

尊貴的李華明主席及各位委員會議員：

香港保健食品協會就（食物安全及環境衛生事務委員會）今天召開的特別會議提出以下有關執行「營養標籤及營養聲稱的規定」規例的意見及質詢：

1. 小量豁免制度中，其中一項撤銷豁免條款規定產品銷售超出 3 萬件的豁免限額，豁免將被撤銷，香港保健食品協會絕無異議。但對於附加條款說明〈食物環境衛生署〉在兩年內不會就同一產品授予豁免則有所質疑。產品推銷有週期性，下年度銷售量不一定比上年度的高，特別是競爭劇烈的產品類別。所以限制重新申請小量豁免，未有考慮到市場的實際運作，此條款有欠公允。
2. 當局對保健食品有深層誤解，以為食物條例可以規管不屬藥物類別的保健食品，這想法是嚴重的缺失，當局必須正視問題從速糾正。食物條例監管的成份主要是蛋白質、碳水化合物及脂肪等，大多數的保健食品都不會含有這些巨量營養素，更不涉及熱量的提供。因此保健食品成份並未能受到食物條例的規管，從西方國家引進而且流行的成份包括：褪黑色素 (Melatonin)、紫錐花 (Echinacea)、貫葉連翹 (St. John's Wort)、葡萄籽提取物 (Grape Seed Extract)、蘆薈 (Aloe Vera)、螺旋藻 (Spirulina)、沙魚丸 (Squalene)、花青素 (Anthocyanins)、骨膠原 (Collagen)、乳薊 (Milk Thistle)等等。正因香港沒有保健食品的專屬條例，令眾多的保健產品成份處於無法監管的狀況，導致產品品質參差不齊，損害消費者利益。

據香港大學社會科學研究中心於去年 10 月發表的保健食品市場調查結果，結果顯示約 35%的被訪者表示曾在過去半年內服食保健食品，從香港目前 5,825,800 的成年人口中，推算出約有 200 萬名本港成年人在被訪前六個月內有服用過保健食品，從而估計香港保健食品總營業額約港幣 100 億。另外，被訪者每天服用保健食品的平均數是 1.9 種，證明保健食品已成為本地一般市民追尋健康的主流途徑。調查結果亦顯示超過九成的被訪者同意政府把保健食品與一般食品分開管理。

3. 香港保健食品協會重複要求當局正視問題，尋找適當的解決方法。本協會同時附上一份**英文版的文件**表述規管保健食品的必要性和保健食品對社會整體健康的裨益。敬請尊貴的議員詳細參閱文件內容，並作出適當的跟進行動。

香港保健食品謹此向各位議員致深切的謝意！

香港保健食品協會

2009 年 6 月 22 日

The Hong Kong Health Food Association

Position Paper

On

The Separation of Health Food From Food

February 2009

Preamble

This is the position of the Hong Kong Health Food Association on the establishment of a regulatory framework for “Health Supplement” in Hong Kong in order for the public to attain and maintain good health through personal health management by the proper usage of health supplements and thus to realize savings in medical care expenditures. Hong Kong is in urgent need of new legislation recognizing health food supplements as a distinct group of health management products, other than food or drug that requires a specific and separate regulatory framework for ensuring product safety and quality, and product access and availability of choice with accurate and full product information to the public.

Executive Summary

The current Ordinances such as the Pharmacy & Poisons Ordinance (Chapter 138), the Chinese Medicine Ordinance (Chapter 549), and the Public Health and Municipal Services Ordinance (Chapter 132) are inapt and inappropriate to regulate “Health Supplement”. Unlike western or Chinese medicine, “Health Supplement” is not intended for the treatment of diseases. It does not provide nutrition like conventional food does. Health supplements are specially formulated in dosage forms to deliver health protection benefits. Conceptually, their nature and usage are significantly different from medicines and food. Hence, a specific and appropriate regulation should be instituted by the Administration promptly so as to rectify the existing skew and confusing legislations on health supplements. Failure to implement the new legislation in the near future to support the proper and educated usage of health supplements will progressively lead to deterioration of the general health of the public when more and more people are aging. This will raise the proportion of disabilities among the local population. Subsequently, the public medical cost will increase sharply and productivity of society will correspondingly be reduced in the next decades. We urge the Administration to adopt multiple approaches to resolve the imminent challenge of escalating public medical expenditure. Taking the experience of foreign countries, the Administration should consider recognizing “Health Supplement” as a key alternative in preventive care. It works through preventing, moderating or delaying the onset of chronic diseases to bring positive results in managing medical expenses and to preserve the general well-being of the public in Hong Kong.

Status-quo: No longer acceptable

The existing Ordinances in Hong Kong that apply to food and drug include Chapter 132 the Public Health and Municipal Services Ordinance (PHMSO) which regulates food, Chapter 138 the Pharmacy and Poisons Ordinance (PPO) which regulates pharmaceutical product; and Chapter 549 the Chinese Medicine Ordinance (CMO) which regulates Chinese medicine. Both the PHMSO and PPO date back to the middle of the last century and lack behind the development of modern society. The implementation of the CMO is still at its teething stage. The industry complained about its overreaching requirements for product registration. Chapter 231 Undesirable Medical Advertisements Ordinance (UMAO), with its latest addition of Schedule 4 to inhibit health claims, together with the other three aforementioned

Ordinances, are not able to proactively protect the health of the general public in Hong Kong.

Being classified as OTC drug, health supplement containing vitamins or minerals requires registration as pharmaceutical product because Hong Kong does not have a specific category for health supplement. Vitamins and minerals have been used by numerous people around the world. There has not been any long-term safety issue. Their use is mainly for health benefits not for treatment of disease. There is no compelling reason to require registration as a drug. In most foreign countries, such products are regulated as health supplements. The lack of timely regulatory reviews and updates has become an impediment to the public of Hong Kong, who may have limited access to the product due to the cost of unnecessary product registration passed to them or the health supplement importer simply opt out of the Hong Kong market altogether and the public is deprived of the choice that they are entitled to as a result.

Currently, the PHMSO regulates health supplements that do not belong to the drug category. As such, health supplements have to comply with the food regulations despite health supplements do not perform the nutrition functions that food does. Notwithstanding their nature being distinct from food, they are liable to the nutrition labeling regulations in the form of a table on the label to show the amounts of calories and 7 core nutrients such as protein, carbohydrate, total fat etc., that are normally absent in health supplements. The mandatory disclosure of food additives, allergenic food ingredients, and display of ingredients in descending order by weight not only are inappropriate and inadequate but may actually undermine the very distinct nature of health supplements in the context of promoting the overall well being of the public. This can only introduce confusion and frustration to the public in selecting the right product instead of protecting their benefits. In actual fact, majority of health food products do not contain macronutrients such as protein, carbohydrates, fats and calories. The ingredients in health food are therefore not regulated by the food regulations despite the Administration has advocated that food law is sufficient to regulate health food products.

When Schedule 4 of the UMAO takes effect in 2009, the public will have limited access to the accurate information about genuine product functions of health supplements. This will impair their ability to choose the suitable products for self-caring their health.

In short, all the Ordinances described above are unintentionally geared to reduce the knowledge of the public in choices for attaining good health and discourage the public to practise self-care.

The actual outcomes of the golden rules

The Central Health Education of Department of Health has commissioned a Qualitative Study on Dietary and Exercise Practices of People in Hong Kong. The Study report was published in July 2005. The qualitative findings revealed "...that the participants daily consumption of fruits and vegetables were less than the level recommended by the Department of Health, which is 2 servings of fruits and 3 servings of vegetables. Only 5.3% of all participants had achieved these recommended levels."¹

Although majority of the working group in the survey is well aware of the health benefits of a balanced diet, 64% of the working males (age 24-53) took lunch outside. Only 5% of them ate 3 or more servings of vegetables and 27% ate 2 or more servings of fruits. While 50% of the working females ate lunch outside. Only 11% of them consumed 3 or more servings of vegetables and 17% had 2 or more servings of fruits on daily basis. The major reasons for the eating lunch outside are for social gathering with colleagues at lunch and inconvenient or no time to prepare lunch at home.

The findings on weekly 20-minute of physical exercise showed that 27% of working males did exercise 3 times or more per week and 17% working females exercised 3 times or more. In the Conclusion and Recommendations Chapter, there is message described that many working adults were unable to do sufficient exercise. The reasons given are due to long or irregular working hours, tiredness after work, time allocated to other things, unavailability of facilities, etc. Although they would like to exercise more frequently but they agreed that it was difficult to achieve. The results indicated the real scenario of the actual city life.

The Study findings are not surprising and are commonly found in developed or economically growing countries. Applying solely the old principles is inadequate to resolve the sophisticated changes created by the modern society of nowadays. For instance, the air and water pollution, the stress and pressure of daily life and in the workplace, the Internet and mobile information access, the demand for constant improvement in personal competitiveness, etc. are health damaging agents not present decades ago. All these factors are in addition to the other health issues that have existed for decades, which include erratic diet, sedentary lifestyle, smoking and alcohol drinking. The situation is worse than ever. To cope with the multiple damaging factors, the Health Authority should formulate alternative strategies and expand the health protection tools outside the medical field.

Situation in overseas

Back in 2001, the Research and Library Services Division actually did a comparative study of health food regulations in overseas places² and discovered different countries used different terms and definitions to describe health food. For example, the term used by USA is “Dietary Supplement³”; Canada describes it as “Natural Health Products”⁴ Australia uses the term “Complementary Medicine”⁵ the term in Singapore is “Health Supplement”⁶ Philippines, Thailand and Indonesia all adopt “Food Supplement”; while China and Taiwan use the same description of “Health Food”. One of the reasons for Hong Kong not following the international practice in establishing a new category for health supplements simply because there was no international consensus on a unified legal definition for ‘health food’. Moreover, the local Administration considered the PPO, CMO, PHMSO and UMAO were sufficient to regulate health food products. These countries realized the health benefits of self-care through the proper use of supplements to achieve two basic objectives. First, by improving health status, the quality of life and the productivity of the general population can be enhanced. Secondly, the onset of chronic diseases can be delayed, which directly saves national

spending in medical treatment and hospitalization. In September 2004⁷ the chairman of the House Government Reform Subcommittee on Human Rights & Wellness held a hearing on “Dietary Supplements: Nature’s Answer to Cost Preventive Medicine”. The testimony provided by the Lewin Group, Inc., a market research firm, commissioned by the Dietary Supplement Education Alliance to conduct an evidence-based study of 5 dietary supplements, released the key findings that daily use of calcium supplement would prevent 734,000 hip fractures and save US\$13.9 billion in health care costs over the next 5 years. This information is of paramount importance for the Administration to seriously consider the use of health supplement in preventive health care, especially, in the wake of an aging population in Hong Kong.

Health food usage in Hong Kong

A survey conducted by the University of Hong Kong, Social Sciences Research Centre in September 2008⁸ revealed a fact that over one third of adults the age of 18 and above being interviewed have consumed health supplement products within the past six months of the survey; the average number of products consumed per day is 1.9. The average monthly amount spent on health supplements is about HK\$280. Therefore, it is estimated that the market size would amount to HK\$10 billion. More important, most users are not aware of the exact benefits of the products they regularly consume and the information they obtained is from friends and relatives or via advertisements, instead of obtaining relevant and appropriate information from product labels. This indicates the public is generally deficient of some basic knowledge on health supplements, due probably to inadequate or lack of positive public education initiated by the Health Authority. There is a consensus from the survey that accurate and genuine information are needed on product labels. It is a general opinion across the health food industry that the UMAO is overly restrictive to health claims. Health claims will never and ever promote or encourage people to self-medicate for the treatment of disease. Industry always questions the necessity of implementing Schedule 4.

Opinion

Albeit Hong Kong is a world recognized metropolitan city, its health care intra-structure is lagging behind the worldwide preventive initiatives. In countries like the United States, Canada, Australia and New Zealand where most of our health supplements are imported from have already established the supplement category. Our ethnic neighbors China and Taiwan have already implemented specific legislations on health food. Even the eleven countries in the ASEAN organization are harmonizing their supplement regulations in the coming year. The legal framework is in recognition of the fact that large portions of the public are consuming health food products as a proactive and preemptive measure to maintain health and to delay the onset of sub-health and unhealthy states. Professional and legislative bodies in overseas have affirmed the positive impacts of supplements on preventive health are recognized by their place in the overall public healthcare system over the world.

The overseas situation and the local surveys described above simply reflects that the

Administration is not sensitive enough to take care of the increasing demand of the public on preventive self care and sub-consciously allowing them to progress silently from healthy to disease stage by holding tightly the golden rules of balanced diet and exercise. The Administration should take bold, forward-looking strategies and innovative approaches to replace the outdated, conservative paradigm instituted for a much different society. Development of alternative solutions and effective policies are not only imperative but should be given the highest priority, to enable, permit and facilitate the public to self-care their own health.

Recommendation

The rationale and experience of health food (supplement) usage in overseas countries are valuable reference to Hong Kong. The separation of health food from food and drug is essential for the public to understand the preventive care benefits of health food and to facilitate the proper choice of product for use by the public. Action taken by the Administration to recognize health food is critical in easing the burden of overall health care expenditure in the long run. Appropriate legislation and public education are utterly necessary to ensure product safety, quality, and the proper use of health food in Hong Kong.

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¹ Wong, E. "Regulation of Health Food in Overseas Places: Overall Comparison", May 2001, Research and Library Services Division, Legislation Council Secretariat, Hong Kong.

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¹ [Congressional Hearing Examines Supplements' Impact on Health Care](#), 2004 (USA).

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