

**Bills Committee on
Certification for Employee Benefits (Chinese Medicine)
(Miscellaneous Amendments) Bill 2005**

**Administration's Response to Issues Raised
at the Bills Committee Meetings Held on
16 December 2005 and 17 January 2006**

Introduction

This paper provides the Administration's response to issues raised by Members of the Bills Committee on the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Bill 2005 ("the Bill") at the Bills Committee meetings held on 16 December 2005 and 17 January 2006.

Proposed Committee Stage Amendments (CSAs)

2. At the Bills Committee meeting of 16 December 2005, Members suggested that (A) the Chinese version of the proposed section 33(6)(b)(i) of the Employment Ordinance (Cap. 57) (EO) should be revised; and (B) references to "medical practitioner" in the Employees' Compensation Ordinance (Cap. 282) (ECO) should be replaced by references to "registered medical practitioner".

(A) Section 33(6)(b)(i) of the EO

3. We have re-considered section 33(6)(b)(i) of the EO and intend to refine both the English and Chinese versions of the provision to enhance its clarity. Please see the proposed Committee Stage Amendments ("CSAs") to Clause 7(6) of the Bill at Annex A.

(B) Alignment of references to the term "registered medical practitioner" in the three Ordinances covered in the Bill

4. The ECO and the Pneumoconiosis (Compensation) Ordinance (Cap. 360) (PCO) are, at present, legally in order and are consistent in the use of the term “medical practitioner”. The meaning of “medical practitioner” is construed on the following basis -

- (i) Section 3 of the ECO contains the relevant definition:
“medical practitioner” (醫生) means a medical practitioner who -
 - (a) is registered under the Medical Registration Ordinance (Cap. 161); or
 - (b) is deemed to be a registered medical practitioner by virtue of section 29(a) of the said Ordinance.

- (ii) There is no definition of “medical practitioner” in the PCO. The reader can rely on the definition in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), which says :
“medical practitioner” (醫生), “registered medical practitioner” (註冊醫生) and any words importing that a person is recognized by any Ordinance to be a medical practitioner in Hong Kong or a member of the medical profession in Hong Kong, mean a person duly registered as, or deemed to be registered as, a medical practitioner under the Medical Registration Ordinance (Cap. 161).

5. The EO, the ECO and the PCO are separate ordinances, each with its own purpose and each to be interpreted as a self-contained ordinance. On the other hand, we also understand that the EO and the ECO are two labour ordinances that are most frequently used by the general public. The use of different expressions in the EO and ECO to mean the same thing may create doubts to the layman. Amending the term “medical practitioner” in the ECO to read “registered medical practitioner” for the purpose of consistency with the terminology adopted in the EO may thus be useful in making the ordinances easier to understand. Relevant amendments will therefore be made to the ECO. The PCO will be amended similarly. Please refer to Annex A for details of the proposed amendments.

Proprietary Chinese medicines

6. At the meeting held on 17 January 2006, a Member expressed concern over the regulation of proprietary Chinese medicines (pCms) that are exempted from registration by virtue of section 158(6) of the Chinese Medicine Ordinance (Cap. 549) (CMO).

7. A paper provided by the Department of Health setting out the background of exempting certain pCms from registration and the relevant regulatory mechanism is attached at Annex B.

8. We would also like to explain the principle of including pCms in the Bill. Section 10A of the ECO specifies the situations where medical expenses shall be payable by an employer for the medical treatment in respect of the injury sustained by his employee at work. It is the intent of the ECO that the cost of medicines incurred in respect of such medical treatment should also be reimbursed to an injured employee. Indeed, “medical expenses” is currently defined in section 3 of the Ordinance to include the cost of medicines. In proposing to recognise the medical treatment given by registered Chinese medicine practitioners (CMPs) under the Ordinance, we adopt the same principle so that where an employee is prescribed Chinese medicines permissible by the law, the cost of such medicines would also be reimbursable.

9. It is common knowledge that people who seek Chinese medicine treatment will normally be prescribed Chinese herbal medicines or pCms. While the new section 10AB(6) of the ECO aims to cater for situations where Chinese herbal medicines are prescribed, section 10AB(5) seeks to cover all those pCms the administration or supply of which is permissible under the CMO. The purpose of including such amendments in the Bill is thus to accord employees who are injured at work the right to claim reimbursement of the cost of medicines where the pCm(s) administered or supplied to him is permissible under the law, just as he would have the right to do so if he is administered or supplied with Chinese herbal medicines or western proprietary medicines permitted by the law.

10. According to a survey of injured workers conducted by the

Labour Department in 2003, some 68% of respondents who sought Chinese medicine treatment were treated by bone-setters. As it is the trade practice of bone-setters to supply patients with pCms compounded either by themselves or by manufacturers entrusted with their prescriptions, reimbursement of the cost of such medicines is highly appropriate to injured workers.

11. We would also propose to add in the Bill an additional type of pCms compounded by manufacturers in situations which are broadly similar to that of the aforesaid pCms exempted from registration under section 158(6) of the CMO. This type of pCms, as mentioned in section 37 of the Chinese Medicines Regulation (Cap. 549 sub. leg. F), is compounded by manufacturers entrusted with the prescriptions of a registered CMP and administered/supplied to patients under the direct care of the attending registered CMP. To ensure that employees injured at work are able to reimburse the cost of all medicines legally administered/supplied to them, we would also propose to render this type of pCms reimbursable for the benefit of injured workers. The same would be applied to the PCO. Proposed amendments to clauses 15 and 24 of the Bill are provided in Annex A.

Economic Development and Labour Bureau
February 2006

**Certification for Employee Benefits (Chinese Medicine)
(Miscellaneous Amendments) Bill 2005**

**Proposed Committee Stage Amendments
to be moved by the Secretary for Economic Development and Labour**

<u>Clause</u>	<u>Amendment Proposed</u>
7(6)	<p>In the proposed section 33(6)(b)(i) –</p> <ul style="list-style-type: none">(a) in sub-subparagraph (B), by deleting “a registered medical practitioner who is not engaged by the employer for the purposes of the scheme” and substituting “any registered medical practitioner”;(b) in sub-subparagraph (C), by deleting “a registered Chinese medicine practitioner who is not engaged by the employer for the purposes of the scheme” and substituting “any registered Chinese medicine practitioner”;(c) in sub-subparagraph (D), by deleting “a registered dentist who is not engaged by the employer for the purposes of the scheme” and substituting “any registered dentist”;(d) in sub-subparagraph (E), by deleting “a registered medical practitioner, registered Chinese medicine practitioner or registered dentist not engaged by the employer for the purposes of the scheme” and substituting “any registered medical practitioner, registered

Chinese medicine practitioner or registered dentist”.

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- (a) By deleting subclause (1)(a) and substituting –
 - “(a) by repealing subparagraph (i) and substituting –
 - “(i) the fees of a registered medical practitioner, registered Chinese medicine practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist;”,.”.
- (b) By adding –
 - “(1A) Section 3(1) is amended by repealing the definition of “medical practitioner”.”.
- (c) In subclause (2), by deleting everything after “paragraph (a),” and substituting –
 - “by repealing “medical practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist” and substituting “registered medical practitioner, registered Chinese medicine practitioner, registered dentist, registered chiropractor, registered physiotherapist or registered occupational therapist”.”.
- (d) In subclause (3), by adding immediately after the

proposed definition of “registered chiropractor” –

““registered medical practitioner” (註冊醫生)

means a medical practitioner who –

- (a) is registered under the Medical Registration Ordinance (Cap. 161); or
- (b) is deemed to be a registered medical practitioner by virtue of section 29(a) of the said Ordinance;”.

13 By deleting everything after “amended” and substituting –
“by repealing “medical practitioner” and substituting
“registered medical practitioner, a registered Chinese
medicine practitioner”.”.

14 (a) In subclause (1), by deleting everything after
“amended” and substituting –
“by repealing “medical practitioner” and
substituting “registered medical practitioner,
registered Chinese medicine practitioner”.”.

(b) In subclause (4), in the proposed section 10A(5B)(a), (d)
and (e), by adding “registered” before “medical
practitioner”.

15 In the proposed section 10AB –

- (a) in subsection (3)(a), by adding “registered”
before “medical practitioner”;
- (b) in subsection (5) –

- (i) in paragraph (c), by deleting “or”;
- (ii) by adding –
 - “(ca) is exempted from registration by virtue of section 37 of the Chinese Medicines Regulation (Cap. 549 sub. leg. F); or”;
- (c) in subsection (9), by adding “registered” before “medical practitioner” where it first appears.

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- (a) In subclause (2), in the proposed section 16(1B)(a)(i) and (b), by adding “registered” before “medical practitioner” wherever it appears.
- (b) In subclause (3), by deleting everything after “amended” and substituting –
 - “by repealing “upon that medical practitioner” and substituting “upon the registered medical practitioner, registered Chinese medicine practitioner or registered dentist concerned”.”.
- (c) In subclause (5), in the proposed section 16(3), by adding “registered” before “medical practitioner” where it first and secondly appears.
- (d) In subclause (9), by deleting everything after “amended” and substituting –
 - “by repealing “medical practitioner” and substituting “registered medical practitioner, registered Chinese medicine practitioner or registered dentist”.”.

- (e) In subclause (10), by deleting everything after “amended” and substituting –
 - “by repealing “medical practitioner” where it twice appears and substituting “registered medical practitioner, registered Chinese medicine practitioner or registered dentist”.”.
- (f) In subclause (12), by deleting everything after “amended” and substituting –
 - “by repealing “of such medical practitioner” and substituting “of the registered medical practitioner, registered Chinese medicine practitioner or registered dentist concerned”.”.
- (g) In subclause (15), by deleting everything after “amended” and substituting –
 - “by repealing “such medical practitioner” and substituting “the registered medical practitioner, registered Chinese medicine practitioner or registered dentist concerned”.”.

17. By deleting everything after “amended” and substituting –
“by repealing “either a medical practitioner” and substituting “a registered medical practitioner, a registered Chinese medicine practitioner”.”.

18. (a) In subclause (1), by deleting everything after “proviso,” and substituting –
“by repealing “medical practitioner” and substituting “registered medical practitioner, registered Chinese medicine practitioner or registered dentist”.”.

(b) In subclause (2), by deleting everything after

“amended” and substituting –
“by repealing “medical practitioner” and substituting “registered medical practitioner, registered Chinese medicine practitioner or registered dentist”.”.

New By adding –
“**18A. Medical examination before employment**
Section 33(1) is amended by adding “registered” before “medical practitioner”.”.

19 By deleting everything after “amended” and substituting –
“by repealing “medical practitioner” and substituting “registered medical practitioner, a registered Chinese medicine practitioner”.”.

20 In the proposed section 36M(1)(a), by adding “registered” before “medical practitioner”.

22 (a) In subclause (1)(a), by deleting everything after “paragraph (a),” and substituting –
“by repealing “medical practitioner” and substituting “registered medical practitioner or registered Chinese medicine practitioner”.”.

(b) In subclause (2), by deleting everything after ““medical treatment”,” and substituting –
“by repealing “medical practitioner” and substituting “registered medical practitioner or registered Chinese medicine

practitioner”.”.

23(5) In the proposed section 12(3)(a), by adding “registered” before “medical practitioner” where it twice appears.

24 In the proposed section 12AA –

(a) in subsection (2)(a), by adding “registered” before “medical practitioner”;

(b) in subsection (4) –

(i) in paragraph (c), by deleting “or”;

(ii) by adding –

“(ca) is exempted from registration by virtue of section 37 of the Chinese Medicines Regulation (Cap. 549 sub. leg. F); or”;

(c) in subsection (8), by adding “registered” before “medical practitioner” where it first appears.

25(3) (a) In the proposed section 12B(3)(b) and (4)(a) and (b), by adding “registered” before “medical practitioner” wherever it appears.

(b) In the proposed section 12B(5), by adding “registered” before “medical practitioner” where it first appears.

(c) In the proposed section 12B(8)(a), by adding “registered” before “medical practitioner”.

New By adding –

**“25A. Appointment of Pneumoconiosis
Medical Board**

Section 22(a) is amended by adding
“registered” before “medical practitioners”.”.

26 In the proposed section 23A(3)(a)(i), by adding “registered”
before “medical practitioner”.

27(1) In the proposed section 28(aa) and (ab), by adding
“registered” before “medical practitioner”.

**Bills Committee on Certification for Employee Benefits
(Chinese Medicine) (Miscellaneous Amendments) Bill 2005**

**Chinese medicines prepared by a Chinese medicine practitioner or
prepared in accordance with his prescription for his own patients**

Introduction

At the meeting of the Bills Committee on 17 January 2006, members raised questions on the exemption clause regarding registration for proprietary Chinese medicines. This paper provides the supplementary information sought.

Registration of proprietary Chinese medicine

2. Under the Chinese Medicine Ordinance (the “Ordinance”), proprietary Chinese medicine means any proprietary product composed solely of the following as active ingredients: any Chinese herbal medicines or any materials of herbal, animal or mineral origin customarily used by the Chinese, formulated in a finished dose form and used for the diagnosis, treatment, prevention or alleviation of any disease or any symptom of a disease in human beings, or for the regulation of the functional states of the human body. Section 119 of the Ordinance stipulates that all proprietary Chinese medicines have to be registered with the Medicines Board of the Chinese Medicine Council of Hong Kong (the Council) before they may be sold, imported or possessed. Under the Ordinance and Chinese Medicine Regulation, Chinese medicines compounded by a registered Chinese medicine practitioner or in accordance with a prescription given by a registered Chinese medicine practitioners, and Chinese medicines manufactured by Chinese medicine manufacturers in accordance with a prescription given by a registered Chinese

medicine practitioner for the patient under the practitioner's direct care only are not subject to the effect of section 119 and not required to be registered.

Chinese medicines compounded by a Chinese medicine practitioner or in accordance with a prescription given by a Chinese medicine practitioners

3. Chinese medicine practitioners differentiate syndrome and formulate treatment to patients based on an individual's physical condition and clinical presentation, and prescriptions vary from person to person. Apart from herbal medicines to be boiled with water and taken as teas, other Chinese medicines in varying dose forms are also commonly used, such as medicinal wine used in bone-setting treatment, ointment for external application, pills taken orally and powder taken with water. Chinese medicine practitioners will prescribe different formulas and dose forms according to the patient's conditions, and adjust the prescriptions having regard to changes in these conditions. The then Preparatory Committee on Chinese Medicine, tasked to advise the Government on legislation to regulate the use of Chinese medicine, was of the view that Chinese medicines compounded or manufactured in the aforementioned circumstances are supplied to patients under the direct care of a Chinese medicine practitioner but not for general sales, and hence are not proprietary products. According to the legislative intent of the relevant clauses, since such compounded Chinese medicines are not for general sales, the registration system for proprietary Chinese medicines is not applicable. This arrangement facilitates Chinese medicine practitioners in effectively managing the conditions of persons who need to use these Chinese medicines. In view of the above, in 1999 the Preparatory Committee on Chinese Medicine made the relevant proposal, which was incorporated in the Chinese Medicine Bill and enacted by the Legislative Council. Therefore, under section 158 of the Ordinance, a Chinese medicine which is compounded by or under the supervision of a registered or listed Chinese medicine practitioner at the premises where he practices and used solely for the purpose of administering or supplying to a patient under his direct care, or one which is individually prepared or compounded in accordance with prescriptions given by a Chinese medicine practitioner or by a licensed retailer of Chinese herbal medicine or under the supervision of such a person, are not required to be

registered.

4. In view of the fact that due to technical requirements, a Chinese medicine practitioner may sometimes need to entrust a manufacturer of proprietary Chinese medicine to prepare the Chinese medicine in accordance with his prescription and administer to patients under his direct care, the Chinese Medicine Regulation also provides for exemption of registration for Chinese medicines prepared under such circumstances. To ensure the safety and quality of the Chinese medicines and to prohibit its use for general sales, the Chinese Medicine Regulation requires that the Chinese medicines shall be manufactured in the premises in respect of which a manufacturer licence is in force and by or under the supervision of a responsible person in accordance with a prescription given by a Chinese medicine practitioner for patients under his direct care. A written notification shall be submitted to the Medicines Board which shall include the quantity of the medicine to be manufactured, its dose form, the names and quantities of each ingredient listed in the prescription, the name and address of the Chinese medicine practitioner and the date on which he entrusts the manufacturer to manufacture the Chinese medicine. In addition, the manufacturer is required to submit a written undertaking given by the Chinese medicine practitioner stating that the medicine will only be administered or supplied to patients under his direct care and in the case where the medicine is for internal application, not more than one patient. Manufacturers have to comply with the relevant legislative requirements in the manufacture of such Chinese medicine.

5. Under the Code of Practice for Chinese medicine practitioners, Chinese medicine practitioners are required to maintain proper patient records in the treatment of patients, and their prescriptions should meet professional standards. The Code also requires Chinese medicine practitioners to issue prescriptions to patients listing the names and dosages of all medicines prescribed.

Regulation of Chinese medicine practitioners and traders of Chinese medicines

6. The Council has put in place a regulatory system for Chinese medicine practitioners and traders of Chinese medicines. The practices and professional conduct of Chinese medicine practitioners are regulated by the Chinese Medicine Ordinance, the Code of Practice for Registered Chinese Medicine Practitioners and the Code of Practice for Listed Chinese Medicine Practitioners compiled by the Chinese Medicine Practitioners Board of the Council. The Chinese medicine practitioners must comply with the regulations laid down in the Code of Practice as a condition for their practice. The Code of Practice for registered and listed Chinese medicine practitioners stipulates that Chinese medicine practitioners must be professionally responsible to their patients. Upon receipt of a complaint, oral or written, from members of the public against a Chinese medicine practitioner regarding his conduct in professional respect, the Practitioners Board will handle the complaint in accordance with procedures stipulated in the Chinese Medicine Practitioners (Discipline) Regulation including conduct of inquiry proceedings. If a Chinese medicine practitioner is found guilty of misconduct in a professional respect, the Chinese Medicine Practitioners Board may take disciplinary actions against the registered Chinese medicine practitioner concerned as provided for by the Regulation. Such actions may include warning, reprimanding and removing the name of the practitioner concerned from the Register of Registered Chinese Medicine Practitioners or the list of Chinese medicine practitioners maintained by the Board.

7. Traders of Chinese medicines (including retailers of Chinese medicines and proprietary Chinese medicines manufacturers, etc) are regulated by the Council by means of a licensing system. In addition to setting the minimum requirements for the responsible persons of Chinese medicines retailers and proprietary Chinese medicines manufacturers in respect of knowledge and experience, the Chinese Medicines Regulation also specifies the duties of licensed traders of Chinese medicines. Those who fail to comply with the Chinese Medicines Regulation are liable to imprisonment or a fine. They may also be subject to disciplinary actions taken by the Chinese Medicine Board, or even revocation of licence for serious offences.

Other measures taken to protect public health

8. The Department of Health (DH) and the Hospital Authority (HA) have established a mechanism for reporting adverse drugs reactions in respect of Chinese medicines. Through the mechanism, hospitals will refer suspected cases of adverse reactions to Chinese medicines to DH for follow-up actions. The Central Notification Office of the Centre for Health Protection under DH also handles referrals from Chinese medicine practitioners or medical practitioners. If investigation results connect a case to inappropriate prescription by a Chinese medicine practitioner, the DH will refer the case to the Disciplinary Committee of Chinese Medicine Practitioners of the Chinese Medicine Board under the Council for follow-up actions.

Department of Health
February 2006