

立法會
Legislative Council

LC Paper No. CB(2)2246/04-05(03)

Ref : CB2/BC/14/04

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

Background brief prepared by the Legislative Council Secretariat

Proposal to recognise Chinese medicine for entitlement of
employees' benefits under labour legislation

Purpose

This paper gives a summary of issues raised by members of the Panel on Manpower on the Administration's proposal to recognise Chinese medicine for entitlement of employees' benefits under labour legislation.

The Administration's proposal

2. At its meeting on 16 May 2002, the Panel on Manpower was consulted on the Administration's proposal to recognise Chinese medicine for entitlement of employees' benefits under the Employment Ordinance (EO), Employees' Compensation Ordinance (ECO), Pneumoconiosis (Compensation) Ordinance (PCO) and the Pneumoconiosis Ex Gratia Scheme.

3. The Administration informed the Panel that in 1999, the Labour Department set up an internal working group to study the feasibility of recognising Chinese medicine in labour legislation. The working group consulted associations of Chinese medicine practitioners (CMPs) and tertiary education institutions involved in the training of Chinese medicine, and conducted surveys on the use of Chinese medicine treatment by injured employees and pneumoconiotic persons. In addition, the working group considered the views of the Health and Welfare Bureau and the Department of Health. The working group completed its study in April 2000 and made a number of recommendations.

4. Having considered the working group's recommendations and the views expressed during consultation, the Administration proposed that where registered CMPs were competent in performing the medical functions stipulated under the various labour legislation and the Pneumoconiosis Ex Gratia Scheme, they should be recognised and granted the same status as registered medical practitioners. The Administration's proposal included –

- (a) the recognition of certification of sickness day, matters relating to pregnancy or confinement, illness or disability arising out of pregnancy or confinement, unfitness of a pregnant employee to handle heavy, hazardous or harmful work, as well as permanent unfitness of an employee to do the present job given by registered CMPs for the purpose of entitlement to employees' benefits under EO;
- (b) the recognition of certification of temporary incapacity given by, and medical examination and treatment conducted or given by registered CMPs for the purpose of entitlement to employees' benefits under ECO;
- (c) the recognition of medical treatment, opinion and medical report given by registered CMPs for the purpose of entitlement to employees' benefits under PCO; and
- (d) the recognition of medical treatment given by registered CMPs in connection with pneumoconiosis for the purpose of entitlement under the Pneumoconiosis Ex Gratia Scheme.

Issues raised by Panel members

5. Members expressed support in principle for the Administration's proposals. However, some members expressed concern about possible abuse in obtaining certified sickness days, as the consultation fee for treatment by CMPs might be less than the fee charged by medical practitioners.

6. A member also enquired whether guidelines on the issue of certified sickness days and the level of medical fees were included in the Code of Practice for CMPs.

7. Members may wish to refer to the extract from the minutes of the Panel meeting held on 16 May 2002 in the **Appendix** for details of the discussion.

EXTRACT

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Legislative Council

Ref : CB2/PL/MP/1

LC Paper No. CB(2)2363/01-02
(These minutes have been seen by
the Administration)

LegCo Panel on Manpower

**Minutes of meeting
held on Thursday, 16 May 2002 at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** :
- Hon LAU Chin-shek, JP (Chairman)
 - Hon CHAN Kwok-keung (Deputy Chairman)
 - Hon Kenneth TING Woo-shou, JP
 - Hon James TIEN Pei-chun, GBS, JP
 - Hon Cyd HO Sau-lan
 - Hon LEE Cheuk-yan
 - Dr Hon LUI Ming-wah, JP
 - Hon CHAN Yuen-han, JP
 - Hon YEUNG Yiu-chung, BBS
 - Hon Ambrose LAU Hon-chuen, GBS, JP
 - Hon Andrew CHENG Kar-foo
 - Hon LI Fung-ying, JP
 - Hon Tommy CHEUNG Yu-yan, JP
 - Hon Michael MAK Kwok-fung
 - Hon Albert CHAN Wai-yip
 - Hon LEUNG Fu-wah, MH, JP
 - Hon Frederick FUNG Kin-kee
- Members attending** :
- Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
 - Dr Hon LO Wing-lok
- Members absent** :
- Hon LEUNG Yiu-chung
 - Hon SZETO Wah

Public Officers : Item IV
attending

Mr Philip K F CHOK, JP
Deputy Secretary for Education and Manpower

Ms Elizabeth TSE
Deputy Secretary for the Treasury

Mrs DO PANG Wai-yee
Principal Assistant Secretary for Education and Manpower

Mrs Jenny CHAN
Assistant Commissioner for Labour (Rights and Benefits)

Mr LO Fu-wai
Assistant Director (Grade Management and Development)
Food and Environmental Hygiene Department

Mr Eddy YAU
Assistant Director (Leisure Services)
Leisure and Cultural Services Department

Mr LEE Cert-quinn
Chief Manager (Support Services) 2
Housing Department

Item V

Mrs DO PANG Wai-yee
Principal Assistant Secretary for Education and Manpower

Mrs Jenny CHAN
Assistant Commissioner for Labour (Rights and Benefits)

Mr NG Kwok-keung
Senior Labour Officer
Labour Department

Item VI

Mrs DO PANG Wai-yee
Principal Assistant Secretary for Education and Manpower

Mrs Jenny CHAN
Assistant Commissioner for Labour (Rights and Benefits)

Dr LEUNG Ting-hung
Assistant Director of Health (Traditional Chinese Medicine)

Mrs Bernadette LAI
Senior Labour Officer
Labour Department

Item VII

Mrs DO PANG Wai-yee
Principal Assistant Secretary for Education and Manpower

Ms Annie CHOI
Principal Assistant Secretary for Environment and Food

Mr TSANG Kin-woo
Assistant Commissioner for Labour (Employment Services)

Attendance by : Item VII
Invitation

Ms Kelly LEASE
Research Associate
Institute for Local Self-Reliance

Ms Miranda YIP
Campaigner
Greenpeace

Clerk in : Ms Doris CHAN
attendance : Chief Assistant Secretary (2) 4

Staff in : Ms Dora WAI
attendance : Senior Assistant Secretary (2) 4

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VI. Recognition of Chinese medicine for entitlement to employee benefits under the Employment Ordinance, Employees' Compensation Ordinance, Pneumoconiosis (Compensation) Ordinance and Pneumoconiosis Ex Gratia Scheme
(LC Paper No. CB(2)1885/01-02(05))

51. PAS(EM) briefed members on the proposal to recognise Chinese medicine for entitlement of employee benefits under EO, Employees' Compensation Ordinance, Pneumoconiosis (Compensation) Ordinance and the Pneumoconiosis Ex Gratia Scheme.

52. Mr James TIEN expressed support for the proposal in principle. However, he expressed concern about possible abuse in respect of the recognition of Chinese medicine practitioners (CMPs) for certifying sickness days on the ground that the consultation fee for treatment by CMPs might be less expensive than that charged by medical practitioners. Mr Tommy CHEUNG expressed similar concern. Mr TIEN asked whether the Administration would consider reviewing the arrangement in respect of the recognition of CMPs for certifying sickness days six months after its implementation.

53. PAS(EM) said that according to information from the Department of Health, based on the experience in the Mainland, there was no sign of CMPs granting more sickness days than medical practitioners. She pointed out that with the enactment of the Chinese Medicine Ordinance (the Ordinance) which provided, among other things, a statutory regulatory framework for the practice of CMPs and a registration system of CMPs, only persons who possessed the required standard of knowledge and practice experience would be allowed to practise Chinese medicine in Hong Kong as CMPs. Against this background, registered CMPs should be competent in performing the medical functions stipulated under relevant labour legislation and the Pneumoconiosis Ex Gratia Scheme, including certifying sickness days, and should therefore be recognised and granted the same status as registered medical practitioners. Moreover, the professional standard and ethics of registered CMPs would be subject to regulation by the Chinese Medicine Council of Hong Kong (CMC) established under the Ordinance. She further said that it was envisaged that there should be registered CMPs practising Chinese medicine for some time by the time the legislative proposal to recognise Chinese medicine for entitlement of employee benefits under labour legislation was introduced to the Legislative Council (LegCo).

54. Miss CHAN Yuen-han expressed support for the proposal. She agreed with the Administration that with the enactment of the Ordinance and the regulatory system of CMPs, registered CMPs should be recognised and granted the same status as registered medical practitioners. Ms Cyd HO, Mr Frederick FUNG, Mr Michael MAK and Ms LI Fung-ying shared the view of Miss CHAN. Most of these members considered that a bills committee should be formed to examine the proposal in detail when the legislative proposal was introduced to LegCo.

55. In response to Mr Tommy CHEUNG's enquiry on the timetable for the registration of CMPs, Assistant Director of Health (Traditional Chinese Medicine) (ADH(TCM)) said that the Chinese Medicine Practitioners Board of CMC (CMPB of CMC) was in the process of assessing the professional qualifications of listed CMPs. A listed CMP might become a registered CMP if -

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- (a) CMPB of CMC was satisfied that he had already acquired adequate experience in practising Chinese medicine or had already possessed the professional qualifications required of a registered CMP;
- (b) he passed the Registration Assessment, which would be in the form of an oral assessment, scheduled to be conducted at the end of 2002; or
- (c) he passed the Licensing Examination, comprising a written test and a clinical examination, scheduled to be conducted in 2003.

He added that as the name list of the first batch of registered CMPs would be announced in the next few months, it was expected that there would be many registered CMPs practising Chinese medicine in Hong Kong in a year's time.

56. Mr Tommy CHEUNG enquired whether guidelines on the issue of sick leave certificate and the level of medical fee were included in the Code of Practice for CMPs. ADH(TCM) responded that no specific guidelines in these aspects were laid down in the Code of Practice for CMPs. However, the guidelines clearly stipulated that the issue of untrue or misleading medical certificates by CMPs might be subject to disciplinary action as deemed appropriate by CMPB of CMC. He pointed out that the contents of the Code of Practice for CMPs, mainly on the regulation of the professional responsibilities, conduct and practising criteria of CMPs, were similar to that for medical practitioners. He supplemented that the Code of Practice for listed CMPs was available on the Internet and the Code of Practice for registered CMPs was in the process of printing and would also be made available on the Internet.

57. Mr Michael MAK enquired whether it was common that CMPs received all-round Chinese medicine training. If this was not the case, they might not be as competent as western medical practitioners in the issue of sick leave certificates for sicknesses. ADH(TCM) said that as a general rule, CMPs also possessed general medical knowledge in Chinese medicine. As in the case of western medical practitioners, CMPs might choose to practise in a specific stream such as acupuncture or bone-setting. In this case, they might display their specific streams of practice in a bracket at the end of their titles but in fact CMPs in a specific stream should also be able to perform the medical functions performed by CMPs in general practice. He then pointed out that misconduct of CMPs in any professional respect might result in disciplinary action by CMPB of CMC and claims for damages sought by the patients concerned.

58. Ms LI Fung-ying requested the Administration to provide a more detailed assessment of the financial and staffing implications of the proposal on the Government in the information paper to be provided to LegCo when the legislative proposal was introduced.

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