

立法會
Legislative Council

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(These minutes have been
seen by the Administration)

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Bills Committee on Chinese Medicine Bill

Minutes of meeting
held on Tuesday, 15 June 1999 at 8:30 am
in Conference Room A of the Legislative Council Building

Members Present : Prof Hon NG Ching-fai (Chairman)
Hon Cyd HO Sau-lan
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHAN Yuen-han
Dr Hon LEONG Che-hung, JP
Dr Hon Philip WONG Yu-hong
Hon Ambrose LAU Hon-chuen, JP
Dr Hon TANG Siu-tong, JP

Members Absent : Hon David CHU Yu-lin
Hon HO Sai-chu, JP
Hon Michael HO Mun-ka
Hon LEE Kai-ming, JP
Dr Hon LUI Ming-wah, JP
Hon Ronald ARCULLI, JP
Hon YEUNG Yiu-chung
Hon CHOY So-yuk
Hon SZETO Wah
Hon LAW Chi-kwong, JP

Public Officers Attending : Mr Gregory LEUNG, JP
Deputy Secretary for Health and Welfare (1)

Dr P Y LAM
Deputy Director of Health

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Miss Eliza YAU
Principal Assistant Secretary for Health and Welfare (Medical) 1

Miss Miranda NG
Senior Assistant Law Draftsman, Department of Justice

Dr LEUNG Ting-hung
Assistant Director of Health (Traditional Chinese Medicine)

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Ms Joanne MAK
Senior Assistant Secretary (2) 4

I. Meeting with the Administration

Cancellation of the visit to Guangdong Provincial Hospital of Traditional Chinese Medicine

(LC Paper No. CB(2) 2139/98-99)

Miss Cyd HO Sau-lan said that it was a pity that the visit had been cancelled. She considered that the Administration should organize another one in the future as such visits would facilitate members' understanding of the actual operation of traditional Chinese medicine hospitals. She suggested the Administration to organize the visit again before the discussions of the relevant subsidiary legislation. Dr LEONG Che-hung shared Miss HO's views and said that it was important for members to see how these hospitals handled the interface problem of Chinese medicine and Western medicine.

2. Miss HO further made the point that it would also be worthwhile for members to pay a visit to Taiwan as she noted that some hospitals there had been making combined use of Chinese and Western medicine in the treatment of patients. The Chairman agreed and suggested that the visits to the Mainland and Taiwan could be organized after the scrutiny of the Bill was completed in order to avoid delay of work. In this connection, Deputy Secretary for Health and Welfare (1) (DSHW) agreed to assist in making the arrangements for the visits. However, as the Bills Committee

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would be dissolved on completion of the scrutiny of the Bill, Miss Cyd HO Sau-lan suggested that the visits could be conducted in the name of the House Committee (HC). Dr LEONG Che-hung, who was the HC Chairman, agreed that the House Committee could discuss the matter. The Chairman said that as there was no urgency to make the visits, the Administration would be requested to follow up the matter later.

Clause-by-clause examination of the Bill

Clause 1 - Short title and commencement

3. The Chairman recalled that Dr LEONG Che-hung had previously suggested to re-name the Bill as the "Traditional Chinese Medicine Bill". He noted that members in general were not supportive of the proposal.

Clause 2 - Interpretation

"committee"

4. Mrs Selina CHOW considered that the committees formed under the Chinese Medicine Council (CMC) should not be called "小組" as such description could not reflect the power and the high level of responsibility of the committees. She also suggested that the Chinese names of the boards and committees formed under the CMC should tally with those of the same set-up under the Medical Council of Hong Kong (HKMC). However, the Administration advised that it was not possible for them to tally because basically the structure of the HKMC was different from the CMC's in that the former only involved a two-tier structure whereas the latter was a three-tier one. It was inevitable to use "小組" for "committees" since "委員會" and "組" had been used for the two upper tiers of the CMC. Mr Philip WONG Yu-hong suggested changing "小組" to be "專責組" for "committees". The Chairman requested the Administration to re-consider the Chinese names of the committees under the CMC.

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"practising Chinese medicine"

5. Mrs Selina CHOW referred to the submission from the Hong Kong College of Obstetricians and Gynaecologists (LC Paper No. 2192/98-99 (01)) and asked whether Chinese medicine practitioners would be allowed to perform obstetric and gynaecological procedures in the future. Dr LEONG Che-hung said he was worried that the Bill could not prohibit Chinese medicine practitioners from performing surgical procedures for lack of a definition of "traditional Chinese medicine" in the Bill. He said that by the same token, the Bill could not prohibit Chinese medicine practitioners from treating eye diseases in the future. He urged the Administration to address the problems.

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6. Mrs Selina CHOW said she understood that there might be delay of work making it impossible for the Bill to be passed before the end of the current session if members insisted that the Bill had to define very specifically the scope of "practising Chinese medicine". She requested the Administration to undertake that it would define clearly the scope before commencement of the statutory registration system. Dr LEONG Che-hung supported the proposal and emphasized that defining the scope was important for the protection of public health.

7. Deputy Director of Health (DDH) pointed out that as Chinese medicine practitioners were prohibited by law, for example, from administration of anaesthetics and performing blood transfusions, there were practical problems for them to handle childbirth. However, Mrs Selina CHOW considered that the Administration should not assume that Chinese medicine practitioners would not perform obstetric and gynaecological procedures simply because of the practical difficulties involved and not to state clearly in the relevant code of practice (COP) that they should refrain from performing the procedures. In response, DSHW said that following the formation of the CMC, it would start at once drafting the COP for the profession. The document would be made public.

8. Dr LEONG Che-hung questioned how the Administration would ensure that the scope of practice defined in the COP would not be made too broad and unrestricted. He also asked how the Administration could control the practice of the Chinese medicine practitioners and prevent them from performing abortions by making use of Chinese herbal medicines or proprietary Chinese medicines. In response, DDH said that the best way to prevent the problems envisaged was by defining clearly in the COP the scope of practice for Chinese medicine practitioners. He pointed out that in the process, it was important for the sector to have thorough discussions with the HKMC regarding their interface. In addition, the Health and Welfare Bureau would play a coordinating role in case of any disputes on the interface problem.

9. Senior Assistant Legal Adviser (SALA) pointed out that there was no mention of the COP in the Bill. There was also no mention of the consequence of failure to observe the provisions of the COP. This was in contrast with the Human Reproductive Technology Bill which clearly required a COP to be prepared and maintained and also provided for the use of the code. Senior Assistant Law Draftsman (SALD) pointed out that there were provisions in the Bill defining the functions of the disciplinary committee under the CMC and the power vested with it in undertaking disciplinary actions against Chinese medicine practitioners. Dr LEONG Che-hung suggested that when the Second Reading debate on the Bill was resumed, the Administration should make an undertaking that there would be a COP issued by the CMC to provide guidance for the profession in respect of their practice. DSHW agreed to consider Dr LEONG's suggestion.

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10. SALA invited members' attention to clause 75 which provided that "every registered Chinese medicine practitioner and listed Chinese medicine practitioner shall

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be entitled to practise Chinese medicine ...". He pointed out that given the definition of "practising Chinese medicine", all registered Chinese medicine practitioners and listed Chinese medicine practitioners in the future could practise Chinese medicine in general practice, acupuncture and/or bone-setting as they liked. It was therefore possible for some Chinese medicine practitioners, who got registered for their long practising experience but had actually practised within a very narrow scope (such as in bone-setting only), to carry out general practice under the new system. Mrs Selina CHOW was of the view that the "grandfathering" arrangements for the existing Chinese medicine practitioners should aim at maintaining their status quo only. She considered that they should only practise within their areas of expertise.

11. DDH explained that the Administration had actually considered the option of providing three different kinds of registered Chinese medicine practitioners - general practice, acupuncture and bone-setting. However, after deliberations it had decided that these arrangements would not be desirable for the long-term development of Chinese medicine nor conducive to raising the standards of Chinese medicine practitioners. He said that the Administration's target was that in the future only Chinese medicine practitioners with a full knowledge of Chinese medicine should be allowed to practise Chinese medicine, no matter whether it was in general practice, acupuncture or bone-setting. As pointed out by the sector, bone-setting and acupuncture should be used in combination with the theories of traditional Chinese medicine in order to be effective. Therefore, there should be only one kind of registered Chinese medicine practitioners who were required to have a full knowledge of all aspects of Chinese medicine. Moreover, DDH pointed out that the registered Chinese medicine practitioners would be required to undergo continuing education in Chinese medicine, which would provide good opportunities for them to improve their professional knowledge. As to the listed Chinese medicine practitioners, DDH said that the Practitioners Board could impose restrictions on their scope of practice if it had doubt about the professional competence of individuals.

12. Dr TANG Siu-tong agreed with Mrs Selina CHOW that conditions should be imposed on registered Chinese medicine practitioners where necessary to stipulate that they must practise within the scope of their specialty. After declaring interest as a member of the PCCM, Dr LEONG Che-hung said that he shared members' concerns. However, he did not support that there should be different kinds of registered Chinese medicine practitioners with different registration criteria imposed on them. He considered the only viable option was to require the Practitioners Board to scrutinize the applications for registration very stringently. It was also important that the grandfathered Chinese medicine practitioners should exercise self-discipline.

13. Mrs Selina CHOW questioned why the Administration did not consider registering some Chinese medicine practitioners with conditions imposed to restrict their scope of practice where necessary. She took the view that the Practitioners Board should be given the discretionary power to impose such conditions on individual registered Chinese medicine practitioners where appropriate. Miss Cyd

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HO Sau-lan agreed with Mrs CHOW and pointed out it would be unfair to patients to assume that all the registered Chinese medicine practitioners were capable of practising Chinese medicine in all aspects. The Chairman agreed and requested the Administration to re-consider the policy.

14. In response, DDH explained that there would be immense administrative work involved if the Practitioners Board were required to analyze in detail the amount of practising experience of a Chinese medicine practitioner in every area of Chinese medicine. DSHW assured members that the Practitioners Board would be required to scrutinize every application for registration very stringently to ensure that only those who had a very high professional standard would be registered. DDH believed that the chance for a registered Chinese medicine practitioner to risk practising in areas he had no knowledge of would be minimal. Moreover, he considered that a Chinese medicine practitioner who had practised for 15 years or more on a full-time basis should be regarded as quite experienced. He added that as it was agreed that bone-setting and acupuncture were two disciplines of Chinese medicine, experienced practitioners of these subjects must have had a comprehensive knowledge of Chinese medicine or else they would not have been able to apply the skills effectively.

15. Mrs Selina CHOW asked whether the Bill had provided for the Practitioners Board to require a practitioner, who had 15 years or more of experience, to take the registration assessment if the Board had doubt as to the applicant's professional competence to practise Chinese medicine in general. In response, DDH said that there were no such enabling provisions in the Bill. Mrs CHOW said that while she accepted that registration could be granted to Chinese medicine practitioners who had continuously been practising for 15 years or more, these registered practitioners should only be allowed to practise within the scope of their past practice. She was worried that there might be a sizeable group of Chinese medicine practitioners who had very long practising experience but within a very limited scope only. She considered that the Administration should not just reply on the goodwill of these Chinese medicine practitioners not to practise outside the areas of their knowledge. She urged that the Practitioners Board should be given the discretionary power to impose conditions on the practice of any registered Chinese medicine practitioners as considered necessary.

16. DDH said that based on a survey conducted, there were almost no existing full-time Chinese medicine practitioners who had never received training in Chinese medicine. Moreover, the complaint mechanism to be established under the CMC would protect the interests of patients and handle any complaints lodged against the practice of Chinese medicine practitioners. However, Mrs Selina CHOW still considered that there was no basis to assume that all Chinese medicine practitioners who were qualified for registration on account of length of service were competent to practise in all areas in Chinese medicine. Moreover, she noted that based on the survey conducted by the PCCM, some of the existing Chinese medicine practitioners who had practised for 15 years or more were found practising only in restricted areas of Chinese medicine.

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17. In response, DDH pointed out that Mrs CHOW's proposal would involve much administrative work beyond the limit that the Practitioners Board could handle. He suggested to stipulate in the COP that Chinese medicine practitioners should only practise within their areas of expertise and to set out the consequence of not adhering to this rule. However, Mrs CHOW pointed out that even in that case the CMC had no grounds to discipline the practitioner because once he was registered by the Practitioners Board, he was given the recognition that he could practise in those areas of Chinese medicine as defined in the Bill. Dr LEONG Che-hung agreed with Mrs CHOW and pointed out that, likewise, a registered medical practitioner who performed obstetric and gynaecological procedures even though he was not a specialist in that field, would not be subject to revocation of his licence. He would at most be required to pay damages if he was sued by his client through civil proceedings and was found liable. In view of members' concerns, DSHW agreed to consider Mrs CHOW's suggestion and revert at the next meeting.

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18. Regarding the definition of "practising Chinese medicine", the Chairman said that it should not be interpreted as implying that Chinese medicine practitioners were barred from using any modern medical equipment. Members agreed.

"registration assessment"

19. Miss CHAN Yuen-han asked whether the Administration was going to list details of the registration assessment under the subsidiary legislation. In response, DSHW said that the details such as the format of the assessment would be worked out and promulgated by the Practitioners Board in the future. However, to ease members' concerns, DSHW said that the Administration could provide information on the criteria adopted for the assessment to the LegCo Panel on Health Services for discussion. Members considered that provisions should be made in the Bill to stipulate that the details (such as the criteria of the assessment, the number of examiners for each assessment and whether there would be examiners coming from outside Hong Kong) would be published by gazette. The Administration undertook to consider the suggestion.

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Clause 4 - Composition of Council

20. Mrs Selina CHOW referred to the request made earlier on by the deputations from the trade of Chinese medicine to increase the number of representatives from the trade from five to six persons to accommodate representatives from the six existing sub-groups of the sector. In response, Assistant Director (Traditional Chinese Medicine) (AD(TCM)) explained that the sub-group made up of people engaged in processing Chinese herbal medicines was diminishing. In fact, there were hardly any more people undertaking this kind of work on a full-time basis. Therefore, the PCCM and the Administration both considered that it was not necessary to include a representative from this sub-group.

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21. Miss CHAN Yuen-han referred to the category of public officers and requested that one of them be specified as "a representative from the Hospital Authority (HA)". As the HA represented all public hospitals in Hong Kong, its membership was very important for the long-term development of Chinese medicine. Dr LEONG Che-hung supported Miss CHAN's suggestion. He considered that if the Administration acknowledged that Chinese medicine was an important component of the health care system, the HA which was the major health care service provider should have a representative on the CMC to facilitate future development of this branch of medicine. He pointed out that Chinese medicine services were already being provided in a number of public hospitals though funded by other sources. Mrs Selina CHOW shared Dr LEONG's views and pointed out that HA as the major health care service provider in Hong Kong should nominate a representative to sit on the CMC. This would facilitate the exchange of views between the HA and the CMC. Principal Assistant Secretary for Health and Welfare (Medical) 1 (PAS(HW)) counter-proposed that the HA representative be included under the "3 lay persons" category as many of the existing HA staff were now no longer public officers. Miss Cyd HO Sau-lan disagreed and observed that the category of lay persons should be used to accommodate persons representing patients' right and interests.

22. In response, DSHW explained that it was too early to state whether an HA representative should be appointed as there were no plans in the near future for provision of Chinese medicine services in public hospitals. Moreover, as suggested by PAS(HW), an HA representative could be appointed under the "3 lay persons" category by administrative means. He pointed out that the functions of the CMC were to deal with the regulation of the practice of Chinese medicine practitioners, and the use, trading and manufacture of Chinese medicines, and such matters were not related to the hospital services provided by the HA. However, members in general supported that one of the two public officers should be designated as an HA representative. Dr LEONG Che-hung undertook to move a Committee Stage amendment to that effect.

Dr LEONG
Che-hung

23. Dr LEONG Che-hung requested the Administration to consider including a medical practitioner under the "3 lay persons" category to facilitate the bringing in of experience gained from the development of Western medicine in Hong Kong into the CMC for the development of Chinese medicine. The Administration agreed to consider the suggestion.

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24. Dr LEONG noted that the chairman of the HKMC was elected from amongst its members. He queried why the CMC did not follow suit. In response, PAS(HW) explained that as it would be the first term of the CMC, it would be better for all its members to be appointed by the Chief Executive (CE) to ensure that the appropriate persons with the required expertise were included in the CMC. She pointed out that it was rare for the chairman of this kind of public organizations to be elected from

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amongst its members if the members were all appointed by the CE. In response, Dr LEONG recalled that even at the time when all the members of the HKMC were appointed members, the chairman was still elected from amongst the HKMC members. He would consider to move an amendment to the effect that except for the first or second term, the chairman of the CMC would be elected from amongst its members.

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25. Mrs Selina CHOW suggested that the category of "2 persons from educational institutions in Hong Kong" should be revised to be "2 persons from educational and research institutions in Hong Kong" to enlarge the source of experts on Chinese medicine who could be appointed to the CMC. The Administration agreed.

Clause 5-7

26. Members completed scrutiny of the above clauses without any comments.

II. Dates of further meetings

27. Members agreed to schedule additional meetings as follows -

- (a) 17 June 1999 from 10:45 am to 12:45 pm;
- (b) 19 June 1999 from 2 pm to 4 pm; and
- (c) 24 June 1999 from 10:45 am to 12:45 pm.

28. The meeting ended at 12 noon.

Legislative Council Secretariat
14 December 1999