

1

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Views presented to Legislative Council's Panel on Undesirable Medical Advertisement (Amendment) Ordinance

It is wrong to regulate health claim on orally consumed products under the same Ordinance that was designed to regulate medical products. This Ordinance (UMAO) was implemented many years ago, that today, it may even be outdated and needed to be revised.

We are very disappointed that our Government is using a convenient measure, a ready to go, existing Ordinance to solve a complicated issue that we are debating this afternoon. It will be extremely unfortunate if, as a result, our Government kills the development of health supplements in Hong Kong. A thorough and detailed investigation is needed.

Health supplements is a new and growing industry that is recognized to be important in the improvement of health. Our government should encourage genuine health claims and clamp down on false claims. We must not prohibit the advertisement of it because our Government and some legislators believe some advertisers are making exaggerated claims, and without proper substantiation, claiming that the public may delay medical treatment. Advertisement by its nature is exaggerating. If you feel the advertisement is exaggerating, you should seek substantiation from the advertisers and educate them not to mislead the public. If you feel "delay in medical treatment" is a problem, a proper Disclaimer pertaining to the claim as a temporary measure will be sufficient. And most importantly, the large majority, probably 99.9% or more, of health supplements or any other orally consumed products with health claims are for improvement of health and to help prevent illness. They are not for treatment of diseases.

Our views are:

1. The current proposal of regulating orally consumed products under UMAO is wrong. UMAO shall only regulate medical products.
2. The current proposal of empowering the Director of Health to appoint any public servants as inspectors to enter and search and take possession of property is unacceptable.
3. The current proposal of allowing Director of Health to make amendments to the Schedules is unacceptable.
4. Substantiated health claims on orally consumed products shall be allowed.
5. False or misleading health claims shall be prohibited.

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2

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We strongly recommend the Government to:

1. Withdraw the current proposal.
2. Carry out a detailed Regulatory Impact Assessment (RIA) to include the assessment of:
 - a. The merit of allowing health claims for orally consumed products:
 - i. Improvement of health of the public
 - ii. Health care cost savings
 - Etc.
 - b. The negative consequence of over regulating:
 - i. Restriction on consumer choices and consumer right to know
 - ii. Negative impact on the economy and the trade
 - Etc.
3. Form a new committee to investigate and propose how best to manage orally consumed products for the well being of the public. The committee **MUST NOT** just consists of doctors and pharmacists with one nutritionist as in the Expert committee set up in 2002.

This new committee should include equal representation from the health professionals as in the first Expert Committee, together with the related food and health supplements industries, advertising industry, academia or expert in health supplement, policy maker and lawyer.

The objective of the committee should be to establish a new harmonized regulation for health claim of orally consumed products to:

- a. To better protect the consumer when health claim is made.
 - b. To facilitate useful information and substantiated health claims of orally consumed products to reach the consumer.
4. Review the current UMAO to ensure that it will only regulate medical products.

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Views on Regulation of Health Claims – Consultation Document, September 2003 relating to the Undesirable Medical Advertisement (Amendment)

The proposed Regulation of Health Claims has substantial impacts on the health foods and foods industries. We hereby urge our Government and Legislators to evaluate the impacts carefully before imposing any regulations on health claims of health foods and/or orally consumed products.

We would like to address some questions to our LegCo Members. It is easy to propose and pass new regulations on health claims under the general premise of "protecting the public". However,

Are you aware of the impacts to the related industries? Examples: manufacturers, wholesalers, retailers, advertising companies, advertising media, printing companies, etc?

Are you aware of the impacts to the economy of Hong Kong? How many people may lose their jobs, their families, the spiral effect on spending and the economy?

Are you aware of the actual benefit/harm to public by imposing new regulation on orally consumed products or health foods? How severe is the problem? Is it justified allocating major funding to regulate and control?

Are you aware of the magnitude of resources needed to enforce a workable regulation on health claims on health foods/foods effectively?

Regulating only claims may not be sufficient, are you aware of the cost needed to regulate health foods?

Have you consider if the Hong Kong Government has the resources available to properly regulate the issue? Can we afford it?

Have you consider the time needed to evaluate, research in arriving at a workable solution?

Are you aware that the Department of Health is probably being assigned a task that, if carry out effectively, is beyond their current capability? The concerned parties will fully understand the issues and will be sympathetic to the Government agency being assigned an unreasonable task with limited resources?

Are you aware that when the regulations are imposed, the blame of losing jobs and business suffered will rest on the Legislator that proposed it and the Legislators

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2

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approved it? The impact of the regulation will definitely be substantial or it wouldn't be effective. You, the Legislators, will be blamed for the damage and the argument of "protection of the public" will vanish when the ones intended to be protected really cannot feel the benefit and the ones hurt by it will rise against the Legislators pushing the issue without considering the consequences.

We would be grateful if our LegCo members will consider our questions carefully before approving new regulation that will affect our general economy. We herewith provide our views and suggestions for your consideration.

1. Treat Health Foods and Medicinal products differently

There is no universally accepted definition of health foods. In the discussion hereafter, health foods will mean complementary medicines, health supplements, nutraceuticals, dietary supplements and natural health products that other countries had defined under their laws and regulations.

With reference to the Consultation Documents, September 2003, the Department of Health (DOH) cited examples on regulation of health claim and regulation of health foods in other countries. DOH clearly pointed out that none of the countries cited, including Mainland China, regulate health foods with the same practice as drugs and medicinal products. It is also clear that none of the countries, although have advertising laws similar to our Undesirable Medical Advertisement Ordinance (UMAO), use the same set of advertisement laws for health foods and medicinal products. For examples, UK and China prohibit the advertisement of medicinal products available on medical prescription only.

We, therefore, suggest that health foods must NOT be treated as same as medicinal products. The UMAO must NOT be applied to health foods.

2. Compare with Regulations of Health Foods in other countries

DOH clearly indicated that there is no international consensus on regulation on so-called health foods or health claims. It is also clear that the regulations, and even the definition, of health foods are very complicated and imperfect. The countries cited in the DOH Consultation Document allow medical claims if the claims are either approved or substantiated. Please keep in mind that all such approval processes require substantial governmental involvement. The resources available to the governmental agencies in the countries cited are relatively much more than our Hong Kong Government. Resources mean monetary funding support, research and

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3

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laboratory facilities, technical and supporting staffs, etc. If the resources of our DOH are not adequate, Legislative Council must careful consider the additional resources needed. We will strongly object to the Government and the Legislative Council if the burden of cost is forced upon related private industries. If the Government want to regulate, the Government should absorb the full cost for the "protection of the public". We believe our current DOH is not equipped to take on such a huge task of regulating hundreds of thousands or even millions of products being or will be sold in the market

We, therefore, suggest that the DOH, Legislative Council and related government agents must careful evaluate if Hong Kong has adequate resources as compared to the major countries cited before imposing any form of approval process of regulation. And, if resource is not adequate, what is the magnitude of the additional resources needed?

3. Evaluate the severity of the "Delay of Seeking Medical Advice" caused by Health Claims

The major concern of DOH's Consultation Documents on health claims is the possibility of delaying the public from seeking proper medical advise and management. We would like to know how many documented case studies are there in Hong Kong reporting the public believed in the claims on health foods resulting in critical consequences (deformation, irreversible damage to organ or body parts, death, etc) or may be, to a lesser extent, requiring more medical treatment. Is the number of such documented case studies justified a ban on making certain or all health claims? Is it merely the fact that the consumers are not happy wth the results or the products are not effective according to the health claims because the claims are "exaggerated"? If so, the same advertising rules as proposed in the Consultation Document must applied to ALL advertisements on ALL products, consumable, non-consumable and even government advertisements. Using government advertisements as examples:

Is the policeman really the policeman's image portrayed in the advertisement?

Is Hong Kong really that beautiful and clean as portrayed in our tourist promotional and Hong Kong promotional film?

Are the public really that happy as portrayed by the few celebrities in the Hong Kong promotional film? Are the celebrities themselves really that happy and are they representative of the average citizen of Hong Kong?

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4

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Would it be possible that the public viewed the balance diet, proper exercise promotional film may be misled to believe that following such advises is all you need to remain healthy and not to seek medical help ever?

Where do you draw the line? How do you judge the intelligent level of the public in knowing what is exaggerated and not exaggerated?

Risk level of the claimed functions seems to be a major consideration in allowing or disallowing health claims. Cough medicines, cold medicine, antipyretic and analgesic are common OTC drugs that health claims can be made. These products are allowed to make health claims on their functions. However, coughing, fever and pain are symptoms to serious medical conditions, such as Tuberculosis, SARS, cancer, etc. Could there be a possibility that the health claims of said OTC medications may lead to delay in seeking medical advise of such serious life threatening conditions? Again, we ask our DOH, where do we draw the line?

We, therefore, suggest the DOH, the Legislative Council and other government agents to comprehensively evaluate the severity or the extent of the public believed in the health claims resulting in delay in seeking medical advise and management. We believe that in the 21st century, the general public is intelligent enough to know that advertisement are exaggerating and not totally believe in a health food's claims resulting in delay in seeking medical advise. However, we believe an appropriate Disclaimer Statement pertaining to the health claims or health foods to prevent the public from not seeking medical advice is needed.

4. Spend more time and resources to reach "Appropriate" Regulations

With "substantial increase in funding" support, DOH can probably manage to enforce "appropriate" regulation on health claims of openly available health foods. We would like to elaborate and emphasize "substantial increase in funding" and "appropriate" regulation. The health foods (nutraceuticals) market in United States is over US\$ 77 billions. The health foods market in other developed countries are also huge. The large majority of food products, including health foods, in Hong Kong are imported from all over the world. Since Hong Kong is a free port, the number of health foods products that could potentially be available in Hong Kong will include all products from United States + European countries + China + the rest of the world. You can image the number of health foods products that can potentially be made available in Hong Kong. DOH is relatively small compare to their counter parts in other developed countries. Thus, it is our common sense that "substantial increase in funding" is needed for our government to form a government agent with equal capability as the other developed countries. In discussion with colleagues in the

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5

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health foods industries, they indicated that even developed countries have difficulties regulating health foods. As DOH stated in the Consultation Documents, there is no international consensus on the regulation of health foods. This statement reinforces our colleagues' comments that it is difficult to regulate health foods. It can also be interpreted as: A set of universally recognized "appropriate" regulations does not exist. An easy solution is to ban the sales of health foods. When this cannot be done, ban or prohibiting some claims on advertisement of such health products seems to be a manageable alternative. Our question is: Is this manageable alternative the only "appropriate" regulatory tool?

We, therefore, respectfully ask our Legislators not to pressure the DOH to come out with a solution quickly. This is a difficult task and we, respectfully, ask the DOH to spend more time and resources in arriving at "appropriate" regulations.

5. Include more non-medical / pharmaceutical professionals in the Expert Committee

The DOH's Consultation Document stated that an Expert Committee was formed consisting of Consumer Council's representative, Chinese medicine practitioners, medical practitioners, pharmacists and a (one) nutritionist in 2002 to study and recommend a list of health claims to be prohibited in orally consumed products. If our interpretation is correct, "a" nutritionist means "one" nutritionist. Why only one nutritionist and the rest of the professionals are medical professionals? Are the medical professionals necessarily expert of health foods? It is our opinion that treating health foods as medical products is not acceptable. Prohibiting health claims merely based on recommendation of a panel of medical experts is not the solution.

We, therefore, request the DOH to form a Regulation Review Committee to further study the appropriate regulation on health foods and their claims. In addition to the medical professional, this committee should include representatives from the related food industry, health foods industry, retailers, advertisers and lawyers, etc.

6. Strike a balance between Protection of public and Freedom of choice / Advertisement

We agree with the DOH that a balance has to be struck between "protection of public" and "freedom of choice by consumers". Advertisement, according to the Dictionary, is a notice designed to attract public attention. It is a mean to inform consumers the availability of choices. Advertisement, by its nature, tends to be exaggerating. Health foods, dependent on your definition, can include everything orally consumed. If you impose unwarranted constraints on advertisement of health foods, you will restrict the freedom of choices to a vast number of products. The

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6

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success of Hong Kong's economy originated from the free port/free trade principal. Please do not restrict our freedom unless it is absolutely necessary. Please also keep in mind that health foods are not pharmaceuticals. A lot of them are already consumed regularly in our normal diet. Advertisement is just a tool to bring out (exaggerate) the natural benefit of these health foods. Besides, have you considered the damage to advertising companies, advertising media (newspaper, magazine, TV, printer, MTR, etc) if you restrict the freedom to advertise health foods?

We, therefore, suggest the DOH, Legislative Council and related government agents to seriously consider "THE BALANCE BETWEEN PROTECTION OF THE PUBLIC AND FREEDOM OF CHOICE BY CONSUMER AND FREEDOM OF ADVERTISEMENT." We further suggest that the focus of protecting the public in terms of advertisement should be on "untrue or deliberately untrue claims", NOT exaggerating claims.

7. Minimize the impact on the Economy of Hong Kong

Health Food is a worldwide growing market. In Hong Kong, it accounts for a significant share of sales in health and beauty retailers, such as Manning and Watson's. In our advertising media business, health foods accounts for a substantial shares of their income. Importers, wholesalers, retailers, logistic providers, advertisers relating to health foods will all suffered if new regulation on a growing business like health foods is deterred from growing in Hong Kong. Under the premise of protecting the public, such economic consideration may only be a minor consideration for DOH since its major role is to protect the public. Our legislators, however, have a much more versatile role. A balance between protecting the public and the economic impact must be a vital consideration. It is not likely to be the responsibility of DOH in evaluating the economic impact. To our LegCo members, we would like you to study the potential merits of various levels of regulatory actions in comparison to the various levels of economic impacts. It is the responsibility of the LegCo member proposing and the LegCo members approving the new regulation to find out, by themselves or through government agents, the potential economic impacts on health foods and its related business. Some of the public you intended to protect may lose their jobs, have their salary reduced and have their company got bankrupt; we hope our LegCo members are prepared to answer to this segment of the public. Some of the public you intended to protect may feel you are stripping them the right to know.

We, therefore, request our LegCo members to weigh the actual merit in any regulations proposed by the DOH against the economic impact before deciding on their votes to the issue.

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7

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Last but not least, we would like to summarize our recommendations as follow:

1. To protect the public, DOH should consider as the first step using a Disclaimer or Qualified Statement in all forms of advertisement of health claims of orally consumed products and/or health foods.
2. DOH to study the possibility of using existing law or regulation to protect the public from untrue or deliberately untrue health claim. Such existing laws may not have been exercised for a long time. The trade must be informed that such laws will be enforced vigorously, if they are to be enforced vigorously.
3. Health claims of Health Foods must not be placed under the same regulatory measures as pharmaceutical products.
4. DOH must clearly define what is considered as health foods and what is considered as orally consumed products.
5. Labelling requirement would most likely be a crucial part of the regulation. From ease of trading, we suggest DOH to consider the possibility of incorporating the labelling requirement in China.
6. We urge our Legislators to careful consider our views as stated earlier in approving new regulations and the DOH to include our views on their evaluation of health claims.

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