration; change the quorum for disciplinary inquiries and increase the number of assessors; enable solicitor or counsel to be appointed to carry out the statutory duties of the Secretary of the Medical Council in inquiries; and increase the number of legal advisers to the Medical Council. The key features of the proposed legislative amendments are set out in paragraph 9 of the LegCo Brief (File Ref: FHCR1/F/3261/92).

Deliberations of the Panel

10. The Panel was consulted on the legislative proposals on 29 February 2016. The deliberations and concerns of members are summarized in the following paragraphs.

Lay participation in the Medical Council, PIC and the Health Committee

11. Members generally supported the legislative proposal to increase the lay participation in the Medical Council, PIC and the Health Committee which could enhance the transparency and accountability in the discharge of the self-regulatory functions by the Medical Council. They noted that the ratio of lay members to medical practitioner members in the Medical Council would be changed from 1:6 (i.e. four lay members to 24 medical practitioner members) to 1:3 (i.e. eight lay members to 24 medical practitioner members) under the legislative proposal. Noting that lay persons comprised one-third or more of the membership in the medical regulatory bodies in some overseas countries, some members called on the Administration to further increase the number of lay members of the Medical Council in the long run. There were also views that the newly added lay members of the Medical Council should be nominated by patients groups and/or credible bodies for appointment by CE. The Administration advised that the criteria for selecting the lay members to be appointed by CE on the Medical Council could be further examined by the bills committee to be formed to study the Bill. At this stage, it had no plan to further increase the number of lay members of the Medical Council in the future.

12. Some members were of the view that the proposed increase in the number of lay members appointed by CE to the Medical Council went against the principle of professional autonomy conferred upon the profession by Article 142 of the Basic Law. Concern was raised about the constitutionality of the Bill. There was another concern that the decisions made by the lay members would be tilted in favour of the Government. Some members considered it necessary to maintain the existing 1:1 ratio of appointed members (i.e. four lay members and 10 medical practitioner members appointed by CE) to elected members (i.e. seven medical practitioner members elected by registered medical practitioners with full and limited registration and seven medical practitioner members nominated by HKMA through election) in the Medical Council. They noted that a proposal of the medical sector was to respectively increase the number of appointed lay members and elected medical practitioner members by six, so as to maintain the 1:1 ratio of appointed members to elected members and at the same time achieve the 1:3 ratio of lay members to medical practitioner members as proposed under the Bill.

13. The Administration stressed that the current legislative proposal was in conformity with the Basic Law. The Administration further advised that for the 10 medical practitioner members appointed by CE, two each were nominated by DH, HKU, CUHK, HA and HKAM. These nominees were all registered medical practitioners of high standing who were committed to maintaining professionalism on the one hand, and on the other hand protecting patients and the public when serving on the Medical Council. The Steering Committee on Strategic Review on Healthcare Manpower Planning and Professional Development was conducting, among others, a root-and-branch regulatory review of the 13 healthcare professions subject to statutory regulation, including doctors. It was expected that the review would be completed in mid-2016. The current legislative exercise was aimed at tackling the most urgent issues of concern of members of the public and patient groups which included, among others, the need for increasing lay participation in the Medical Council. The Administration had met with, among others, patient groups to collect their views on the legislative proposals. They had reservation about the aforesaid proposal of the medical sector.

Complaint investigation and disciplinary inquiry mechanism of the Medical Council

14. Given the surge in the number of complaint cases concerning the professional conduct of registered medical practitioners in recent years (i.e. from 476 cases in 2010 to 624 cases in 2014) and the long time currently taken by the Medical Council for processing the complaints, members were concerned about

how the legislative proposals could improve the complaint investigation and disciplinary inquiry mechanism of the Medical Council.

15. The Administration advised that the number of complaint cases in recent years had exceeded the current capacity of the Medical Council at both PIC and inquiry stages. As a result, there was a backlog of cases resulting in prolonged period for conclusion of the cases. Under the Bill, it was proposed that the number of lay persons on PIC be increased from one lay member of the Medical Council to two lay persons who might either be a lay member of the Medical Council or a lay assessor. In addition, the Medical Council could establish more than one PIC and have more than one legal adviser. The above apart, the total number of persons who might be appointed to the panel of assessors (including assessors who were registered medical practitioners nominated by DH, HA, HKAM, HKU and CUHK, and the lay assessors) for conducting inquiries was proposed to be increased substantially from 14 to 34. This would enable PIC and the Medical Council to conduct meetings more frequently and in parallel, so as to speed up complaint investigation and disciplinary inquiries.

Admission of non-locally trained doctors

16. Members generally supported the proposed extension of 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 their view, this could attract more experienced non-locally trained specialists to practise in Hong Kong in order to tie in with the 10-year public hospital development plan and to meet the rising healthcare service needs of an ageing population. There was a further view that while it was necessary to ensure the professional standard of non-locally trained medical graduates was at a level comparable to that of local medical graduates, more measures, such as reviewing the standard of and the need for the Licensing Examination, should be taken to facilitate them to practise in Hong Kong.

17. According to the Administration, the Licensing Examination of the Medical Council aimed to ensure that those who wished to register as medical practitioners in Hong Kong after having received medical training elsewhere had attained a professional standard comparable to that of local medical graduates. The Medical Council would ensure that the standard of the Licensing Examination was consistent with that adopted by the two faculties of medicine in Hong Kong for assessing their medical graduates. To facilitate more overseas-trained doctors to practise in Hong Kong, the Medical Council had increased the frequency of the Licensing Examination from once to twice a year starting from 2014 and introduced more flexibility to the relevant internship requirement.

Relevant papers

18. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
18 March 2016

Relevant papers on the Medical Registration (Amendment) Bill 2016

Committee	Date of meeting	Paper
Panel on Health Services	29.2.2016 (Item I)	<u>Agenda</u>

Council Business Division 2
Legislative Council Secretariat
18 March 2016