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Legislative Council

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Bills Committee on Medical Registration (Amendment) Bill 2017

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information and summarizes relevant discussions of the Panel on Health Services ("the Panel") on the proposed amendments to the Medical Registration Ordinance (Cap. 161) ("the Ordinance") and three items of its subsidiary legislation which seek to, among others, increase lay membership in the Medical Council of Hong Kong ("the Medical Council"); improve the complaint investigation and disciplinary inquiry mechanism of the Medical Council, and enable the Medical Council to approve applications for limited registration for a period from not exceeding one year to a period of not exceeding three years.

Background

Functions and composition of the Medical Council of Hong Kong

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

3. According to 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 the Chief Executive ("CE"). Among the 24 members of the

Medical Council who are registered medical practitioners, seven are elected by registered medical practitioners with full and limited registration, seven others are members of the Hong Kong Medical Association ("the Medical Association") elected by its Council members, and the remaining 10 being registered medical practitioners nominated by specified person or bodies for appointment by CE (i.e. two each nominated by the Director of Health, the University of Hong Kong ("HKU"), The Chinese University of Hong Kong ("CUHK"), the Hospital Authority ("HA") and the Hong Kong Academy of Medicine ("the Academy of Medicine") respectively).

4. According to section 20BA(2) of the Ordinance, the Medical Council may establish five committees (namely the Licentiate Committee, the Education and Accreditation Committee, the Ethics Committee, the Preliminary Investigation Committee ("PIC") and the Health Committee) in accordance with, and having such functions as are assigned to them by the Ordinance or delegated to them by the Medical Council.

5. The Boards and Councils Office of the Department of Health ("DH") currently provides secretariat support to the Medical Council in areas such as arranging meetings, handling registration, providing support for licensing examinations and conducting inquiries and disciplinary proceedings concerning the professional conduct of registered medical practitioners. In 2017-2018, the Government has earmarked additional funding of \$8.4 million for increasing manpower resources of the Medical Council Secretariat, and provision of honorarium to experts at the preliminary investigation stage of the Medical Council¹ to facilitate the Medical Council to expedite its complaint handling process through administrative measures.

Registration of medical practitioners

6. At present, 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, non-locally trained doctors with acceptable qualifications and proven experience, if selected for employment by specified institutions (including DH, HA, HKU and CUHK) for the purpose of teaching, conducting research or performing clinical or hospital work, may apply to the Medical Council for

¹ Starting from October 2016, honorarium is provided to experts providing expert advice at the preliminary investigation stage of the Medical Council.

limited registration in Hong Kong.² Each registration is valid for a period not exceeding one year, and upon expiry the relevant person may apply for renewal by the Medical Council for a period not exceeding one year.

7. As at 31 December 2016, there were 14 013 medical practitioners with full registration and 134 medical practitioners with limited registration in Hong Kong.³

Complaint investigation and disciplinary inquiry mechanism of the Medical Council

8. PIC is established by the Medical Council to, among others, make preliminary investigations into complaints or information touching any matter that may be inquired into by the Medical Council or heard by the Health Committee⁴ and give advice on the matter to any registered medical practitioner. 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, Director of Health, HA and any member of the Medical Council respectively.⁵ 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.

9. According to the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E) and the established procedures, complaints

² Currently, application for limited registration can be made under the types of employment set out in six promulgations of limited registration published by the Medical Council in the Gazette. These promulgations are available at the Medical Council website at http://www.mchk.org.hk/english/registration/limited_registration.html.

³ The number of medical practitioners employed by HA, HKU and CUHK under limited registration was 14, 27 and 52. DH did not employ any medical practitioners under limited registration.

⁴ 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 Medical Association and the other two each nominated by the Director of Health and HA respectively. 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.

⁵ 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.

concerning professional conduct of registered medical practitioners will be considered by the chairman and deputy chairman of PIC to determine whether a complaint should be referred to PIC or the Health Committee for consideration. For those complaints which are considered groundless or frivolous, and hence should not be proceeded further, the chairman and deputy chairman of PIC will consult the lay member of PIC before a decision is made to dismiss the complaints. For those cases which are referred to PIC for full consideration, PIC will examine each complaint and explanation of the medical practitioner concerned at meetings to decide whether or not there is a prima-facie case to refer the complaint to the Medical Council for a formal inquiry.⁶ At present, the panel of assessors appointed by the Medical Council for the purpose of conducting an inquiry comprises 10 registered medical practitioners ("medical assessors"), two each are nominated by the Director of Health, HA, the Academy of Medicine, HKU and CUHK respectively; and four lay persons ("lay assessors") nominated by the Secretary for Food and Health ("SFH").

10. 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;⁷ or not less than three members and two assessors from the panel appointed for the purpose of conducting an inquiry, at least one of whom shall be a lay member but subject to the majority being registered medical practitioners. The Legal Adviser appointed by SFH under the delegated authority by CE will 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.

11. Separately, 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 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.

⁶ According to the latest measure of the Medical Council, PIC may, at the first meeting to consider a complaint case, either dismiss the complaint case or decide to seek explanation or clarification from the registered medical practitioner under complaint to facilitate the making of a decision on the complaint case.

⁷ 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.

12. According to the Administration, the Medical Council received 628 complaints and conducted 26 inquiries in 2016. As at the end of 2016, the total backlog of cases handled by the Medical Council was about 940, with 560, 280 and 100 cases at pre-PIC stage (i.e. under initial consideration by the PIC chairman and deputy chairman), PIC stage and inquiry stage respectively.

The Medical Registration (Amendment) Bill 2016

13. The Administration introduced the Medical Registration (Amendment) Bill 2016 ("the 2016 Bill") into the Legislative Council ("LegCo") on 2 March 2016. The Bills seeks to, among others, 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 reference of registration of medical practitioners with limited registration; change the quorum for disciplinary inquiries and increase the number of assessors; enable solicitor or counsel to be appointed to carry out the statutory duties of the Secretary of the Medical Council in inquiries; and increase the number of legal advisers to the Medical Council.

14. A Bills Committee was formed to scrutinize the 2016 Bill. It completed scrutiny work in June 2016. Members may refer to the Report of the Bills Committee (LC Paper No. CB(2)1795/15-16) for details of its deliberations. The Second Reading debate on the 2016 Bill was resumed at the Council meeting of 29 June 2016. The Second Reading of the 2016 Bill was passed at the Council meeting of 6 July 2016 but the Committee stage proceedings of the 2016 Bill could not be completed before the Fifth LegCo stood prorogation on 16 July 2016.

The Medical Registration (Amendment) Bill 2017

15. The Administration introduced the Medical Registration (Amendment) Bill 2017 ("the Bill") into LegCo on 7 June 2017 to amend the Ordinance and three items of its subsidiary legislation to, among others, change the composition of the Medical Council; amend the arrangements for preliminary investigation, disciplinary inquiries and Health Committee meetings; extend the period of limited registration of medical practitioners; and provide for technical, textual and consequential amendments and transitional and savings arrangements. The main provisions of the Bill are set out in paragraph 10 of the LegCo Brief issued by the Food and Health Bureau on 24 May 2017 (File Ref: FHCR1/F/3261/92).

Deliberations of the Panel

16. The Panel was consulted on the legislative proposals on 29 May 2017. The deliberations and concerns of members are summarized in the following paragraphs.

Composition of the Medical Council

17. Members noted that the Bill sought to increase the number of lay members in the Medical Council from four to eight. While the existing four lay member seats remained to be filled by lay persons to be appointed by CE, appointment by CE would not be required for the proposed additional four lay members. Among them, three were to be elected by patient organizations in accordance with the regulations to be made by the Permanent Secretary for Food and Health (Health) which would be subject to negative vetting by LegCo, and one was to be nominated by the Consumer Council. The above apart, the existing two registered medical practitioner member seats to be nominated by the Academy of Medicine for appointment by CE were proposed to be converted to two registered medical practitioner member seats to be elected by the Academy of Medicine in accordance with its regulations or procedures. It was proposed that appointment by CE would not be required for these two members.

18. Some members supported the above proposals which would increase the ratio of lay members to medical practitioner members in the Medical Council from 1:6 (i.e. four lay members to 24 medical practitioner members) to 1:3 (i.e. eight lay members to 24 medical practitioner members) on the one hand, and on the other hand addressed a concern raised during the scrutiny of the 2016 Bill on the ratio of appointed members and elected members. These members agreed that given that the Academy of Medicine was a statutory body established under the Hong Kong Academy of Medicine Ordinance (Cap. 419) and operated under the principle of professional autonomy, the Academy of Medicine should be allowed to decide on how to elect these two members to the Medical Council. Some other members, however, expressed concern that the elected element in the composition of the Medical Council had not been increased under the above proposals. They considered that there should be an increase in the number of directly elected registered medical practitioner members in the Medical Council. There was a suggestion that the number of registered medical practitioners nominated respectively by HKU, CUHK, HA and Director of Health for appointment by CE should be reduced from two to one each and the number of members elected by registered medical practitioners with full registration and limited registration should be increased correspondingly by four.

19. The Administration advised that under its proposals, registered medical practitioners maintained to form the majority (i.e. three-fourths) of the membership of the Medical Council. It should be noted that elected registered medical practitioner members (i.e. two registered medical practitioners elected by the Academy of Medicine in accordance with its regulations or procedures; seven registered medical practitioners who were members of the Medical Association and nominated in accordance with its regulations or procedures and elected by its Council members; and seven registered medical practitioners who are elected by registered medical practitioners with full registration and limited registration) would account for half of the membership of the Medical Council. In the Administration's view, the proposals had struck a proper balance between meeting the community's aspiration for more public participation and greater transparency in the Medical Council and upholding the professional autonomy of the medical profession.

Complaint investigation and disciplinary inquiry mechanism

20. Members noted that the a new scheme for the nomination of medical assessors and lay assessors to be appointed by the Medical Council was proposed under the Bill. The total number of assessors would be increased from 14 (i.e. 10 medical assessors and four lay assessors) to the range of 28 to 140 (i.e. 16 to 80 medical assessors and 12 to 60 lay assessors). In relation to the number and composition of PIC, the Bill sought to enable the Medical Council to establish more than one PIC. A PIC would comprise four registered medical practitioners being either a member of the Medical Council or a medical assessor and three lay persons being either a lay member of the Medical Council or a lay assessor. The maximum term of office of all members of PIC would be aligned to 12 months. The Medical Council would also be empowered under the Bill to appoint inquiry panels ("IPs") upon referrals by PIC to take over the current function of the Medical Council of holding disciplinary inquiries. An IP would consist of three registered medical practitioners who had to be either a member of the Medical Council or a medical assessor and two lay persons who had to be either a lay member of the Medical Council or a lay assessor.

21. Noting that there were at present about 940 backlog of cases handled by the Medical Council and it would take about 72 months to conclude a case requiring disciplinary inquiry, members generally supported the above proposals which, in their view, could help enhancing the efficiency of the Medical Council in handling complaints and conducting disciplinary inquiries. There was a view that lay persons should account for more than half of the membership of a PIC and an IP. Concern was raised over the requirements relating to the qualifications and experience of medical assessors and lay assessors. There

was a suggestion that similar to the current arrangement of providing honorarium to experts at the preliminary investigation stage, honorarium should be provided to the assessors as a token of gratitude.

22. The Administration advised that under the Bill, the pool of assessors would become sufficiently large for formation of enough PICs and IPs to handle complaints within a reasonable time. In line with the principle of peer review, it was proposed that registered medical practitioners should constitute the majority of the membership of each PIC and IP. That said, lay participation had been increased throughout the process of preliminary investigation of complaints and disciplinary inquiries to enhance the credibility of the Medical Council. In recognition of professional autonomy, the Medical Council would be empowered to specify the qualifications and experience that a person had to possess in order to be eligible for nomination as a medical assessor and lay assessor. Necessary support would be provided by the Medical Council Secretariat to facilitate the assessors to perform their duties.

Extending the period of limited registration of medical practitioners

23. Members generally supported the proposed extension of the maximum term of limited registration and renewal of such registration from not exceeding one year to a period of not exceeding three years. They considered that the proposal could attract more experienced non-locally trained specialists to perform clinical and hospital work in HA and in turn provide an immediate solution to the current medical manpower constraint problem at public hospitals. Questions were raised about the recruitment and monitoring mechanism put in place by HA on medical practitioners employed under limited registration, and the past figures on the countries or regions where these medical practitioners received their medical training. There was a view that it was necessary to ensure that medical practitioners so employed by HA would not affect the career path of registered medical practitioners.

24. The Administration advised that HA would exhaust every effort to attract locally trained registered medical practitioners to fill the vacancies in HA. It would initiate recruitment process for medical practitioners under limited registration only when there were requests from relevant departments and the requests were in agreement with the Specialty Coordinating Committee. It was hoped that the annual number of medical practitioners working in public hospitals under limited registration could be increased from about 10 at present to about 50 after the passage of the Bill. The Administration further advised that during the period of January 2012 to December 2016, the Medical Council had approved 29 applications of non-locally trained medical practitioners for practice with limited registration in public hospitals. These medical practitioners,

who were employed by HA as Service Residents, received their basic medical degree or specialty qualification in the United Kingdom, Australia, New Zealand, United States or Canada. Members were assured that all medical practitioners working in public hospitals under limited registration would be subject to monitoring by HA's Task Force on Limited Registration Scheme.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
26 June 2017

Relevant papers on the Medical Registration (Amendment) Bill 2017

Committee	Date of meeting	Paper
Panel on Health Services	29.5.2017 (Item I)	<u>Agenda</u>

Council Business Division 2
Legislative Council Secretariat
26 June 2017