

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

Supplementary Background Information to the Bill

Introduction

Chinese medicine has a long history in Hong Kong. Over the years, it has played an important part in curing illnesses and relieving sufferings and is widely accepted by the community. The Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Bill 2005 contains amendments to the Employment Ordinance (Cap. 57) (EO), Employees' Compensation Ordinance (Cap. 282) (ECO) and Pneumoconiosis (Compensation) Ordinance (Cap. 360) (PCO) ("three labour ordinances") to recognise the medical treatment, examination and certification given by registered Chinese medicine practitioners (CMPs) for the purpose of entitlement to employee benefits.

Developments since 2002

2. The Administration consulted the Legislative Council Panel on Manpower in 2002 on the legislative proposal. The Panel supported the principle of recognising Chinese medicine under the three labour ordinances.

3. Since then, the Administration has embarked on the preparation and drafting of the Bill. Related developments are summarised as follows -

- (a) *Preparing registered CMPs for the proposed statutory functions:* In 2003, the Labour Department formed a Focus Group comprising Chinese medicine professionals, human resources management practitioners, representatives of the insurance industry, employers, employees and government to identify ways for implementing the proposed amendments.

Upon the advice of the Focus Group, the Labour Department has published a leaflet and organized seminars on the medical certificates to be issued and records to be kept under labour laws so that registered CMPs could make early preparation for the proper discharge of duties after the Bill is enacted. In 2004, a total of eleven such seminars have been held for registered CMPs and undergraduates of CM courses in local universities. We will continue to hold such seminars.

- (b) *Competence of registered CMPs*: The Administration briefed the Chinese Medicine Practitioners Board (the “Practitioners Board”) on the legislative proposal in July 2004. The Practitioners Board advised that overall speaking, registered CMPs are competent to perform the proposed statutory functions under the three labour ordinances. The Practitioners Board is a statutory body tasked by the Chinese Medicine Council (CMC) to regulate the professional standards and code of conduct of CMPs.
- (c) *Consultation with the medical profession*: The Administration consulted the Medical Council of Hong Kong (HKMC) on the proposed amendments relating to their profession in May 2004. The Hong Kong Medical Association (HKMA) also expressed their views. In preparing the Bill, the views of HKMC and HKMA including concerns on the competency and training of registered CMPs have been duly considered.

In the course of consulting various groups in the lead-up to drafting the bill, the suggestion has been made that an employer should be given the option to offer to have an employee examined free of charge by a practitioner from a different discipline. Accordingly, it is proposed in the Bill that an employer may require an employee, who has produced a medical certificate as to his unfitness for performing certain work, to submit to a medical examination for obtaining a second opinion and such medical

examination can be conducted by either a medical practitioner (MP) or a registered CMP under the EO, irrespective of the discipline of the practitioner who issued the first certificate.

On the issuance of prescriptions for claiming medical expenses under the ECO, the Bill proposes that unless an employer or the Commissioner for Labour so requests, it is not necessary for an injured employee to produce the prescription and payment receipt of the related medicines for claiming medical expenses. The Bill includes comparable provisions for the PCO.

- (d) Consultation with the Labour Advisory Board (LAB) and the Pneumoconiosis Compensation Fund Board¹ (PCFB): The LAB and the PCFB were further consulted in early 2005 on some technical aspects of the proposal. They supported the technical amendments.

Regulatory Mechanisms under the Chinese Medicine Ordinance

4. Since the enactment of the Chinese Medicine Ordinance (CMO), mechanisms have been put in place to regulate the practice and training of registered CMPs, including the issue of certificates to patients.

(A) Regulatory and Professional Training

5. The regulatory and professional training mechanism for registered CMPs includes:

- (a) a regulatory framework is provided by the CMO for the practice of Chinese medicine and the use, trading and manufacturing of Chinese medicines;
- (b) the CMC is set up under the CMO to, among others, devise and implement measures, including registration and disciplinary systems, to regulate the practice of CMPs;

¹ The Pneumoconiosis Compensation Fund Board is the authority appointed under the PCO to administer the Ordinance.

- (c) the CMC has issued a Code of Practice in 2002 to uphold the professional ethics and standardize the practice of registered CMPs. The Code requires registered CMPs to be professionally responsible to patients and master relevant knowledge and skills in order to perform their professional duties;
- (d) a framework of continuing education in Chinese medicine (CME) for CMPs has been implemented since 28 February 2005. There are lists of accredited “CME Administrators” and “CME Programme Providers” and all registered CMPs were notified in writing of their respective CME cycle and CME points required. Among the approximately 5,000 registered CMPs, the first batch of 2,400 CMPs will have to fulfil the CME requirement by November this year before they can renew their practising certificates.

(B) Regulatory Mechanism in Issuing Certificates etc.

6. The Code of Practice for registered CMPs specifies that registered CMPs should not issue false certificates, and has laid down requirements on keeping medical records and issuing prescriptions.

7. The Practitioners Board has drawn up guidelines on common CM diagnosis and sick leave duration for reference by registered CMPs. The guidelines have been distributed since February 2004 to registered CMPs, major employers’ associations and insurers underwriting medical and employees’ compensation insurance.

8. Under the Practitioners Board, there is a Disciplinary Committee of Chinese Medicine Practitioners. The Committee is responsible for investigating complaints against CMPs and making recommendations to the Practitioners Board on the appropriate courses of disciplinary action.

Other options

9. There are views that there is no pressing need to recognise Chinese medicine under labour laws and measures such as promoting to employers a “certificate of consultation” issued by registered CMPs may

suffice. However, we wish to point out that legislative amendments are necessary as the recognition of registered CMPs will affect the statutory rights and responsibilities of many parties, including employers, employees, registered CMPs, insurers underwriting employees' compensation insurance policies and the PCFB. Administrative measures cannot serve this purpose. After all, the proposed amendments are in tune with the latest development in Chinese medicine in Hong Kong and the growing and wide acceptance of Chinese medicine by the local community in curing illnesses and relieving sufferings.

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