

立法會
Legislative Council

LC Paper No. LS23/11-12

**Paper for the House Committee Meeting
on 3 February 2012**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 13 January 2012**

Date of tabling in LegCo : 18 January 2012

Amendment to be made by : 15 February 2012 (or 21 March 2012 if extended by resolution)

Undesirable Medical Advertisements (Amendment) Ordinance 2005 (16 of 2005)

Undesirable Medical Advertisements (Amendment) Ordinance 2005 (Commencement) Notice 2012 (L.N. 3)

By L.N. 3, the Secretary for Food and Health appoints 1 June 2012 as the day on which sections 2, 3, 4, 5, 6, 7, 8, 10 and 12 (the remaining provisions) of the Undesirable Medical Advertisements (Amendment) Ordinance 2005 (16 of 2005) (UMAAO) come into operation.

2. The Undesirable Medical Advertisements Ordinance (Cap. 231) (the Ordinance) prohibits or restricts advertisements of any medicine, surgical appliance or treatment claiming curative or preventive effect on diseases or conditions specified in Schedules 1 and 2 to the Ordinance. The Ordinance was amended by UMAAO, which was passed by the Legislative Council on 29 June 2005 and gazetted on 8 July 2005. UMAAO extends the prohibition or restriction on advertising to six groups of claims for orally consumed products, except those customarily consumed only as food or drink or to satisfy a desire for taste, texture or flavour.

3. The six groups of prohibited or restricted claims are specified in the new Schedule 4 to the Ordinance (as added by section 10 of UMAAO). They include:

- (a) the following three types of claims which are prohibited:
 - (i) prevention, elimination or treatment of breast lumps;
 - (ii) regulation of the function of the genitourinary system and/or improvement of symptoms of genitourinary problems; and
 - (iii) regulation of the endocrine system and/or maintenance or alteration of hormonal secretions; and

- (b) the following three types of claims which are allowed in the prescribed format, subject to the inclusion of a specified disclaimer if the product is not registered under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549) (CMO):
 - (i) regulation of body sugar or glucose and/or alteration of the function of the pancreas;
 - (ii) regulation of blood pressure; and
 - (iii) regulation of blood lipids or cholesterol.

4. Apart from prohibiting or restricting advertisements of orally consumed products, other amendments introduced by UMAAO include raising the penalties for contravention of the Ordinance, empowering the Director of Health to appoint inspectors to enforce the Ordinance and certain textual amendments.

5. By L.N. 16 of 2006, sections 1 (short title and commencement), 9 (amending the purposes for which advertising is permitted under Schedule 1 to the Ordinance) and 11 (textual amendments to the Ordinance) of UMAAO came into operation on 20 January 2006. According to paragraph 5 of the LegCo Brief issued by the Food and Health Bureau in January 2012 (File Ref.: FH CR 1/3231/03 Pt. 19), the remaining provisions have not been brought into operation pending commencement of the mandatory registration and the requirements of label and package insert of proprietary Chinese medicine under CMO. According to the Administration, the relevant registration and labelling requirements have been implemented in two phases in December 2010 and December 2011 respectively.

6. According to paragraphs 10 to 13 of the LegCo Brief, the trade and stakeholders have been briefed on the plan to commence the remaining provisions. The Department of Health (DH) has published guidelines, written to traders and publishers, and held seminars and briefings to prepare for the full implementation of UMAAO. Upon our enquiry, the Administration has

advised that during the briefings, traders sought clarification on the specific provisions under UMAAO, and expressed that adequate time should be allowed for them to revise the advertisements of their products to meet the new requirements. DH will continue to keep the trade informed and launch further publicity activities. The Administration considers that a commencement date of 1 June 2012 will provide adequate time for the trade and stakeholders to prepare for the full implementation of UMAAO.

7. The Panel on Health Services was consulted on the proposed commencement of the remaining provisions at its meeting on 9 January 2012. Members of the Panel in general supported the proposal. However, some members raised concerns about misleading or exaggerated claims made in infant formula and health foods advertisements.

8. No difficulties have been identified in relation to the legal or drafting aspects of the above item of subsidiary legislation.

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