

For information  
10 July 2006

## **Legislative Council Panel on Health Services**

### **Enforcement of Undesirable Medical Advertisements Ordinance (Cap.231)**

#### **Purpose**

At the last Health Services Panel meeting, Members asked the Administration to provide an information paper outlining the Department of Health's actions in relation to the enforcement of the Undesirable Medical Advertisements Ordinance, Cap. 231 ("the Ordinance").

#### **Background**

2. The Ordinance prohibits the advertisement of 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<sup>1</sup> with the claims as specified in Schedule 4 to the Ordinance. The purpose is to protect the public from being induced by advertisements to seek improper self-medication or treatment instead of consulting medical practitioners. Improper self-medication or treatment may result in inadequate, inappropriate or incorrect treatment, no supervision of treatment outcome, no monitoring for adverse effects and delayed treatment, thereby endangering the life of the patients.

3. The Ordinance seeks to regulate advertisements and not the products which are subjects of separate control. In determining the diseases or bodily conditions that are to be stipulated in the Schedules and the associated advertisements be regulated, a risk-based approach is adopted, balancing the risk of self-medication or delayed proper treatment and the marketing needs of the trade and products in question. Contravention of the provisions in the Ordinance is an offence under section 6 and if convicted is liable to a fine of \$10,000 upon first conviction, and a fine of \$25,000 and imprisonment for one year upon second and subsequent

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<sup>1</sup> The provisions in respect of orally consumed products and Schedule 4 to the Ordinance were added by virtue of the Undesirable Medical Advertisement (Amendment) Ordinance 2005, and have yet to be brought into operation.

conviction<sup>2</sup>. Parties involved in making or carrying such advertisements or health claims, including publishers and product distributors, are responsible for ensuring that the advertisements they carry comply with the provisions in the Ordinance.

### **Enforcement of the Undesirable Medical Advertisements Ordinance**

4. The Department of Health (DH) is responsible for monitoring compliance of the Ordinance and referral of cases to the Police for investigation and prosecution. We note that there has recently been concern about the enforcement of the Ordinance in respect of advertisements carried in the printed media. As in the case in carrying out other statutory regulatory and enforcement functions, DH adopts a systematic, equitable and consistent enforcement approach. It also seeks to work with the trade to facilitate compliance with the statutory provisions. The following outlines DH's work in relation to enforcing and facilitating compliance of the Ordinance.

5. Most of the advertisements and claims are carried in the published press. In monitoring compliance with the provisions in the Ordinance, a team of trained staff in the DH screens the published press including daily local newspapers and magazines. The screeners follow a set of standard procedures in conducting the screening, issuance of warnings and identification of cases for referral to Police for investigation and prosecution. This system complies with the ISO 9001:2000 quality management system standard and was certified by the Hong Kong Quality Assurance Agency in 2005.

6. DH regularly screens over 20 newspapers and magazines published for sale locally. Problematic advertisements would be picked up and appropriate follow up actions taken. All screeners are trained to follow a set of procedures and standards to identify advertisements suspected to have contravened the Ordinance. The wordings, pictures, graphs and the whole concept of the advertisement would be taken into account in the process.

7. For advertisements that appear to have contravened the Ordinance, warning letter(s) will first be issued to the publishers and distributors and the letter would contain a copy of the relevant sections of the Ordinance in question for reference. An enquiry telephone number will also be provided.

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<sup>2</sup> The penalty will be adjusted by virtue of the Undesirable Medical Advertisement (Amendment) Ordinance 2005 which has yet to be brought into operation.

Since late 2005, keywords / pictures appearing to have contravened the Ordinance are 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 Advertisement (Amendment) Ordinance 2005' is also set out in all warning letters. Such information seeks to provide channels through which publishers and distributors in question could better understand the provisions in the Ordinance and to facilitate compliance.

8. In case the publisher/ distributor disregards the warning and continues to publish the relevant advertisement, the case will be referred to the Police for investigation and if appropriate prosecution actions. As the regulator, DH takes its enforcement-related duties seriously. The Director of Health personally meets staff every month to discuss and review cases to be referred to the Police for action.

9. In 2005, DH screened 43,286 advertisements and issued 4,117 warning letters. Of the 59 cases against which legal actions were taken, 14 concerned publishers (involving nine different publishers).

### **Communications with the Trade / Publishers**

10. While it is the duty of members of the public to comply with the law, we recognize the importance of informing the public of the legal requirements and to facilitate compliance. In this connection, DH has maintained communication with the trade and publishers through various means and has also sought to enhance such communication channels.

11. In the context of the last exercise to amend the Ordinance in 2005, DH took the opportunity to review its communication with stakeholders. Improvements were made to the format of the warning letters. DH has also developed two sets of bilingual guidelines: "Guidelines on the Undesirable Medical Advertisements Ordinance" and "Guidelines on the Undesirable Medical Advertisements (Amendment) Ordinance 2005". The latter was prepared in close consultation with the trade after passage of the amendments to the Ordinance in 2005. These guidelines explain the requirements of the Ordinance and list examples of diseases and conditions, on which advertising for treatment or prevention are regulated by the Ordinance. These Guidelines are placed on DH webpage ([www.psdh.gov.hk](http://www.psdh.gov.hk)).

12. A seminar to explain the expanded scope of the Ordinance was organized in March 2006 and was attended by over 100 companies / organizations. Information on the requirements of the Ordinance concerning health claims as listed in the new Schedule was provided in detail. DH colleagues also explained with examples the definition of “orally consumed products”. The Guidelines on the Undesirable Medical Advertisements (Amendment) Ordinance 2005 were distributed to the attending companies / organizations.

13. Due to fast pace of technology development, new types of multimedia advertisements are rapidly emerging. DH would keep in view of the development of these new forms of advertisements and consider making appropriate adjustment on enforcement measures.

14. Members are invited to note the content of this paper for information.

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