



Labour Department (Headquarters)

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Clerk to Bills Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn : Mrs Sharon TONG)
(Fax : 2509 0775)

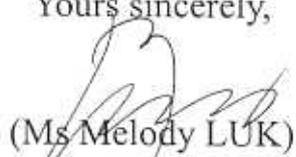
Dear Mrs TONG,

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

In the Bills Committee meeting of 12 May 2006, Members asked the Administration to consider moving Committee Stage Amendments (CSAs) to provide for the recognition of the medical treatment, examination and certification in various forms given by listed Chinese medicine practitioners under the three labour ordinances. Having carefully re-visited the issue, the Administration decides not to move CSAs to include listed Chinese medicine practitioners in the Bill. I enclose the Administration's paper which sets out the reasons for disagreeing with the CSAs.

We also wish to inform Members that the Administration aims at having the resumption of Second Reading Debate of the Bill take place on 28 June 2006. We appeal to Members' support for resumption of debate on 28 June 2006.

Yours sincerely,


(Ms Melody LUK)

for Permanent Secretary
for Economic Development and Labour (Labour)/
Commissioner for Labour

Encl

c.c. DoJ (Attn : Miss Betty CHEUNG)
SHWF (Attn : Mr Jeff LEUNG)

Fax : 2523 5104
Fax : 2840 0467

**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 12 May 2006**

Introduction

At the meeting of the Bills Committee held on 12 May 2006, Members requested the Administration to move Committee Stage Amendments (CSAs) to recognise the medical treatment, examination and certification given by listed Chinese medicine practitioners (CMPs) for the purpose of entitlement to employee benefits under the Employment Ordinance (Cap. 57), Employees' Compensation Ordinance (Cap. 282) and Pneumoconiosis (Compensation) Ordinance (Cap. 360) ("three labour ordinances"). Having carefully revisited the issue, the Administration considers that the proposal would have substantial impact not only on the Chinese Medicine Ordinance (CMO) but also on the proposed Bill. As such, the Administration disagrees with the proposal. Details of the reasons are given below.

A. The Bill is well founded on a Chinese medicine practitioners registration system established by the law

2. The CMO was enacted by the Legislative Council in 1999. By virtue of this Ordinance, a registration system of CMPs was set up. The system defines clearly the professional status of CMPs. We understand that this CMP registration system also has the wide support and endorsement of the CMP profession as it affirms the professional standard of CMPs and provides an essential foundation for the development of Chinese medicine in Hong Kong. Since 2002, over 5 000 persons have become registered CMPs by passing assessment in respect of their experiences and qualifications or by passing examination.

3. The Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Bill 2005 ("the Bill") which seeks to

recognise registered CMPs in performing specified medical functions under labour laws is founded on community recognition and respect of the CMP registration system, as well as the popularity of Chinese medicine treatment amongst employees.

B. The transitional nature of “listed CMPs”

4. Members suggested that the Administration should recognise the medical treatment, examination and certification given by listed CMPs. We would like to reiterate that unlike registered CMPs, “listed CMPs” is only a transitional arrangement, and that the professional qualifications of listed CMPs have not been assessed and listed CMPs are therefore not on a par in terms of status with registered CMPs. At the time when the CMO was drafted, the Administration noted that there were then many practising CMPs in Hong Kong. It therefore proposed providing transitional arrangements concomitant with implementing the registration and regulation of CMPs, so that this batch of practising CMPs might continue practising Chinese medicine as listed CMPs for a period of time and become qualified as registered CMPs in the interim through the different channels provided under the CMO. Same as the other medical professionals who are subject to registration in Hong Kong, registered CMPs also come under systematic regulation by their own profession to ensure that they possess the required professional standard.

C. Registered CMPs and listed CMPs are subject to different requirements and regulatory measures

5. As registered CMPs are medical professionals who have gone through a certain level of professional assessment under the CMO, the requirements and regulatory measures relating to them are not the same as those relating to listed CMPs. For example -

- Continuing education: Registered CMPs must fulfil the requirements of continuing education in Chinese medicine as prescribed by the Chinese Medicine Practitioners Board of the Chinese Medicine Council (CMC) before they can renew their practising certificates. However, there is no corresponding requirement for listed CMPs.
- Dispensation of Chinese herbal medicines: Registered CMPs are

permitted to possess or dispense Chinese herbal medicines specified under Schedule 1 (Chinese herbal medicines with higher toxic levels) to a patient under his direct care. However, such power is not given to listed CMPs. Also, licensed herbal medicine retailers are not permitted to dispense Schedule 1 Chinese herbal medicines prescribed by a listed CMP.

- The effect on registration when conviction and professional misconduct are involved: There are different requirements between seeking to be a registered CMP and a listed CMP. The CMO stipulates that a person who applies for registration as a registered CMP must provide a declaration as to whether he has been convicted of an offence punishable with imprisonment and whether he has been found guilty of professional misconduct. If that person has such record, his application for registration may be refused after inquiry. However, there is no corresponding requirement regarding applications for inclusion of a person's name into the list of listed CMPs.
- Disciplinary measures: According to the CMO, disciplinary measures that may be taken by the Chinese Medicine Practitioners Board in respect of registered CMPs and listed CMPs are not the same. For a registered CMP, a range of disciplinary measures can be imposed on him if he is found guilty of professional misconduct. Such may range from removal of his name from the Register for serious cases or ordering a reprimand or warning for less serious ones. However, action for misbehaved listed CMP is confined to removing his name from the list of listed CMPs.
- Practising certificate: Registered CMPs are prohibited from practising without a valid practising certificate which has to be renewed every three years. For the practising certificate to be granted or renewed, he is also required to meet certain conditions (including fulfilling the requirements of continuing education and payment of a fee). This requirement of regularly renewing a practising certificate is similar to that for other medical professionals like registered medical practitioners and dentists. There is however no such requirement for listed CMPs.

6. As can be seen from the above, the CMO was constructed with the policy intent that registered CMPs should be subject to regulatory

mechanisms on a par with that of other medical professionals. Under these regulatory regimes, the professional standards of registered medical professionals come under comprehensive and stringent scrutiny. In contrast, “listed CMPs” is a transitional arrangement. There are definite differences in terms of the status and professional qualifications between listed CMPs and registered CMPs. Therefore, the medical functions of listed CMPs are subject to certain restrictions, and they are subject to fewer professional regulatory measures.

D. The principle of labour policy and liabilities involved

7. The prerequisite for other practitioners of medical professions being recognised under the Employment Ordinance, Employees’ Compensation Ordinance and Pneumoconiosis (Compensation) Ordinance is that they must be registered under the respective registration ordinances. The purpose is to ensure that only persons who are assessed to have attained a certain professional standard are conferred the statutory responsibilities under the three labour ordinances. This will ensure that the interests of employees and the parties who are held liable to pay compensation are equally safeguarded. We have adopted the same prerequisite and principle in this Bill.

8. Recognition of the medical treatment, examination and certification given by registered CMPs under labour laws affects the statutory rights and liabilities of various parties including employers, employees, CMPs, insurers underwriting employees’ compensation insurance, and the Pneumoconiosis Compensation Fund Board¹ (“the Board”).

9. We consider it very important under labour laws that the interests of employees and other relevant stakeholders be properly guarded because the medical functions concerned would lead to legal liabilities for employers, insurers and the Board. In the gravest situation, the certification issued by a CMP might subject an employer to prosecution if he fails to discharge his statutory liabilities arising therein. It is therefore evident that the effects of recognising a certain category of medical

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

professionals under labour laws goes beyond the doctor-patient relationship. Since the recognition of Chinese medicine under labour laws affects the rights and liabilities of employees and employers, the Administration is of the view that given the existing Chinese medicine regulatory mechanisms, the interests of employees and employers could not be reasonably balanced if the medical functions performed by listed CMPs were recognised under the three labour ordinances.

E. Listed CMPs performing other medical functions in addition to rendering treatment

10. Some Members considered that while listed CMPs are permitted to provide medical treatment, there is no reason why the medical functions performed by them should not be recognised in the same way as that of registered CMPs. The Administration wishes to point out that over the years, CMPs have been rendering medical treatment to the public. Having regard to this reality in the community, the CMO has, upon its enactment in 1999, proposed to permit all those who were practising Chinese medicine on or prior to a specific date to have their names entered on a list to become listed CMPs. They were allowed to continue with their Chinese medicine practice until such date as may be promulgated by the Secretary for Health, Welfare and Food. In the interim, the CMPs on the list would undergo assessment in respect of alternative qualifying requirements so that those who fulfilled the criteria prescribed in the CMO could be registered to become registered CMPs. Since the implementation of this registration system, two-thirds of listed CMPs have been registered through the avenues provided by the CMO. It has all along been the policy of the Administration to encourage the remaining listed CMPs to get registered through the channels laid down in the CMO. The Administration hence considers that to further accord additional medical functions other than that permitted under the CMO to the remaining listed CMPs would upset the registration system and jeopardize the long-term professional development of Chinese medicine in Hong Kong. Though the Bill does not cover listed CMPs, it would not inhibit them from continuing with their practices or acquiring the registration status.

F. Other considerations

11. Recognition of Chinese medicine under labour laws is a milestone in Chinese medicine development and at the same time a new development in the labour scene in Hong Kong. The Administration indeed needs to be prudent and pragmatic in adopting the long-accepted principle of recognizing only those professionally assessed medical professionals duly registered by the concerned statutory regime.

12. The support of the Labour Advisory Board and the Panel on Manpower of the Legislative Council on the legislative proposal as contained in the Bill was mainly founded on the establishment of the CMP registration system. Now that the mechanism to regulate the practice of registered CMPs is well in place, and listed CMPs also have channels to become registered, the Administration finds it difficult to convince employers associations, different medical professionals and the insurance industry which underwrites employees' compensation insurance policies to allow listed CMPs who have not undergone any professional assessment to perform the same medical functions like registered CMPs under the three labour ordinances.

G. The proposed amendments are outside the scope of the Bill

13. The Administration is of the view that the CSAs proposed by Members are outside the scope of the Bill. Rule 57(4)(a) of the Rules of Procedures of the Legislative Council (RoP) stipulates that -

“(a) An amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.”

14. The Long Title of the Bill has unequivocally spelt out that the Bill amends the three labour ordinances to provide for the recognition of certification in various forms given by, and medical examination and treatment conducted or given by, a registered CMP for the purposes of entitlement to certain employee benefits under those Ordinances. However, nowhere in the Bill is “listed CMPs” mentioned. As “registered CMPs” and “listed CMPs” are distinct categories of persons with different qualifications, experience, and power in prescribing Chinese herbal

medicines, the Administration considers Members' proposal to extend the scope of the Bill to recognising "listed CMPs" is evidently outside the subject matter of the Bill. Our arguments will be set out in greater detail in another paper.

The way ahead: assisting listed CMPs to become registered CMPs

15. The Administration is of the view that an intact registration system of CMPs is of paramount importance to the positive development of Chinese medicine in Hong Kong in the long run. The Bill seeks to accord a balanced protection of the interests of employers, employees and insurers etc. Therefore, we consider that a more positive approach to respond to Members' suggestion is to explore ways to assist those listed CMPs who aspire to be registered to achieve their goal. This is also in line with the unswerving objective of the Administration. Since 2003, the Department of Health has been organizing briefing sessions for listed CMPs on techniques in taking Licensing Examination. These sessions brief would-be candidates on the points to note in taking such examination which include the scope, mode and procedures of examination as well as the techniques in answering questions. We are also aware that since the implementation of the registration system of CMPs, local Chinese medicine associations have been organising courses to help listed CMPs to get registered. In fact, up to the present, more than 500 listed CMPs have become registered CMPs through taking the Licensing Examination.

16. We recognise that while listed CMPs are keen to attain the registration status, some may face practical difficulties in preparing for and taking the Licensing Examination. The Administration's policy has all along been to actively facilitate listed CMPs in sitting for the Licensing Examination, subject to the maintenance of registered CMPs' standards and protection of public health. We will work with the CMC (the statutory regulatory authority) to explore means to better facilitate listed CMPs in obtaining the registration status through Licensing Examination, e.g. exploring the categorisation of subjects within the syllabus. The Administration will also encourage the collaboration between professional bodies and universities to provide more training courses in different modes, which will address the candidates' difficulties and impart practical knowledge to them. The relevant professional bodies and universities

respond positively to the above proposals.

Economic Development and Labour Bureau
Health, Welfare and Food Bureau
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