

**Written Representation by Professor Yu Tak Sun Ignatius
of the Department of Community and Family Medicine,
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on the Occupational Deafness (Compensation) (Amendment) Bill 2002**

1. Schedule 2 of the Ordinance should be amended to reflect the establishment of the Occupational Medicine Subspecialty in the Hong Kong Academy of Medicine

The Subspecialty of Occupational Medicine was formally set up in the Hong Kong Academy of Medicine under the Hong Kong College of Community Medicine in 2001. It is appropriate to amend Schedule 2 of the Ordinance to reflect this:

(d) 1 medical practitioner nominated by the *Occupational Medicine Subspecialty Board of the Hong Kong College of Community Medicine of the Hong Kong Academy of Medicine*;

A similar amendment to the Ordinance was made in 1998 with regard to the establishment of the Hong Kong College of Otorhinolaryngologist in the Hong Kong Academy of Medicine.

2. Reimbursement of expenses in relation to hearing assistive devices

The 1996 Working Group recommended the provision of a one-off compensation payment of \$15,000 to successful claimants for the costs of purchase and maintenance of assistive devices and/or other related services, and that the amount would be adjusted as and where the general levels of compensation were adjusted. This recommendation was not adopted by the Government in the 1998 amendment due to an unrealistically pessimistic projection of the financial situation for the Compensation Board (which was subsequently proven to be totally wrong). The proposed payment in the Bill should at least reflect the original recommendation. The amounts prescribed for the purposes of 27C(1) and (2) are unlikely to be enough for the proposed purposes. Since the payments will be in the form of reimbursement of actual expenses and the acquisition of hearing aids will require professional recommendation and guidance, the possibility of abuse will be minimum. The cost of a good and appropriate hearing aid may already exceed the proposed amounts prescribed for the purposes.

3. The percentage of permanent incapacity

3.1 There is no medical reason why the maximum incapacity for occupational deafness is being capped at 60%, whereas workers suffering from deafness as a result of occupational injuries or **other prescribed occupational diseases** under the Employees Compensation Ordinance are entitled to a maximum incapacity of 100%. This is a violation against the principle of fairness under the legal system.

- 3.2 In the United Kingdom, hearing impairment at 50 dB due to Occupational Deafness would be rated as having a disablement of 20% and the maximum disablement allowed for occupational deafness is 100%.
- 3.3 It is therefore suggested that the cap of 60% be removed and the table for permanent incapacity be adjusted upwards.

4. Specified noisy occupations

- 4.1 In the practice of Occupational Medicine or medicine in general, the diagnosis of a disease depends on the clinical processes of history taking (including occupational history), physical examination and laboratory tests. The decision on whether a history (including occupational exposure) corresponds with the clinical abnormalities detected through physical examination and laboratory tests to yield a certain diagnosis should depend on the examining doctor. It is unique and most unnatural that history taking be segregated from the physical examination by law in the diagnosis of an occupational disease. The current requirement of assessing “occupational entitlement” with prescribed occupations and prescribed durations of exposure as a prerequisite for the diagnosis of occupational deafness by the designated medical practitioner is against the principle of professional autonomy in medical practice.
- 4.2 If it is impossible to remove the requirement of “occupational entitlement” due to administrative reasons, then the requirement of the duration of employment (10 or 5 years) should be removed and the prescribed noisy occupations should be expanded to include all other occupations that would involve exposure to noise at a daily equivalent level of 80dB(A) [$L_{EP,d}$] or more as assessed by a specialist in Occupational Medicine. The first change is necessary as there is evidence to support that workers can develop occupational deafness with less than 5 years of exposure and the compensation systems in Singapore, US and Australia do not have such requirements. The second change is also necessary as exposures to noise levels of over 80dB(A) have been shown to cause hearing impairment (occupational deafness), and no prescribed list of noisy occupations can be exhaustive. There is also no prescribed list of noisy occupations in the Singapore compensation legislation. The relaxation of the requirements will not be abused as each case will still have to be reviewed and confirmed by the Medical Committee (with representatives from all relevant professional organizations) after considering the occupational history, physical examinations and the audiometry results, before compensation will be paid out.
- 4.3 In both reviews (1996 and 2000), the working groups recommended adding “new” noisy occupations to the list. It is understandable that any

such list cannot be exhaustive and any review process causes delay in recognition. Workers who genuinely had occupational deafness might suffer from not being compensated purely because of the failure on the part of the administration to recognize certain noisy occupations in the past.

5. The Board to conduct or finance rehabilitation programmes

This proposal is strongly supported. It is further recommended that the resources be allocated to provide or conduct pre-employment (pre-placement) and follow-up hearing tests for workers engaged in noisy occupations. Such medical surveillance programmes will help to prevent occupational deafness and reduce the future burden of occupational deafness on the compensation scheme and the society in general.

6. Other recommendations

6.1 The proposed improvement of the compensation scheme should have retrospective effect from the first launch of the Scheme, as early applicants have suffered as a result of the wrong projections on the part of the Government.

6.2 It is recommended that the Board provide regular (say every two to three years) reassessments for those workers who have received compensation but have to continue to stay in noisy jobs, and provide additional compensation for any further hearing loss after discounting the effect of ageing on hearing acuity. These workers may suffer further hearing loss as a result of their continued occupational noise exposure, unless the Labour Department can guarantee 100% that all workplaces are safe with regard to noise exposure. If the latter case were true, then no workers would have further deterioration of their hearing and no additional payments would be required even if repeated assessments were offered. On the other hand, the present one-off payment may result in injustice as it does not compensate any further possible hearing loss due to occupational exposure to noise. Under the current system, some exposed workers would wait until their retirement before claiming compensation, as their hearing level then would reflect the total amount of hearing loss due to occupational noise exposure, and the amount of compensation paid could be much higher. By deferring the initial assessment to retirement, the opportunity for better prevention would also be jeopardized.

6.3 According to the AMA (American Medical Association) Guides to the Evaluation of Permanent Impairments, hearing impairment begins when

the average of the hearing levels at 500, 1000, 2000, and 3000 Hz exceeds 25 dB in the worse ear. This is much different from the current qualifying hearing levels used in the present Scheme. It is proposed to adopt a qualifying hearing level that can better reflect the loss of hearing function and sufferings of the workers with noise induced hearing impairments than the current level of 40 dB loss in the better ear.