

立法會
Legislative Council

LC Paper No. CB(2)800/18-19

(These minutes have been
seen by the Administration)

Ref : CB2/BC/5/16

Bills Committee on Medical Registration (Amendment) Bill 2017

Minutes of the ninth meeting
held on Tuesday, 19 December 2017, from 2:45 pm to 4:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon Tommy CHEUNG Yu-yan, GBS, JP (Chairman)
Hon LAU Kwok-fan, MH (Deputy Chairman)
Hon LEUNG Yiu-chung
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Hon CHAN Han-pan, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, BBS, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-chun
Dr Hon Pierre CHAN
Hon CHAN Chun-ying
Hon CHEUNG Kwok-kwan, JP
Hon Jeremy TAM Man-ho

- Members absent** :
- Hon Mrs Regina IP LAU Suk-ye, GBS, JP
 - Hon WU Chi-wai, MH
 - Hon Kenneth LEUNG
 - Dr Hon KWOK Ka-ki
 - Hon Dennis KWOK Wing-hang
 - Ir Dr Hon LO Wai-kwok, SBS, MH, JP
 - Hon CHU Hoi-dick
 - Dr Hon Junius HO Kwan-yiu, JP
 - Hon HO Kai-ming
 - Dr Hon CHENG Chung-tai
- Public Officers attending** :
- Mr FONG Ngai
Head, Healthcare Planning and Development Office
Food and Health Bureau

 - Mr Chris FUNG Pan-chung
Principal Assistant Secretary for Food and Health
(Health) 3
Food and Health Bureau

 - Miss Natalie LAU Wai-kwan
Assistant Secretary for Food and Health (Health) 8
Food and Health Bureau

 - Miss Lisa LAI Yuk-wan
Secretary, Medical Council of Hong Kong
Department of Health

 - Mr Joseph SIU Wing-ho
Deputy Secretary (Medical Council) 1
Department of Health

 - Miss Cindy CHEUK Chi-wing
Senior Government Counsel
Department of Justice
- Clerk in attendance** :
- Ms Maisie LAM
Chief Council Secretary (2) 5
- Staff in attendance** :
- Ms Wendy KAN
Assistant Legal Adviser 6

Ms Priscilla LAU
Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 5

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I. Meeting with the Administration

[LC Paper Nos. CB(2)1723/16-17(02), CB(2)2098/16-17(03), CB(2)109/17-18(03), CB(2)152/17-18(01), CB(2)221/17-18(01), CB(2)371/17-18(01), CB(2)511/17-18(01) to (05) and CB(3)628/16-17]

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

Continuation of clause-by-clause examination of the Bill

2. The Bills Committee continued clause-by-clause examination of the Chinese text of the Bill up to clause 34.

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3. Members noted that the Administration would propose the following amendments to the Bill:

- (a) to amend the proposed section 34 of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E) ("the Regulation") to the effect that the section applied to both decision and order made in an inquiry, and covered the scenario where other persons who had appeared before the inquiry panel in the inquiry concerned were invited to appear in the review;
- (b) to amend the proposed section 21 of the Medical Registration Ordinance (Cap. 161) ("the Ordinance") to the effect that the Medical Council of Hong Kong ("the Medical Council") needed not appoint another inquiry panel to conduct the review in the event of a vacancy of member for a review case if, when the vacancy in membership occurred because of the circumstances mentioned in the proposed new section 21(4CA) of the Ordinance, the inquiry panel had already made a determination in the review but not yet announced the determination;
- (c) to delete the reference to the proposed section 21A(1)(c) of the Ordinance in section 21A(3) of the Ordinance, as the proposed

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section 21A(1)(c) and section 21A(1)(d) of the Ordinance were mutually exclusive;

- (d) to amend the proposed section 25(1A) of the Ordinance to provide that if an inquiry panel made an order under section 21(1)(v) of the Ordinance, the Registrar of Medical Practitioners had to serve the order of issuing a warning letter, together with the warning letter, on the registered medical practitioner concerned, and to add the reference to the proposed section 25(1A) of the Ordinance in the proposed section 26(3) of the Ordinance;
- (e) to remove "the procedure to be followed in relation to" in the proposed section 33(4)(a)(viii) of the Ordinance;
- (f) to replace "Hong Kong Medical Association" with "The Hong Kong Medical Association" in item 6 of Table 2 of the proposed new Schedule 5 to the Ordinance;
- (g) to amend the proposed new section 2 of the proposed new Schedule 6 to the Ordinance to provide for transitional arrangement for filling a vacancy in the office of a member of the Medical Council under section 3(5B)(b) of pre-amended Ordinance (as defined in that Schedule);
- (h) to expand the scope of the proposed new section 5(2)(a) of the proposed new Schedule 6 to the Ordinance to provide for transitional and savings arrangements for a case where the chairman or the deputy chairman of a Preliminary Investigation Committee ("PIC") as established prior to the commencement of the majority of the provisions of the Bill under clause 1(2) of the Bill ("the Commencement"), if passed ("the Former PIC") had directed the case be proceeded under section 10 of the Regulation;
- (i) to amend the proposed new section 5(5) of the proposed new Schedule 6 to the Ordinance to exclude the proposed new sections 20S(2A) and 20BA(5) of the Ordinance from application;
- (j) to amend the proposed new section 6(3) of the proposed new Schedule 6 to the Ordinance to exclude the proposed new section 20BD(1)(a) of the Ordinance from application;

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- (k) to add in the proposed new Schedule 6 to the Ordinance transitional and savings provisions:
 - (i) to provide for review, after the Commencement, of decisions or orders made by the Medical Council in inquiries under section 21(1) of the Ordinance before the Commencement pursuant to the proposed section 21(4B) of the Ordinance;
 - (ii) to provide for the relevant cases to be referred back to the Former PIC under the proposed section 15(1)(a) of the Regulation; and
 - (iii) to deal with cases remitted by the Court of Appeal under section 26(1) of the Ordinance to the Medical Council for inquiries under section 21(1) of the Ordinance before the Commencement and such inquiries had not been completed before the Commencement; and
- (l) to amend the proposed new section 7 of the proposed new Schedule 6 to the Ordinance to provide that, if after the appeal referred to in the section had been made after the Commencement and subsequently the Court of Appeal remitted the case under the proposed new section 26(1A)(b)(i) of the Ordinance for holding a new inquiry, it would be the deemed panel to conduct the new inquiry.

4. Members noted that the Administration would consider amending the proposed new section 6(1) of the proposed new Schedule 6 to the Ordinance to expand its scope to deal with cases where the Former PIC had referred to the Medical Council for inquiries under the existing section 21 of the Ordinance but no meetings of the Medical Council had been held prior to the Commencement, and cases directed by the Chairman of the Medical Council to be proceeded in accordance with section 16(1) of the Regulation before the Commencement.

Follow-up actions required of the Administration

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5. In respect of the meetings of the Medical Council held for the purpose of an inquiry in accordance with the existing section 21 of the Ordinance in the past two years, the Bills Committee requested the Administration to:

- (a) provide statistics on the number of disciplinary inquiry cases

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considered by and the relevant inquiry participation rate of each member of the Medical Council and each assessor from the panel of assessors appointed by the Medical Council for the purpose of conducting an inquiry; and

- (b) explain the reasons for the uneven distribution of caseloads, if any, among members of the Medical Council and assessors.

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6. The Chairman requested the Administration to provide the Bills Committee with a full set of the draft amendments to the Bill to be moved by the Administration as soon as possible.

Draft amendments to the Bill proposed by members

7. The Chairman invited members who intended to propose amendments to the Bill and wished their amendments to be considered by the Bills Committee to forward their proposed amendments to the Secretariat as early as practicable for consideration by the Bills Committee at its next meeting.

II. Any other business

8. The Chairman reminded members that the next meeting of the Bills Committee would be held on 19 January 2018 at 2:30 pm.

9. There being no other business, the meeting ended at 4:22 pm.

**Proceedings of the ninth meeting of
the Bills Committee on Medical Registration (Amendment) Bill 2017
held on Tuesday, 19 December 2017, from 2:45 pm to 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000921 - 001054	Chairman	Opening remarks	
001055 - 001811	Chairman Admin	Briefing by the Administration on its responses to the follow-up actions arising from the discussion at the meetings on 13 and 27 November 2017 [LC Paper No. CB(2)511/17-18(04)] and its response to issues raised in the letters dated 11 December 2017 from Dr Hon KWOK Ka-ki [LC Paper No. CB(2)511/17-18(05)].	
001812 - 002634	Chairman Dr Pierre CHAN Admin	<p>Dr Pierre CHAN's enquiries about the nature of interest that should be declared under the established mechanism put in place by the Medical Council of Hong Kong ("the Medical Council") to handle conflicts of interest arising from the handling of complaints and disciplinary inquiries; and the arrangement for an inquiry if a declaration of interest was made under the arrangements introduced under the Bill. In his view, a clear guideline should be formulated in this regard.</p> <p>The Administration's elaboration on the established arrangements of the Medical Council as set out in paragraph 4 in its paper [LC Paper No. CB(2)511/17-18(04)]. Members or assessors involving in disciplinary inquiries should declare, if any, the actual or perceived conflicts of interest, including but not limited to pecuniary interest. Under the proposed new section 13A of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E), the Medical Council had to appoint another inquiry panel to inquire into the case if a declaration of interest was made under the section. The Administration added that after the passage of the Bill, the Medical Council would review and consider how to further improve the mechanism on declaration of interest and handling conflicts of interest.</p>	
002635 - 004019	Chairman Admin Dr Pierre CHAN	<p>Continuation of clause-by-clause examination of the Bill</p> <p><u>Examination of clause 13</u></p> <p>In response to Dr Pierre CHAN's enquiry about the requirements for being an assessor of the Medical Council, the Administration advised that under the proposed new sections 20BB and 20BC of the Medical Registration Ordinance (Cap. 161) ("the Ordinance"), the Medical Council was empowered to specify requirements relating to the qualifications and experience that a person should possess in order to be eligible for nomination as a medical assessor and a lay assessor.</p>	

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>Noting that patient organizations which satisfied the eligibility requirements to be an elector for lay members representing patients' interests in the Medical Council were one of the nominating authorities of lay assessors, Dr Pierre CHAN asked about the factors to be considered by the Permanent Secretary for Food and Health (Health) ("the Permanent Secretary") in recognizing an organization which was not recognized by or registered with the Hospital Authority ("HA"), the Social Welfare Department ("SWD") and the Hong Kong Society for Rehabilitation ("HKSR") as an organization represented patients' interests. He further pointed out that there were patient groups that were established by pharmaceutical companies.</p> <p>The Administration's response that it proposed to empower the Permanent Secretary to recognize and accept any other entity not recognized by or registered with HA, SWD and HKSR in order to allow flexibility to include those new patient groups and credible platforms to be established in the future. An organization that wished to be an elector should, among others, be a company defined by the Companies Ordinance (Cap. 622) or society registered under the Societies Ordinance (Cap. 151) with principle objective to safeguard or represent patients' interests and had been in operation for at least two years.</p>	
004020 - 004554	Chairman Admin Dr Pierre CHAN	<u>Examination of clauses 14 to 21</u>	
004555 - 010329	Chairman Admin Dr Pierre CHAN Dr Helena WONG	<p><u>Examination of clause 22</u></p> <p>Dr Pierre CHAN' suggestion that assessors should be provided with allowances for their voluntary work by making reference to the existing arrangement for jurors as it was currently not uncommon that disciplinary inquiries would be conducted on Saturdays and Sundays; and the Administration's response that it was open-minded to the suggestion and would discuss with the Medical Council after the passage of the Bill.</p> <p>Dr Pierre CHAN's request's for the Administration to advise in writing (a) statistics on the number of disciplinary inquiry cases considered by and the relevant inquiry participation rate of each member of the Medical Council and each assessor from the panel of assessors appointed by the Medical Council for the purpose of conducting an inquiry; and (b) the reasons for the uneven distribution of caseloads, if any, among members of the Medical Council and assessors.</p> <p>Dr Helena WONG's enquiry as to whether membership of the new inquiry panel had to be all new under the proposed new section 20X(4) of the Ordinance which provided that if, before the proceedings of an inquiry panel were concluded, a vacancy occurred in the membership of the panel because of the death, resignation or otherwise of a member, the Medical Council should, as soon as possible, appoint another inquiry panel to hold a new inquiry.</p>	Admin

Time marker	Speaker	Subject(s)/Discussion	Action required
		The Administration advised that members of such new panel might be all new or partly new. Dr Pierre CHAN's view that it would be more desirable if members of the new inquiry panel were all new to ensure the fairness and impartiality of an inquiry.	
010330 - 010540	Chairman Admin	<u>Examination of clause 23</u> Members noted the amendments to clause 23 to be proposed by the Administration as set out in paragraphs 31 and 33 under Schedule 1 of its response to the Legal Adviser to the Bills Committee's letter dated 7 September 2017 [LC Paper No. CB(2)221/17-18(01)].	Admin
010541 - 010629	Chairman Admin	<u>Examination of clause 24</u> Members noted the amendments to clause 24 to be proposed by the Administration as set out in paragraph 35 under Schedule 1 of its response to the Legal Adviser to the Bills Committee's letter dated 7 September 2017.	Admin
010630 - 010741	Chairman Admin	<u>Examination of clauses 25 to 28</u>	
010742 - 011305	Admin Chairman Dr Pierre CHAN	<u>Examination of clauses 29 and 30</u> Members noted the amendments to clauses 29 and 30 to be proposed by the Administration as set out in paragraph 38 under Schedule 1 of its response to the Legal Adviser to the Bills Committee's letter dated 7 September 2017. In response to Dr Pierre CHAN's enquiry about the statutory power of the inquiry panels, the Administration advised that the inquiry panels, which were proposed to be established under the auspices of the Medical Council to take over the current function of the Medical Council of holding disciplinary inquiries, would have full disciplinary power to make order and review its decisions.	Admin
011306 - 011409	Chairman Admin	<u>Examination of clause 31</u> Members noted the amendments to clause 31 to be proposed by the Administration as set out in paragraph 15 under Schedule 2 of its response to the Legal Adviser to the Bills Committee's letter dated 7 September 2017.	Admin
011410 - 011434	Admin	<u>Examination of clause 32</u>	
011435 - 014017	Chairman Admin Dr Pierre CHAN ALA6 Ms Claudia MO	<u>Examination of clauses 33 and 34</u> Members noted the amendments to clause 34 to be proposed by the Administration as set out in paragraphs 43, 44, 48, 49, 52, 53 and 55 under Schedule 1 and paragraphs 16 and 18 under Schedule 2 of its response to the Legal Adviser to the Bills Committee's letter dated 7 September 2017; and that the Administration would consider proposing amendments to the Bill	Admin

Time marker	Speaker	Subject(s)/Discussion	Action required
		<p>in response to the observation raised by the Legal Adviser to the Bills Committee as set out in paragraph 31(b) under Schedule 1 of her letter dated 7 September 2017 [LC Paper No. CB(2)2098/16-17(03)].</p> <p>The Legal Adviser to the Bills Committee drew members' attention to the Administration's response that it was not necessary to provide for transitional and saving provisions in respect of the matters set out in paragraphs 31(a) and 32(c) of her letter dated 7 September 2017.</p> <p>In response to the enquiries of the Legal Adviser to the Bills Committee and Ms Claudia MO, the Administration affirmed that the situation of different persons having performed the function of the president of the meetings of the Medical Council held in accordance with section 21B of the Ordinance would not arise. The current practice was that the meeting would be re-scheduled if the presiding officer was not available to chair the meeting.</p> <p>In response to Dr Pierre CHAN's concern about the arrangement for the office of chairperson of an inquiry panel under the Bill to avoid that the chairpersonship would only be assumed by one to two persons, the Administration advised that the Medical Council was empowered under the Bill to decide on the number of inquiry panel to be set up and to appoint members, including chairperson, of an inquiry panel. Taking into account that the pool of assessors would be significantly expanded under the Bill, the above arrangement provided flexibility for the Medical Council to appoint experienced persons to be chairpersons of inquiry panels.</p> <p>The Legal Adviser to the Bills Committee's remarks that future amendments to the proposed new Schedules 5 and 6 to the Ordinance would be made by notices published in the Gazette. Such a notice would be subsidiary legislation subject to the negative vetting procedure of the Legislative Council.</p>	
014018 - 014115	Chairman	Date of next meeting	
<i>Agenda item II: Any other business</i>			
014116 - 014123	Chairman	Closing remarks	