

LN161-e

Chinese Medicines Traders (Regulatory)

Regulation

(Made by the Chinese Medicine Council of Hong Kong under section 161(5) of the Chinese Medicine Ordinance (Cap. 549) with the approval of the Secretary for Health, Welfare and Food)

PART 1

Preliminary

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Health, Welfare and Food by notice published in the Gazette.

2. Interpretation

In this Regulation, unless the context otherwise requires---

"Board" (中藥組) means the Chinese Medicines Board established by section 12(b) of the Ordinance;

"Board chairman" (中藥組主席) means the chairman of the Board mentioned in section 14(a) of the Ordinance;

"Board secretary" (中藥組秘書) means the secretary of the Board appointed under section 23(2) of the Ordinance;

"Committee" (小組) means the Regulatory Committee of Chinese Medicines Traders established under section 25(1)(b)(iii) of the Ordinance;

"Committee chairman" (小組主席) means the chairman of the Committee mentioned in section 31(b)(i) of the Ordinance;

"Committee secretary" (小組秘書) means the secretary of the Committee;

"complainant" (申訴人) means a person from whom a complaint or information has been received by the Board under section 3;

"defendant" (被告人), in relation to a complaint or information, means a licensed Chinese medicines trader in respect of whom a complaint or information has been made;

"licensed Chinese medicines trader" (持牌中藥業者) means a Chinese medicines trader who holds a licence to which section 139 of the Ordinance applies.

PART 2

Procedures before the Board Holds a Meeting for

Considering a Case

3. Receipt and submission of complaint or information

(1) Any complaint or information alleging that the conduct of a licensed Chinese medicines trader is such that the Board may exercise powers under section 139 of the

Ordinance shall be made or given to the Board.

(2) Where a complaint or information is received by the Board under subsection (1), the Board secretary shall submit the complaint or information to the Committee for investigation and consideration in accordance with the procedures laid down in this Regulation.

4. Clarification and support for complaint or information

(1) The Committee chairman may---

- (a) require the complainant to set out in writing the specific allegations constituting the complaint or information and the grounds for the allegations;
- (b) require the complainant to make clarifications or furnish evidence about the complaint or information;
- (c) direct the Committee secretary to seek any legal advice or any necessary assistance or advice from any relevant authorities with regard to the evidence about the complaint or information; and
- (d) require that any allegation in the complaint or information be supported by one or more statutory declarations, unless the complaint or information is in writing and made by a public officer in the discharge of his duties.

(2) A statutory declaration referred to in subsection (1)---

- (a) shall state the name, address and the Hong Kong Identity Card number or details of another document of identification of the declarant; and
- (b) shall state all the facts of the complaint or information to the best of the declarant's knowledge, or if any fact declared is not within his personal knowledge, state the source of the declarant's information and the grounds for his belief in the truth of those facts.

5. Submission of case to Committee

(1) Where the Committee chairman considers that---

- (a) all further clarifications, evidence and statutory declarations that are necessary to enable the Committee to consider the complaint or information have been furnished; or
 - (b) it is impracticable to seek further clarifications, evidence or statutory declarations,
- he shall fix a date for the Committee to consider the complaint or information.

(2) When the Committee chairman has fixed a date under subsection (1), he shall arrange to notify the defendant in writing at least 1 month before the date fixed---

- (a) of the receipt of the complaint or information, and of any allegations that constitute the complaint or information; and
- (b) of the date on which the Committee will meet to consider the complaint or information.

(3) A notification under subsection (2) shall be accompanied by---

- (a) a copy of the complaint or information;
- (b) a copy of any statutory declaration furnished under section 4(1)(d); and
- (c) an invitation to the defendant---

(i) to submit in writing not less than 7 days before the meeting to the Committee any explanation for his conduct or for any matter alleged in the complaint or information, any representations or any statement in mitigation; and

(ii) to attend the meeting to make oral representations, if necessary.

(4) If the Committee chairman considers that in the particular circumstances of a case it is desirable that any personal particulars of any person contained in any documents mentioned in subsection (3)(a) or (b) should not be disclosed to the defendant, he may arrange for such necessary obliteration or other editorial modification of the copies of those documents to be supplied to the defendant so that those personal particulars are not disclosed.

6. Consideration of complaint, etc. by Committee

(1) A meeting of the Committee to consider a complaint or information shall be held in private.

(2) Within a reasonable period before any meeting of the Committee to consider a complaint or information, the Committee secretary shall provide all members of the Committee who will consider the complaint or information with copies of all the documents relating to the complaint or information that he has received.

(3) The Committee may postpone its consideration or decision of a complaint or information, in whole or in part, to such date or adjourn a meeting from time to time as it thinks fit.

(4) Where the Committee considers that any allegations notified to the defendant under section 5(2) should be amended, the Committee may direct the Committee secretary to---

- (a) make the amendment;
- (b) advise the defendant of the amendment; and
- (c) invite him to submit any further explanation, representations or statement in mitigation.

(5) Before coming to a decision regarding a recommendation to the Board under subsection (7), (8) or (9), the Committee may cause to be made such further investigations or further clarifications from the defendant with regard to the case being considered by the Committee and with regard to his explanation, representations and statement in mitigation, and may seek such additional advice or assistance as it considers desirable.

(6) The Committee shall, having regard to any explanation, representations and

statement in mitigation provided by the defendant and all the materials before it, consider the case.

(7) If the Committee is of the opinion that the conduct of the defendant is such that the Board may exercise powers under section 139 of the Ordinance, the Committee shall recommend to the Board accordingly.

(8) If the Committee is of the opinion that the case may be adequately disposed of by the Committee issuing a letter of advice to the defendant regarding the subject matter of the complaint or information against him and without the Board exercising its powers under section 139 of the Ordinance, the Committee shall recommend to the Board accordingly.

(9) If the Committee is of the opinion that---

(a) the matter of which the defendant is alleged, even if proven to be true, does not affect his practice as a licensed Chinese medicines trader;
(b) the complaint or information is frivolous or groundless;
(c) the defendant has ceased to be a licensed Chinese medicines trader; or
(d) the complaint or information has previously been considered and disposed of by the Committee and no additional information has been provided,
it shall recommend the Board not to exercise its powers under section 139 of the Ordinance.

(10) The Committee shall by written notification submit the case to the Board for consideration as to the exercise by the Board of powers under section 139 of the Ordinance specifying---

(a) the findings of the Committee;
(b) the recommendation of the Committee as to the exercise by the Board of powers under section 139 of the Ordinance; and
(c) the reasons for making the recommendation.

7. Date to be fixed for Board meeting for consideration of complaint or information

(1) On receipt of a notification under section 6(10), the Board chairman shall fix the date of the meeting of the Board for considering the complaint or information.

(2) Unless the Board directs a shorter period of notice to which the defendant has consented in writing, the Board secretary shall, within 2 months of the receipt of the notification under subsection (1) and at least 1 month before the date fixed for the meeting under that subsection, serve on the defendant a notice of meeting together with a copy of this Regulation and shall inform the complainant of the date.

(3) A notice of meeting served under subsection (2)---

(a) shall specify the matters in respect of which the meeting is to be held;
(b) shall state the date, time and place at which the meeting is to be held; and
(c) shall include a summary of the findings, recommendations and reasons for the

recommendations of the Committee.

(4) The Board may invite the defendant---

- (a) to submit in writing not less than 7 days before the meeting for the Board's consideration any explanation, representations or statement in mitigation; and
- (b) to attend the meeting to make oral representations, if necessary.

8. Consolidation of complaints

(1) Where the Board secretary receives any further complaint or information that he thinks is similar in nature to a complaint or information before the Board against the same defendant, he shall submit it to the Committee as soon as practicable.

(2) Upon the notification under section 6(10) by the Committee to the Board of any further complaint or information against the same defendant, the Board may direct that---

- (a) the further complaint or information or any part thereof be considered at the same meeting that the Board is to hold in respect of the defendant, and where the Board makes that direction, evidence relating to the further complaint or information may be introduced at the meeting; and
- (b) the notice of meeting be amended accordingly and served on the defendant within such period of time as may be specified in the direction.

9. Amendment of notice of meeting

(1) Where before the opening of the meeting or in the course of the meeting, it appears to the Board chairman that a notice of meeting is defective, the Board chairman may give such directions for its amendment as he thinks necessary to remedy the defect unless, having regard to the merits of the case, he thinks that to make the required amendment will be unjust to the defendant.

(2) The Board secretary shall, as soon as it is practicable after a notice of meeting has been amended under subsection (1), give notice of the amendment to the defendant and to the complainant.

PART 3

Procedures of Meeting Held by the Board for Considering Complaint or Information

10. Procedures of meeting

At a meeting for consideration of any complaint or information, the Board secretary shall put before the Board---

- (a) a copy of the notice of meeting served on the defendant;
- (b) the written notification mentioned in section 6(10);
- (c) the complaint or information received;
- (d) any statutory declaration received in respect of the complaint or information;
- (e) any written explanation, representations or statement in mitigation submitted

by the defendant; and

(f) any evidence obtained or any document, statement or report concerning the case or any matter in the nature of evidence relevant to or in support of the complaint or information and which is available.

11. Adjournment of meeting

(1) The Board may postpone its consideration or determination of a case, in whole or in part, to such date or adjourn a meeting from time to time as it thinks fit.

(2) The Board secretary shall, when he is so directed by the Board chairman, give notice of a postponement or adjournment to the defendant and to the complainant as directed.

12. Deliberation of the Board

(1) In the taking of the votes of the Board on any matter to be decided by it, the Board chairman shall call upon the members to signify their votes and shall thereupon declare the decision of the Board in respect of such matter.

(2) Where the decision of the Board so declared by the Board chairman is challenged by any member of the Board, the Board chairman shall call upon each member severally to declare his vote, declare his own vote and announce the number of members of the Board who have voted each way, and the result of the vote.

(3) No person other than members of the Board and the legal adviser to the Board may be present when the Board votes on any matter.

13. Informing defendant of the Board's decision

(1) The Board secretary shall cause to be served on the defendant a notice in writing of the Board's decision and the reasons for the decision.

(2) Where the Board decides to issue a warning to the defendant under section 139(2)(d) of the Ordinance, the Board secretary shall cause to be served the warning together with the notice under subsection (1) on the defendant.

(3) Where the Board decides that a case is to be disposed of by the Committee issuing a letter of advice to the defendant, the Board secretary shall inform the Committee who shall act accordingly.

14. Suspension or revocation of licence not to take immediate effect

A decision of the Board to suspend or revoke a licence under section 139(2)(a) or (b) of the Ordinance shall not take effect ---

(a) until after the expiry of the time within which an appeal may be lodged under section 141(1) of the Ordinance; or

(b) in the case of an appeal having in fact been lodged under section 141(1) of the Ordinance, until after a decision of the Court of First Instance has been made.

15. Board not required to inquire into conviction

When considering a record of conviction of a Chinese medicines trader for the

purposes of section 139 of the Ordinance---

(a) the Board shall not be required to inquire into the question as to whether the licensed Chinese medicines trader was properly convicted; but

(b) the Board may consider any record of the case in which such conviction was recorded and any other evidence that may be available and is relevant as showing the nature and gravity of the offence.

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30 October 2002

Explanatory Note

This Regulation provides for the procedures to be adopted by the Regulatory Committee of Chinese Medicines Traders and the Chinese Medicines Board in dealing with complaints or information against licensed Chinese medicines traders under the Chinese Medicine Ordinance (Cap. 549).