

立法會
Legislative Council

LC Paper No. CB(2)1795/15-16

Ref : CB2/BC/4/15

Paper for the House Committee

**Report of the Bills Committee on
Medical Registration (Amendment) Bill 2016**

Purpose

This paper reports on the deliberations of the Bills Committee on Medical Registration (Amendment) Bill 2016 ("the Bills Committee").

Background

2. The Medical Council of Hong Kong ("the Medical Council") is established under section 3(1) of the Medical Registration Ordinance (Cap. 161) ("the Ordinance"). Its major functions include, among others, maintaining a register of medical practitioners; setting and conducting 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. There is increasing public concern over the Medical Council's efficiency in complaint investigation and conducting disciplinary inquiries, as well as its lack of flexibility for the admission of non-locally trained medical practitioners. On the former, the Medical Council proposed to the Administration in June 2014 to, among others, increase the number of lay assessors of the panel of assessors appointed by the Medical Council for the purpose of conducting an inquiry from four to 14, and allow lay assessors to play a role in the proceedings of the Preliminary Investigation Committee ("PIC") and disciplinary inquiries in order to expedite the processing of complaint cases and the conduct of disciplinary inquiries. Separately, Mr Tommy CHEUNG consulted the Panel on Health Services of the Legislative Council ("LegCo") in November 2015 his

proposal to introduce a Member's Bill to amend the Ordinance to increase the number of lay members appointed by the Chief Executive ("CE") to the Medical Council from four to eight, and the respective number of lay members of the Medical Council appointed to PIC and Health Committee from one to two.

The Bill

4. The Administration introduced the Medical Registration (Amendment) Bill 2016 ("the Bill") into 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 (Cap. 161E). According to the LegCo Brief (File Ref.: FHCR 1/F/3261/92) issued by the Food and Health Bureau on 24 February 2016, the objects of the Bill are to increase lay participation in the Medical Council; improve its complaint investigation and disciplinary inquiry mechanism; and facilitate the admission of non-locally trained doctors, in particular specialists, to practise in Hong Kong.

5. To achieve the above objects, the legislative proposals seek to increase the number of lay members appointed by CE to the Medical Council from four to eight, and the respective number of lay persons appointed to PIC and the Health Committee from one to two; enable the Medical Council to establish more than one PIC; extend the term of registration and renewal of medical practitioners with limited registration; refine the quorum for disciplinary inquiries and increase the number of assessors; enable solicitor or counsel (apart from the legal officers appointed by the Secretary for Justice) to be appointed to carry out the duties of the Secretary of the Medical Council in respect of inquiries; increase the number of legal advisers to the Medical Council; and provide for incidental matters and make related technical amendments.

6. The Bill, if passed, would come into operation on the day it is published in the Gazette as an Ordinance.

The Bills Committee

7. At the House Committee meeting on 11 March 2016, Members agreed to form a Bills Committee to study the Bill. Mr Vincent FANG and Mr CHAN Han-pan were elected as Chairman and Deputy Chairman of the Bills Committee respectively. The membership list of the Bills Committee is in **Appendix I**.

8. The Bills Committee has held a total of 10 meetings to study the Bill. The Bills Committee has also received views from the public and members of the medical profession at one of these meetings. A list of organizations and individuals which/who have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

Increasing lay participation in the Medical Council, PIC and the Health Committee

Proposals in the Bill

9. According to existing section 3(2) of the Ordinance, the Medical Council comprises a total of 28 members, with 24 being registered medical practitioners elected or nominated by specified person or bodies and four lay members appointed by CE. Lay membership currently accounts for about 14% of the total membership of the Medical Council. According to the Administration, the review being conducted by the Steering Committee on Strategic Review on Healthcare Manpower Planning and Professional Development ("the Steering Committee")¹ reveals that there is an international trend towards greater involvement of lay members in the regulatory bodies of the medical profession. While the review is expected to be completed in mid-2016, it is observed that members of the public are most concerned about issues relating to the registered medical practitioners, including, among others, the public accountability, transparency and credibility of the Medical Council. To increase lay participation in the Medical Council and two of its committees,² the Bill seeks to:

¹ The Steering Committee, which was set up by the Government in January 2012, aims to make recommendations that would better enable the society to meet the projected demand for healthcare professionals, as well as to foster professional development with a view to ensuring healthy and sustainable development of the healthcare system and the continued provision of quality healthcare services to the public. The review covers 13 healthcare disciplines (including registered medical practitioners) that are subject to statutory regulation.

² According to section 20BA(2) of the Ordinance, the Medical Council may establish five committees in accordance with, and having such functions as are assigned to them by the Ordinance or delegated to them by the Medical Council ("the five statutory committees"), namely the Licentiate Committee, the Education and Accreditation Committee, the Ethics Committee, PIC and the Health Committee. Among these committees, only PIC and the Health Committee require a membership that comprises lay members of the Medical Council.

- (a) increase the number of lay members on the Medical Council to be appointed by CE from four to eight;
- (b) increase the number of lay persons on PIC³ from one lay member of the Medical Council to two lay persons who may be a lay member of the Medical Council or a lay assessor appointed under the proposed amended section 21B(2)(f) of the Ordinance; and
- (c) increase the number of lay persons on the Health Committee⁴ from one of the lay members of the Medical Council to two of the lay members of the Medical Council.

Appointment of lay members on the Medical Council

10. Members are supportive of the proposed increase in the number of lay members on the Medical Council so as to enhance public accountability and credibility of the Medical Council in discharging its self-regulatory function, in particular the handling of complaints against registered medical practitioners for the sake of the public interest. Miss Alice MAK is of the view that while the proposal would increase lay membership of the Medical Council from about 14% to 25%, the proportion of lay members on the Medical Council was still on the low side when compared to that of the medical regulatory bodies in Canada, Australia, New Zealand (for which lay persons comprise one-third of the membership) and the United Kingdom (for which lay persons comprise half of the membership). She urges the Administration to consider further increasing the number of lay members on the Medical Council in the future such that the proportion of lay members will account for half of the membership.

11. Some members including Mr Albert HO, Dr KWOK Ka-ki and Mr YIU Si-wing have expressed concern about the criteria for nominating and appointing a lay person to the Medical Council by CE. They consider that the four additional lay members should be drawn from a wide spectrum of the

³ The existing composition and functions of PIC are detailed in paragraph 37 below.

⁴ According to existing section 20U of the Ordinance, 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 the Hong Kong Medical Association ("the Medical Association") and the other two each nominated by the Director of Health and the Hospital Authority ("HA") respectively. Under section 20V of the Ordinance, 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.

community including, for instance, patient and consumer representatives, and representatives from the legal and accounting professions. Where appropriate, the individuals concerned should be nominated by the relevant bodies in accordance with a transparent procedure relating to the filling of these seats. Mr Albert HO is of the further view that the above principles should be applied to the four existing lay member seats.

12. The Administration has advised that its intention is to appoint persons representing interests of consumers and patients to fill these four additional lay member seats of the Medical Council. For the former, it considers that the Consumer Council could nominate person(s) representing consumers' interests for CE's appointment. As regards the latter, there are, to the best of its knowledge, more than 200 organizations which are established as patient groups or patient support groups. These organizations are of different scale, with a membership ranges from 40 000 to less than 100. Some of them are societies established under the Societies Ordinance (Cap. 151), some are companies incorporated under the new Companies Ordinance (Cap. 622) or the former Companies Ordinance (Cap. 32), and some are neither societies nor companies but are organized on their own without formal registration under the above Ordinances to carry out activities to promote and/or represent patients' interests. The Administration assures the Bills Committee that it would consult the organizations concerned in order to hammer out a mechanism for electing representatives among themselves for CE's appointment to the Medical Council. For the four existing lay member seats, the Administration considers that the current arrangement should remain unchanged. Mr LEUNG Yiu-chung and Dr Fernando CHEUNG stress that it is of paramount importance to ensure that patients' interests are adequately represented in the Medical Council.

13. Having considered members' views, the Administration has proposed to move a Committee stage amendment ("CSA") to amend the proposed amended section 3(2)(g) of, and add a new section 3(3AA) to the Ordinance such that three of the lay members to be appointed by CE are to be elected by the organizations specified by the Secretary for Food and Health ("SFH") in accordance with the guidelines to be issued by SFH in consultation with those organizations. SFH may specify, by notice published in the Gazette, organizations that, in SFH's opinion, represent the interests of patients. Another lay member to be appointed by CE is to be nominated by the Consumer Council.

14. Members note that the Consumer Council welcomes the proposal and has expressed the view that it should be given the flexibility to nominate a person who has the knowledge and experience in consumer protection and at the same time could afford the time to sit as lay member of the Medical Council.

15. Some members including Dr KWOK Ka-ki and Dr Fernando CHEUNG are concerned that a clear definition of what constitutes an organization that represents the interests of patients and is eligible to elect the three persons for appointment by CE to the Medical Council would not be provided for in the legislation. In addition, the gazettal by SFH of a notice on the organizations that represent the interests of patients is not a subsidiary legislation and would not be subject to scrutiny by LegCo. Given that there are hundreds of patient groups and patient support groups in the community, they have queried how the Administration could forge a consensus among all the organizations concerned on the election arrangement and ensure that the representatives so elected could truly represent the interests of patients.

16. The Administration has advised the Bills Committee that it has consulted major patient groups and patient support groups,⁵ which cover over 50 000 patient or patients' relatives members, on the arrangement for electing three persons representing patients' interests for CE's appointment to the Medical Council. Their view is that it would be more desirable and practical for the legislation to allow sufficient flexibility to include as many relevant organizations as possible, and provide adequate latitude to include those new organization(s) promoting and/or representing patients' interests and credible platform(s) when established in the future. The Administration has undertaken to state clearly during the resumption of the Second Reading debate on the Bill that the following four factors would be taken into account (but not limited to) by SFH in recognizing which organizations are eligible for nominating and electing candidates for CE's appointment to the Medical Council to represent patients' interests:

- (a) the organization should be a society established under the Societies Ordinance (Cap. 151), or a company incorporated under the new Companies Ordinance (Cap. 622) or the former Companies Ordinance (Cap. 32);

⁵ These groups include Hong Kong Alliance of Patients' Organizations Limited, Hong Kong Society for Rehabilitation, Society for Community Organization - Hong Kong Patients' Rights Association, Rehabilitation Alliance Hong Kong, Alliance for Renal Patients Mutual Help Association, The Brightening Association (HK) Ltd, Christian Oi Hip Fellowship Ltd, Hong Kong Stoma Association, Hong Kong Adult Blood Cancer Group Limited, Care For Your Heart - Cardiac Patients Mutual Support Association, Hongkong Ankylosing Spondylitis Association, and Hong Kong Patients' Voices.

- (b) the organization should be recognized by a credible patient-related platform, including but not limited to HA,⁶ the Community Rehabilitation Network ("CRN")⁷ and the Social Welfare Department's Financial Support Scheme for Self-help Organizations of Persons with Disabilities/Chronic Illnesses;⁸
- (c) the mission of the organization should be promoting and/or representing patients' interests as reflected in the instrument or rules governing its mission or activities; and
- (d) the organization should be in operation for a specified period and have been carrying out activities to promote and/or represent patients' interests and/or advocating medical policies.

If there is any organization considered itself a qualified organization but such organization fails to meet the above four requirements, SFH may consider the case on an individual merit basis.

17. Dr LEUNG Ka-lau and Dr Fernando CHEUNG consider that the above four requirements are not clear enough for preventing vote-rigging and ensuring that the organizations so recognized truly represent the interests of patients. Ms Emily LAU is of the view that to dispel any suspicion of political consideration, it would be better if the decisions on whether an organization represents the patients' interests and hence, is eligible for electing the three persons representing patients' interests for appointment by CE to the Medical Council are made by the Permanent Secretary for Food and Health (Health), instead of SFH who is a politically appointed official. Dr Fernando CHEUNG has expressed agreement with Ms Emily LAU's view. After consideration, the Administration has agreed to revise its proposed CSA as set out in paragraph 13 above to such effect. Mr LEUNG Yiu-chung and Ms Emily LAU have requested the Administration to put in place a mechanism to consider appeals against the decision of the Permanent Secretary for Food and Health (Health) on eligibility for being an elector.

⁶ According to the Administration, HA has been engaging over 200 patient-related groups on service developments and patient support services.

⁷ CRN is a community-based rehabilitation service under the Hong Kong Society for Rehabilitation to assist persons with visceral disability or chronic illness and their families. According to the Administration, it has engaged over 160 self-help organizations.

⁸ The Social Welfare Department has been providing financial support to self-help organizations of persons with disabilities or chronic illness aiming at promoting the spirit of self-help and mutual help among persons with disabilities and their families. There are 78 self-help organizations receiving funding support under the Scheme for 2014-2016.

18. According to section 3(3) of the Ordinance, lay members of the Medical Council shall hold office for a period of three years from the date of his or her appointment and, at the expiry of his or her period of appointment or of any period for which he or she is reappointed, shall be eligible for reappointment for further periods of three years each. Hence, the election to be held by the eligible organizations for electing the three representatives for CE's appointment to the Medical Council will be conducted on a triennial basis. Members note that subject to the passage of the Bill before the prorogation of the fifth term of LegCo, the Administration tentatively aims to invite applications for becoming an eligible elector and nominations for election to the Medical Council in August and November 2016 respectively. The plan of the Administration is for the first election be conducted in December 2016 for the appointment to take effect in January 2017. Given the tight schedule, members are concerned about whether the hundreds of patient groups and patient support groups could work out the election arrangement and conduct the first election accordingly.

19. The Administration has advised that it has maintained dialogue and would continue to discuss with the major patient groups and patient support groups with a view to finalizing the detailed election arrangement in July 2016. The preliminary proposal is that SFH will appoint a person or an organization with relevant experience to conduct the election. A possible choice is the Secretary of the Medical Council, who is currently responsible for conducting the election held for the purpose of filling the seven seats of the Medical Council who are taken by registered medical practitioners elected by registered medical practitioners with full registration and limited registration. After the announcement of the election date, relevant organizations may submit their applications to the electoral office, which will vet the applications in accordance with the above guidelines on eligibility of electors. When the registration period ends, the electoral office will publish in the gazette and newspapers the list of organizations which are eligible for voting in the election. The electoral office will issue the notice of election before the election date. Each eligible organization may nominate one candidate, and may cast a maximum of three votes by secret ballot at the poll. The three candidates receiving the highest number of votes are elected for appointment by CE to the Medical Council for a three-year term.

20. Dr Fernando CHEUNG is gravely concerned that, as of late May 2016, many of the patient groups and patient support groups which, in his view, meet the four requirements in paragraph 16 above were unaware of the proposed election arrangement for the three persons representing patients' interests on the Medical Council. At his suggestion, the Administration has written to all patient-related groups engaged by HA and self-help organizations engaged by CRN or receiving funding support under the Financial Support Scheme for Self-

help Organizations of Persons with Disabilities/Chronic Illnesses to inform them of, and seek their views on, the proposed election arrangement. Dr KWOK Ka-ki has suggested the Administration to consult the Independent Commission Against Corruption ("ICAC") before finalizing the election arrangement. These members remain of the view that the qualifications of electors and the election procedures should be set out in the legislation to enhance legal certainty and clarity.

21. Mr LEUNG Yiu-chung has expressed concern over the support to be provided for the three lay members representing patients' interests in performing their duties. The Administration has assured the Bills Committee that necessary resources and administrative support would be provided to facilitate these representatives to perform their duties.

Ratio of appointed members and elected members of the Medical Council

22. Members note that the Medical Council currently comprises 14 members appointed by CE, with 10 being registered medical practitioners nominated by specified person or bodies (i.e. two each nominated by the Director of Health, the University of Hong Kong ("HKU"), The Chinese University of Hong Kong ("CUHK"), HA and the Hong Kong Academy of Medicine ("the Academy of Medicine") respectively according to section 3(2)(c), (d), (da), (db) and (h) of the Ordinance) and four lay members. The remaining 14 members of the Medical Council include seven registered medical practitioners who are members of the Medical Association elected by its Council members, and seven registered medical practitioners who are elected by registered medical practitioners with full registration and limited registration. Hence, the legislative proposal of increasing the number of lay members to be appointed by CE from four to eight would result in a larger number of members appointed by CE than that of members elected by the medical profession.

23. Some members including Mr Alan LEONG, Dr KWOK Ka-ki and Mr IP Kin-yuen are concerned that under the current term Government, any increase in the number of members appointed by CE in statutory regulatory bodies might result in increased Government control. The legislative proposal would enable CE to exercise political influence in the affairs of the Medical Council as the decisions made by the appointed members may be tilted in favour of the Government, to the detriment of professional autonomy. They are of the view that maintaining an equal ratio of appointed members and elected members in the Medical Council is necessary for ensuring a balance of views. Dr LEUNG Ka-lau has pointed out that the need to maintain an equal ratio of appointed members and elected members in the Medical Council was affirmed

during LegCo's scrutiny of the Medical Registration (Amendment) (No. 2) Bill 1995 ("the 1995 Bill").⁹

24. The Administration has stressed that professional autonomy of the medical profession is always upheld by having the majority of members of the Medical Council being registered medical practitioners. The registered medical practitioners nominated by HKU, CUHK, HA and the Academy of Medicine respectively for appointment by CE, who possess substantive experience and qualifications as well as high professional standing, are all professionally independent to represent the interests of the specified bodies concerned and, as other members of the Medical Council, the interests of patients. The Administration has further pointed out that under the Ordinance, the nomination is a pre-condition for appointment by CE. The Administration has explained that it is a well-established principle in administrative law that if a decision maker takes into account matters irrelevant to his or her decision, or refuses or fails to take account of matters relevant to his or her decision, the court may set the decision aside in a judicial review. The fact that members of the Medical Council are nominated by HKU, CUHK, HA and the Academy of Medicine is a factor which the Ordinance clearly requires CE to take into account in exercising the appointment power. Given that these bodies are in the best position to decide who should represent them, CE is required to give the nomination substantial weight. In the Administration's opinion, in the absence of exceptional circumstances, it is unlikely that CE may reasonably refuse to appoint the nominated persons and accordingly CE has little discretion not to appoint the registered medical practitioners nominated by these specified bodies.¹⁰

25. Dr LEUNG Ka-lau and Dr KWOK Ka-ki have remained concern that the Administration's legislative proposal would dilute the existing elected element

⁹ The 1995 Bill sought to, among others, increase the number of lay members to be appointed by the Governor to the Medical Council from one to two, and change the membership of the Medical Council from 14 members appointed by the Governor to 12 members elected by registered medical practitioners and 12 members (including the two lay members) appointed by the Governor. The Bills Committee formed to study the 1995 Bill proposed to increase the number of lay members to four, and make a corresponding increase in the number of elected registered medical practitioner members in order to maintain an equal ratio between the appointed members and elected members in the Medical Council. The Administration had agreed to move CSAs to achieve this effect. The CSAs were passed by LegCo.

¹⁰ Section 3(7) of the Ordinance provides that, notwithstanding anything in that section, a person (a) against whom an order under section 21 has at any time been made; or (b) who is (i) undergoing a sentence of imprisonment; (ii) detained in a mental hospital; or (iii) an undischarged bankrupt, shall not be eligible for appointment, reappointment, election or re-election, as the case may be, as a member of the Medical Council.

in the composition of the Medical Council. Dr LEUNG Ka-lau has pointed out that many members of the medical profession are strongly of the view that the current 1:1 ratio between appointed members and elected members should be maintained after the addition of the four proposed lay members in the Medical Council in order to preserve professional autonomy of the medical profession. This apart, according to the results of his commissioned survey conducted by the Public Opinion Programme of HKU in April 2016 to gauge the views of the public on the reform of the Medical Council, 45% of the respondents supported to, whereas only 30% of the respondents objected to, maintain the current 1:1 ratio between appointed members and elected members in the Medical Council.

26. Dr LEUNG Ka-lau has further pointed out that the number of registered medical practitioners has surged from around 8 000 in 1995 to around 14 000 today, which justifies an increase in the number of elected registered medical practitioner members in the Medical Council. Such an increase could also address his concern of not having sufficient number of registered medical practitioner members for the Medical Council to form more than one PIC as proposed in the Bill for the purpose of improving the complaint investigation mechanism of the Medical Council.¹¹ In the light of the above, he has indicated his intention to propose two sets of CSAs for maintaining the equal ratio between appointed members and elected members through increasing the number of directly elected registered medical practitioner members.

27. One set of Dr LEUNG Ka-lau's proposed CSAs is to increase the number of members elected by registered medical practitioners with full registration and limited registration by four (i.e. from seven to eleven) while keeping the increase in the number of lay members appointed by CE same as that proposed by the Administration (i.e. from four to eight, with three to be elected by the qualified electors to represent the interests of patients and one to be nominated by the Consumer Council) ("4+4 proposal"). Under this approach, the number of members of the Medical Council will increase from 28 to 36, and the proportion of lay membership will increase from about 14% to 22%.

28. The other set of CSAs proposed by Dr LEUNG Ka-lau is to increase the number of members elected by registered medical practitioners with full registration and limited registration, and the number of lay members appointed by CE both by six (i.e. from seven to 13 for the former and from four to 10 for the latter, with five to be elected by the qualified electors to represent the interests of patients and one to be nominated by the Consumer Council) ("6+6 proposal"). This proposal will increase the number of members of the Medical Council from 28 to 40. Dr LEUNG Ka-lau takes the view that the merit of this

¹¹ Please see paragraphs 41 and 42 below for details.

proposal is that the current 1:1 ratio between appointed members and elected members will be maintained on the one hand, and on the other hand the proportion of lay membership will increase from about 14% to 25%, to be on par with that proposed under the Administration's legislative proposal.

29. The Administration has advised that it does not accept a corresponding increase of elected registered medical practitioner members as put forth under the two proposals of Dr LEUNG Ka-lau on the ground that there are at present already 24 registered medical practitioner members in the Medical Council, forming the majority of the membership. In addition, any further increase in the membership size may affect the efficient operation of the Medical Council. There is also no cause for concern that there may be insufficient number of registered medical practitioner members to form more than one PIC.¹² The Administration has drawn members' attention to the main objects of the Bill which seek to, among others, increase lay participation in the Medical Council. The Hong Kong Alliance of Patients' Organizations and the Society for Community Organization have submitted the views to the Bills Committee that they are against a further increase in the number of registered medical practitioner members in the Medical Council.

30. Mr Paul TSE has expressed disagreement with the arguments put forward by the Administration, as he considers that the 6+6 proposal could achieve the effect of increasing the proportion of lay members in the Medical Council to 25% as proposed by the Bill. In his view, a larger membership does not necessarily mean lower efficiency. Dr LEUNG Ka-lau has expressed dissatisfaction with the Administration's refusal to balance the interests of the medical profession and the patient groups (which in this case, only two patient groups have indicated objection to increasing the number of registered medical practitioner members in the Medical Council) in reforming the composition of the Medical Council. Some other members, including Mr YIU Si-wing and Miss Alice MAK, however, take the view that any increase in registered medical practitioner members in the Medical Council will go against the growing community aspiration for increasing lay involvement in the regulatory bodies of various professions (including the Medical Council) and trades.

31. Dr KWOK Ka-ki has also indicated that he would propose a CSA to the proposed amended section 3(2) to the effect that the number of registered medical practitioners nominated respectively by HKU, CUHK, HA and the Academy of Medicine for appointment by CE be reduced from two to one each and the number of members elected by registered medical practitioners with full registration and limited registration be increased correspondingly by four (i.e.

¹² Please see paragraph 43 below for details.

from seven to eleven), while keeping the increase in the number of lay members appointed by CE same as that proposed by the Administration in the current legislative exercise (i.e. from four to eight). The effect of the CSAs is to increase the elected element in the composition of the Medical Council, and at the same time increase the proportion of lay membership from about 14% to 25%.

32. The Administration objects to Dr KWOK Ka-ki's proposal on the ground that the registered medical practitioners nominated by HKU and CUHK as well as the Academy of Medicine play an indispensable role in the Medical Council. The role of the former is to maintain the professional competency of local medical graduates, whereas the role of the latter is to maintain the standard of medical specialist training and continuing medical education in Hong Kong. The two registered medical practitioners nominated by HA, which is the major healthcare services provider and a provider of general and specialist training for the medical professionals, could provide valuable views to the Medical Council from the perspective of employment and training needs.

33. While the Administration takes the view that maintaining an equal ratio between appointed members and elected members is not a pre-requisite for upholding professional autonomy, it has proposed to move a CSA to the Bill to the effect that the two existing appointed seats to be nominated by the Academy of Medicine for appointment by CE would be converted to two elected seats to be elected by the Council of the Academy of Medicine,¹³ in order to address the concern of some members of the medical profession over the ratio of appointed members and elected members in the Medical Council.

34. Members note that at present, the two nominees of the Academy of Medicine for appointment by CE are nominated on the basis of election by the Council of the Academy of Medicine. Some members including Mr LEUNG Yiu-chung, Dr LEUNG Ka-lau, Dr KWOK Ka-ki, Dr Fernando CHEUNG and

¹³ Section 9(2) of the Hong Kong Academy of Medicine Ordinance (Cap. 419) provides for the composition of the Council of the Academy of Medicine. The Council currently has 26 members, consisting of six Officers (i.e. the President, the Vice-President (General Affairs), the Vice-President (Education and Examinations), the Honorary Secretary, the Honorary Treasurer and the Editor) who are nominated and elected by members of the Council, 15 College Presidents who are elected by members of the Colleges in general according to the constitutions of each College (except for the Presidents of Hong Kong College of Anaesthesiologists, College of Dental Surgeons of Hong Kong, Hong Kong College of Obstetricians and Gynaecologists and College of Surgeons of Hong Kong who are nominated and elected by the College Councillors being nominated and elected by all College members), and five elected Council members who are nominated and elected by all Fellows of the Academy of Medicine.

Mr IP Kin-yuen take the view that if CE has little discretion not to appoint the registered medical practitioners nominated by the Academy of Medicine, the above proposal of the Administration is in effect merely a superficial change without increasing the elected element in the composition of the Medical Council.

35. According to the Administration, the view of the Academy of Medicine is that as the number of Fellows in each of its 15 Colleges¹⁴ varies from 1 600 to less than 200,¹⁵ an election from all Fellows for representation at the Medical Council would be perceived as disadvantages towards candidates from those Colleges with fewer Fellows. Notwithstanding the above, having regard to the principle of professional autonomy and the fact that the Academy of Medicine is a statutory body governed by the Hong Kong Academy of Medicine Ordinance (Cap. 419), the Administration has subsequently refined its proposal such that the nomination and election procedures as to how the Academy of Medicine elects the two registered medical practitioners to fill the two elected seats would be decided by the Academy of Medicine itself and would not be specified in the legislation. The Administration will move CSAs to amend section 3(2)(h), (3), (3A) and (5A) of, and to add a new section 35(10) to, the Ordinance to achieve this effect. The Academy of Medicine has indicated to the Bills Committee that it is supportive of the revised proposal which in effect has maintained the ratio of appointed members and elected members in the Medical Council at 1:1.

36. The Bills Committee notes that any CSA to the Bill has to be relevant to the subject matter of the Bill and to the subject matter of the clause to which it relates as required under Rule 57(4)(a) of the Rules of Procedure. The issue of whether the Administration's proposed set of CSAs to convert the seats of the Academy of Medicine as elected seats falls within the scope of the Bill has been discussed by the Bills Committee. The Administration is of the view that its proposed CSA, which aims to restore the ratio of appointed members and elected members to 1:1 as currently reflected in section 3(2) of the Ordinance, falls within the scope of the Bill as it is incidental to the proposed addition of

¹⁴ The 15 Colleges as set out in the Schedule to the Hong Kong Academy of Medicine Ordinance are Hong Kong College of Anaesthesiologists, Hong Kong College of Community Medicine, College of Dental Surgeons of Hong Kong, Hong Kong College of Emergency Medicine, Hong Kong College of Family Physicians, Hong Kong College of Obstetricians and Gynaecologists, College of Ophthalmologists of Hong Kong, Hong Kong College of Orthopaedic Surgeons, Hong Kong College of Otorhinolaryngologists, Hong Kong College of Paediatricians, Hong Kong College of Pathologists, Hong Kong College of Physicians, Hong Kong College of Psychiatrists, Hong Kong College of Radiologists and College of Surgeons of Hong Kong.

¹⁵ According to the Academy of Medicine, it currently has around 7 400 Fellows in total.

four lay members appointed by CE to the Medical Council. The Bills Committee notes that it is for the President to decide whether the proposed set of CSAs falls within the scope of the Bill.

Changes to the complaint investigation and disciplinary inquiry mechanism of the Medical Council

Establishment of more than one PIC

37. Members note that the Medical Council currently receives about 500 new complaint cases each year.¹⁶ According to existing section 20T of the Ordinance, PIC is responsible 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. Under existing section 20S of the Ordinance, PIC currently comprises three members of the Medical Council (i.e. a chairman and a deputy chairman elected from among members of the Medical Council, and 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 the Medical Association, the Director of Health, HA and any member of the Medical Council respectively.¹⁷ 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.

38. According to the Medical Practitioners (Registration and Disciplinary Procedure) Regulation and the established procedures as explained by the Administration, 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

¹⁶ According to the information provided by the Administration to the Bills Committee in March 2016, the number of new complaints received by the Medical Council in 2011, 2012, 2013, 2014 and 2015 was 461, 480, 452, 624 and 493 cases respectively.

¹⁷ According to existing section 20S(5) of the Ordinance, 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.

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.

39. Clause 7 of the Bill amends section 20BA(2)(d) of the Ordinance to enable the Medical Council to establish more than one PIC. Clause 8 of the Bill amends section 20S of the Ordinance to increase the number of lay persons on PIC from one lay member of the Medical Council to two lay persons who may be a lay member of the Medical Council or a lay assessor appointed under the proposed amended section 21B(2)(f) of the Ordinance ("Relevant Lay Persons"). The term of appointment of a Relevant Lay Person would also be extended from a period of not exceeding three months to a period of not exceeding 12 months as the Medical Council may specify in his or her letter of appointment.

40. The Administration has advised the Bills Committee that the number of complaint cases in recent years has far exceeded the current capacity of the Medical Council at the pre-PIC stage (i.e. under initial consideration by the PIC chairman and deputy chairman), preliminary investigation stage and inquiry stage.¹⁸ The existing backlog of cases at these three stages is about 700, 150 and 80 cases respectively. The Administration is of the view that the existing arrangement prescribed by the Ordinance that the Medical Council can only establish a single PIC to make preliminary investigations into complaints has resulted in a bottleneck. By enabling the Medical Council to establish more than one PIC, it is expected that the Medical Council will establish at least two and preferably more PICs upon the passage of the Bill in order to clear the existing backlog of complaint cases and deal with new complaint cases received.

41. Dr LEUNG Ka-lau is strongly of the view that it is not feasible for the Medical Council to establish more than one PIC if there is no increase in the number of registered medical practitioner members of the Medical Council (which at present stands at 24 members), as it is a normal practice to elect members of the Medical Council who are registered medical practitioners to be the PIC chairman and deputy chairman given that decision making of whether a complaint should be referred to PIC or the Health Committee requires knowledge of medical terminologies and procedures. He has pointed out that at present, a total of 18 seats in the five statutory committees are to be filled by

¹⁸ According to the Administration, the average time required for handling complaint case at the pre-preliminary investigation, preliminary investigation and inquiry stages are 17 months, 13 months and 28 months respectively in 2016, and the total average time required is 58 months.

members of the Medical Council.¹⁹ The Court of Appeal had affirmed in November 2012²⁰ that members of the Medical Council who had taken part in the disciplinary proceedings (either during preliminary investigation or in the disciplinary inquiry) involving matters which subsequently formed the factual basis of the recommendation of the Education and Accreditation Committee should not take part in the Medical Council's decision on the recommendation (including the appeal under section 200 of the Ordinance), for the reason that such members would have already formed a view on the underlying facts and therefore have been tainted with apparent bias. According to the above ruling and by way of analogy, the Medical Council has adhered to the principle that overlapping membership among the different proceedings of the Medical Council and its committees relating to same underlying facts is prohibited.

42. Dr LEUNG Ka-lau has further pointed out that taking into account of the above tainted-member rule, there are currently only eight registered medical practitioner members who are not serving on any of the five statutory committees. They are the Chairman of the Medical Council and a member who actively take part in inquiries, two senior directorate officers of the Department of Health, three senior executives of HA, and a member in private practice. These members will very unlikely take up the role of chairman or deputy chairman of PIC for various reasons. Against the above, Dr LEUNG Ka-lau considers that there will not be sufficient number of untainted registered medical practitioner members of the Medical Council to be elected as chairman and deputy chairman of the additional PIC(s) to be established after the passage of the Bill. Partly for this reason, he has remained of the view that it is necessary to increase the number of members of the Medical Council elected by registered medical practitioners with full registration and limited registration, say, by four or six as set out in his 4+4 proposal or 6+6 proposal.

43. The Administration is, however, of a contrary view. It is considered that the said eight members of the Medical Council could serve on additional PIC(s) to be formed upon the passage of the Bill. The Administration has also drawn the attention of the Bills Committee that while it is the Medical Council's current arrangement that multi-membership on the five statutory committees should be avoided as far as possible, there is no prohibition under the Ordinance for the 16 registered medical practitioner members of the Medical Council serving on other statutory committees to serve concurrently on PIC. For

¹⁹ Among the 18 seats in the five statutory committees, 16 seats can either be taken up by registered medical practitioner members of the Medical Council or lay members of the Medical Council, whereas the two remaining seats are required to be taken up by lay members of the Medical Council.

²⁰ CACV 205/2011, CACV 206/2011, CACV 209/2011

instance, the five registered medical practitioner members of the Medical Council serving on the Ethics Committee can serve on additional PIC(s) to be established upon the passage of the Bill.

44. The Legal Adviser to the Bills Committee has advised that it is 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 has been involved in a PIC must not participate in the subsequent 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 will conduct the review in due course, the Legal Adviser to the Bills Committee has no objection to dealing with the matter by way of administrative measure in the interim. Mr Tommy CHEUNG agrees with the Legal Adviser and has 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.

45. Separately, Mr LEUNG Yiu-chung considers that for those complaints which the chairman and deputy chairman of PIC, after having consulted a lay member of PIC, decide that the complaint is frivolous and should not proceed further, the Medical Council should advise, where appropriate, its recommendations on the way forward for consideration of the registered medical practitioner who is the subject of the complaint. The Administration has agreed to relay the suggestion to the Medical Council for consideration.

Refining the quorum of meetings of the Medical Council held for an inquiry

46. Under existing section 21B(1) of the Ordinance, the quorum of a meeting of the Medical Council held for the purpose of an inquiry on a case referred to it by, among others, PIC is five members of the Medical Council;²¹ or not less than three members of the Medical Council and two assessors from the panel appointed for the purpose of conducting an inquiry,²² at least one of whom shall be a lay member but subject to the majority being registered medical practitioners.

47. Clause 11 seeks to, among others, amend the composition of the quorum of a meeting of the Medical Council held for a disciplinary inquiry as set out in

²¹ 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.

²² Please see paragraph 52 below for details.

section 21B of the Ordinance to the effect that while registered medical practitioners would still be the majority at the inquiry meeting, the five persons forming the quorum must have at least one member of the Medical Council who is a registered medical practitioner, at least one lay member of the Medical Council or a lay assessor, and at least one assessor who is a registered medical practitioner.

48. Dr LEUNG Ka-lau has indicated his intention to propose a CSA to delete the proposed amended section 21B(1) of the Ordinance. He has expressed concern that notwithstanding that the quorum for meetings of the Medical Council held for an inquiry has been stipulated in the Ordinance, a roster system for members of the Medical Council to serve on the inquiry panel has been put in place by the Medical Council since 2009.²³ Under the roster system, a rota of seven adjudicating members (i.e. four members of the Medical Council who are registered medical practitioners, one lay member of the Medical Council and two assessors) will be drawn up for each inquiry hearing. He sought explanation about the legal grounds for not allowing members of the Medical Council not on roster to attend meetings of the Medical Council held for the purpose of inquiry. Some members including Mr Albert HO, Mr James TO and Mr Alan LEONG share the concern raised by Dr LEUNG Ka-lau.

49. The Administration has explained that whilst there is one "Medical Council of Hong Kong", it may meet for different purposes where provision is made for a different quorum and even a different composition. As confirmed by the court,²⁴ section 4 of the Ordinance²⁵ points out that the Medical Council may

²³ Before 2009, all members of the Medical Council (except the chairman and deputy chairman of PIC and the lay member of the Medical Council who had considered the case in PIC) would be invited to indicate their availability for inquiry hearings. Members were free to join the inquiry or to decline participation. No inquiry hearing could be held if no lay member of the Medical Council signed up for the hearing. The panel of assessors would be approached when the quorum of five members of the Medical Council could not be met for conducting the inquiry.

²⁴ *The Hong Kong Medical Association v Medical Council of Hong Kong*, HCAL 70/2012 (Court of First Instance).

²⁵ Section 4 on "Meetings of the Council" of the Ordinance reads:

- "(1) The Council shall meet at such times and such places as the Chairman may appoint.
(2) Except in an inquiry under section 21, in an appeal hearing under section 20F, 20O or 20W, or in an election petition under the Election Regulation as defined in section 3, at any meeting of the Council 13 members shall be a quorum.
(2A) In a meeting of the Council to hear an appeal under section 20F, 20O or 20W or an election petition under the Election Regulation as defined in section 3, 5 members shall be a quorum.
(3) The validity of any proceedings of the Council shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof.

meet in different capacities and for different purposes. Sections 21 and 21B of the Ordinance provide that the Medical Council conducting the disciplinary inquiry under section 21 is the Medical Council consisting of those members of the Medical Council and assessors (if any) who participated in the inquiry. The court opined in its judgement that the legislation should be amended to eliminate any ambiguity or uncertainty in the powers and the functions of the Medical Council in the conduct of disciplinary action against a registered medical practitioner. It is against the above background that clause 10 of the Bill adds a new section 21(7) to the Ordinance to clarify that in relation to an inquiry, a reference to the Medical Council in section 21 (except the references specified in that clause) is a reference to the members and assessors in section 21B(1) who participate in the inquiry. This is consistently mirrored in the proposed amended section 21B(1), which provides for the quorum at each meeting of the Medical Council (within the meaning of the proposed new section 21(7)) held for an inquiry under section 21 of the Ordinance.

50. The Administration has further explained that section 21B(1) of the Ordinance only stipulates the quorum for a meeting of the Medical Council held for the purpose of an inquiry. The Medical Council is empowered to make the necessary arrangements to enable the conduct of inquiries according to the Ordinance and its subsidiary legislation. In addition, section 4(6) of the Ordinance stipulates that the Medical Council may make standing orders for regulating the procedure at, and in connection with, its meetings. There are no provisions in the legislation which provides for a right of a member of the Medical Council to participate in each and every inquiry. The Medical Council, on the recommendation of ICAC,²⁶ decided to implement a roster system for

(4) All questions coming or arising before a meeting of the Council shall be decided by a majority of the members of the Council present and voting thereon.

(4A) Except for an inquiry under section 21, for an appeal hearing under section 20F, 20O or 20W and for an election petition under the Election Regulation as defined in section 3, the Council may transact any of its business by circulation of papers without meeting; and a resolution signed by all the members of the Council for the time being present in Hong Kong is as valid and effective as if it had been passed at a meeting by the votes of the members so signing.

(5) The Chairman at any meeting of the Council shall have an original vote and also, if upon any question the votes shall be equally divided, a casting vote except in an inquiry under section 21 at which he shall have only an original vote.

(6) The Council may make standing orders for regulating the procedure at, and in connection with, its meetings."

²⁶ At the invitation of the Medical Council, ICAC made recommendations relating to the procedures of disciplinary inquiries of the Medical Council in 2008. One of these recommendations was that the Medical Council should implement a roster system for members to serve on the inquiry panels. The Medical Council accepted the recommendations and set up a task force to formulate proposals for implementing the recommendations.

conducting inquiries, which allows a distribution of work amongst members of the Medical Council for taking part in disciplinary inquiries. In view of the fact that the Medical Council has genuine difficulty in forming quorum for conducting inquiry under the existing quorum requirement and the tainted-member rule, the Administration proposes in the Bill to adjust the quorum of a meeting of the Medical Council (within the meaning of the proposed new section 21(7)) held for the purpose of an inquiry under section 21 to allow more flexibility for the Medical Council to form a quorum to conduct inquiry.

51. The Medical Council has suggested in its submission to the Bills Committee that the proposed new requirement of having one assessor who is a registered medical practitioner to form the quorum of a meeting of the Medical Council held for the purpose of an inquiry should be removed in order to allow more flexibility. Dr LEUNG Ka-lau has indicated his intention to propose a further CSA to amend the proposed amended section 21B of the Ordinance to achieve this effect.

Increasing the total number of assessors

52. According to existing section 21B(2) of the Ordinance, the Medical Council shall appoint a panel of persons who are not members of the Medical Council to form a panel of assessors for the purpose of conducting an inquiry. This panel of assessors comprises 10 registered medical practitioners, two each are nominated by the Director of Health, HA, the Academy of Medicine, HKU and CUHK respectively; and four lay persons nominated by SFH. Clause 11 of the Bill seeks to, among others, increase the total number of assessors who are registered medical practitioners nominated by the above specified person or bodies from 10 to 20 (i.e. four each are nominated by the Director of Health, HA, the Academy of Medicine, HKU and CUHK respectively), and the number of lay assessors nominated by SFH from four to 14. This will have the effect of increasing the total number of assessors from 14 to 34.

53. The Administration has advised that with the increase in the total number of assessors and the number of lay members of the Medical Council, as well as the proposed more flexible rules for forming the quorum of a meeting of the Medical Council for the purpose of an inquiry, the Medical Council could conduct PIC and inquiry meetings more frequently and in parallel upon the passage of the Bill.

The proposal of the Task Force to draw up a roster of seven adjudicating members (i.e. four members of the Medical Council who are registered medical practitioners, one lay member of the Medical Council and two assessors) for each inquiry meeting was endorsed by the Medical Council in 2009.

54. Dr LEUNG Ka-lau has sought explanation as to the rationale for requiring those assessors who are registered medical practitioners be nominated by the Director of Health, HA, the Academy of Medicine, HKU and CUHK respectively. He considers that the registered medical practitioner assessors should instead be drawn randomly from all registered medical practitioners with full registration, or should include registered medical practitioners nominated by the Medical Association. The Administration has advised that the latter view had been raised during LegCo's scrutiny of the 1995 Bill. The consideration at that time, which still applies, was that, as the Medical Association already had seven representatives on the Medical Council, there was no need for the Medical Association to have representatives on the panel of assessors.

55. Dr LEUNG Ka-lau has indicated his intention to propose a CSA to the proposed amended section 21B(2) to the effect that while the total number of registered medical practitioner assessors to be nominated by the Director of Health, HA, the Academy of Medicine, HKU and CUHK respectively will remain at 10, there will be an additional 10 registered medical practitioner assessors to be nominated by the Medical Association, and the number of lay assessors nominated by SFH will be increased from four to 14 as proposed by the Administration under the Bill. This will have the same effect of increasing the total number of assessors from 14 to 34.

56. Dr KWOK Ka-ki has also indicated his intention to propose a CSA to the proposed amended section 21B(2) to further increase the number of registered medical practitioner assessors by adding eight registered medical practitioners who are members of the Medical Association and are nominated by the Medical Association.

Strengthening the legal support to the Medical Council

57. At present, upon the request made by the Chairman of the Medical Council, the Department of Justice ("DoJ") will provide legal support to the Medical Council at the PIC and inquiry stages through appointing a legal officer under section 21 of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation to advise PIC on the sufficiency or otherwise of evidence and vet the notice of inquiry, undertake the preparatory work relating to the inquiry as well as appearing before the inquiry to present the case on behalf of the Secretary of the Medical Council. This apart, DoJ also provides legal representation to the Medical Council in respect of litigation arising from appeals against its decisions made in inquiries and applications for judicial review of the decisions made by the Medical Council and its various committees.

58. According to the Administration, the time required for the procedure of seeking DoJ's comments on the draft PIC notice containing charge(s) against the registered medical practitioner at the PIC stage is three months, whereas that required for the procedure of studying the case in depth and comment the draft notice of inquiry by the legal officer of DoJ is two months. Under the proposed amended section 21 of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation, the Secretary for Justice may appoint any solicitor or counsel, including a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87), to carry out the duties of the Secretary of the Medical Council to assist in a disciplinary inquiry in order to help shortening the time required for the above procedures. The Administration has advised the Bills Committee that with the anticipated increase in the number of cases handled, it would provide additional resources to DoJ for enhancing its legal support to the Medical Council.

59. Dr LEUNG Ka-lau and Dr Fernando CHEUNG are of the view that even if the Bill is not passed, the time required for the above procedures could be shortened, say, from five months to two months in total, by providing additional resources to the Medical Council Secretariat. The Administration has, however, advised that it is impossible to substantially increase the legal support provided to the Medical Council if the Bill is not passed.

60. Separately, a Legal Adviser is appointed by SFH under the delegated authority by CE under section 3B of the Ordinance to provide legal advice to the Medical Council in inquiries and hearings. It is a statutory requirement that the Legal Adviser so appointed must be present at every inquiry held by the Medical Council. Given that the Medical Council could only appoint one Legal Adviser under the Ordinance, the Medical Council could only conduct one inquiry hearing at one time. According to the Administration, there are currently 80-odd cases scheduled for inquiry. The average time taken for a case referred by PIC to be heard at the inquiry meeting was 28 months in the years of 2013 to 2015. To date, the case referred by PIC in April 2016 for disciplinary inquiry has to wait until April 2019 to be heard. Clause 5 of the Bill amends section 3B of the Ordinance to enable the Medical Council to have more than one legal adviser, with a view to help clearing the backlog of cases and shortening the waiting time for inquiry.

61. Members note that before November 1994, the Legal Adviser to the Medical Council was a lawyer of the then Attorney General's Chambers of the Government. Arising from the suggestion of the Court of Appeal that it was undesirable to have both the Legal Adviser and the counsel presenting the disciplinary case at the inquiry being deployed from the then Attorney General's Chambers, an independent Legal Adviser outside the Government has been

appointed to the Medical Council from November 1994. Noting that a Legal Adviser has been engaged by the Medical Council on a part-time basis since then, some members including Dr LEUNG Ka-lau, Dr KWOK Ka-ki and Dr Fernando CHEUNG are of the view that the engagement arrangement should be changed to a full-time basis for shortening the time required by the Medical Council for scheduling an inquiry date. They have also expressed concern about the annual remuneration for the Legal Adviser to the Medical Council.

62. The Administration has advised that the Legal Adviser is more or less working on a full time basis for the Medical Council.²⁷ The current rate of remuneration for the Legal Adviser is \$2,000 per hour, subject to a monthly cap of \$280,000. In the financial year of 2015-2016, the annual remuneration of the Legal Adviser concerned was \$3.18 million. The Administration is of the view that it would be more desirable to engage several legal advisers on a part-time basis to provide more flexible support for the Medical Council in inquiries and hearings. If the Bill is passed, more than one legal adviser can be appointed by CE to provide legal advice to the Medical Council. The Administration will provide additional resources to the Medical Council for engaging more than one legal adviser.

The handling of conflict of interest

63. According to section 7(1) and (2) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation, members of PIC are required to declare their interest upon receipt of a case. A member with conflict of interest must not participate in any deliberation or decision regarding the case. Mr Dennis KWOK has expressed concern that it was stated in the judgment in *Law Yiu Wai, Ray v. Medical Council of Hong Kong and Others* (HCAL 46 of 2015) handed down by the Court of First Instance on 12 October 2015 that the Medical Council lacked appropriate guidelines in relation to the declaration by a member of PIC of an interest in a case.

64. According to the Administration, additional administrative measures have been put in place by the Medical Council to better ensure that each and every complaint is handled in a fair and impartial manner. When inviting panel members to sit for a disciplinary inquiry, the Secretariat will provide panel members with the information relating to the disciplinary inquiries, including

²⁷ According to the Administration, the number of hours of legal service provided by the current Legal Adviser to the Medical Council was 1 659 and 1 653 hours for the financial years of 2014-2015 and 2015-2016 respectively. As reference, the net annual working hours of civil servants whose conditioned hours are 44 hours gross per week are 1 654 hours.

the identity of the defendant doctor and the case nature in advance and remind panel members to consider if they may have actual or perceived conflict of interest. Moreover, the Chairman of the disciplinary inquiry will formally invite panel members to make declaration of interest before the commencement of each inquiry and to ask whether the defendant will have any objection to the panel composition in accordance with the procedural guide of the Medical Council Disciplinary Inquiry. The Medical Council has, at its meeting held on 4 May 2016 further refined its Standing Order No. 6 to spell out clearly the circumstances under which declaration of interest and/or recusal from discussion would be required as follows:

"6. Conflict of interests of members

(1) A member of the Council or a committee or a sub-committee who has personal or pecuniary interest, direct or indirect, in the outcome of any matter under consideration by the Council or committee or sub-committee, is required to make a declaration of his interest to the Council or committee or sub-committee as appropriate prior to the discussion of the matter; and he shall not participate in any deliberation or decision regarding the matter.

(2) A member of the Council or a committee or a sub-committee is also required to make a declaration of his interest to the Council or committee or sub-committee as appropriate prior to the discussion of the matter if a reasonable, objective and informed person would reasonably apprehend that he has not brought or will not bring an impartial mind to bear on the deliberation and/or decision of the matter; and he shall not participate in any deliberation or decision regarding the matter.

(3) In situation(s) other than those mentioned in sub-paragraphs (1) and (2) above, a member of the Council or committee or sub-committee may make a declaration of his interest out of prudence; and he shall further declare that he can nevertheless bring an impartial mind to bear on the deliberation and/or decision of the matter.

(4) No member shall appear before the Council or committee or sub-committee as a legal practitioner or act as an expert witness for any party appearing before the Council or committee or sub-committee, regardless of whether he is going to be paid or not."

65. Mr Dennis KWOK considers it unclear as to under what circumstances a member of the Medical Council or a committee or a sub-committee should not participate in any deliberation or decision regarding the matter after making a

declaration of interest, and under what circumstances the member concerned could continue to participate in the deliberation or decision of the matter after making a declaration of interest as set out in sub-paragraphs (2) and (3) of the refined Standing Order No. 6.

66. The Medical Council has clarified that the purpose of sub-paragraph (3) is to encourage member(s) to make a declaration of interest in case he or she has any doubt if there is a potential conflict of interest. Upon a member's disclosure of an interest under sub-paragraph (3), the Council or committee or sub-committee will consider whether that member has brought or will bring an impartial mind to bear on the deliberation and/or decision of the matter and decide on whether the member concerned shall participate in any deliberation or decision regarding the matter. Mr Dennis KWOK is of the view that sub-paragraph (3) should be revised to reflect the above intention more clearly. The Medical Council Secretariat has agreed to relay the suggestion to the Medical Council for consideration.

Other measures for improving the complaint handling mechanism

67. The majority of members are of the view that the legislative proposals of enabling the Medical Council to establish more than one PIC, refining the quorum of meetings of the Medical Council held for an inquiry, increasing the total number of assessors and strengthening the legal support to the Medical Council will help facilitate the Medical Council to shorten the time required for handling complaint cases at the pre-PIC, preliminary investigation and inquiry stages. Some members share the concern raised by some deputations over the bottlenecks that have hampered the current operation of the complaint investigation and disciplinary inquiry mechanism, and have enquired whether these bottlenecks could be removed by the implementation of administrative measures and provision of additional manpower resources to the Medical Council Secretariat if the Bill is not passed.

68. The Administration has advised the Bills Committee that upon the passage of the Bill, with the implementation of the administrative measures and after clearing the backlog of cases, it is estimated that the handling time of a case would be shortened from 58 months to around 30 months. However, if the Bill is not passed, the Administration estimates that the average processing time could at best be reduced by five months in total by improving, through administrative measures and provision of additional resources, the procedures of seeking expert(s) to give opinions for the complaint case at the pre-preliminary investigation stage; drafting PIC Notice containing charges against the registered medical practitioner concerned; preparing the case bundle for

discussion of the complaint case at its monthly PIC meeting; and securing an expert witness for the inquiry.

69. Members note that upon receiving directives from the chairman or the deputy chairman of PIC to seek relevant medical reports or records from the hospitals or clinics concerned, the Medical Council Secretariat will request consent from the complainants, if necessary, and approach the hospitals or clinics concerned for the required medical records or reports of patients for consideration by the chairman or the deputy chairman of PIC or, if the complaint is referred to PIC, at the PIC meetings. Dr LEUNG Ka-lau has expressed concern that it currently takes around three months on average by HA to release medical records or reports of patients to the Medical Council. According to section 19(1) of the Personal Data (Privacy) Ordinance (Cap. 486), a data user must comply with a data access request and supply a copy of the data within 40 days after receiving the request. Dr KWOK Ka-ki has enquired about the number of cases which are at the stage of pending the provision of the relevant medical records or reports of patients by HA.

70. The Administration has advised that the time required to complete the procedure is determined by the complexity of the case and the time required for HA to provide the relevant information. According to the record of the Secretariat of the Medical Council, HA has decided not to release medical records or reports of patients to PIC for three cases in view of HA's duty of confidentiality, which forbids it from releasing medical records or reports of patients without patients' consents. The Administration has further pointed out that it was agreed at a meeting held amongst representatives of the Food and Health Bureau, the Chairman of the Medical Council and representatives of HA in March 2016 that should there be divergent legal views on whether there would be an overriding public interest for HA to disclose the relevant medical records or reports of patients to PIC, the Medical Council would make an application to the court for a ruling. As of May 2016, PIC is seeking DoJ's assistance in making application to the court for the release of patients' medical records or reports of patients to facilitate the investigation of two complaints.

71. Members note that separately, upon receiving directives from the chairman or the deputy chairman of PIC to seek expert assistance from outside sources, the Medical Council Secretariat will invite expert from the list of volunteer doctors compiled for such purpose through various Colleges of the Academy of Medicine, HKU and CUHK to provide independent expert opinion. If no suitable experts can be secured from the list, the Medical Council Secretariat will invite experts from overseas for providing independent opinion. Members have enquired about whether the time required for seeking expert(s) to

give opinions for the complaint case could be shortened through administrative measures.

72. The Administration has informed the Bills Committee that it is in discussion with the Medical Council of the latter's proposal on the provision of honorarium as a token of gratitude to experts who provide assistance to the investigation work at the PIC stage. It is expected that the processing time of obtaining an independent expert opinion may be reduced from the current four months to two months upon introduction of the arrangement.

73. As a related matter, Dr KWOK Ka-ki and Mr Dennis KWOK have suggested the Administration to explore the feasibility for the Medical Council to handle complaints against registered medical practitioners through mediation. The Administration has advised that one of the matters being looked into by the Steering Committee is the feasibility of providing an option for the Medical Council and the public to handle complaint against registered medical practitioners not involving professional misconduct through mediation. However, mediation, which aims to resolve disputes between medical professionals and patients, cannot substitute the disciplinary procedures in handling complaints against registered medical practitioners involving professional misconduct, as the latter's objectives are to protect patients, foster ethical conduct and maintain professional standards by taking disciplinary action against registered medical practitioners who have been guilty of misconduct in professional respects.

Strengthening the secretarial support to the Medical Council

74. According to the Administration, in addition to the Secretary of the Medical Council appointed by CE under section 3B of the Ordinance, six staff members (including one Chief Executive Officer, one Senior Executive Officer, one Executive Officer I, one Executive Officer II, one Clerical Officer and one Assistant Clerical Officer) are primarily or exclusively deployed to perform duties relating to the handling of complaints and conduct of inquiries for the Medical Council. Members have requested the Administration to strengthen the ability of the Medical Council Secretariat in providing support to the Medical Council in this regard through provision of additional manpower resources.

75. The Administration has advised that at present, the annual staff cost of the above six staff members is about \$4 million. Given that the existing staff have already been stretched to their limit to meet the increasing workload of PIC and inquiry meetings, it has already decided to earmark an additional \$4 million in the 2016-2017 financial year to strengthen the manpower of the Medical Council Secretariat in order to help the Medical Council expedite

complaints handling and conduct of inquiries, whether the Bill is passed or not. It has undertaken to provide additional resources to the Medical Council Secretariat for each additional PIC established upon the passage of the Bill.

Extending the term of registration of medical practitioners with limited registration

76. Currently, persons who have been awarded a degree of medicine and surgery by HKU or CUHK and have undergone internship training at HA as required 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 the Department of Health, 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. As at the end of 2015, there were 150 medical practitioners with limited registration in Hong Kong²⁸.

77. Under the existing section 14A of the Ordinance, the Medical Council may approve the registration of a person as a medical practitioner with limited registration if all the specified conditions are met. One of the specified conditions is that the applicant must have obtained an acceptable overseas qualification. The registration is valid for up to one year subject to annual renewal by the Medical Council. Clause 6 of the Bill amends section 14A 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.

78. Members are of the view that an adequate supply of experienced medical practitioners, notably those with specialist qualifications, is important to the sustainable development of the healthcare system in Hong Kong. Taking into account that it takes at least 13 years to train a specialist, members in general welcome the proposed amendments which could in effect help to attract more non-locally trained specialists to practise in Hong Kong.

²⁸ The number of medical practitioners employed by HA and the two medical schools under limited registration is 12 and 92.

Timing for enacting the Bill

79. The Bills Committee notes that members are in general supportive of the Bill, and have indicated their wish to have the Bill be dealt with before the prorogation of the Fifth LegCo. Dr LEUNG Ka-lau has, however, reiterated his objection to the Administration's attempt to rush through the Bill within a short period of time. He has remained concerned over certain issues covered by the Bill, which include, among others, the quorum arrangement for conducting an inquiry and how the list of assessors who are registered medical practitioners should be drawn up.

Committee stage amendments

CSAs to be moved by the Administration

80. Apart from CSAs to be moved by the Administration as elaborated in paragraphs 17 and 35 above, the Administration has proposed some textual, technical and consequential amendments to the Bill. A full set of the CSAs to be moved by the Administration is in **Appendix III**.

CSAs to be moved by individual members

81. The Bills Committee takes note that Dr LEUNG Ka-lau and Dr KWOK Ka-ki have indicated their intention respectively to move various CSAs to the Bill as detailed in paragraphs 27, 28, 31, 48, 51, 55 and 56 above.

82. The Bills Committee will not propose any CSAs to the Bill.

Follow-up actions by the Administration

83. The Administration has made the following undertakings:

- (a) SFH will, in his speech during the Second Reading debate on the Bill, state the detailed and concrete considerations in recognizing which organizations are eligible for nominating and electing candidates for CE's appointment to the Medical Council to represent patients' interests as well as the election arrangement (paragraph 16);

- (b) additional resources will be provided to DoJ for enhancing its legal support to the Medical Council and to the Medical Council for engaging more than one legal adviser upon the passage of the Bill (paragraphs 58 and 62); and
- (c) additional resources will be provided to the Medical Council Secretariat for each additional PIC established by the Medical Council upon the passage of the Bill (paragraph 75).

Resumption of Second Reading debate on the Bill

84. Members in general raise no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 29 June 2016, subject to the moving of the CSAs by the Administration.

Advice sought

85. Members are invited to note the deliberations of the Bills Committee and the date for the resumption of the Second Reading on the Bill.

Council Business Division 2
Legislative Council Secretariat
20 June 2016

Bills Committee on Medical Registration (Amendment) Bill 2016

Membership list

Chairman	Hon Vincent FANG Kang, SBS, JP
Deputy Chairman	Hon CHAN Han-pan, JP
Members	Hon Albert HO Chun-yan Hon James TO Kun-sun Hon LEUNG Yiu-chung 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 Dr Hon LEUNG Ka-lau Hon Mrs Regina IP LAU Suk-ye, GBS, JP Hon Paul TSE Wai-chun, JP Hon Alan LEONG Kah-kit, SC Hon WONG Yuk-man (since 11 April 2016) 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 Kenneth LEUNG Hon Alice MAK Mei-kuen, BBS, JP Dr Hon KWOK Ka-ki Hon KWOK Wai-keung 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 (Total : 32 members)
Clerk	Ms Maisie LAM
Legal Adviser	Ms Wendy KAN
Date	11 April 2016

Bills Committee on Medical Registration (Amendment) Bill 2016

A. Organizations and individuals which have/who have made oral representation to the Bills Committee

1. Association of Hong Kong Nursing Staff
2. Association of Private Medical Specialists of Hong Kong
3. Hong Kong Academy of Medicine
4. Hong Kong Alliance of Patients' Organizations Limited
5. Hong Kong Doctors Union
6. Hong Kong Patients' Rights Association
7. Hong Kong Patients' Voices
8. Hong Kong Public Doctors' Association
9. Hospital Authority
10. Liberal Party
11. Liberal Party Youth Committee
12. Rehabilitation Alliance Hong Kong
13. Society for Community Organization
14. The Federation of Medical Societies of Hong Kong
15. The Hong Kong Medical Association
16. The Medical Council of Hong Kong
17. Mr CHAN Tsz-tai
18. Mr Peter CHEUNG Shung-tak

19. Dr CHOI Kin
20. Dr HO Pak-leung
21. Ms LAM Gee-wah
22. Dr David LAM Tzit-yuen
23. Ms Eugina LAU Mei-kuen
24. Ms LAU Siu-lan
25. Mr Curtis NG Tsz-chung
26. Dr PONG Chiu-fai
27. Mr TAI Siu-ching
28. DR WONG Yee-him

B. Organizations and individuals which have/who have provided written submissions to the Bills Committee only

1. Consumer Council
2. Dr Peter AU-YEUNG
3. CHOW Tsz-fung
4. CHU Ching-yuen
5. KIT Tsz-yui
6. Alex LAM Tun-kin
7. Austin LI Chit-ho
8. Dr Paul SHEA
9. Dr Louis SHIH Tai-cho

10. TSAI Wai-wa
11. 梁新宇
12. 12 members of the public who have submitted their views via the Hong Kong Medical Association

Medical Registration (Amendment) Bill 2016

Committee Stage

Amendments to be moved by the Secretary for Food and Health

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>By deleting the clause and substituting—</p> <p>“4. Section 3 amended (establishment and composition of Council)</p> <p>(1) Section 3(2)—</p> <p>Repeal paragraph (g)</p> <p>Substitute</p> <p>“(g) 8 lay members appointed by the Chief Executive—</p> <p>(i) 3 of whom are elected by the organizations specified by the Permanent Secretary for Food and Health (Health) under subsection (3AA) in accordance with the guidelines issued by him or her in consultation with those organizations; and</p> <p>(ii) 1 of whom is nominated by the Consumer Council;”.</p> <p>(2) Section 3(2)(h)—</p> <p>Repeal</p> <p>everything after “practitioners”</p> <p>Substitute</p> <p>“elected by the Academy of Medicine in accordance with its regulations or procedures;”.</p> <p>(3) Section 3(3)—</p> <p>Repeal</p>

“, (g) or (h)”

Substitute

“or (g)”.

(4) After section 3(3)—

Add

“(3AA) The Permanent Secretary for Food and Health (Health) may, for the purposes of subsection (2)(g)(i), specify, by notice published in the Gazette, organizations that, in his or her opinion, represent the interests of patients.”.

(5) Section 3(3A)—

Repeal

“(2)(i) or”

Substitute

“(2)(h), (i) or”.

(6) Section 3(5A)—

Repeal

everything after “holding office under” and before “the member elected”

Substitute

“subsection (2)(h) or (i), the member resigns or the member’s office becomes vacant—

(a) the Academy of Medicine or the Hong Kong Medical Association (as the case requires) must, as soon as possible, conduct an election to elect a person qualified under subsection (2)(h) or (i) (as the case requires) to fill that vacancy; and

(b) ”.”.

By adding—

“(3A) Section 20S(4)—

Repeal

everything after “a meeting,” and before “to preside at”

Substitute

“the other members present and forming a quorum must elect a person from among themselves”.”.

10 By renumbering the clause as clause 10(3).

10 By adding—

“(1) Section 21(1)(c)—

Repeal

“; or”

Substitute a semicolon.

(2) Section 21(1)(d)—

Repeal the comma

Substitute a semicolon.”.

New By adding after clause 12—

“12A. Section 35 amended (transitional)

After section 35(9)—

Add

“(10) If, on the commencement date of section 4 of the Medical Registration (Amendment) Ordinance 2016 (of 2016), the term of office of a member of the Council referred to in section 3(2)(h) as in force immediately before that date has not yet expired, the member may continue to hold office until the member’s term of office expires.”.”.