

Legislative Council Panel on Health Services

Misleading or exaggerated claims made by slimming/fat reduction products and services provided by beauty parlours

Purpose

This paper outlines Health, Welfare and Food Bureau and Department of Health's policy and measures in educating the public against and protecting them from adopting inappropriate weight control measures. The paper also notes the recent consumer complaints against the beauty care industry, and outlines steps being taken to encourage more responsible practices in the promotion of related services.

Background

2. With members of the public becoming more weight conscious, slimming service and treatment have become more prevalent. Seeking weight loss or rather maintaining one's body weight appropriate to one's bodily conditions has become very trendy. A recent Consumer Council survey revealed that many of the claims on the efficacy of slimming programmes were dubious and lacked scientific proof. The survey also revealed that for many of the slimming devices used by these slimming centres, there is little scientific evidence to substantiate that they can eliminate fat. These practices and findings have caused public concern.

3. Whilst there is a public health dimension with regard to the health risk, if any, posed by slimming products and equipment, there is also a need to ensure that consumers are given accurate information on the relevant services from a consumer protection perspective.

Role of Department of Health

4. The Department of Health (DH) safeguards the health of the community mainly through its preventive measures and education and promotion. It also acts as the gate-keeper by carrying out the various statutory functions the Department is tasked to enforce either directly or by supporting the work of the various statutory boards and committees. In defining the scope of the products and services that are to be regulated, a risk based approach is adopted. Priority and resources are placed on issues and items that pose health hazards, for example in registering drugs and in regulating healthcare professionals. The only area where statutory restrictions are placed on 'claims' are those covered under the Undesirable Medical Advertisement Ordinance (UMAO) (Cap. 231). The Ordinance prohibits the publication of advertisements to promote the use of, inter alia, medicines or surgical appliances for the treatment/administration of illnesses

and bodily conditions (for example cancer and heart diseases). The idea is to ensure that people who are suffering from such ailments or are having certain bodily conditions (e.g. hypertension) would seek medical consultation in the first instance instead of resorting to self-medication thus resulting in delay in treatment and bodily harm. The perceived need for weight reduction is not considered one of such illnesses or bodily conditions.

5. As far as slimming treatment and products are concerned, DH's work focuses on the following two health hazard related aspects –

- (a) the control of drugs used or contained in slimming related health food; and
- (b) the operation of high-risk medical devices which, if administered improperly, could potential lead to serious health problems.

Furthermore, DH also plays a major role in promoting among members of the community the message on the importance of healthy eating, regular exercises and having a correct attitude towards one's body and body weight through various public health education drives. Details of DH's work are elaborated in paragraphs 8 to 22 below.

6. It is understandable that consumers who have not achieved the results claimed or promised in the promotion of slimming products and services may feel aggrieved and complain accordingly. From the health perspective, a person failing to achieve the degree of weight loss as promised in advertisements does not constitute the level of public health risk that may warrant DH's intervention per se. This is more of an issue of whether there is adequate disclosure of pertinent and accurate information to consumers and whether there are suitable channels for redress.

DH's Public Health Protection Work

7. The above limitations notwithstanding, DH has a duty to protect the health of members of the public and make Hong Kong a healthy city. The following policies and measures are being implemented by the Department.

Control of Medicine

8. Some slimming centres use health food as part of the slimming package they offer. Some consumers also purchase over-the-counter drugs and other weight reduction health food for consumption with a view to control their weight. DH plays an important role in ensuring that public health is adequately protected when the public consume such products.

9. Under the Pharmacy and Poisons Ordinance (PPO) (Cap.138), all pharmaceutical products have to be registered to ensure they are safe and of good quality and efficacy before they can be sold. Some pharmaceutical products are further

classified as prescription-only medicine because of their specialized use and their side-effects. Prescription drugs can only be supplied by registered medical practitioners, or by pharmacists employed at pharmacies in accordance with a prescription. Persons convicted of selling unregistered pharmaceutical products or prescription-only medicines without prescription are liable to a maximum penalty of a fine of \$100,000 and two years' imprisonment.

10. DH has a team of 28 pharmacists to undertake enforcement actions, which include inspections at medicine companies and pharmacies as well as test purchases of prescription-only medicines. The enforcement team also acts upon complaints received.

11. We note that many of the health food products and proprietary Chinese medicine (pCm) available in the markets are targeted at the bodyweight-conscious. The enforcement team therefore regularly purchases samples of health food products for laboratory analysis to ensure they are not adulterated with western drug ingredients. It should be noted that products containing pharmaceutical substances are required to be registered under the PPO as pharmaceutical products and be subject to the relevant sales restriction. In the event that health food or other products are found to contain pharmaceutical substances, DH will order the importer, distributor or manufacturer concerned to recall the products from the market, and they will be liable to be prosecuted for selling unregistered pharmaceutical products. In 2005, DH purchased 2,221 health food products/proprietary Chinese medicines for laboratory analysis. Out of these samples, 42 were found to contain western medicines, of which eight contained western pharmaceutical ingredients intended for slimming purposes.

12. Enforcement actions aside, DH also issues letters to licensed drug retailers, slimming centres/beauty parlours, and doctors reminding them of the need to sell only registered pharmaceutical products, and providing information about how to identify a registered drug.

13. We notice that there are reports on slimming centres/beauty parlours employing medical practitioners to provide advice as part of the slimming service. The professional practice of such practitioners is regulated by the Professional Code and Conduct (the Code) issued by the Medical Council of Hong Kong (MCHK). With regard to prescription of pharmaceutical products, the Code provides that a registered medical practitioner has the responsibility to decide, after proper consultation, the proper medications with appropriate duration. According to paragraph 11 of the Code, which governs the supply of dangerous drugs or other controlled drugs, doctors are advised to acquaint themselves with the Guidelines on the Proper Prescription and Dispensing of Dangerous Drugs issued by the MCHK, in addition to ensuring compliance with the PPO and the DDO. Disciplinary proceedings will be taken against doctors found guilty of non-compliance with the relevant provisions of the Code.

14. There had also been incidents of slimming centres administering dangerous drugs in the provision of slimming service. Dangerous drugs, because of their

susceptibility to abuse and the serious health consequences associated with such abuse, are subject to more stringent control. The Dangerous Drugs Ordinance (DDO) (Cap 134) sets out the relevant regulatory framework. Under the Ordinance, persons convicted of illegal possession of dangerous drugs will upon conviction be liable to a maximum fine of \$5,000,000 and life imprisonment. The Administration monitors closely the drug abuse situation and keeps under review the list of drugs subjected to the control of DDO. In fact, a few weight-loss drugs have been so classified. Examples are the inclusion of phentermine in 1994, and amfepramone and cathine in 1999. Enforcement actions are undertaken by DH, with Police's assistance as appropriate, through test purchases, inspections and complaint investigations. In 2005, nine prosecutions were made, with one of them involving a slimming centre.

Control of Medical Device

15. In addition to drugs and pharmaceutical products, medical devices which if used improperly would caused bodily harm are also subject to control. The Administrative Control System for Medical Devices implemented by DH in late 2004 seeks to introduce better control on the safety and effectiveness of medical devices through instituting a post-market surveillance and adverse incident reporting system, among other requirements, for the purpose of public health protection. The system is primarily intended for the control of medical devices, instead of beauty devices.¹

16. Nonetheless, in the light of the risk level of, and hence the widespread public concern, about the improper use of high-power laser and Intense Pulse Light (IPL) devices in the beauty industry², DH decided to bring such devices under the administrative control system. It is noted that some slimming centres/beauty parlours use such devices for slimming treatment, although the devices are more commonly understood to be used for skin whitening and rejuvenation by the beauty industry. DH together with the beauty industry, the Vocational Training Centre, the Consumer Council, the Education and Manpower Bureau and other stakeholders has recently developed an examination-based accreditation system for IPL operators. The objective is to ensure that IPL operators will have adequate knowledge on the safe use of IPL so as to achieve better consumer protection. The accredited beauticians will be encouraged to have their certificates displayed in their business establishments for clients' identification. Launching of the accreditation scheme will be coincided with a series of public education programmes to educate the public about the safe use of IPL devices.

17. DH will keep a close watch over the developments in the use of drugs and

¹ Medical device is defined as "instrument, apparatus, appliance, material or other article intended for diagnosis, treatment, or monitoring of diseases or injuries, or rehabilitation purposes, and when used, may change the structure or function of the human body". This definition is drawn up with reference to the recommendation made by the Global Harmonisation Task Force (GHTF). GHTF was formed in 1992 by a group of representatives from regulatory authorities and medical device industries from the USA, the EU, Canada, Australia etc.

² The medical uses of IPL approved by US Food and Drug Administration are treatment of blood vessel lesions, pigmented lesions, tattoo removal etc.

devices that may pose potential health hazards to members of the public in the beauty/slimming industry, and take appropriate response measures.

Health Education

18. A positive attitude on and understanding of one's proper body weight, self-image and the effective means to achieve such body weight is an important defence for members of the public against misleading or exaggerating claims made in advertisements, if any. In this regard, as part of its continuous efforts in promoting a healthy lifestyle, DH has been promoting to the community the importance of keeping a balanced diet and taking regular exercise in achieving proper weight control. DH's Central Health Education Unit (CHEU) and Student Health Service (SHS) are instrumental in this regard.

19. The CHEU has been organizing territory-wide activities in promoting healthy diet and healthy body image. Such endeavours aim at enhancing the public's knowledge and skills through a wide range of channels including poster campaigns, roving exhibitions, health talks, mass media publicity programmes etc. Relevant health messages are also disseminated through distribution of pamphlets, CHEU's website at www.cheu.gov/hk and 24-hour Health Education Hotline at 28330111. DH adopts a multi-sectoral and community-based approach in promoting the health messages through actively involving stakeholder groups like NGOs, the school sector, the academia and community leaders etc in its work. Recent promotional efforts include a "2 Plus 3 A Day" campaign, Stair Climbing Campaign, and the Exercise Prescription Project in collaboration with the Hong Kong Medical Association and NGOs.

20. Health messages are also actively promoted through SHS to primary and secondary school students. Students enrolled to the Service are given an annual appointment to attend the SHS Centre for a series of health services including physical examination: screening for health problems related to growth, nutrition, blood pressure, vision, hearing, spine, sexual development, psychological health and behaviour; individual counselling and health education. One of the services provided is measurement of body weight and height, and counselling on what is the desirable body weight and how to attain it. Talks on healthy diet, desirable body weight and weight control conducted by dietitians are organized for participating students. Leaflets containing these messages are also distributed. SHS also conveys these messages through newsletters to schools.

21. The SHS launched the Adolescent Health Programme (AHP) in 2001, which is aimed at equipping adolescents, their parents and teachers with knowledge, attitudes and skills, which can help improve adolescents' psychosocial health. The AHP adopts an interactive mode of training and experiential learning to deliver preventive programmes to the target audience in the school setting through a multi-disciplinary team which consists of doctors, nurses, social workers, clinical psychologists, dietitians and health promotion officers. Topical programmes are offered to address adolescents' developmental needs covering a wide range of life skills including problem-solving,

emotion management, interpersonal communication, stress management, adversity management, self-acceptance and self-care. A nutritional series to promote healthy eating is covered in the programme. The series consists of six sessions and covers various aspects of healthy eating. Students are taught basic concepts of balanced diet, appropriate body weight and weight management with clarification of myths about weight loss and dieting. They are also taught how to make healthy food choices in different types of eating outlets.

22. Noting that healthy eating should best be cultivated when one is young, the Administration has committed in the 2005 Policy Address to devote focused efforts in promoting healthy eating habits among primary school children to protect the public from life-style diseases. A Steering Committee and two Working Groups have been set up comprising relevant government departments, the school sector, parent groups, professional organizations as well as the academic sector to work out details of the initiatives, which will be rolled out in the 2006-07 school year.

Consumer Protection

23. As mentioned above, we notice that part of the concern raised about slimming service and products focuses on the failure to achieve the desired results or the results as promised to consumers. In this context, there were 126 complaints against slimming services or courses to the Consumer Council in 2005, representing about 0.3% of all complaints to the Council last year. These concerned issues such as: ineffective treatment, high-pressure sales tactics, closing down of shops with paid-for services still outstanding and poor service standards.

24. The focus of consumer protection policy, which comes under the purview of the Economic Development and Labour Bureau, is to safeguard the legitimate interests of consumers, primarily in terms of the safety of products that are not otherwise subject to regulation on health, safety or other grounds, and fairness in transactions. The following ordinances contain provisions that allow consumers to seek redress if they are unsatisfied with goods or services provided to them -

- Unconscionable Contracts Ordinance (Cap. 458) – it empowers the Court to refuse to enforce, or to revise unconscionable terms in consumer contracts for the sale of goods or supply of services
- Supply of Services (Implied Terms) Ordinance (Cap. 457) – it obliges a supplier of service to carry out the service with reasonable skill and care and within a reasonable time
- Sale of Goods Ordinance (Cap. 26) – it provides that where a seller supplies goods in the course of business there is an implied condition that the goods are of merchantable quality and that a buyer has the right to reject defective goods unless he or she has a reasonable opportunity to examine them

25. Promoting consumer awareness through dissemination of information also helps to protect consumers against undesirable trade practices and empower them to exercise rational choices. The Consumer Council plays a key role in this regard, by disseminating consumer information and enhancing consumer awareness through publication of CHOICE magazine and its online version, media liaison and various publicity programmes. The Council also helps facilitate consumers' access to redress through its complaints mediation service and through providing financial support and legal assistance for consumers to take action against suppliers of unsatisfactory goods or services.

26. In view of the concern about the operation of beauty/slimming centres, the Consumer Council has recently completed the drafting of the Beauty Industry Code of Practice (the Code). The Code was drafted in close consultation with the trade representatives, who have committed to actively promulgate and abide by the Code. The Code will provide guidance to the beauty industry in respect of its operation and will promote the use of good sales practice. The Consumer Council is confident that the Code will help enhance service quality of the beauty care industry.

Advertising of Products and Services

27. We understand that regulation of the truthfulness of advertisements and claims about a service/goods is provided for in different ordinances and codes. The following are some relevant examples:

“Generic Code of Practice on Television Advertising Standards” and “Radio Code of Practice on Advertising Standards”

28. The Broadcasting Authority has, pursuant to the Broadcasting Authority Ordinance (Cap. 391) and the Broadcasting Ordinance (Cap. 562), issued a “Generic Code of Practice on Television Advertising Standards” and a “Radio Code of Practice on Advertising Standards” (the “TV and Radio Advertising Codes”) to regulate the advertisements aired by licensed television and radio service providers. The TV and Radio Advertising Codes have set out stringent requirements on the truthfulness of the television and radio advertisements. These requirements include:

- No television and radio advertisements may contain claims which depart from truth;
- all factual claims contained in the advertisements should be capable of substantiation; and
- no advertisement may misleadingly claim or imply that the product or service advertised has some special features which are incapable of being established.

29. For advertisements on products, services and institutions which offer or provide treatment aimed at the achievement of weight loss or reduction of body fatness, there are additional requirements in the TV and Radio Advertising Codes whereby these advertisements are required to indicate that the advertised products or services are adjunct to a balanced /healthy diet to achieve such effect. Television and radio licensees are required to obtain sound evidence showing that the advertised products or services are likely to be effective and will not cause harm. Moreover, the advertisements must not be addressed to persons under the age of 18.

Code of Practice promulgated by the Association of Accredited Advertising Agents of Hong Kong

30. The Association of Accredited Advertising Agents of Hong Kong (HK4As) has formulated a set of Code of Practice to regulate the advertisements produced by its members. The Code of Practice requires that “advertisements must be legal, decent, honest and truthful” and specifies that “no description, claims and illustrations in any advertisements should directly or implicitly mislead consumers about the products or services under promotion”. Any member who fails to comply with the Code of Practice will be subject to sanctions according to the relevant rules laid down by HK4As.

Health, Welfare and Food Bureau
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