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**Medical Council (Election and Appointment of Lay  
Members) Regulation**

**Contents**

Section	Page
<b>Part 1</b>	
<b>Preliminary</b>	
1. Commencement .....	B719
2. Interpretation .....	B719
<b>Part 2</b>	
<b>Registration of Electors</b>	
3. Announcement of compilation of electoral register .....	B725
4. Eligibility for registration .....	B725
5. Application for registration .....	B729
6. Electoral register .....	B731
7. Authorized representative .....	B731
8. Secretary may determine procedures .....	B735
<b>Part 3</b>	
<b>Notice of Election</b>	
9. Notice of election .....	B737

Section	Page
---------	------

**Part 4**

**Nomination of Candidates**

10.	Who may be nominated as candidate .....	B741
11.	Nomination period .....	B741
12.	How to nominate candidate .....	B743
13.	Subscription of nomination form .....	B743
14.	Requirement for candidates to be validly nominated and determinations as to validity of nominations .....	B745
15.	Withdrawal of candidature .....	B747
16.	When person disqualified from being elected .....	B747

**Part 5**

**Result of Nominations**

17.	Notice of result of nominations .....	B749
18.	Poll to be conducted in contested election .....	B749
19.	Declaration of election result if number of candidates same as number of vacancies .....	B749
20.	Procedure if no candidate or vacancies outnumber candidates .....	B751

**Part 6**

**Polling**

21.	Polling period .....	B755
-----	----------------------	------

Section	Page
22. Requirements for polling notice, ballot paper and declaration form .....	B755
23. Votes to be cast by postal ballot .....	B757
24. Replacement of ballot paper and declaration form .....	B759
25. Counting of votes .....	B761
26. Rejection of ballot papers .....	B761
27. Secretary may delegate power in relation to polling .....	B763
28. Result of polling .....	B763
29. Death or disqualification of candidate before polling period .....	B765
30. Death or disqualification of candidate during polling period .....	B767
31. Death or disqualification of candidate after polling period expires but before declaration of result .....	B767

**Part 7**

**Result of Election**

32. Declaration of result of election .....	B771
33. Failure to assume office .....	B771

**Part 8**

**Documents and their Disposal**

34. Disposal of documents .....	B775
---------------------------------	------

Section	Page
---------	------

**Part 9**

**Election Petition**

35.	Questioning election by election petition .....	B777
36.	Who may petition .....	B777
37.	Respondent to election petition .....	B779
38.	Time limit for election petition .....	B779
39.	Form and presentation of election petition .....	B779
40.	Procedural matters before hearing .....	B781
41.	Withdrawal of election petition .....	B783
42.	Hearing .....	B783
43.	Determination of Council .....	B785
44.	Council may regulate procedure .....	B787
45.	Successful election petition does not invalidate previous acts .....	B787

**Part 10**

**Nomination for Appointment**

46.	How to fill vacancy if unexpired term is less than 1 year .....	B789
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**Part 11**

**Transitional Provision**

47.	Transitional provision .....	B795
Schedule	Prohibited Practices .....	B797

# Medical Council (Election and Appointment of Lay Members) Regulation

(Made by the Permanent Secretary for Food and Health (Health) under section 33(3A) of the Medical Registration Ordinance (Cap. 161))

## Part 1

### Preliminary

#### 1. Commencement

This Regulation comes into operation on a day to be appointed by the Permanent Secretary for Food and Health (Health) by notice published in the Gazette.

#### 2. Interpretation

(1) In this Regulation—

***authorized representative*** (獲授權代表) means an authorized representative appointed under section 7;

***by-election*** (補選) means an election that is held to elect a person as a specified lay member to fill a vacancy in the office of a specified lay member that arises in circumstances described in section 3(5AA)(a) of the Ordinance;

***election*** (選舉) means an ordinary election or by-election and includes a further round of election conducted under section 20, 30 or 31;

***election petition*** (選舉呈請) means an election petition presented under section 39;

***elector*** (選舉人) means an organization that is registered under section 5;

***electoral register*** (選舉名冊) means the electoral register published under section 6(2)(a) that is in force for the time being;

***lay member*** (業外委員) means any lay member of the Council described in section 3(2)(g), (ga) and (gb) of the Ordinance;

***nomination closing date*** (截止提名日) means the last day of a nomination period;

***nomination form*** (提名表格)—see section 12(a);

***nomination period*** (提名期)—see section 11;

***notice of election*** (選舉通知) means a notice issued by the Secretary under section 9(1);

***ordinary election*** (一般選舉) means—

- (a) the first election to elect a person as a specified lay member; or
- (b) an election (other than a by-election) to elect a person to fill a vacancy in the office of a specified lay member that is to arise on the expiry of the term of office;

***polling period*** (遞交選票期)—see section 21(3);

***prohibited practice*** (受禁行為)—see the Schedule;

***registration*** (註冊) means registration as an elector, and ***registered*** (註冊) and ***register*** (註冊), except in sections 4(1)(a)(i)(B), 10(a) and 16(a), are to be construed accordingly;

***selection*** (遴選) means a selection of a specified lay member under Part 10, and ***selected*** (獲選) and ***select*** (遴選) are to be construed accordingly;

***specified form*** (指明表格) means a form specified by the Secretary;

***specified lay member*** (指明業外委員) means a lay member described in section 3(2)(ga) of the Ordinance but does not include a person appointed under section 3C(1AA) of the Ordinance;

***term of office*** (任期) means—

- (a) in relation to a specified lay member returned at an ordinary election (other than the first election) to fill a vacancy that arises due to the expiry of the term of office of the predeceasing incumbent of the office—the period of 3 years from the date of notification in the Gazette of the member's election; or
  - (b) in relation to a specified lay member returned at a by-election or a selection to fill a vacancy that arises during the term of office of the predeceasing incumbent of the office—the period beginning on the date of election or appointment of the member until the expiry of the unexpired term of office of the predeceasing incumbent.
- (2) In this Regulation, except for sections 6, 11 and 21(2), a reference to an election includes, if applicable, a reference to a further round of that election conducted under section 20, 30 or 31.
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## Part 2

### Registration of Electors

#### 3. Announcement of compilation of electoral register

- (1) The Secretary must, within 1 month after the commencement date of this Regulation—
  - (a) announce that an electoral register is to be compiled for the purposes of this Regulation; and
  - (b) invite applications for registration.
- (2) The Secretary must, before the 9 months preceding the expiry of the current term of office of the specified lay members—
  - (a) announce that an electoral register is to be compiled for the purposes of this Regulation; and
  - (b) invite applications for registration.
- (3) An announcement under subsection (1) or (2) must—
  - (a) be made by a notice published in the Gazette; and
  - (b) specify—
    - (i) a period (*application period*) of not less than 28 days within which an application for registration may be made; and
    - (ii) an address to which the application must be sent.

#### 4. Eligibility for registration

- (1) An organization is eligible for registration if it meets the following requirements—



- (a) throughout the 2 years immediately before the end of the application period specified under section 3(3)(b)(i)—
  - (i) it has been—
    - (A) a company defined by section 2(1) of the Companies Ordinance (Cap. 622); or
    - (B) a society or a branch of a society registered, or exempted from registration, under section 5A of the Societies Ordinance (Cap. 151); and
  - (ii) it has been carrying on activities to safeguard or represent the interests of patients;
- (b) its principal objective is to safeguard or represent the interests of patients;
- (c) it is recognized by a reference authority as an organization that safeguards or represents the interests of patients.

(2) In this section—

***reference authority*** (參考機關) means—

- (a) the Hospital Authority;
- (b) the Social Welfare Department;
- (c) The Hong Kong Society For Rehabilitation; or
- (d) any other entity designated by the Permanent Secretary as an authority that provides reference on whether an organization safeguards or represents the interests of patients.

**5. Application for registration**

- (1) An organization that wishes to be registered must apply for registration in the specified form and in accordance with the procedures specified by the Secretary.
- (2) The Secretary must not process an application that is not received by the Secretary within the application period specified under section 3(3)(b)(i).
- (3) The organization must provide, in the application, the particulars of its authorized representative.
- (4) The Secretary must—
  - (a) assess the applicant's eligibility for registration; and
  - (b) send to the Permanent Secretary the assessment together with a recommendation as to whether the application should be approved.
- (5) The Permanent Secretary must—
  - (a) consider the application and the Secretary's assessment and recommendation;
  - (b) determine whether the applicant is eligible for registration; and
  - (c) if the applicant is determined to be eligible—approve the application.
- (6) The Secretary and the Permanent Secretary may make any inquiry that they consider appropriate for assessing or determining the applicant's eligibility for registration.
- (7) A determination under subsection (5) is final.
- (8) If an application for registration is approved under subsection (5)(c), the Secretary must register the applicant by complying with section 6(1)(b).

**6. Electoral register**

- (1) The Secretary must—
  - (a) compile an electoral register; and
  - (b) enter into the electoral register the particulars of the organizations whose applications for registration have been approved under section 5(5)(c).
- (2) At least 1 week before issuing a notice of election in relation to an ordinary election, the Secretary must—
  - (a) publish the electoral register by notice in the Gazette; and
  - (b) inform applicants for registration of the results of their applications.
- (3) An electoral register takes effect on the date of publication and continues to have effect until the publication of the next electoral register.
- (4) The Secretary may amend an electoral register to—
  - (a) rectify a clerical or printing error in the register; or
  - (b) reflect a change in the particulars of an elector entered into the register.

**7. Authorized representative**

- (1) An organization applying for registration must—
  - (a) appoint, in accordance with its rules, an individual as its authorized representative to act on its behalf for purposes relating to an election;
  - (b) make the appointment in the specified form (*appointment form*); and
  - (c) send to the Secretary the appointment form together with the application for registration.

- (2) Subject to subsection (3), if the Secretary receives 2 or more appointment forms in relation to an individual, only the appointment form first received is valid.
- (3) If—
  - (a) the Secretary receives 2 or more appointment forms in relation to an individual; and
  - (b) it is not clear which appointment form is first received by the Secretary,the Secretary may make any inquiry that the Secretary considers appropriate for determining which appointment form is valid.
- (4) If the Secretary makes a determination under subsection (3), the Secretary must notify all relevant organizations of the determination.
- (5) An elector may from time to time appoint an individual as its authorized representative to replace its current authorized representative to act on its behalf for purposes relating to an election.
- (6) An appointment under subsection (5) must be made by sending an appointment form to the Secretary.
- (7) The Secretary must give a written notice to the elector to confirm the replacement.
- (8) An appointment under subsection (5) takes effect on the date on which the notice under subsection (7) is given.
- (9) An individual who is an authorized representative of an organization is not qualified for appointment as an authorized representative of another organization.
- (10) An individual is not qualified for appointment as an authorized representative unless the individual has attained the age of 18 years.

**8. Secretary may determine procedures**

Subject to sections 3, 4, 5, 6 and 7, the Secretary may determine the procedures in relation to the matters set out in this Part.

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## **Part 3**

### **Notice of Election**

#### **9. Notice of election**

- (1) For each election to be held, the Secretary must issue a notice of election by—
  - (a) publishing the notice in a manner that the Secretary considers appropriate; and
  - (b) sending to every elector a copy of the notice.
- (2) A notice of election must specify in relation to the election—
  - (a) the number of vacancies to be filled;
  - (b) that nominations of candidates are invited;
  - (c) who may be nominated as a candidate under section 10;
  - (d) the requirements under sections 12, 13 and 14 relating to a nomination, including the nomination period within which, and the address to which, nomination forms for the election are to be sent to the Secretary;
  - (e) that a poll is to be conducted under section 18 if, at the end of the day following the nomination closing date, the number of validly nominated candidates who have not withdrawn candidature under section 15 exceeds the number of vacancies;
  - (f) that, if a poll is to be conducted—
    - (i) the Secretary is to issue to every elector a polling notice, a ballot paper and a declaration form; and

- (ii) an elector who votes is to send the ballot paper and the declaration form in accordance with section 23 to the Secretary to the address specified in the notice of election by the end of the polling period;
  - (g) that a validly nominated candidate is to be declared elected if, at the end of the day following the nomination closing date, the number of validly nominated candidates who have not withdrawn candidature under section 15 is the same as the number of vacancies;
  - (h) that a further round of election is to be conducted if, at the end of the day following the nomination closing date, no candidate is validly nominated or every validly nominated candidate has withdrawn candidature under section 15; and
  - (i) that if, at the end of the day following the nomination closing date, the number of vacancies exceeds the number of validly nominated candidates who have not withdrawn candidature under section 15, the validly nominated candidates are to be declared elected and a further round of election is to be conducted to fill the remaining vacancies.
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## **Part 4**

### **Nomination of Candidates**

#### **10. Who may be nominated as candidate**

Any person who has attained the age of 18 years may be nominated as a candidate at an election unless the person—

- (a) is a registered medical practitioner;
- (b) has not been ordinarily resident in Hong Kong for the last 12 months;
- (c) is an undischarged bankrupt or, within the previous 5 years, has either obtained discharge in bankruptcy or has entered into composition or arrangement with his or her creditors, in either case without paying the creditors in full;
- (d) has, within the previous 5 years, been convicted of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
- (e) has, within the previous 5 years, committed a prohibited practice in a previous election.

#### **11. Nomination period**

- (1) The nomination period for an ordinary election is the period of 4 weeks beginning on the date of the notice of election.
- (2) The nomination period for a by-election or a further round of an election is the period beginning on the date of the notice of election and ending on a date specified in the notice.



**12. How to nominate candidate**

A person is validly nominated as a candidate at an election only if—

- (a) a duly completed nomination instrument in the specified form (***nomination form***) nominating the person is sent to the Secretary;
- (b) the person has—
  - (i) indicated his or her consent to the nomination by signing the nomination form; and
  - (ii) declared in the nomination form that he or she is qualified for nomination under section 10;
- (c) section 13 is complied with in relation to the nomination form; and
- (d) the nomination form is received by the Secretary at the address specified in the notice of election within the nomination period in a manner specified in the notice.

**13. Subscription of nomination form**

- (1) A nomination form must be subscribed by at least 5 electors.
- (2) The authorized representative of every elector mentioned in subsection (1) must declare in the nomination form that the subscription reflects the decision of the elector made under its rules.
- (3) An elector may for each election subscribe to only 1 nomination form.
- (4) If—
  - (a) a nomination form (***the former***) subscribed by an elector is received by the Secretary; and

- (b) another nomination form (*the latter*) nominating another candidate that is subscribed by the same elector is subsequently received by the Secretary, the elector is taken to have not subscribed to the latter as long as the person nominated under the former remains a validly nominated candidate until the end of the nomination period.

**14. Requirement for candidates to be validly nominated and determinations as to validity of nominations**

- (1) A person may stand for an election only if the person is validly nominated as a candidate under this Part.
- (2) The Secretary must—
  - (a) examine each nomination form as soon as possible after receiving it; and
  - (b) determine whether the candidate nominated in the nomination form is validly nominated.
- (3) The Secretary may make any inquiry that the Secretary considers appropriate for determining the validity of a nomination.
- (4) The Secretary may determine that a nomination is invalid if—
  - (a) any requirement under section 12 or 13 is not complied with in relation to the nomination;
  - (b) it is proved to the satisfaction of the Secretary that the person purported to be nominated—
    - (i) has died;
    - (ii) is not qualified for nomination under section 10; or
    - (iii) is disqualified under section 16;

- (c) it is proved to the satisfaction of the Secretary that the subscription of the nomination form by an elector does not reflect the decision of the elector made under its rules; or
- (d) the nomination form is received by the Secretary after the nomination closing date.
- (5) If the Secretary determines that a nomination is invalid, the Secretary must endorse on and sign the nomination form to this effect and give reasons for the determination.
- (6) The Secretary must issue to every person nominated a notice of the determination as to the validity of the nomination.

**15. Withdrawal of candidature**

- (1) A person who is nominated may withdraw candidature by giving to the Secretary a notice in the specified form not later than the day following the nomination closing date.
- (2) The notice must be signed by the candidate in the presence of the Secretary.

**16. When person disqualified from being elected**

A person who has been validly nominated as a candidate for an election is disqualified from being elected as a specified lay member if the person—

- (a) becomes a registered medical practitioner;
  - (b) becomes bankrupt;
  - (c) is convicted of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
  - (d) commits a prohibited practice.
-

## **Part 5**

### **Result of Nominations**

#### **17. Notice of result of nominations**

- (1) On determining the validity of nominations under section 14, the Secretary must issue to every elector a notice of result of nominations for the nominations received by the Secretary within the nomination period.
- (2) Except if section 19 applies and subject to section 20, the Secretary must issue the notice of result of nominations within 45 days after the nomination closing date.

#### **18. Poll to be conducted in contested election**

- (1) A poll is to be conducted if, at the end of the day following the nomination closing date, the number of validly nominated candidates who have not withdrawn candidature under section 15 exceeds the number of vacancies.
- (2) If a poll is to be conducted, the Secretary must comply with section 22(1).

#### **19. Declaration of election result if number of candidates same as number of vacancies**

If, at the end of the day following the nomination closing date, the number of validly nominated candidates who have not withdrawn candidature under section 15 is the same as the number of vacancies, the Secretary must declare those candidates elected to fill those vacancies and declare the result of the election under section 32(1).

**20. Procedure if no candidate or vacancies outnumber candidates**

- (1) If, at the end of the day following the nomination closing date, no candidate is validly nominated or every validly nominated candidate has withdrawn candidature under section 15—
  - (a) the Secretary must declare the result of nominations in the notice of result of nominations issued under section 17;
  - (b) a further round of the election must be conducted to fill the vacancies;
  - (c) the Secretary must issue a notice of election for the further round of the election; and
  - (d) the declaration must be made, and the notice of election must be issued, as soon as possible.
- (2) If, at the end of the day following the nomination closing date, the number of vacancies exceeds the number of validly nominated candidates who have not withdrawn candidature under section 15—
  - (a) the Secretary must declare those candidates elected in the notice of result of nominations issued under section 17;
  - (b) a further round of the election must be conducted to fill the remaining vacancies;
  - (c) the Secretary must issue a notice of election for the further round of the election; and
  - (d) the declaration must be made, and the notice of election must be issued, as soon as possible.
- (3) Despite subsection (1)(c) or (2)(c), subsection (4) applies if—

- (a) an election has resulted in a notice of election being issued under subsection (1) or (2) for a further round of the election (**2nd round**); and
  - (b) at the end of the day following the nomination closing date for the 2nd round, any vacancy remains because—
    - (i) no candidate is validly nominated;
    - (ii) every validly nominated candidate has withdrawn candidature under section 15; or
    - (iii) the number of vacancies exceeds the number of validly nominated candidates who have not withdrawn candidature under section 15.
  - (4) For a further round of the election (**3rd round**) required to be conducted as a result of the application of subsection (1) or (2) to the 2nd round, the Secretary may—
    - (a) elect not to issue a notice of election for the 3rd round until the expiry of 16 weeks from the nomination closing date of the 2nd round; and
    - (b) issue a notice of election for the 3rd round as soon as possible after the expiry of the 16 weeks.
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## **Part 6**

### **Polling**

#### **21. Polling period**

- (1) The Council must determine—
  - (a) a date on which a polling notice, a ballot paper and a declaration form must be issued to every elector; and
  - (b) a date by which an elector who votes must send the ballot paper and the declaration form to the Secretary.
- (2) The date determined under subsection (1)(b) for an ordinary election (the first election excepted) to fill a vacancy in the office of a specified lay member must be earlier than 1 month before the expiry of the term of office of the member.
- (3) The polling period for an election is the period beginning on the date mentioned in subsection (1)(a) and ending on the date mentioned in subsection (1)(b).

#### **22. Requirements for polling notice, ballot paper and declaration form**

- (1) On the date mentioned in section 21(1)(a), the Secretary must issue to every elector a polling notice, a ballot paper and a declaration form.
- (2) A polling notice issued under subsection (1) must specify—
  - (a) the particulars of each validly nominated candidate;
  - (b) the polling period; and

- (c) the address to which, and the manner in which, the ballot paper and the declaration form must be sent for casting a vote.
- (3) A ballot paper issued under subsection (1) or section 24(1) or (3) must—
  - (a) be in the specified form;
  - (b) contain the particulars of each validly nominated candidate as shown in the polling notice; and
  - (c) bear the date and description of the election.
- (4) A declaration form issued under subsection (1) or section 24(1) or (3) must—
  - (a) be in the specified form; and
  - (b) bear a serial number.

**23. Votes to be cast by postal ballot**

- (1) At a poll, an elector must cast a vote by sending a ballot paper to the Secretary within the polling period.
- (2) A ballot paper is valid for casting a vote only if—
  - (a) the vote recorded on it is marked in compliance with subsection (4);
  - (b) it is accompanied by a declaration form completed in compliance with subsection (5); and
  - (c) it is sent by post together with the declaration form in a manner specified in the polling notice.
- (3) The date of the relevant post mark is taken to be the date on which the ballot paper is sent.
- (4) The authorized representative of an elector casting a vote must indicate the elector's choice on the ballot paper by marking an "X" in the box adjacent to the name of each candidate chosen.



- (5) The authorized representative must—
  - (a) declare in the declaration form that the vote recorded on the ballot paper reflects the decision of the elector made under its rules; and
  - (b) sign the declaration form.
- (6) Only original ballot papers and declaration forms issued under section 22(1) or 24(1) or (3) are to be accepted.
- (7) If the Secretary receives from an elector 2 or more ballot papers for a poll, all those ballot papers are void.
- (8) The Secretary must verify the details of each ballot paper and the accompanying declaration form before a vote recorded on it is accepted and recorded.

**24. Replacement of ballot paper and declaration form**

- (1) An elector who has inadvertently marked, mutilated or otherwise spoilt a ballot paper or declaration form (*defective document*) may, on returning it to the Medical Council Secretariat and with the Secretary's approval, have another ballot paper or declaration form issued to the elector as a replacement.
- (2) On issuing a replacement under subsection (1), the defective document becomes void.
- (3) An elector who alleges that no ballot paper or declaration form has been received may, on notifying the Medical Council Secretariat and with the Secretary's approval, have a ballot paper or declaration form issued to the elector.
- (4) If a ballot paper or declaration form is issued to an elector under subsection (3) for an election, any ballot paper or declaration form issued previously to the elector for the election becomes void.

**25. Counting of votes**

- (1) Within 30 days after the end of a polling period, the Secretary must verify, record and count the number of votes cast for each candidate.
- (2) The Secretary must—
  - (a) notify all candidates of the counting of votes; and
  - (b) inform them of their right to be present.
- (3) A candidate is entitled to be present at the counting of votes.
- (4) The following persons may also be present at the counting of votes—
  - (a) the Chairman;
  - (b) any other persons that the Chairman considers to be appropriate.
- (5) The presence or absence of any person at the counting of votes does not affect the validity of the result.

**26. Rejection of ballot papers**

- (1) The Secretary may reject any ballot paper if—
  - (a) the ballot paper is, under section 23(2) or (7) or 24(2) or (4), not valid;
  - (b) the ballot paper is unmarked or not clearly marked;
  - (c) the number of candidates chosen exceeds the number of vacancies;
  - (d) the Secretary determines that any vote recorded on the ballot paper is void for uncertainty;
  - (e) the accompanying declaration form is not complete;
  - (f) the ballot paper or the accompanying declaration form is not an original or has been altered;

- (g) the ballot paper or the accompanying declaration form is substantially mutilated;
  - (h) it is proved to the satisfaction of the Secretary that the ballot paper is marked, or the accompanying declaration form is signed, by a person other than the authorized representative of the elector to which the ballot paper or the declaration form is issued;
  - (i) it is proved to the satisfaction of the Secretary that the vote recorded on the ballot paper does not reflect the decision of the elector made under its rules; or
  - (j) the ballot paper is sent to the Secretary after the end of the polling period.
- (2) A vote recorded on a ballot paper that is rejected under subsection (1) is not to be counted.

**27. Secretary may delegate power in relation to polling**

The Secretary may delegate to a deputy secretary, an assistant secretary or a clerical staff member of the Medical Council Secretariat any of the following functions—

- (a) verifying details under section 23(8);
- (b) recording and counting votes.

**28. Result of polling**

- (1) If a poll is conducted to fill 1 vacancy, the Secretary must declare the candidate who has obtained the highest number of votes to be elected.
- (2) If a poll is conducted to fill 2 or more vacancies, the Secretary must declare an equivalent number of candidates to be elected where a candidate who has obtained a higher number of votes has a higher priority of being declared to be elected.

- (3) If—
  - (a) 2 or more candidates (*specified candidates*) have obtained the same number of votes; and
  - (b) as a result, the Secretary cannot declare any of them to be elected under subsection (1) or (2),the Secretary must determine which of those candidates is or are to be elected by drawing lots.
- (4) A specified candidate on whom the lots fall is, or (if applicable) the specified candidates on whom the lots fall are, elected.
- (5) The drawing of lots must be conducted in the presence of the Chairman.
- (6) The Secretary must—
  - (a) notify all specified candidates of the drawing of lots; and
  - (b) inform them of their right to be present.
- (7) A specified candidate is entitled to be present at the drawing of lots.
- (8) The presence or absence of any person other than the Chairman at the drawing of lots does not affect the validity of the result.

**29. Death or disqualification of candidate before polling period**

- (1) This section applies if, after a person (*relevant candidate*) has been determined to be validly nominated as a candidate for an election under section 14(2)(b) but before the polling period, it is proved to the satisfaction of the Secretary that the relevant candidate—
  - (a) has died;
  - (b) is not qualified for nomination under section 10; or

(c) is disqualified under section 16.

- (2) The Secretary must vary the determination by issuing a notice to the relevant candidate in accordance with section 14(6).

**30. Death or disqualification of candidate during polling period**

- (1) An election is countermanded if, during the polling period, it is proved to the satisfaction of the Secretary that a person validly nominated as a candidate—
- (a) has died;
  - (b) is not qualified for nomination under section 10; or
  - (c) is disqualified under section 16.
- (2) If the election is countermanded—
- (a) a further round of the election must be conducted to fill the vacancies;
  - (b) the Secretary must issue a notice of election for the further round of the election as soon as possible; and
  - (c) the Secretary must specify in the notice of election in addition to the information described in section 9(2), the relevant event described in subsection (1).

**31. Death or disqualification of candidate after polling period expires but before declaration of result**

- (1) This section applies if after the polling period expires but before the result of the election is declared under section 32(1), it is proved to the satisfaction of the Secretary that a person validly nominated as a candidate (*relevant candidate*)—
- (a) has died;
  - (b) is not qualified for nomination under section 10; or

- (c) is disqualified under section 16.
  - (2) The proceedings for the election is not to be terminated. If the counting of votes in respect of the election has not been completed, the counting is to proceed as if the event described in subsection (1) had not occurred.
  - (3) If, after the counting of votes is completed, the votes cast for the relevant candidate are sufficient for returning the candidate had the event described in subsection (1) not occurred, the election is countermanded and—
    - (a) a further round of the election must be conducted to fill the vacancies;
    - (b) the Secretary must issue a notice of election for the further round of the election as soon as possible; and
    - (c) the Secretary must specify in the notice of election in addition to the information described in section 9(2), the relevant event described in subsection (1).
  - (4) If, after the counting of votes is completed, the votes cast for the relevant candidate are not sufficient for returning the candidate at the election, the Secretary must comply with section 28.
-

## Part 7

### Result of Election

#### 32. Declaration of result of election

- (1) When, in the opinion of the Secretary, the result of an election is ascertained, whether by polling, under section 19 or 20(2)(a) or a combination of these manners, and despite any vacancy remaining under section 20(3)(b), the Secretary must declare the result of the election by—
  - (a) publishing a notice of the result in the Gazette; and
  - (b) issuing to every elector a notice of the result.
- (2) For the purposes of section 3(3AA) of the Ordinance, the date of notification in the Gazette of a person's election is the date specified in the notice published under subsection (1)(a).

#### 33. Failure to assume office

- (1) If—
  - (a) a candidate (*quitting candidate*), having been elected by polling at an election, fails or refuses to assume the office of specified lay member within 3 months from the date of publication of the notice of the result of election in the Gazette; and
  - (b) there is a candidate (*next-in-line candidate*) who—
    - (i) has, as compared to the candidates who have been declared to have been elected in the poll, obtained the next highest number of votes; and
    - (ii) has not been disqualified from being elected under section 16,

the Secretary may, instead of declaring the office vacant, by publishing a notice (*replacement notice*) in the Gazette, declare the next-in-line candidate to have been elected in the poll.

(2) If—

- (a) 2 or more candidates have obtained the same number of votes; and
- (b) as a result, the Secretary cannot declare any of them to have been elected under subsection (1),

the Secretary must determine which of them is to be so declared by drawing lots and section 28(4), (5), (6), (7) and (8) applies with necessary modifications. The candidate on whom the lot falls is regarded, for the purposes of subsection (1)(b), as the next-in-line candidate.

(3) On the publication of the replacement notice in the Gazette—

- (a) the quitting candidate is regarded as not having been elected in the poll; and
  - (b) the next-in-line candidate is regarded as having held office as a specified lay member as from the date of publication of the original notice of the result of election in the Gazette until the expiry of the term of office which the quitting candidate would have held had he or she assumed office.
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## Part 8

### Documents and their Disposal

#### 34. Disposal of documents

(1) The Secretary must—

- (a) keep in his or her custody, for a period of 3 months from the relevant date, all relevant documents including nomination forms, ballot papers and declaration forms, received by the Secretary in relation to the election; and
- (b) arrange for those documents to be destroyed after the expiry of the period.

(2) In this section—

**relevant date** (有關日期) means—

- (a) if an election petition is presented in relation to the election—the date on which the petition is withdrawn or determined; or
  - (b) if no election petition is presented in relation to the election and—
    - (i) a poll was held for the election—the date on which the votes are counted under section 25; or
    - (ii) no poll was held for the election—the date on which the result of the election is declared under section 32(1).
-

## **Part 9**

### **Election Petition**

#### **35. Questioning election by election petition**

The result of an election may only be questioned by an election petition presented on the ground that—

- (a) a person declared to be elected under this Regulation was not duly elected—
  - (i) because the person is not qualified for nomination under section 10;
  - (ii) because the person is disqualified under section 16;
  - (iii) because of the commission of a prohibited practice by or in respect of the person; or
  - (iv) because of the commission of a prohibited practice generally at or in respect of the election;
- (b) a person determined to be not validly nominated as a candidate under this Regulation should have been determined to be validly nominated; or
- (c) material irregularity occurred in relation to the election.

#### **36. Who may petition**

An election petition questioning the result of an election may be presented—

- (a) jointly by 5 electors;
- (b) by a validly nominated candidate at the election; or

- (c) by a person determined to be not validly nominated as a candidate at the election.

**37. Respondent to election petition**

- (1) A candidate whose election is questioned by an election petition on the ground set out in section 35(a) or (c) must be made a respondent to the petition.
- (2) If an election petition is presented on the ground set out in section 35(b) or (c), the Secretary must be made a respondent to the petition.

**38. Time limit for election petition**

An election petition must be presented within 30 days from the date on which the result of election is declared in relation to the election.

**39. Form and presentation of election petition**

- (1) An election petition must be in writing and signed by—
  - (a) if the petition is jointly presented by 5 electors—the authorized representative of each of them;
  - (b) if the petition is presented by a validly nominated candidate at the election—the candidate; or
  - (c) if the petition is presented by a person determined to be not validly nominated as a candidate at the election—the person.
- (2) An election petition must state—
  - (a) in which of the capacities set out in section 36 the petitioner presents it;
  - (b) whose election is questioned; and
  - (c) the ground of the petition.

- (3) The petitioner must present the petition by serving the petition on the Chairman.
- (4) The petitioner must, at the same time as the petitioner presents the petition, serve a copy of it on the respondent.

**40. Procedural matters before hearing**

- (1) On being served with an election petition, the Chairman must examine the petition.
- (2) The Chairman may dismiss an election petition if—
  - (a) any requirement under section 39 is not complied with in relation to the petition; or
  - (b) the ground of the petition is not one set out in section 35.
- (3) Unless the Chairman dismisses an election petition—
  - (a) the Chairman must direct the Secretary to fix a date, time and place of the hearing of the petition; and
  - (b) the Secretary must give 14 clear days' notice of the hearing to the petitioner and the respondent.
- (4) If 2 or more election petitions are presented in relation to the same election, the Chairman may order those petitions to be consolidated in a manner that the Chairman considers appropriate so that they may be heard at the same time or one immediately after the other.
- (5) Before the hearing of an election petition, the Chairman may direct the Secretary to review the procedure or result of the election being questioned.
- (6) If the petitioner or the respondent wishes to submit any written representation relating to an election petition for consideration by the Council at the hearing, the petitioner or the respondent, as the case may be, must—

- (a) send the representation to the Council at least 7 days before the date fixed for the hearing; and
- (b) at the same time serve a copy of the representation on the other party.

**41. Withdrawal of election petition**

At any time before the hearing of an election petition, the petitioner may withdraw the petition by—

- (a) giving a written notice of withdrawal to the Chairman; and
- (b) serving a copy of the notice on the respondent.

**42. Hearing**

- (1) The Chairman must preside at the hearing of an election petition.
- (2) The petitioner and the respondent may appear at the hearing and may be heard by a solicitor or counsel or—
  - (a) in the case of an election petition jointly presented by 5 electors—by the authorized representative of one of them;
  - (b) in the case of a validly nominated candidate or a person determined to be not validly nominated as a candidate at an election—in person; or
  - (c) in the case of the Secretary—in person or by an officer of the Medical Council Secretariat authorized by the Secretary.

- (3) At the hearing of an election petition claiming that the respondent was not duly elected and that another candidate should be declared of as duly elected, the respondent may give evidence to prove that that candidate was not duly elected in the same manner as if the respondent had presented an election petition questioning the election of that candidate.
- (4) If the petitioner or the respondent or both of them fail to appear at the hearing of an election petition, the Council may—
  - (a) adjourn the hearing to a later date;
  - (b) proceed to hear the petition in the absence of the party or parties; or
  - (c) if the petitioner fails to appear—dismiss the petition.
- (5) If the Council hears an election petition in the absence of any party, it must consider the written representation, if any, submitted by that party under section 40(6).
- (6) The Chairman may—
  - (a) extend the time within which an act must be done under this Part whether or not the time has expired;
  - (b) postpone the date or time fixed for the hearing of an election petition;
  - (c) adjourn the hearing of an election petition; and
  - (d) at the written request of the petitioner or the respondent, summon any person to appear at the hearing of an election petition and examine the person as a witness either on oath or otherwise.

#### **43. Determination of Council**

- (1) After the hearing of an election petition, the Council must—

- (a) determine—
    - (i) whether the ground of the petition has been proved; and
    - (ii) whether a person declared by the Secretary to have been elected at the election was duly elected;
  - (b) if it determines that a person was not duly elected—determine whether another person was duly elected in the person's place; and
  - (c) make any other determination in relation to the petition as it considers necessary.
- (2) A determination under subsection (1) is final.
- (3) The Secretary must, within 28 days after the determination of the Council—
- (a) publish a notice of the determination in the Gazette; and
  - (b) issue to the petitioner and the respondent a notice of the determination.

**44. Council may regulate procedure**

Subject to this Part, the Council may regulate its procedure in relation to an election petition.

**45. Successful election petition does not invalidate previous acts**

If the Council determines under section 43 that a person declared to have been elected at an election has not been duly elected, acts done by the person in the execution of his or her office as a specified lay member before the determination are not invalidated by the determination.

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## **Part 10**

### **Nomination for Appointment**

#### **46. How to fill vacancy if unexpired term is less than 1 year**

- (1) This section applies if the unexpired term of office of a specified lay member is less than 1 year when the office becomes vacant.
- (2) The Secretary must immediately—
  - (a) notify the Chairman and the lay members of the vacancy; and
  - (b) invite the lay members to make nominations of candidates for appointment as a specified lay member by a deadline specified in the invitation.
- (3) A nomination made pursuant to an invitation under subsection (2) or (9) must—
  - (a) be in the specified form;
  - (b) be subscribed by 1 lay member;
  - (c) be accompanied by a written consent to the nomination by the person nominated; and
  - (d) be received by the Secretary by the deadline specified in the invitation.
- (4) A person is validly nominated as a candidate only if—
  - (a) subsection (3) is complied with in relation to the nomination;
  - (b) had the person been nominated as a candidate for an election on the date of nomination made under this section, the person would have been qualified under section 10 for being nominated for the election; and



- (c) the Permanent Secretary considers that the candidate represents the interests of patients.
- (5) On receiving a nomination, the Secretary must immediately forward the nomination and consent to the Permanent Secretary.
- (6) The Permanent Secretary must consider each nomination received and determine whether the person nominated is validly nominated as a candidate.
- (7) The Secretary must inform the person of the determination of the Permanent Secretary by a notice sent to the person's address stated in the nomination.
- (8) A determination under subsection (6) is final.
- (9) On the expiry of the deadline specified in an invitation under subsection (2)—
  - (a) if no candidate is validly nominated—the Secretary must issue to the lay members notices to further invite nominations from them;
  - (b) if the number of validly nominated candidates is the same as the number of vacancies—the Permanent Secretary must appoint the nominated candidates as specified lay members;
  - (c) if the number of vacancies exceeds the number of validly nominated candidates—
    - (i) the Permanent Secretary must appoint the nominated candidates as specified lay members; and
    - (ii) the Secretary must further invite from the lay members nominations of candidates for appointment as specified lay members to fill the remaining vacancies; or

- (d) if the number of validly nominated candidates exceeds the number of vacancies—the Secretary must immediately call a meeting among the lay members for the purpose of selecting the candidates for appointment to fill the vacancies.
  - (10) The following provisions apply in relation to a meeting held under subsection (9)(d)—
    - (a) the Chairman must preside at the meeting;
    - (b) only lay members (including the Chairman if the Chairman is a lay member) may vote at the meeting;
    - (c) the absence of any lay member other than the Chairman does not affect the validity of the selection;
    - (d) the selection must be made by secret ballot of the lay members present and the candidates who have obtained the highest number of votes are taken to be selected;
    - (e) proxy is not allowed at the meeting;
    - (f) the Secretary must draw lots to determine who is to be selected in the case of equal votes among the candidates; and
    - (g) the Secretary must declare which candidates are selected.
  - (11) The Secretary must immediately give notice of the result of the selection to the Permanent Secretary who must appoint the selected candidates as specified lay members.
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## **Part 11**

### **Transitional Provision**

#### **47. Transitional provision**

For the purposes of compiling the first electoral register under Part 2, an organization that is a company, a society or a branch of a society which meets the description in section 4(1)(a)(i)(A) or (B) is eligible to be registered if the Permanent Secretary is satisfied that, before the end of the application period, the organization has satisfied the requirements under section 4(1) except that it has not been such a company, society or branch for at least 2 years.

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## Schedule

[s. 2]

### Prohibited Practices

#### 1. Interpretation

In this Schedule—

- (a) a reference to a person includes an organization;
- (b) a reference to doing anything to, on or against a person includes doing it to, on or against an organization, its authorized representative or a member or officer of the organization; and
- (c) a reference to a person doing anything includes an organization, its authorized representative or a member or officer of the organization doing it.

#### 2. Meaning of *prohibited practice*

An act prohibited by section 3, 4, 5, 6, 7, 8, 9 or 10 of this Schedule is a prohibited practice for the purposes of sections 10(e), 16(d) and 35(a).

#### 3. Bribery or intimidation concerning candidacy

- (1) A person must not, directly or indirectly by himself or herself, or by any other person on his or her behalf, bribe or intimidate another person—
  - (a) to stand as a candidate at an election;
  - (b) to refrain from standing as a candidate at an election; or
  - (c) withdraw candidature after being nominated as a candidate at an election.

- (2) A person must not, directly or indirectly by himself or herself, or by any other person on his or her behalf, solicit or accept a bribe—
  - (a) to stand as a candidate at an election;
  - (b) to refrain from standing as a candidate at an election; or
  - (c) withdraw candidature after being nominated as a candidate at an election.
- (3) For the purposes of this section—
  - (a) a person bribes another if the person does any of those activities referred to in section 8 of this Schedule in relation to a person standing as a candidate;
  - (b) a person solicits or accepts a bribe if the person does any of those activities referred to in section 8 of this Schedule in relation to his or her standing as a candidate; and
  - (c) a person intimidates another if the person does any of those activities referred to in section 10 of this Schedule in relation to a person standing as a candidate.

**4. False statement concerning withdrawal**

A person must not, before or during an election, knowingly publish a false statement of a candidate's withdrawal of candidature at the election for the purpose of promoting or procuring the election of another candidate.

**5. False statement concerning candidate**

- (1) A candidate must not, before or during an election, for the purpose of promoting or procuring his or her election at the election, wilfully make or publish any false statement of fact in relation to himself or herself including but not limited to his or her character, qualifications or conduct.
- (2) A person does not contravene subsection (1) if the person establishes that he or she had reasonable grounds for believing, and did believe, the statement to be true.

**6. False claim of support**

- (1) A candidate must not, without reasonable excuse, before or during an election, for the purpose of promoting or procuring his or her election at the election, use or publish in any form the name or device of any person or organization, or a name or device which is substantially similar to the name or device of any person or organization, in such a way as to infer, or to be likely to cause, encourage or persuade any elector to believe, that the candidate's candidature is supported by that person or organization.
- (2) Subsection (1) does not apply if the candidate has obtained or received from the relevant person or organization his or her or its prior consent or permission in writing to the use or publication of the relevant name or device in connection with the election.
- (3) For the purposes of subsection (1), an oral consent or permission by any person or organization does not constitute a reasonable excuse.

**7. Personation**

A person must not at an election apply for a replacement ballot paper or declaration form under section 24 in the name of any other person.

**8. Bribery**

- (1) A person must not, in Hong Kong or elsewhere, without lawful authority or reasonable excuse—
  - (a) offer any advantage to a person or to any person on behalf of another person as an inducement to or reward for or otherwise on account of that person's voting or refraining from voting, or having voted or having refrained from voting at an election;
  - (b) offer any advantage to any person as an inducement to or reward for or otherwise on account of that person's procuring or endeavouring to procure the vote of another person at an election or the return of any person to be a member of the Council;
  - (c) solicit or accept any advantage as an inducement to or reward for or otherwise on account of his or her voting or refraining from voting, or having voted or having refrained from voting at an election; or
  - (d) solicit or accept any advantage as an inducement to or reward for or otherwise on account of his or her procuring or endeavouring to procure the vote of another person at an election or the return of any person to be a member of the Council.
- (2) In this section—
  - (a) **advantage** (利益) has the meaning given by section 2(1) of the Prevention of Bribery Ordinance (Cap. 201); and

- (b) a person offers, solicits or accepts an advantage if the person does any of the activities specified in section 2(2) of that Ordinance.

## **9. Treating**

- (1) A person must not, before, during or after an election, directly or indirectly by himself or herself, or by any other person on his or her behalf—
  - (a) give or provide, or pay wholly or in part the expense of giving or providing, any meal, drink, entertainment or provision to or for any person—
    - (i) for the purpose of influencing that person or any other person to vote or refrain from voting at the election; or
    - (ii) on account of such person or any other person having voted or refrained from voting at the election; or
  - (b) solicit, accept or take any such meal, drink, entertainment or provision.
- (2) The serving of non-alcoholic beverages incidental to a meeting is not prohibited by subsection (1).
- (3) The serving of meals of any kind incidental to a meeting is of itself *prima facie* taken to be an act prohibited by subsection (1).

## **10. Undue influence**

- (1) A person must not, directly or indirectly by himself or herself, or by any other person on his or her behalf, make use of or threaten to make use of any force, violence or restraint, or inflict or threaten to inflict, by himself or herself or by any other person, any temporal or spiritual



injury, damage, harm or loss upon or against any person on his or her behalf—

- (a) in order to induce or compel the person to vote or refrain from voting at an election; or
  - (b) on account of the person having voted or refrained from voting at an election.
- (2) A person must not, directly or indirectly by himself or herself, or by any other person on his or her behalf, by abduction, duress, or any fraudulent device or contrivance—
- (a) impede or prevent the free exercise of the rights of any person to vote at an election; or
  - (b) induce, compel or prevail upon any person either to vote or to refrain from voting at an election.
- (3) A person must not, directly or indirectly by himself or herself, or by any other person on his or her behalf, make use of or threaten to make use of any force, violence or restraint, or inflict or threaten to inflict, by himself or herself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce, compel or prevail upon the person to persuade any person to support or refrain from supporting a particular candidate at an election.

Ms. Elizabeth TSE  
Permanent Secretary for Food and  
Health (Health)

24 April 2018

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## **Explanatory Note**

This Regulation provides for matters relating to the election and appointment of lay members described in section 3(2)(ga) of the Medical Registration Ordinance (Cap. 161).

### **Registration of electors**

2. Part 2 provides for how an organization may apply for registration as an elector. An organization that wishes to be registered as an elector may, upon the announcement of compilation of electoral register, make an application in accordance with section 5. Section 6 provides that an electoral register is to be compiled before each ordinary election (further rounds of election excepted).

### **Notice of election**

3. Part 3 provides for matters relating to a notice of election. Section 9 provides that a notice of election must be issued before each election. Every notice of election must contain information described in section 9(2).

### **Nomination of candidates**

4. Part 4 provides for matters relating to nomination of candidates for an election. Section 10 sets out eligibility requirements for candidates to be validly nominated for an election.

## **Result of nominations**

5. Part 5 provides for matters relating to result of nominations of candidates. Section 18 provides that a poll is to be conducted in a contested election. Section 20 provides for what is to be done if no candidate is validly nominated or the number of vacancies exceeds the number of validly nominated candidates.

## **Polling**

6. Part 6 provides for matters relating to polling. In a contested election, a poll must be conducted by postal ballots. Sections 23 and 24 provide for the requirements relating to ballot papers and declaration forms which must be sent to the Secretary of the Medical Council of Hong Kong (*Secretary*) for casting votes.
7. Sections 29, 30 and 31 provide for what is to be done if a validly nominated candidate dies or becomes disqualified before the result of election is declared.

## **Result of election**

8. Part 7 provides for matters relating to declaration of the result of an election. Section 32(1) requires the Secretary to publish a notice in the Gazette to declare the result of an election. Under section 33, if an elected candidate fails or refuses to assume office, the Secretary may declare a next-in-line candidate to have been elected.

## **Documents and their disposal**

9. Part 8 provides for when election documents may be disposed of.

## **Election petition**

10. Part 9 provides for matters relating to an election petition. The result of an election may only be questioned by an election petition presented under that Part. Section 44 empowers the Medical Council of Hong Kong to regulate its procedure relating to an election petition.

## **Nomination for appointment**

11. Part 10 provides that a specified lay member may be appointed in accordance with section 46 if the unexpired term of office of a specified lay member is less than 1 year when the office becomes vacant.

## **Transitional provision**

12. Part 11 provides for transitional arrangement relating to the compilation of the first electoral register under the Regulation.

## **Schedule**

13. The Schedule provides for the meaning of *prohibited practices* under the Regulation.