

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

**Administration's Response to Issues Raised
at the Bills Committee Meeting Held on 5 October 2005**

Introduction

This paper sets out the Administration's response to views expressed by deputations and Members of the Bills Committee on the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Bill 2005 ("the Bill") at the Bills Committee meeting held on 5 October 2005.

(A) Listed Chinese medicine practitioners

2. The Hong Kong Chinese Medicine Practitioners' Rights General Union considered that the Bill should accord the same recognition to both listed and registered Chinese Medicine Practitioners (CMPs) under the Employment Ordinance, Employees' Compensation Ordinance and the Pneumoconiosis (Compensation) Ordinance ("the three labour ordinances"), such that both are empowered to perform the same functions and enjoy the same rights. If not, the proposal will amount to discrimination against listed CMPs and affect their livelihood adversely. In a submission to the Legislative Council after the meeting, the Chinese Ancient Healings Medicines Conservation Association also expressed a similar view.

Registration of Chinese medicine practitioners

3. The Chinese Medicine Ordinance (CMO) was enacted by the Legislative Council in 1999. The Ordinance stipulates the details of the registration system, which includes the transitional and long-term registration arrangements for CMPs. The registration system was an important issue in

the drafting of the CMO. At that time, the Administration understood that there were then many practising CMPs in Hong Kong and therefore suggested providing transitional arrangements under the registration system to enable these CMPs to continue practising Chinese medicine as listed CMPs.

4. As a transitional arrangement under the CMO, those who were practising Chinese medicine in Hong Kong on 3 January 2000 may have their names put on a list and may continue practising Chinese medicine as listed CMPs until a date as may be specified and promulgated by the Secretary for Health, Welfare and Food by notice in the Gazette.

5. The CMO also stipulates different channels for listed CMPs to be registered. As stated in the Ordinance, depending on their practising experience and academic qualifications recognised by the Chinese Medicine Practitioners Board¹ (CMPB), listed CMPs could directly apply for registration as registered CMPs or obtain registration status through taking part in the Registration Assessment² or Licensing Examination³. It is the long-term objective of the Administration that all practising CMPs in Hong Kong are registered CMPs so that the provision of Chinese medicine service in Hong Kong is of a professional standard.

¹ The Chinese Medicine Practitioners Board is established under the Chinese Medicine Ordinance for, among others, implementing the registration and disciplinary measures for regulation of Chinese medicine practitioners.

² The Registration Assessment is designed to test the candidates' basic professional knowledge and skills of Chinese medicine for the purpose of assessing whether they have achieved the professional standard for practising Chinese medicine. The scope of assessment includes Basic Theories of Chinese Medicine, Diagnostics of Chinese Medicine, Chinese Materia Medica, Chinese Medicinal Formulary, Internal Medicine of Chinese Medicine, External Medicine of Chinese Medicine, Gynaecology of Chinese Medicine, Paediatrics of Chinese Medicine, Orthopaedics and Traumatology of Chinese Medicine, and Acupuncture and Moxibustion. The assessment was conducted in the form of an interview.

³ The Licensing Examination is directed at a comprehensive professional assessment of the candidates' fundamental knowledge of Chinese medicine. The examination covers both fundamental and clinical subjects of general Chinese medicine. There are two parts for the licensing examination, including a written examination and a clinical examination.

6. The CMPB of the Chinese Medicine Council⁴ (CMC) conducted two rounds of Registration Assessment during January to February and October in 2003 respectively. The CMC has also been conducting Chinese Medicine Practitioners Licensing Examination every year since 2003 for listed CMPs and other persons eligible for taking the examination. Since the commencement of the registration of CMPs in Hong Kong, the number of listed CMPs has dropped from around 7 700 to 2 967.

Suggestion in the Bill

7. The Administration proposes that registered CMPs should be recognised to perform specified medical functions under the three labour ordinances.

8. At present, registration under the respective medical ordinances is a prerequisite for recognition of practitioners of relevant medical disciplines under the three labour ordinances. The aim is to ensure that only persons who pass through a stringent assessment and attained the professional standard are conferred the statutory rights and responsibilities, which include the issuance of certification for the purpose of a claim for employee benefits and protection, under the three labour ordinances.

9. Considering that the recognition of the medical treatment, examination and certification given by CMPs will affect the statutory rights and liabilities of various parties including employers, employees, CMPs, insurers underwriting employees' compensation insurance and the Pneumoconiosis Compensation Fund Board⁵, and that the professional standard of registered CMPs are duly recognised, the Administration considers it appropriate to allow only registered CMPs to perform specified medical

⁴ The Chinese Medicine Council is set up as a statutory authority under the Chinese Medicine Ordinance to devise and implement control measures to regulate the practice of Chinese medicine and the use, manufacture and trading of Chinese medicines.

⁵ The Pneumoconiosis Compensation Fund Board is set up by statute to administer the Pneumoconiosis (Compensation) Ordinance.

functions under labour laws.

10. It must be pointed out that under the CMO, allowing listed CMPs to practise Chinese medicine is only a transitional arrangement. There are channels for listed CMPs to apply to become registered CMPs. In fact, a notable number of them have become registered CMPs through taking part in the Registration Assessment or Licensing Examination.

11. Furthermore, according to the Thematic Household Survey conducted by the Census and Statistics Department in 2002, more than 40% of the interviewees who had consulted CMPs during the 30 days before enumeration were economically inactive⁶. In other words, CMPs in Hong Kong are not merely serving members of the labour force. Hence although listed CMPs are not covered in the Bill, it will not be inhibited from continuing with their practices.

(B) Referrals for medical imaging and laboratory investigations

12. A delegation suggested that registered CMPs should be empowered to refer patients to undergo medical imaging and laboratory investigations. As the Bill only covers relevant labour laws and as the stipulations of other medical ordinances fall beyond the scope of this Bill, we have passed the suggestion to the Health, Welfare and Food Bureau and sought their views.

13. According to section 2(5) of Part 3 of the Code of Practice for Registered Chinese Medicine Practitioners in Hong Kong, a registered CMP may make medical referrals if necessary, and the registered medical professionals to whom a patient is referred should be able to provide the required diagnosis or treatment. Section 5 of Part 3 of the Code further stipulates that a registered CMP should master relevant knowledge and skills in order to perform the professional duties. As far as diagnostic techniques are concerned, a registered CMP can only use the relevant diagnostic

⁶ Economically active persons comprise persons who are either employed or are seeking employment.

techniques (including modern diagnostic techniques) after he has passed the professional assessment, having the appropriate medical apparatuses and acting in accordance with the requirements of the relevant medical legislation. A registered CMP should adopt treatment methods on the basis of Traditional Chinese Medicine in prescribing Chinese herbal medicines or proprietary Chinese medicines, and in the use of traditional therapeutic apparatuses or other innovative therapeutic apparatuses that are developed with Chinese medicine theory. A registered CMP should not use other treatment methods as provided under laws concerning other medical and healthcare professions.

14. Under the Supplementary Medical Professions Ordinance, the Radiographers (Registration and Disciplinary Procedure) Regulation, the Code of Practice of the Radiographers Board of Hong Kong, and the Code of Practice of the Medical Laboratory Technologists Board of Hong Kong, no radiographer and no medical laboratory technologist shall exercise their functions on the referral of a CMP. The purpose of the legislation and Codes of Practice that exercise regulatory control on the medical professions is to ensure the standard of the relevant professionals for the protection of the health of the general public. Medical referrals should only be made by professionals with the appropriate training, knowledge and skills.

15. In mid-2005, the CMPB met with the Radiographers Board⁷ and the Medical Laboratory Technologists Board⁸ for a preliminary exchange of views on the issue of referrals by CMPs. The matter will be further deliberated for in-depth discussion in future.

16. The Administration considers that it is imperative for the regulatory authorities of all medical professions to place the protection of the health of

⁷ The Radiographers Board is established under the Supplementary Medical Professions Ordinance to, among others, implement the registration and disciplinary measures for regulation of registered radiographers, and promote adequate standards of professional practice and of professional conduct among registered radiographers.

⁸ The Medical Laboratory Technologists Board is established under the Supplementary Medical Professions Ordinance to, among others, implement the registration and disciplinary measures for regulation of registered medical laboratory technologists, and promote adequate standards of professional practice and of professional conduct among registered medical laboratory technologists.

the general public and patients above all other considerations. Besides, in deliberating the smooth integration of the interfaces of different professions, we should take full account of the fundamental training and acquisition of appropriate professional expertise and skills of individual professions. We have no intention of including amendments to other medical legislation in this Bill.

(C) Explaining the Bill to the Chinese medicine profession

17. A delegation suggested that the Labour Department (LD) and relevant training institutes should organise talks on the Bill to help those in the Chinese medicine profession to better understand the Bill and the functions, rights and responsibilities that will be conferred upon them. Since the gazettal of the Bill in June this year, LD has visited various Chinese medicine associations to explain the provisions of the Bill. With the CMC's approval, LD has been organising from September 2005 onwards a number of point-awarding seminars on the Bill under the mechanism of continuing education in Chinese Medicine with a view to helping the Chinese medicine profession gain an in-depth understanding of the Bill.

(D) Medical and third party insurance

18. A Chinese medicine association expressed concern over whether the medical treatment given and sick leave certificates issued by registered CMPs are admissible in a claim for compensation under medical and third party insurance policies. Currently, members of the public could voluntarily take out medical and third party insurance policies that cover Chinese medicine treatment in the market. Under the principle of free market, the Government considers that the scope and terms of protection of such insurance policies should be negotiated by the insured and the insurance company on the basis of individual needs. Nevertheless, we are liaising with the Hong Kong Federation of Insurers and have suggested to the Federation to consider arranging Chinese medicine professionals to explain the regulatory system and issuance of sick leave certificates to insurers with a view to enhancing mutual

understanding.

(E) Providing a parallel list of diagnoses in Western medicine alongside that of Chinese medicine

19. Concerning the Reference Guide on Issuance of Sick Leave Certificates by Registered Chinese Medicine Practitioners (“the Reference Guide”) compiled by the CMC, a Member opined that it would help the general public (including employers, insurance companies and employees), better understand the equivalent disease or injury of a diagnosis in Chinese medicine if the Reference Guide includes a parallel list of diagnoses placing the terminology used in Western medicine alongside that of Chinese medicine. It would also be conducive to the smooth implementation of the legislative proposals by concerned parties.

20. We have relayed the Member’s view to the CMC Secretariat. The Secretariat has responded that as Chinese and Western medicine belong essentially to two different medical disciplines, the preparation of a parallel list would call for a very complicated academic inquiry. For this reason, the CMPB does not consider it appropriate to make such a hard-and-fast conversion list in medical diagnosis. In the Reference Guide, CMPB has already listed out the sicknesses commonly encountered by local CMPs and provided details of the corresponding Chinese medicine diagnosis, principal pattern (主證) and classifications of diagnosis for the purpose of enhancing employers’ understanding of the sickness or injury that individual Chinese medicine diagnosis is referring to.

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