

For information  
on 17 June 2011

## **Legislative Council Panel on Manpower**

### **Findings of the Inter-Bureaux/Departmental Working Group on the Study of Whether the Medical Certificates Issued by Chiropractors Should be Recognised under Labour Legislation**

#### **Purpose**

This paper briefs Members on the findings of the Inter-bureaux/departmental Working Group on the study on recognition of medical certificates issued by chiropractors under labour legislation (the Working Group) and the views of the Administration on the subject.

#### **Background**

2. In 2005, the Chiropractic Doctors' Association of Hong Kong and the Hong Kong Chiropractors' Association put up a request for amending the labour legislation to cover the medical certificates issued by chiropractors. Specifically, they recommended that medical certificates issued by chiropractors should be recognised under the Employment Ordinance (EO).

3. In response to their requests, the Working Group was set up in November 2005 to conduct a study on whether the medical certificates issued by chiropractors should be recognised under labour legislation. The Working Group comprised representatives of the Labour Department (LD), the Food and Health Bureau, the Department of Health and the Civil Service Bureau.

4. The Working Group held altogether 10 meetings to deliberate the issue. The information provided by both LD and chiropractic associations was fully considered. It also held discussion sessions with human resources practitioners, representatives of chiropractors' associations and the Chiropractors Council of Hong Kong (CCHK) to tap their views on the subject. The insurance industry and other stakeholders were also consulted.

5. The Working Group subsequently submitted its report on 29 December 2009. The Administration has thoroughly considered the report and its recommendations. At the same time, in order to gauge the level of acceptance of chiropractic treatment among employees, LD has undertaken a survey of the injured employees for sick leave clearance. The ensuing paragraphs set out the study of the Working Group and the views of the Administration on the subject.

### **The Study of the Working Group**

6. While the request of the chiropractors' associations is for medical certificates issued by chiropractors to be recognised under the EO, the Working Group holds the view that the subject should be considered from a wider perspective as it would have read-across implications on the Employees' Compensation Ordinance (ECO)<sup>1</sup> and other labour legislation. In addition, references should be made to local and overseas chiropractic practices as well as the views of stakeholders on the subject.

#### **(I) Chiropractic Practice in Hong Kong**

7. In Hong Kong, the Chiropractors Registration Ordinance (CRO) was enacted in 1993 to provide for matters relating to the registration and disciplinary control of chiropractors. It also established the CCHK to deal with registration and disciplinary matters. In 2002, the CCHK registered the first batch of chiropractors. On 13 February 2003, the CRO came into full operation, making it illegal thereafter for any unregistered person to practise chiropractic in Hong Kong.

8. As at 1 September 2009, the number of chiropractors in Hong Kong was 114, all practising in the private sector. Under the ECO, the medical expenses for treatment rendered by chiropractors, physiotherapists or occupational therapists to an employee injured at work are reimbursable from the employer subject to a specified daily ceiling.

9. According to the CCHK, chiropractic is a distinct healthcare system. It is not a part of orthodox medicine. The World Health Organisation (WHO) defines chiropractic as a form of "complementary and alternative medicine". The majority of cases treated by chiropractors are functional disorders of the neuro-musculoskeletal system such as low back pain, neck pain, shoulder pain, elbow and wrist pain. In addition, chiropractic treatment also covers some

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<sup>1</sup> The ECO provides for payment of compensation to employees who are injured or sustain occupational diseases in the course of and arising out of their employment.

medical conditions that, on the surface, may not appear to be related directly to the spine and pelvis, such as asthma and migraine. In Hong Kong, chiropractors may provide treatment without a referral by other healthcare practitioners. In rendering treatment, no drugs or surgery may be used. A chiropractic treatment programme usually comprises a series of consultations and treatments that spread over a period of time.

10. As distinct from most other types of healthcare practitioners in Hong Kong, chiropractic training is not provided in any local tertiary training institution. Nor is there any licensing examination. All chiropractors in Hong Kong have received their training overseas. The CCHK accepts chiropractic degrees awarded by chiropractic colleges accredited by four overseas accrediting councils for chiropractors<sup>2</sup>. Lately, the CCHK is considering various means to tighten the registration requirement after making reference to overseas experiences<sup>3</sup>.

11. The Code of Practice (CoP) for chiropractors issued by the CCHK for providing guidance for the conduct and relationship in carrying out the chiropractic responsibilities is broadly in line with those for other types of healthcare practitioners. However, the CoP does not contain any explicit requirement on the maintenance of medical records. The CCHK advised that it is currently reviewing the CoP and considering including in the CoP a new section on patients' records to set out what essential information is required to be documented.

## (II) Experiences of Other Jurisdictions

12. The Working Group has studied the experiences of some other jurisdictions in regulating chiropractic practice and the role of chiropractors in these jurisdictions. It has been found that for countries that have introduced regulatory measures on the chiropractic practice, there are considerable differences in the degree of coverage of chiropractic under their respective labour laws or social security systems.

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<sup>2</sup> The four councils are the Council on Chiropractic Education (US) Inc., the Council on Chiropractic Education Australasian Inc., the Canadian Federation of Chiropractic Regulatory and Educational Accrediting Boards; and the European Council on Chiropractic Education.

<sup>3</sup> Options under consideration include requiring applicants to have a pass in international licensing examinations, conducting oral examinations/interviews with applicants to assess their clinical knowledge and skills, or introducing internship programmes.

13. In Asia, Hong Kong is the first place to register chiropractors. Thailand passed a law to recognise and regulate the practice of chiropractic in 2006. Japan does not recognise chiropractic treatment under their labour laws and healthcare system, though there are some institutions providing training on chiropractic. Moreover, neither Singapore nor the Mainland has operated a statutory registration system for chiropractors.

14. For western countries, the approaches adopted by North American and European countries in the recognition of chiropractic under labour legislation and social security system are significantly different. Chiropractic is well-established in the United States of America (USA) and Canada. The medical certificates issued by chiropractors and other types of healthcare practitioners (for example, physiotherapists) are covered by their labour laws. Nonetheless, in some states and provinces of USA and Canada, there has been a recent trend to restrict benefit payments in respect of chiropractic treatment<sup>4</sup>, along with similar restrictions on physiotherapy and occupational therapy.

15. In Europe, chiropractic is usually considered as a kind of therapy supplementary to western medicine. Some European countries have introduced laws to regulate chiropractors. In the United Kingdom, the labour legislation does not provide for the recognition of chiropractors. However, employers may decide whether to accept medical certificates issued by chiropractors. In Denmark, the medical certificates issued by chiropractors will not entitle employees to employees' benefits.

16. In Australia, the certificates issued for general sickness by healthcare practitioners such as chiropractors and physiotherapists are covered by the labour legislation. However, in work injury cases, chiropractors are, like other healthcare counterparts, subject to certain restrictions on the medical certificates issued and the number of treatments rendered<sup>5</sup>.

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<sup>4</sup> From 2004 onwards, California reduces the number of chiropractic visits under its employees' compensation system. Starting from the same year, chiropractic services were delisted from the health insurance plan which is subsidised by the Ontario government in Canada.

<sup>5</sup> For example, in Victoria, when reporting a work injury, an employee must submit medical certificates signed by a medical practitioner indicating his injury condition. In addition, the first 14 days of sick leave can only be issued by medical practitioners. Chiropractors and physiotherapists can only issue medical certificates subsequent to the first 14 days of sick leave. In New South Wales, prior approval from the nominating treating doctor is required if an injured employee has to receive chiropractic treatment in excess of the pre-approved number of consultations.

17. In conducting the country studies, the Working Group observed that the approach of the North American countries towards chiropractic and other healthcare practitioners is considerably different from that of European countries. Generally speaking, in USA and Canada, on top of medical practitioners, other healthcare practitioners, e.g. nurses, podiatric physicians and optometrists, can also issue medical certificates under the labour legislation and social security system. However, in Europe, medical practitioners remain the mainstream for certification of illness and work injuries. In general, the medical certificates issued by chiropractors would not establish the entitlement of employees to benefits and protection under the labour legislation and social security system.

### (III) Surveys on Chiropractic Treatment

18. To gauge the popularity of chiropractic treatment in Hong Kong, the Working Group studied various local surveys on chiropractic, including a Thematic Household Survey (THS) conducted by the Census and Statistics Department (C&SD) in 2005.

19. The THS indicated that at the time when the survey was conducted, there were 44 300 persons aged 15 and over who had received chiropractic treatment during the 12 months before enumeration, constituting 0.8% of all persons aged 15 and over in Hong Kong. Among those 44 300 respondents, around 46.6% indicated that they had received chiropractic treatment for their “waist”, 32.7% for their “back” and 27.9% for their “neck”.

20. Persons who sought chiropractic treatment tended to have relatively higher education and higher median monthly household income than the population as a whole. Among those who sought chiropractic treatment, 82.8% had attained secondary education or above<sup>6</sup>. In the 40 900 households with members who had received chiropractic treatment during the 12 months before enumeration, their median monthly household income was \$25,700, a level significantly higher than the overall median monthly household income of \$15,700 for the population then. Over half (50.2%) of the persons who had received chiropractic treatment reported that they had first received the treatment three months or more after the injury or illness. More than half of the persons who sought chiropractic treatment paid more than \$300 per consultation.

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<sup>6</sup> According to the 2006 by-census, among the population with aged 15 and above, 74.6% have attended secondary or higher education.

21. In addition, to gauge the prevalence of chiropractic treatment among injured employees, LD undertook a survey of the injured employees who called on the department for sick leave clearance in October 2007: of the 778 injured employees surveyed, four (or 0.5%) had sought chiropractic treatment.

22. In a similar survey conducted by LD in 2003 to ascertain the prevalence of Chinese medicine among injured employees, 32.1% of the respondents replied that they had sought Chinese medicine treatment. At that time, the medical functions performed by registered Chinese medicine practitioners had yet to be recognised under labour legislation. In other words, an injured employee was not entitled to sick leave and reimbursement of medical expenses after receiving treatment from Chinese medicine practitioners.

#### (IV) Views of Liability-takers

23. Whether the medical certificates issued by a type of healthcare practitioners should be recognised under labour legislation is not simply a matter between the patients and the practitioners concerned. This is because such proposal will create new legal liabilities on the stakeholders like employers and insurers underwriting employees' compensation insurance.

24. With a view to evaluating the related implementation issues involved, the Working Group met a group of human resources (HR) practitioners from the private sector and also considered the views of insurers on the subject. Both HR practitioners and insurers observed that the demand for chiropractic services by employees was small in Hong Kong. HR practitioners pointed out that the uncertainties with respect to the diseases and injuries that chiropractors could treat could lead to management problems. They suggested that the chiropractic sector should first draw up guidelines for issuing medical certificates to facilitate employers and insurers to monitor the sick leave pattern.

25. Both HR practitioners and insurers considered that the services offered by other healthcare practitioners such as physiotherapists and occupational therapists were more popular than those provided by chiropractors. HR practitioners further suggested that the chiropractic sector should step up educational and promotional efforts to enhance the public awareness of the diseases that might be amenable to chiropractic treatment and the scope of such treatment, so as to minimise any possible misunderstanding of, and disputes between, employees and employers.

(V) Observations and Concerns

26. Having thoroughly studied the issues involved, the Working Group has the following observations and concerns.

*Read-across Implications on Other Healthcare Practitioners*

27. At present, 12 types of healthcare practitioners<sup>7</sup> are subject to statutory registration. The main purpose of the Administration to establish a mandatory registration system for a particular type of healthcare practitioners is to eliminate laypersons in the performance of the concerned healthcare functions. Whether the practitioners can issue medical certificates under labour legislation is irrelevant. Currently, only medical practitioners, registered Chinese medicine practitioners and dentists are authorised to issue medical certificates to entitle employees to benefits such as sickness allowance, subject to stipulated conditions. If the medical certificates issued by chiropractors are to be covered under labour legislation, similar demands will also be raised by other types of healthcare practitioners that are more popular among employees and have a longer history of practice in Hong Kong.

28. The Working Group holds the view that Hong Kong must carefully consider whether the North American model which authorises chiropractors, physiotherapists, optometrists, nurses, etc. to issue medical certificates should be followed, and the impact of this relaxed model on the labour relations and employees' compensation system of Hong Kong.

*Community Knowledge and Acceptance*

29. In Hong Kong, chiropractic is not within the mainstream medical treatment and community knowledge of chiropractic is low. While chiropractic treatment can cover different injuries and diseases, such as dysfunction of the immunity or respiratory system, the general public's perception may confine chiropractic treatments to back injuries and pains.

30. According to the results of the THS mentioned above, patients or injured employees usually sought chiropractic treatment after trying some other forms of medical treatment and, in many cases, persons who sought the treatment did not attend the full treatment programme as recommended. Even though injured employees could claim reimbursement for the cost of chiropractic treatment under the ECO, most employees were more readily

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<sup>7</sup> These include medical practitioners, dentists, Chinese medicine practitioners, midwives, nurses, pharmacists, medical laboratory technologists, occupational therapists, optometrists, radiographers, physiotherapists and chiropractors.

acceptable to medical treatment rendered by medical practitioners, registered Chinese medicine practitioners, physiotherapists and occupational therapists. Only a few injured employees had sought chiropractic treatment.

31. In fact, employees have already been provided with a range of treatment options under the current labour legislation. The illness and injuries treated by chiropractors can also be dealt with by medical practitioners and Chinese medicine practitioners. If the medical certificates issued by chiropractors are recognised under labour legislation, the Administration will need to set up a new assessment mechanism under the existing employees' compensation system, which will make the procedures of processing work injury cases more complicated.

### *Implementation Problems*

32. If the medical certificates issued by chiropractors are recognised under labour legislation, employers and insurers will be endowed with new legal obligations. In order to discharge these new obligations, employers will need to incur additional expenditure in sickness allowance, periodical payments and medical expenses, which will in turn generate a pressure to increase the level of premium for employees' compensation policies. The insurers will also become liable for a greater amount of compensation payment. In addition, given the lack of ethnic root of chiropractic in the local Chinese community, employers may become sceptical of the medical certificates issued by chiropractors if they do not have sufficient knowledge on chiropractic.

33. Furthermore, the chiropractic sector has yet to provide a set of guidelines for the issuance of medical certificates. The Working Group considers these guidelines necessary, as they can help to gain the acceptance of employers, employees and other stakeholders and facilitate the resolution of disputes with regard to the nature of treatment and the duration of sick leave granted.

### (VI) Recommendations of the Working Group

34. After thorough consideration, the Working Group does not recommend recognising the medical certificates issued by chiropractors under labour legislation. Major considerations include:

- (a) There are significant differences in the approaches adopted by different countries in dealing with chiropractic practices in labour legislation and social security systems. In USA and Canada, the medical certificates issued by chiropractors and other healthcare

practitioners are recognised. However, in recent years, there has been a trend to restrict benefit payments in respect of chiropractic treatment in some states or provinces. In Europe, medical practitioners is the mainstream profession for the issuance of medical certificates in respect of illness and work injuries. In Asia, in addition to medical practitioners, some countries or regions also recognise the certificates issued by Chinese medicine practitioners under their labour legislation. However, the study of Working Group indicates that most European and Asian countries do not recognise the medical certificates issued by chiropractors. Therefore, the Working Group considers it necessary to adopt a more prudent approach on this issue;

- (b) The WHO defines chiropractic as “a form of complementary and alternative medicine”. Chiropractic also lacks ethnic root in the local Chinese community. Even though injured employees can claim reimbursement for the cost of chiropractic treatment under the ECO, only a small number of citizens have sought such treatment, reflecting that the public have limited knowledge on chiropractors. Therefore, it is suggested that the chiropractic sector should step up educational and promotional efforts to minimise any possible misunderstanding and disputes on chiropractic treatment between employers and employees, which would have a negative impact on the harmonious labour relations in Hong Kong. In view of the above, the Working Group considers it premature to recognise the medical certificates issued by chiropractors under labour legislation as chiropractic in Hong Kong is still under development. The subject should be further studied in detail from the local context and perspective taking into account the community knowledge and acceptance of chiropractic treatment, the stakeholders’ views and the development of chiropractic in Hong Kong and elsewhere;
- (c) If the medical certificates of chiropractors are covered under labour legislation, it might have an impact on the existing employees’ compensation system. As all chiropractors are engaged in private practice and there is a lack of local tertiary institutions providing chiropractic training in Hong Kong, it would be difficult to identify neutral and independent authority to offer medical opinion or arbitrate in case of disputes if the medical certificates issued by a chiropractor are opposed or challenged by the employer or insurer. Under the existing mechanism, in case medical practitioners have different medical opinions on the period of temporary incapacity and degree of permanent loss of earning capacity of an injured employee, assessment and arbitration can be undertaken by the medical

practitioners of the Hospital Authority. Likewise, any difference in medical opinions among registered Chinese medicine practitioners can be assessed and arbitrated by the Chinese medicine practitioners of the local universities; and

- (d) If the medical certificates of an additional type of healthcare practitioners are covered under labour legislation, employers and insurers will have to take on new legal obligations. We should thus ensure that their rights are also adequately protected. Since employers, HR practitioners and insurers have limited understanding on the scope of chiropractic treatment, the diseases that chiropractors can treat, as well as the chiropractors' criteria and guidelines on the issuance of medical certificates, their understanding on these matters would need to be enhanced in order to avoid unnecessary disputes relating to the issuance of medical certificates.

## **Way Forward**

35. Having carefully considered the Report of the Working Group, the Administration agrees with the recommendations made by the Working Group and considers that at this juncture there are not enough justifications for medical certificates issued by chiropractors to be recognised under labour legislation. However, the Administration also notes the recent developments of chiropractic in Hong Kong. These include the continual increase in the number of chiropractors from 32 upon the registration of the first batch of chiropractors in January 2002, to 114 when the Working Group was conducting its study<sup>8</sup>. The latest number of chiropractors registered rose to 134<sup>9</sup> as at March 2011. The chiropractic sector also actively considers improving its registration system, requiring individual chiropractors to keep medical records of their patients, and drawing up guidelines for the issuance of medical certificates. These initiatives are currently under study and the guidelines are being drafted. In addition, chiropractic associations have organised various kinds of activities to promote and publicise chiropractic treatment. Besides, the CCHK has launched a voluntary Continuing Professional Development scheme since 1 January 2010 to encourage chiropractors for continuing education.

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<sup>8</sup> The figure as at September 2009.

<sup>9</sup> As at March 2011, there are 11 731 medical practitioners, 1 979 dentists, 6 241 Chinese medicine practitioners, 2 252 physiotherapists and 1 393 occupational therapists in Hong Kong.

36. To gauge the prevalence of chiropractic treatment in Hong Kong, LD conducted another round of survey on injured employees who called on the department for sick leave clearance in November 2010. The result revealed that 24 (or 2.9%) of the 819 injured employees surveyed had sought chiropractic treatment, which was higher than the 0.5% recorded in the 2007 survey.

37. In order to gain a more updated and thorough understanding on the community's knowledge and utilisation of chiropractic treatment, the Administration proposes to commission C&SD to conduct a more comprehensive survey on the subject to gauge the prevalence of chiropractic treatment in Hong Kong. At the same time, the Administration will continue to communicate with the stakeholders and closely monitor the latest development of chiropractic in Hong Kong and other regions.

### **Views of the Labour Advisory Board**

38. At the meeting of the Labour Advisory Board held on 9 May 2011, members noted and agreed to the recommendations of the Working Group and the Administration's proposal as set out in paragraph 37 above.

### **Conclusion**

39. Members are invited to note the content of this paper.

Labour and Welfare Bureau  
Labour Department  
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