

LEGISLATIVE COUNCIL BRIEF

Undesirable Medical Advertisement (Amendment) Ordinance 2005

UNDESIRABLE MEDICAL ADVERTISEMENTS (AMENDMENT) ORDINANCE 2005 (COMMENCEMENT) NOTICE 2012

INTRODUCTION

Pursuant to section 1(2) of the Undesirable Medical Advertisements (Amendment) Ordinance 2005 (UMA(A)O), the Secretary for Food and Health has made the Commencement Notice at [Annex A](#) to commence the provisions related to the control of health claims of orally consumed products on 1 June 2012.

JUSTIFICATIONS

Background

2. The Undesirable Medical Advertisements Ordinance (Cap. 231) (UMAO) prohibits advertisements claiming that a medicine, a surgical appliance or a treatment has curative or preventive effect on any diseases or conditions in human beings as specified in the schedules to the Ordinance. The purpose is to protect the general public from being induced by advertisements to seek improper self-medication or treatment instead of consulting relevant healthcare professionals.

3. The UMAO was amended in June 2005 to widen its scope to extend the prohibition or restriction on advertising to another six groups of health claims specified in a new Schedule 4, and to apply the prohibition/restriction to all orally consumed products, except those customarily consumed as food or drink. The six groups of claims to be prohibited/restricted included in Schedule 4 are detailed in the table below.

Health claims	Restriction imposed
(i) Prevention, elimination or treatment of breast lumps	The advertising of these three claims is not allowed under any circumstances.
(ii) Regulation of function of genitourinary system	
(iii) Regulation of endocrine system	
(iv) Regulation of body sugar or glucose	The advertising of these three claims is allowed in the prescribed format (e.g. “The product is suitable for people concerned about blood sugar”). However, for products not registered under the Chinese Medicines Ordinance (Cap. 549) (CMO) or the Pharmacy and Poisons Ordinance (Cap.138) (PPO), a disclaimer must be clearly put in the advertisement to inform consumers that they are not products registered under the CMO or the PPO.
(v) Regulation of blood pressure	
(vi) Regulation of blood lipids or cholesterol	

4. Other major amendments of the UMA(A)O include:
- (a) increasing the penalty for contravention of UMAO from \$10,000 to level 5¹ and imprisonment for six months for a first offence; and from \$25,000 and imprisonment for one year to level 6¹ and imprisonment for one year for a second or subsequent offence (Section 7 of UMA(A)O);
 - (b) empowering the Director of Health to appoint inspectors to enforce the UMAO (Section 8 of UMA(A)O); and
 - (c) changes to Schedules 1 to add in new permitted claims and remove some restrictions on the permitted claims (Section 9 of UMA(A)O).

¹ The maximum penalties for level 5 and level 6 are \$50,000 and \$100,000 respectively.

Provisions proposed for commencement

5. Sections 1, 9, 11 of the UMA(A)O commenced in January 2006. Other provisions of the UMA(A)O, including those relating to prohibition / restriction of advertising of the six groups of claims of orally consumed products detailed in paragraph 3 above, are yet to commence. As these provisions provide that orally consumed products carrying health claims but not registered under PPO or CMO must carry an additional disclaimer indicating so, they can only be brought into operation after commencement of the mandatory registration and the requirements of label and package insert of proprietary Chinese medicine (pCm) under CMO. This has been implemented in two phases in December 2010 and December 2011 respectively.

6. We propose to commence the remaining provisions under the UMA(A)O on 1 June 2012. The list of legislative provisions proposed to commence is at **Annex B**.

THE COMMENCEMENT NOTICE

7. The Commencement Notice brings into operation sections 2, 3, 4, 5, 6, 7, 8, 10 and 12 of the UMA(A)O on 1 June 2012.

LEGISLATIVE TIMETABLE

8. The legislative timetable of the Commencement Notices is as follows -

Publication in the Gazette	13 January 2012
Tabling at the LegCo	18 January 2012
Date of Commencement	1 June 2012

IMPLICATIONS OF THE COMMENCEMENT NOTICE

9. The proposal has no productivity, financial or civil service implications. It is in conformity with the Basic Law, including the

provisions concerning human rights, and will not affect the binding effect of UMAO.

PUBLIC CONSULTATION

10. The trade and stakeholders have been briefed on the plan to commence the remaining sections of UMA(A)O since early 2011. We also consulted the LegCo Panel on Health Services on 9 January 2012. Members in general supported the commencement proposal.

PUBLICITY

11. To help the trade better understand the new regulations under UMA(A)O, the Department of Health (DH) has launched various publicity activities and maintained close communication with the trade since 2005.

12. DH has also prepared a set of guidelines in close consultation with the trade representatives and Members of the Health Services Panel in 2006. The “Guidelines on the Undesirable Medical Advertisements (Amendment) Ordinance 2005” have been sent to the trade and made available on the website of the Drug Office under DH.

13. In addition, letters were sent to traders and publishers to brief them about the UMA(A)O. Seminars and briefing sessions were also conducted in 2006 for the trade and publishers to explain the UMAO and its Amendment Ordinance.

14. To prepare the trade for the full implementation of the UMA(A)O, DH has launched another round of publicity activities. Since January 2011, DH organized nine briefing sessions for traders of western medicine, Chinese proprietary medicine and health food, as well as the publishing companies and other stakeholders. Representatives from over 500 companies / organizations attended. DH will continue to keep the trade informed and launch further publicity activities.

ENQUIRY

15. For any enquiries on the brief, please contact Miss Carmen YU, Assistant Secretary for Food and Health at 3509 8957.

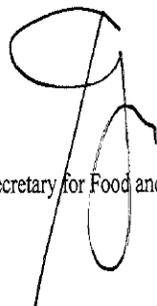
Food and Health Bureau
January 2012

Undesirable Medical Advertisements (Amendment) Ordinance 2005
(Commencement) Notice 2012

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**Undesirable Medical Advertisements (Amendment)
Ordinance 2005 (Commencement) Notice 2012**

Under section 1(2) of the Undesirable Medical Advertisements (Amendment) Ordinance 2005 (16 of 2005), I appoint 1 June 2012 as the day on which sections 2, 3, 4, 5, 6, 7, 8, 10 and 12 of the Ordinance come into operation.



Secretary for Food and Health

10 January 2012

Provisions Proposed for Commencement

Undesirable Medical Advertisement (Amendment) Ordinance 2005

Section	Purpose of the provision
2	To amend the long title of the Ordinance to reflect its widened scope of covering health claims.
3	To amend the short title of the Ordinance by repealing “醫藥廣告” and substituting “廣告(醫藥)” .
4	To amend section 2(1) of the Ordinance to add in the definition of orally consumed product.
5	To add section 3B to the Ordinance to prohibit advertisements relating to certain orally consumed products as set out in column 1 of Schedule 4, except for those as allowed under the provisions in column 2 of that Schedule.
6	To amend section 5(1) regarding the defenses for a contravention of section 3, 3B, or 4.
7	To revise section 6 of the Ordinance regarding the level of penalty.
8	To add section 8 to the Ordinance to empower the Director of Health to authorize any public officer to be an inspector for the purposes of this Ordinance and to set out the enforcement provisions under this Ordinance.
10	To add Schedule 4 to the Ordinance to specify the claims for orally consumed products in respect of which advertisements are prohibited or restricted.
12	To set out the consequential amendments to the Schedule of the Specification of Public Offices (Cap.1 sub. Leg. C).