立法會
Legislative Council

LC Paper No. CB(2)657/06-07
(These minutes have been seen by the Administration)

Ref : CB2/PL/HS

Panel on Health Services

Minutes of special meeting held on Monday, 25 September 2006, at 8:30 am in Conference Room A of the Legislative Council Building

Members present	:	Dr Hon KWOK Ka-ki (Chairman) Dr Hon Joseph LEE Kok-long, JP (Deputy Chairman) Hon Albert HO Chun-yan Hon Fred LI Wah-ming, JP Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP Hon CHAN Yuen-han, JP Hon Bernard CHAN, GBS, JP Dr Hon YEUNG Sum Hon Andrew CHENG Kar-foo Hon LI Fung-ying, BBS, JP
Members attending	:	Hon Tommy CHEUNG Yu-yan, JP Hon Audrey EU Yuet-mee, SC, JP Dr Hon Fernando CHEUNG Chiu-hung
Members absent	:	Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP Hon Vincent FANG Kang, JP Hon LI Kwok-ying, MH, JP

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Public Officers attending : Items I and II

Miss Susie HO, JP
Deputy Secretary for Health, Welfare and Food (Health) 1

Item I

Ms Ernestina WONG
Principal Assistant Secretary for Health, Welfare and Food (Health) 2

Dr Allen W L CHEUNG
Director (Professional Services & Operations)
Hospital Authority

Dr Beatrice CHENG
Senior Executive Manager (Professional Services)
Hospital Authority

Item II

Dr LEUNG Ting-hung, JP
Deputy Director of Health

Dr Henry NG Chi-cheung
Principal Medical and Health Officer
Department of Health

Deputations by invitation : Item I

Consumer Council

Mrs CHAN WONG Shui
Chief Executive

Ms Rosa WONG
Head, Research & Trade Practices Division

Hong Kong Medical Association

Dr CHOI Kin
President

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Dr CHIU Shing-ping
Council Member

Practising Pharmacists Association of Hong Kong

Mr Billy CHUNG Wing-ming
President

Ms Iris CHANG
Vice President

Society of Hospital Pharmacists of Hong Kong

Miss Cecilia CHOI
General Committee Member

The Hong Kong Association of the Pharmaceutical Industry

Mr Steven E HARDACRE
President

Dr Anthony CHAN
Vice President

Patients' Alliance on Healthcare Reform

Mr HO Yin-ming
Representative

Mr Frank LEUNG
Representative

Alliance for Patients' Mutual Help Organizations

Mr CHEUNG Tak-hai
Chairperson

Mr TSANG Kin-ping
Secretary

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2) 5

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Staff in attendance	:	Ms Amy YU Senior Council Secretary (2) 3 Ms Sandy HAU Legislative Assistant (2) 5

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I. Further discussion on review of Hospital Authority Drug Formulary - supply of self-financed drugs in public hospitals
(LC Paper Nos. CB(2)2654/05-06(01), CB(2)3054/05-06(01) to (06) and CB(2)3070/05-06(01) to (02))

At the invitation of the Chairman, Director (Professional Services & Operations), Hospital Authority (Director (PS&O), HA) gave a power-point presentation on the latest progress in the Hospital Authority's (HA) discussion with the private sector on the supply of drug items to be purchased by patients at their own expenses (self-financed items or SFI), details of which were set out in the Administration's paper (LC Paper No. CB(2) 3054/05-06(01)).

Views of deputations

Consumer Council

2. Mrs CHAN WONG Shui presented the views of the Consumer Council (CC) as detailed in its submission (LC Paper No. CB(2)3054/05-06(02)). Notably, the CC supported the supply of SFI drugs by the HA to its patients, as it would provide better assurance of continuous supply, quality and safety. The CC also considered the concern that by supplying SFI drugs, the HA would undermine fair competition and exacerbate the imbalance between the private and the public sectors, unfounded for the reasons given in paragraphs 8 and 9 of the submission.

3. Mrs CHAN further said that the main reason why the CC had reservation over the proposal of inviting private sector participation by tender for the setting up of community pharmacies in public hospitals to supply SFI drugs to public patients was that this might result in higher drug prices. Although the private sector participant had to provide an assurance that prices of the SFI drugs to be supplied would be benchmarked against market prices, it was questionable whether this could keep the prices of SFI drugs at a reasonable level as market prices were in effect determined by the private sector. There was also the concern that if the tender was awarded to the applicant with the highest bid, the successful tenderer might increase drug prices to defray cost. As any additional revenue to be generated by the supply of SFI drugs by the HA would be fully ploughed back to meet the expenditure, especially the expenditure on drugs, of the HA's public medical services, it was unclear whether the successful tenderer

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would be required to give back a portion of the profits earned to the HA. The CC was also of the view that if the tender was awarded to the applicant with the lowest bid, consideration should be given to requiring the successful tenderer to lower the prices of the SFI drugs to avoid excessive profits due to low rental charged by the HA.

Hong Kong Medical Association

4. Dr CHOI Kin introduced the submission of the Hong Kong Medical Association (HKMA) (LC Paper No. CB(2)3070/05-06(01)), which urged for a review of the HA Drug Formulary (the Formulary) be conducted to ensure that resources were targeted at patients most in need, such as revisiting the suggestion of subsidising expensive drugs like cancer drugs and put drugs with cheaper alternatives on the private purchase list. The HKMA was very concerned about the financial impact on the chronically ill, elderly and underprivileged caused by an increasing number of drugs being excluded from the Formulary. Dr CHOI further said that the HKMA did not support HA supplying SFI drugs to its patients, which was not conducive to raising the professional standards of community pharmacists and which in turn would hamper the development of separation of prescribing from dispensing of drugs.

Practising Pharmacists Association of Hong Kong

5. Ms Iris CHANG presented the views of the Practising Pharmacists Association of Hong Kong (PPAHK) as set out in its submission (LC Paper No. CB(2)3054/05-06(03)). Specifically, PPAHK considered private-public collaboration in the supply of SFI drugs was the solution that would truly benefit patients. Under this concept, community pharmacies should be set up in public hospitals as a start, to be supported by a network of community pharmacies in the long run so as to provide greater convenience to patients. A recent survey revealed that over 80% of the respondents found community pharmacies more convenient than hospital pharmacies in buying SFI drugs. To ensure SFI drugs supplied by community pharmacies were safe and reasonably priced and of good quality, controls on various aspects of the operation of these pharmacies, including drug dispensing and counselling, quality of drugs, record keeping, by the HA could be put in place.

Hong Kong Association of the Pharmaceutical Industry

6. Dr Anthony CHAN presented the views of the Hong Kong Association of the Pharmaceutical Industry (HKAPI) as detailed in its submission (LC Paper No. CB(2)3054/05-06(04)). Notably, HKAPI had no preference on the mode of supply of SFI drugs to HA patients so long as it could provide patients with a safe, high quality, convenient and continuous source of drug supply at reasonable prices. To address the long time taken to introduce new drugs into the Formulary, the HA

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should develop a clear, simplified and transparent system with clear and objective scientific criteria for the approval of new drugs.

Society of Hospital Pharmacists of Hong Kong

7. Miss Cecilia CHOI presented the views of the Society of Hospital Pharmacists of Hong Kong as follows -

(a) HA should not supply SFI drugs to its patients, as this would exacerbate the imbalance between the private and the public sectors;

(b) more efforts should be made on promoting private-public collaboration in the supply of drugs, stepping up drug education to enhance the overall knowledge on the appropriate and effective use of drugs and educating the public on the overall knowledge and seeking advice from community pharmacists for non-serious illnesses;

(c) to increase public confidence on community pharmacies, a working group should be set up by the Administration to make the relevant legislation more stringent in deterring illegal practices and inspections to these pharmacies by the Department of Health (DH) should be stepped up;

(d) to safeguard patients' interests, competition among community pharmacies should be based on quality of service rather pricing. To that end, community pharmacies should be encouraged to make public the prices of the drugs they supplied; and

(e) community pharmacies in public hospitals should operate on a non-profit-making basis, and any profit earned should be used on helping needy patients.

Patients' Alliance on Healthcare Reform

8. Mr HO Yin-ming presented the views of the Patients' Alliance on Healthcare Reform as set out in its submission (LC Paper No. CB(2)3054/05-06(05)). Mr HO further asked -

(a) whether patients of small and medium-sized public hospitals would have to travel to a major public hospital to purchase SFI drugs, having regard to the proposal that only major public hospital(s) in each hospital cluster would be participating in the tender exercise for the setting up of community pharmacies in public hospitals to supply SFI drugs to public patients; and

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(b) whether the HA would make public how it planned to use the additional revenue to be generated from the sale of SFI drugs should the HA decide to set up its own pharmacies to supply SFI drugs if no suitable private sector participant could be identified.

Mr HO also requested the HA to -

(a) shed light on its initial thinking on the mechanism for ensuring that the SFI drugs to be supplied by private sector participants were reasonably priced;

(b) relax the assessment criteria for patients needing financial assistance for drugs under the Samaritan Fund; and

(c) enhance the transparency of the mechanism for introducing new drugs into and taking out drugs from the Formulary as well as the clinical guidelines for administrating drugs to patients, and involve patient groups in the development and formulation of such.

Alliance for Patients' Mutual Help Organizations

9. Mr CHEUNG Tak-hai introduced the submission of the Alliance for Patients' Mutual Help Organizations (LC Paper No. CB(2)3054/05-06(06)) which expressed support for the supply of SFI drugs by HA as this would provide assurance of continuous supply, quality and safety.

Discussion

10. Dr Fernando CHEUNG asked the HA why it had changed its stance from setting up its own pharmacies in public hospitals to supply SFI drugs to HA patients in July 2006 to now considering to invite private sector participating for the setting up of pharmacies in public hospitals to supply SFI drugs to HA patients. Dr CHEUNG further asked why patient groups had not been involved in the discussion in the mode of supply of SFI drugs to HA patients.

11. Deputy Secretary for Health, Welfare and Food (Health)1 (DSHWF(H)1) explained that at the meeting of the Panel on 10 July 2006, members requested the HA to explore further the possibility of involving the private sector in the supply of SFI drugs in public hospitals before deciding whether HA pharmacies should expand their supply of SFI drugs beyond the existing three categories to cover all SFI drugs prescribed to patients by HA. Subsequent to that meeting, the HA held two high-level meetings with the private sector to exchange views on possible private-public collaboration in the supply of SFI drugs in public hospitals. The private sector representatives welcomed the opportunity to work with the HA. A

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Task Group comprising representatives of the HA and four private sector parties was subsequently formed to work out the framework of a collaboration model between the two sides. The latest proposal of inviting private sector participation by tender for the setting up of community pharmacies in public hospitals to supply SFI drugs to public patients was the preliminary consensus reached so far by the Task Group. Director (PS&O), HA supplemented that the HA was open-minded to any mode of supply of SFI drugs to HA patients so long as such mode could meet the three principles of quality of drug supply, patient convenience and reasonable pricing. The HA would see to it that the latest proposal could meet the foresaid principles along the lines as set out in paragraph 4(b)-(d) of the Administration's paper.

12. As regards involving patient groups in the discussion of mode of supply of SFI drugs in public hospitals, Director (PS&O), HA said that prior to this meeting the HA had consulted representatives of patient groups on the matter. Although these representatives preferred the supply of SFI drugs by HA pharmacies, they had no objection to private sector participation in the supply of SFI drugs in public hospitals.

13. Dr Fernando CHEUNG shared the concern of the HKMA about the financial burden imposed on patients because of the increasing number of drugs being excluded from the Formulary. Dr CHEUNG urged the Administration and the HA to conduct a review of the Formulary, including considering the HKMA's suggestion of putting expensive drugs like cancer drugs in the Formulary and putting drugs with cheaper alternatives on the private purchase list.

14. Dr Joseph LEE asked the following questions -

(a) whether the HA would make public specifications of the tender of inviting private sector participation for the setting up of community pharmacies in public hospitals to supply SFI drugs to public patients once these details were finalised;

(b) whether the HA would involve patient groups in the formulation of the tender specifications and in the monitoring of the operation of the community pharmacies set up in public hospitals to supply SFI drugs to HA patients;

(c) whether consideration could be given to appointing some community pharmacies located nearby small and medium-sized public hospitals in the supply of SFI drugs to HA patients to provide convenience to patients;

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(d) whether the private sector would consider the suggestion of operating community pharmacies in public hospitals for the supply of SFI drugs to HA patients on a non-making-profit basis, say, by injecting any profit earned into the Samaritan Fund;

(e) whether patient groups would support the proposal of inviting private sector participation for the setting up of community pharmacies in public hospitals to supply SFI drugs to public patients if such proposal could meet the three principles of quality of drug supply, patient convenience and reasonable pricing; and

(f) whether the Administration would amend the Pharmacy and Poisons Ordinance (PPO) (Cap. 138), which was outdated, to deter illegal practices by pharmacies.

15. Director (PS&O), HA responded as follows -

(a) the HA saw no problem of making public specifications of the tender of inviting private sector participation for the setting up of community pharmacies in public hospitals to supply SFI drugs to public patients once these details were finalised, as the tender would be an open one;

(b) the HA would consider involving patient groups in the formulation of the tender specifications, as the overall HA's objective of supplying SFI drugs to its patients was that it must be in the best interests of patients; and

(c) there would be difficulties for the HA to appoint some community pharmacies located nearby small and medium-sized public hospitals in the supply of SFI drugs to HA patients, as the HA was not empowered to monitor private pharmacies. It was also questionable whether the trade would support such a proposal, not to mention the difficulty of drawing up the selection criteria acceptable to the trade.

16. On the suggestion of amending the PPO, DSHWF(H)1 said that the Administration kept the legislation under continuous review and would amend it as necessary to meet development. Members of the Legislative Council (LegCo) would be consulted should the occasion arise.

17. Mr CHEUNG Tak-hai said that from patients' standpoint, the supply of SFI drugs should best be carried out by the HA. Not only would such an arrangement provide better assurance of quality, safety and reasonable pricing, any additional revenue generated from the sale of SFI drugs would be fully ploughed back to assist needy patients.

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18. Mr Billy CHUNG of the PPAHK said that the PPAHK had raised the proposal of patient groups forming a non-profit-making co-operative with the pharmacist associations to operate community pharmacies in public hospitals to supply SFI drugs to public patients with the Task Group. However, such a collaboration model was not supported by the Task Group.

19. Mrs Selina CHOW said that the Liberal Party supported private sector participation in the setting up of community pharmacies in HA hospitals to supply SFI drugs to public patients, as it was not appropriate for the HA, being a public organisation, to go into the business as retailer of medicines. Not only would the supply of SFI drugs by the HA marginalise private pharmacies, it would also give rise to unfair competition given that HA could bargain for lower prices than the private sector through bulk purchasing.

20. Director (PS&O), HA responded that although the HA could bargain for good prices through bulk purchasing of SFI drugs, the HA would price these drugs at rates which were comparable to the levels in the market and would supply them to HA patients only to minimise interference with the private market. In case individual partnership projects were found not viable or of no market interest in a particular public hospital cluster, the HA would proceed with the supply of SFI drugs by HA pharmacies in that cluster as previously proposed. Director (PS&O), HA further said that to prevent the tender from being monopolised by the major retail pharmacy groups in Hong Kong, terms would be incorporated in the tender specification to facilitate fair competition by small community pharmacies.

21. Ms Audrey EU asked how the HA could ensure that prices of SFI drugs set by private sector participants would be at reasonable levels, if the prices of drugs sold at community pharmacies were set by the private sector, in particular by the two major retail pharmacy groups which dominated the supply of drugs in the private market.

22. Director (PS&O), HA responded that prior to considering the mode of supply of SFI drugs to HA patients, the HA had conducted a survey to find out the pricing of drugs by the community pharmacies in the private market. The findings revealed that there was no sign that the pricing of drugs in the private market was monopolised by the major retail pharmacy groups, having regard to the wide range of prices set by different pharmacies for the same types of drugs generally. Director (PS&O), HA reiterated that to ensure that SFI drugs to be supplied by community pharmacies in public hospitals would be set at reasonable levels, the private sector participants had to provide an assurance that the pricing of these drugs would be benchmarked against market prices. In addition, consideration was being given to incorporate a price-capping strategy on SFI drugs which the private sector participants could charge.

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23. Ms LI Fung-ying said that although the proposal of HA supplying SFI drugs to public patients had merits, the proposal nevertheless raised the concern about conflict of interest, having regard to the fact that the list of SFI drugs was determined by the HA and that any revenue to be generated from the supply of SFI drugs would be fully ploughed back to the HA as it saw fit. Moreover, there was also the question of the appropriateness for the HA, being a public organisation, going into business as a retailer of medicines and competing with the private pharmacies for the business. Miss CHAN Yuen-han echoed similar views.

24. Director (PS&O), HA responded that there was no cause for concern that there would be conflict of interest if the HA were to supply SFI drugs to its patients, as the operation of the supply of SFI drugs by HA pharmacies, if implemented, would be made open and transparent for scrutiny by the public. Moreover, the HA was accountable to LegCo and stood ready to answer any queries on its operation.

25. Mrs CHAN WONG Shui pointed out that in many overseas jurisdictions which had fair competition law, the supply of a certain good or service by a public organisation would not be considered as violating the law if the supply of such was for the interests of the general public. Hence, the supply of SFI drugs by the HA for its patients should not be considered as undermining fair competition. On the contrary, the HA had to tread very carefully in taking forward the tender in question in order to prevent the setting up of community pharmacies in public hospitals from being monopolised by large retailers.

26. Dr YEUNG Sum said that the Democratic Party was against the proposal of the HA inviting private sector participation for the setting up of community pharmacies in public hospitals to supply SFI drugs to public patients, as the projects would likely be monopolised by large retail pharmacy groups and whose profit-driven nature would likely lead to an increase in drug prices which might be outside the control of the HA. Dr YEUNG opined that the delay by the Administration in coming up with health care financing options was the impetus for making the HA to resort to a private-public collaboration in the supply of SFI drugs to public patients in order to address its budget deficit. Dr YEUNG cautioned the HA not to contract out the supply of SFI drugs to the private sector, as it would be very difficult for the HA to supply SFI drugs to its patients after the arrangements on health care financing had been mapped out.

27. DSHWF(H)1 responded that the Administration and the HA were neutral on how the SFI drugs should be supplied to HA patients, so long as the mode of supply was in the best interests of patients. As mentioned early at the meeting, the latest proposal was made in response to members' request made at the meeting on 10 July 2006 that the HA should explore further the possibility of involving the private sector in the supply of SFI drugs in public hospitals before deciding whether HA pharmacies should supply the same. DSHWF(H)1 further said that

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the rationale for supplying SFI drugs in the pharmacies in public hospitals was to facilitate patients' choice and provide them convenience. Revenue generation had never been the HA's concern in the supply of SFI drugs to its patients.

28. The Chairman considered the proposal of inviting private sector participation by tender for the setting up of pharmacies in public hospitals to supply SFI drugs to public patients a move in the right direction, as the appropriateness of the HA also supplying SFI drugs to its patients when it was the one determining which drug should come under the list of SFI drugs would inevitably be called into question. To remove doubts by the public on the assessment of tender proposals by the HA, the Chairman urged the HA to involve patient groups, pharmacist associations, pharmaceutical trade and independent bodies such as the CC in the formulation of tender specifications and in the assessment of the tender proposals, having regard to the fact that the HA would supply SFI drugs in its own pharmacies if no suitable private sector participant could be identified. The Chairman further said that one way to safeguard the interests of patients was for patient groups to join force with pharmacist associations in forming co-operatives to tender for the setting up of community pharmacies in public hospitals to supply SFI drugs to HA patients.

29. Director (PS&O), HA reiterated that the reason why the HA would supply SFI drugs to its patients if no suitable private sector participant could be identified was to cater for the eventuality that the project was found to be not viable or of no market interest. Director (PS&O), HA further reiterated that the HA would give consideration to involving patient groups in the formulation of the tender specifications. Representatives from pharmacist associations and the pharmaceutical trade were already on the Task Group. The Task Group was presently in discussion with the parties concerned on the framework of the collaboration model for the supply of SFI drugs in public hospitals in accordance with the three guiding principles of quality, patient convenience and reasonable pricing as detailed in paragraph 4(b)-(d) of the Administration's paper. Director (PS&O), HA assured members that the HA would make public details of the tender specifications. The HA would seek approval from the HA Board whose membership comprised people independent from the HA. The HA would also need to seek the approval of the HA Board if there came the need for the HA to supply SFI drugs to its patients.

30. In closing, the Chairman thanked the deputations for attending the meeting to give their views on the supply of SFI drugs.

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II. Enforcement of Undesirable Medical Advertisements Ordinance (Cap. 231)

(LC Paper Nos. CB(2)2654/05-06(03) and CB(2)3054/05-06(07))

31. Deputy Director of Health (DDH) briefed members on the DH's actions in relation to the enforcement of the Undesirable Medical Advertisements Ordinance (UMAO) (Cap. 231), details of which were set out in the Administration's paper (LC Paper No. CB(2)2654/05-06(03)).

32. Mrs Selina CHOW said that there had been accusations by some media organisations that the DH enforced the UMAO selectively. Referring to the information provided by the Administration on the breakdown of the warning letters issued to newspapers and magazines and the breakdown of organisations against which legal actions were taken in 2005 (LC Paper No. CB(2)3054/05-06(07)), Mrs CHOW noted that the numbers of warning letters issued to the Suns News (amounted to 269 out of 4 117) and the Oriental Daily News (amounted to 283 out of 4 117) were particularly high. The same was also true of the number of legal actions taken against these two publishers. Mr Tommy CHEUNG raised similar concern.

33. DDH responded that there was no question of selective enforcement of the UMAO by the DH. In monitoring compliance with the provisions in the Ordinance, a team of trained staff in the DH regularly screened over 20 newspapers and magazines published for sale locally to see whether they complied with the provisions under the UMAO. The screeners followed a set of standard procedures in conducting the screening, issuance of warnings and identification of case for referral to Police for investigation and prosecution. For advertisements that appeared to have contravened the Ordinance, warning letter(s) would first be issued to the publishers and distributors. In case the publishers/distributors disregarded the warning and continued to publish the relevant advertisements, the cases would then be referred to the Police for investigation and if appropriate prosecution actions after being reviewed by the Director of Health.

34. DDH further said that compliance of the UMAO by publishers and distributors was high, as evidenced by the fact that only 4 117 warning letters had been issued out of 43 286 advertisements screened in 2005, i.e. less than 10%, and that out of 4 117 warning letters issued, only 77 were referred to the Police for investigation. Such high compliance rate was attributed to the introduction since late 2005 that keywords/pictures appearing to have contravened the Ordinance were also highlighted for the attention of the distributors/publishers. The web address containing the bilingual "Guidelines on the Undesirable Medical Advertisements Ordinance" and the "Guidelines on the Undesirable Medical Advertisements (Amendment) Ordinance 2005" was also set out in the all warning letters. The number of cases against which legal actions were taken for not complying with the UMAO in 2005 was also low, i.e. 59 out of the 4 117 warning

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letters or less than 2%. 14 out of these 59 cases concerned publishers, of which only five involved the Suns News and the Oriental Daily News.

35. Mrs Selina CHOW queried whether the relatively high number of warning letters issued to the Suns News and the Oriental Daily News was attributable to the large number of the advertisements placed with them. DDH responded that this might be the case.

36. Mr Fred LI asked about the conviction rate in the enforcement of the UMAO and whether legal actions were brought against the publisher or product distributor, or both.

37. DDH responded that of the 59 prosecution cases brought under the UMAO in 2005, 55 resulted in conviction. DDH further said that legal actions would be brought against the publisher and the product distributor if there was sufficient evidence to do so. DSHWF(H)1 supplemented that in cases where the publisher and the product distributor were both prosecuted, the product distributor often bore a greater liability than the publisher. She quoted a court case whereby the product distributor was sentenced to a fine of some $42,000, whereas the publisher was sentenced to a fine of several thousand dollars.

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38. At the request of Mr Fred LI, DSHWF(H)1 agreed to provide in writing examples of the cases which had led and had failed to lead to prosecution respectively under the UMAO, as well as the penalties for cases resulted in conviction.

39. Ms LI Fung-ying asked whether, and if so, what action(s) had been taken by the Administration to inform the public that the health claims made by certain advertisements were misleading or exaggerated.

40. DDH responded that apart from regulating health claims through legislative means, education had all along been playing an important role to enable consumers make informed choices. DH had launched programmes to educate the public on the concept of health and proper use of health products. Public education on this front would be continued and further stepped up when necessary.

41. Ms LI Fung-ying queried whether public education could counter the wrong message impressed upon the public by the great number of advertisements making irresponsible health claims in the popular newspapers and magazines. Ms LI asked whether the Administration would consider putting up a statement in the same newspapers and magazines where such advertisements had appeared that these advertisements should be ignored for their falsity.

42. DSHWF(H)1 responded that the Administration could only issue a statement suggested by Ms LI in paragraph 41 above after the advertisement was

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ruled by the court to have contravened the UMAO, but this judicial process might take up to one year's time. In her view, a better approach would be to publicise information on the organisations which legal actions were taken for contravening the UMAO.

43. Mr Albert HO shared Ms LI Fung-ying's concern. To better protect public health, Mr HO suggested that distributors/publishers should be ordered to immediately stop publishing advertisements making irresponsible health claims which could lead to serious consequences and be required to make a public corrective statement.

44. DDH responded that the DH was not empowered to carry out the orders as proposed by Mr HO in paragraph 43 above. This however did not mean that the public would be left misinformed by advertisements making irresponsible health claims, as the media would invariably seek the views of the health experts if the health claims were unheard of or appeared to be grossly exaggerated. The media would publicise the views of the health experts when available and/or the latter would come out to dispute/refute the claims if these claims were found to be misleading/false.

45. Mr Albert HO said that the Administration should be more proactive in monitoring health claims made by advertisements. To make his suggestions more workable, the concerned distributors and publishers could be allowed to appeal against DH's decision ordering them to stop publishing the problematic advertisements immediately and the publication of the corrective statement by the concerned distributors and publishers could be made a factor for the court to mitigate punishment for contravening the UMAO. DSHWF(H)1 agreed to give Mr HO's suggestions more thoughts. DSHWF(H)1 further drew members' attention to the fact that the UMAO did not seek to regulate the truthfulness of advertisements nor the products which were subjects of separate control, but to see to it that no advertisements on medicines, surgical appliances, or treatment for prevention of or treatment of certain diseases or bodily conditions as specified in Schedules 1 and 2 to the Ordinance; and advertisement of orally consumed products with the claims as specified in Schedule 4 to the Ordinance were allowed to be published. The purpose was to protect the public from being induced by advertisements to seek improper self-medication or treatment instead of consulting medical practitioners.

46. Responding to Mr Albert HO's enquiry on overseas practice on the regulation of health claims, DSHWF(H)1 said that there was no universally accepted approach to regulate products or services claiming health benefits. For those jurisdictions with a regulatory framework in place, the types of regulation ranged from pre-marketing approval to prescribing a list of accepted/prohibited claims as in the case of Hong Kong.

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47. The Chairman disagreed the saying by DDH that compliance by distributors/publishers of the UMAO was high, given that 4 117 warning letters were issued by DH in 2005 which came up to an average of 11 problematic advertisements appearing in the printed media daily. To better protect the public from being misinformed by such advertisements which might lead to serious consequences, the Chairman suggested -

(a) pre-censoring all advertisements claiming health benefits;

(b) publicising those advertisements on which warnings had been issued;

(c) publicising the names of product distributors who contravened the UMAO, and

(d) expeditiously amending the UMAO to improve the enforcement of the legislation, having regard to the fact that only 55 of the 4 117 cases which received warnings last year resulted in conviction.

The Chairman further asked about the action(s) taken by the DH over advertisements making misleading health claims whose advertisers were Mainland companies and that the product or service advertised was offered in the Mainland.

48. DSHWF(H)1 and DDH responded as follows -

(a) it was questionable whether advertisements claiming health benefits should be pre-censored, given the provisions under the UMAO as mentioned in paragraph 45 above, medicines were regulated under either the PPO or the Chinese Medicine Ordinance (Cap.549) and the Public Health and Municipal Services Ordinance (Cap. 132) prohibited the sale, and possession for the purpose of sale, of any food which is unfit for human consumption. It should also be pointed out that pre-censoring of television advertisement was removed from the then Commercial Television (Advertising) Regulations of the Television Ordinance (Cap. 52) in July 1995 by way of an Amendment Regulation in response to the public criticism that pre-censoring of television advertisement was an infringement of press freedom and freedom of expressions;

(b) to publicise those advertisements on which warnings had been issued and the names of product distributors who contravened the UMAO would not be useful in helping the public to make informed decisions about purchasing the goods and services advertised, as the list of such advertisements was long and involved a wide range of different organisations and products/services;

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(c) the fact that only 55 cases were convicted under the UMAO in 2005 did not necessarily mean that the enforcement provisions in the Ordinance were too lax, as only 77 cases were referred to the Police for investigation and if appropriate prosecution actions. With the enhanced communication with the trade and publishers on the compliance of the statutory provisions after passage of the amendments to the Ordinance in 2005, the number of warning letters issued from January to August this year only came up to some 1 400 as opposed to 4 117 for the whole of last year; and

(d) legal actions could only be taken against the publishers of the advertisements which did not comply with provisions in the UMAO and not the distributors if the latter was from the Mainland.

49. Mrs Selina CHOW expressed opposition to pre-censoring advertisements claiming health benefits and publicising advertisements on which warnings had been issued for not complying with the UMAO, as to do so would infringe freedom of expression and hamper creativity so necessary in advertisements to attract target clients. Moreover, the wisdom of consumers should not be under-estimated. Mrs CHOW further asked whether there had been cases whereby a warning letter was issued to a publisher for contravening the UMAO, but not to another for publishing the same advertisement. Mr Tommy CHEUNG also asked whether there were cases whereby a warning letter was issued to a publisher for contravening the UMAO, but not to another for publishing the same later.

50. DDH reiterated that DH had not been enforcing the UMAO selectively. The judgment of a case heard by the court several years ago had concluded such. Although the cases cited by Mrs CHOW and Mr CHEUNG in paragraph 49 above might happen when the screening of newspapers and magazines for sale locally was done randomly before 2004, this should not be construed as selective enforcement. DDH further said that with the regular screening of over 20 newspapers and magazines for sale locally since 2004 coupled with the enhanced communications with the trade/publishers, inconsistency in the issuance of warnings had not and should not have arisen.

51. Noting that the number of warning letters issued in 2005 was 4 117 but only 77 cases were subsequently referred to the Police for investigation, Mrs Selina CHOW queried whether the enforcement of the UMAO by the DH was unreasonably stringent. DDH disagreed for the reasons already given in paragraph 34 above.

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52. In closing, the Chairman requested the Administration to provide a breakdown of the warning letters issued to newspapers and magazines and a breakdown of organisations against which legal actions were taken in 2004 after the meeting.

Action

III. Any other business

Operation of HA's general outpatient clinics

53. The Chairman said that many public doctors and nurses had expressed concern about HA's plan to extend the opening of its general outpatient clinics (GOPCs) to Sundays and public holidays, which was against the spirit of the implementation of five-day week in the Government.

54. DSHWF(H)1 responded that she understood from the HA that the proposal of opening the GOPCs on Sundays and public holidays was only very preliminary. Should the HA decide to take forward the proposal, it would certainly consult the views of staff and the relevant LegCo Panel(s) before deciding on the way forward.

55. The Chairman said that members of the Panel on Manpower had also expressed concern on the proposal. He suggested that the issue be jointly discussed by this Panel and the Panel on Manpower should the HA decide to take forward the proposal. Members agreed.

56. There being no other business, the meeting ended at 11:10 am.

Council Business Division 2
Legislative Council Secretariat
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