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Panel on Health Services

**Information note prepared by the Legislative Council Secretariat
for the special meeting on 29 May 2017**

Medical Registration (Amendment) Bill 2017

Background

Functions and composition of the Medical Council of Hong Kong

The Medical Council of Hong Kong ("the Medical Council") is an independent statutory body established under the Medical Registration Ordinance (Cap. 161) ("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.

2. 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).

3. 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.

4. 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

5. 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 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.

6. As at 31 December 2016, there were 14 013 medical practitioners with full registration and 136 medical practitioners with limited registration in Hong Kong.³

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

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, 29 and 52. DH did not employ any medical practitioners under limited registration.

Complaint investigation and disciplinary inquiry mechanism of the Medical Council

7. 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.

8. According to the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E) and the established procedures, complaints concerning professional conduct of registered medical practitioners will be considered by the chairman and deputy chairman of PIC to determine whether a complaint should be referred to PIC or the Health Committee for consideration. For those complaints which are considered groundless or frivolous, and hence should not be proceeded further, the chairman and deputy chairman of PIC will consult the lay member of PIC before a decision is made to dismiss the complaints. For those cases which are referred to PIC for full consideration, PIC will examine each complaint and explanation of the medical practitioner concerned at meetings to decide whether or not there is a prima-facie case to refer the complaint to the Medical Council for a formal inquiry.⁶

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.

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.

9. 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,⁸ at least one of whom shall be a lay member but subject to the majority being registered medical practitioners. The Legal Adviser appointed by the Secretary for Food and Health 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.

10. 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.

11. 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.

Medical Registration (Amendment) Bill 2016

12. 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 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

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.

⁸ At present, the panel of assessors appointed by the Medical Council for the purpose of conducting an inquiry comprises 10 registered medical practitioners, two each are nominated by the Director of Health, HA, the Academy of Medicine, HKU and CUHK respectively; and four lay persons nominated by the Secretary for Food and Health.

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.

13. A Bills Committee was formed to scrutinize the 2016 Bill. It completed scrutiny of the 2016 Bill in June 2016. Members of the Bills Committee in general raised no objection to the resumption of the Second Reading debate on the 2016 Bill at the Council meeting of 29 June 2016.⁹ The Council scrutinized the 2016 Bill at the last three meetings of the 2015-2016 legislative session. The proceedings of the 2016 Bill could not be completed and the Bill lapsed upon the prorogation of the Fifth LegCo on 16 July 2016.

Medical Registration (Amendment) Bill 2017

14. Subsequently, the Administration has set up a tripartite platform comprising registered medical practitioners, representatives of patients' interests and consumers' interests, and LegCo Members to promote understanding and communication, as well as provide views and deliberate on proposed legislative amendments to the Ordinance. The proposed amendments are based on, among others, the original proposals of the 2016 Bill and the subsequent Committee stage amendments proposed by the Administration. In the Sixth LegCo, members of the Panel on Health Services have been invited to join the tripartite platform. Six members of the Panel (namely Mr Tommy CHEUNG, Mr CHAN Han-pan, Ms Alice MAK, Dr KWOK Ka-ki, Dr Helena WONG and Dr Pierre CHAN) have joined the tripartite platform. The tripartite platform held four meetings between November 2016 and March 2017.

15. At its meeting on 16 May 2017, the Executive Council advised and CE ordered that the Medical Council Registration (Amendment) Bill 2017 ("the 2017 Bill") should be introduced into LegCo to improve the complaint investigation and disciplinary inquiry mechanism of the Medical Council; increase lay membership in the Medical Council; and enable the Medical Council to approve applications for limited registration for a period from not exceeding one year to not exceeding four years. The 2017 Bill will be published in the Gazette on 2 June 2017 and introduced into LegCo on 7 June 2017.

Council Business Division 2
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⁹ The deliberation of the Bills Committee are detailed in its report (LC Paper No. CB(2)1795/15-16), which is available at the LegCo website at <http://www.legco.gov.hk/yr15-16/english/hc/papers/hc20160617cb2-1795-e.pdf>.