

FOR IMMEDIATE RELEASE

**30 August, 2022**

George Town, Cayman Islands – Dr. Yaron Rado, Chief Radiologist and Chairman of the Board of Doctors Hospital, issued the following comment on the Cayman Islands Grand Court judgment handed down on 19 August 2022.

“In this judicial review, CTMH Doctors Hospital sought to challenge, firstly, the two-tier registration system for medical professionals practicing in the Cayman Islands, and secondly, the lawfulness of the substantial, and ongoing, financial concessions granted by the Government of the Cayman Islands (CIG) to Health City over a decade ago [and similar waivers offered to Aster Caribbean Holdings Ltd in 2020 to pave the way for a proposed new \$350 million hospital in West Bay].

In 2010, the UDP Government, committed this country to a long-term deal with the founder of Health City, Dr Devi Shetty. Two key inducements granted by the UDP Government to Health City were:

1. That Health City would be permitted to employ medical practitioners at its hospital notwithstanding that they did not possess the qualifications and experience to meet Cayman Islands registration requirements of the Health Practice Law.
2. That Health City would be exempt from paying certain customs duty, stamp duty and work permit fees for up to 50 years (and in some cases indefinitely).

### **Judicial review – promoting patient safety**

The first inducement given to Health City was achieved by a change to the Health Practice Law in 2011 to create a new category of doctor, namely the ‘institutionally registered’ practitioner.

Significantly, the institutionally registered practitioners did not need to be qualified and trained in one of the seven developed jurisdictions (UK, US, Canada etc). Instead, they could be permitted to practice if they had obtained qualifications from any medical school listed on the World Directory of Medical Schools, which aims to list every medical school in the world and does not endorse a minimum, or any, standard of medical education. Not only this, but the

newly revised law allowed institutionally registered practitioners to hold themselves out as specialists without needing to demonstrate specialist training, experience or expertise (which all other practitioners are required to do).

To safeguard patient safety, the practical mechanism by which institutional registration was implemented, was that Cabinet (as opposed to the Medical Dental Council) was given the power to 'designate' a health care facility as one permitted to employ institutionally registered doctors.

Incredibly, however, until Doctors Hospital's judicial review, Cabinet has been arbitrarily granting such designations (i.e., Health City and in later years also Total Health and the HSA) without reference to any particular policy or criteria and with no review mechanism in place. The effect of the absence of any criteria for designation is that Cabinet has permitted health facilities to employ doctors trained anywhere in the world without requiring that those facilities to have any systems or safeguards in place to guarantee that those doctors are properly supervised.

In April 2021, Doctors Hospital announced its intention to challenge the ongoing failure of CIG to properly regulate this new, second tier of medical practitioner, in the event that CIG did not formulate and publish an adequate criteria of safeguards which a facility must have in place in order to employ institutionally registered practitioners.

Remarkably, the initial response from CIG was that Doctors Hospital should apply to be designated. In other words, rather than address the absence of regulatory oversight of institutional doctors, CIG's response was to invite Doctors Hospital to apply to 'join the club'. Having no wish to participate in the perpetuation of lower standards, Doctors Hospital filed for judicial review to force CIG to formulate, publish and apply criteria for the proper regulation of designated institutions and their doctors.

We are delighted that Doctors Hospital's judicial review has succeeded in securing three crucial developments for the healthcare sector:

- a. A matter of days before the final hearing of the judicial review in April 2022, CIG conceded that criteria for 'designation' were necessary and has published "*Guidelines for Designation as an Institutionally Registered facility to employ practitioners on the Institutional Registration List*".

- b. On the second day of the final hearing, CIG conceded that since it had agreed criteria for designation were necessary, it must also concede that designated institutions must be reviewed at reasonable intervals to ensure they remain suitable places for employment and supervision of doctors on the institutional list.
- c. Finally, CIG was driven to concede that the correct interpretation of the Health Practice Act and Health Practice Regulations (as revised) must be that the educational qualifications for full registration and institutional registration are the same.

The Grand Court has added its approval to the above concessions by CIG and has recommended that the Legislature considers the need to amend the wording of the Health Practice Law and Regulations to make matters crystal clear “in this important area of patient safety.’

In summary, as a direct result of Doctors Hospital’s legal challenge, all doctors practicing medicine in Cayman must now meet the same, high standards before they may be approved to practice in the Cayman Islands and before they may hold themselves out as specialists in a particular field. This outcome is not just a win for the medical community and Doctors Hospital, but it is a victory for the people of the Cayman Islands who may now have greater confidence in their healthcare system.

### **Judicial review - power resides with the electorate**

The 2010 contract also purported to give Health City long-term stamp, duty and immigration permit fee waivers. For example, Health City would be exempt from paying any duty on medical equipment and supplies imported up to a value of US\$ 800 million: the duty on which would otherwise have been US\$ 176 million (22%).

CIG has considered itself bound by those contractual promises since the contract was signed in 2010. The result was that CIG gave away millions of dollars in revenue, which could otherwise have been spent on public services. The previous administration entered into a similar contract with Aster in December 2020.

Doctors Hospital claimed that these contractual promises were ineffective or unlawful because they fettered the Government’s duty to collect taxes according to the prevailing interests of the country. The Grand Court allowed that claim, holding that CIG’s powers to collect taxes cannot be fettered by long term contractual promises.

The effect of this is that CIG is now free to collect taxes from Health City and Aster, to the value of hundreds of millions of dollars.

The judgment is also significant beyond the health sector. CIG cannot give long term tax concessions to any company in any sector of the economy unless it obtains parliamentary approval.

Accordingly, the recent Grand Court ruling ensures that CIG is free to collect taxes from Health City and Aster and cannot commit to long term subsidies without parliamentary approval. This is exactly the outcome that Doctor's Hospital sought.