

立法會
Legislative Council

LC Paper No. CB(2)539/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/BC/18/98

Bills Committee on Chinese Medicine Bill

Minutes of meeting
held on Tuesday, 18 May 1999 at 8:30 am
in Conference Room A of the Legislative Council Building

Members Present : Prof Hon NG Ching-fai (Chairman)
Hon David CHU Yu-lin
Hon HO Sai-chu, JP
Hon Cyd HO Sau-lan
Hon Michael HO Mun-ka
Hon LEE Kai-ming, JP
Hon LUI Ming-wah, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHAN Yuen-han
Dr Hon LEONG Che-hung, JP
Hon YEUNG Yiu-chung
Dr Hon TANG Siu-tong, JP
Hon CHOY So-yuk

Members Absent : Hon Ronald ARCULLI, JP
Dr Hon Philip WONG Yu-hong
Hon Ambrose LAU Hon-chuen, JP
Hon SZETO Wah
Hon LAW Chi-kwong, JP

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

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

Action

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. Confirmation of minutes of meeting held on 30 March 1999 and matters arising
(LC Paper No. CB(2)1993/98-99)

The minutes of the meeting held on 30 March 1999 were confirmed.

II. Discussion with the Administration -

Main issues raised by the deputations at previous meetings

(LC Paper No. CB(2)2010/98-99(02) - summary of the main issues for discussion)

Use of acupuncture by other health care professionals

2. Deputy Secretary for Health and Welfare (1) (DS(HW)1) said that after the last meeting, the Administration had consulted Chinese medicine practitioners as to whether or not it was practicable to allow other health care professionals to use acupuncture in treating patients. The general feedback was that acupuncture should be used in combination with the theories of traditional Chinese medicine in order to be effective. Therefore, it was not possible to single out acupuncture and allow other health care professionals to use it as they had not received full training in Chinese medicine. DS(HW)1 highlighted that Chinese medicine practitioners generally felt that comprehensive knowledge of Chinese medicine was a necessary complement to the use of acupuncture. As to those who had been using acupuncture but had not

Action

learnt Chinese medicine, DS(HW)1 said that the proposed transitional arrangements would allow a reasonably long time for them to study Chinese medicine and apply for registration. During the transitional period, they could continue with the practice of acupuncture.

3. Assistant Director of Health (Traditional Chinese Medicine) (AD(TCM)) then briefed members on the regulatory systems for acupuncture in the United States (US) as set out in the Administration's paper (LC Paper No. CB(2) 1778/98-99 (04)). He said that there was very stringent training programme on acupuncture for those who wanted to apply for licences for the practice, and the duration of the programme varied from state to state in the range of 2 250 to 2 500 total hours. AD(TCM) said that the training programme was similar to a full course on Chinese medicine, including studies in Chinese herbal medicines, prescription of Chinese medicines, clinical practice, theories of Chinese medicine and training on acupuncture. On completion of the training programme, applicants were required to take a licensing examination.

4. Mr Michael HO Mun-ka was concerned that under the new legislative proposals, some practitioners with substantial experience in the use of acupuncture though might not be allowed to use acupuncture. On the other hand, some Chinese medicine practitioners, who got registered simply for their length of services, would be allowed to use acupuncture without regard to their experience in the use of it. In response, DS(HW)1 reiterated that under the transitional arrangements, existing Chinese medicine practitioners offering acupuncture service could continue with the practice, until they had successfully registered as Chinese medicine practitioners, or until the end of the transitional period. DS(HW)1 said that as the Bill aimed at fostering the development of Chinese medicine, it was necessary to impose stringent requirements on the practitioners.

5. Dr LUI Ming-wah noted that the existing acupuncturists seldom prescribed Chinese medicines for patients and considered that it was unreasonable to require them to learn all the subjects of Chinese medicine, most of which were not of use to them. He supported that a practitioner who used acupuncture only but not any other Chinese medicine methods in the treatment of patients should only be required to learn the basic theories of Chinese medicine to ensure their accurate use of acupuncture. The Chairman added that in the case of the medical practitioners, who had been using acupuncture for a long time requesting permission to continue with the practice, they should be given special consideration for their professional training received in western medicine. AD(TCM) advised that Chinese medicine practitioners, however, had stressed that it was essential to use acupuncture based on the theories of Chinese medicine. Moreover, in the course of using acupuncture, other ways of treating patients used in Chinese medicine (such as massage) might also have to be applied depending on the patient's illness.

6. Dr LEONG Che-hung took the view that Chinese medicine practitioners were in the best position to advise what qualifications were required for the practice of

Action

acupuncture. Having said that, he noted that some existing medical practitioners and other health care professionals had been using acupuncture for a long time in treating patients and he agreed that the Bill should address these cases.

7. Dr LUI Ming-wah held the view that it was unrealistic to require some one who only wanted to use acupuncture to be well acquainted with all aspects of Chinese medicine. He pointed out that on the Mainland, the study of Chinese medicine was of at least five to six years' duration. He suggested that acupuncture should be treated as a kind of medical specialty and that only those who could pass the qualifying examination specifically for this discipline to practise it. Mr David CHU Yu-lin agreed with Dr LUI and supported that the existing acupuncturists should not be required to complete a full course on Chinese medicine in order to get registered.

8. In response to Dr TANG Siu-tong's enquiry, AD(TCM) said that on the Mainland, the study of Chinese medicine comprised 18 subjects including acupuncture. There was not a kind of professionals called Acupuncturists and that acupuncture was only used by Chinese medicine practitioners who had completed full training in Chinese medicine. The Chairman informed members that acupuncture was also one of the subjects of the Chinese medicine course at the Hong Kong Baptist University.

9. AD(TCM) said that the Administration's goal was that by the end of the transitional period, there should not be any person who did not know much about Chinese medicine practising acupuncture. Dr LEONG Che-hung supported that the learning of Chinese medicine should be required for anyone to specialize in any areas of Chinese medicine. Both Dr LEONG and the Chairman did not support to have a category of professionals called Registered Acupuncturists as this would not be in the interest of the development of Chinese medicine. Dr LEONG considered that improved training of Chinese medicine practitioners and more standardized treatments were essential to raise the status of Chinese medicine. He recalled that when the registration system for dentists was established, arrangements had been made for the then existing dental practitioners, who were not qualified to register as dentists, to remain in the service to provide restricted kinds of dental services only. He suggested the Administration to make reference to these arrangements in considering the current case.

10. Regarding the transitional arrangements made for Chinese medicine practitioners on the Mainland, AD(TCM) said that colleges of traditional Chinese medicine were set up on the Mainland only in the 1950s and most of the Chinese medicine practitioners before that had learnt the practice as apprentices. The registration authorities there decided that Chinese medicine practitioners with more than 15 years' experience of practice would be exempted from qualifying examinations and be allowed to be registered. As to those with less experience, they would be required to undergo relevant assessments. AD(TCM) said that these arrangements were similar to the transitional arrangements proposed by the Bill.

Action

11. AD(TCM) said that registration systems for medical practitioners and Chinese medicine practitioners would come into effect on the Mainland in May 1999. Those who did not meet the registration requirements but had had substantial experience of practice would be called "醫士" and allowed to practise medicine in rural areas as they had used to do. They would be encouraged to acquire more training and experience and to apply for registration.

12. Regarding the transitional arrangements proposed under clause 93, DS(HW)1 invited members' attention to the following points -

- (a) Flexibility would be allowed in setting the length of the transitional period to take into account the practical situation and progress of the registration of the existing Chinese medicine practitioners;
- (b) To facilitate practitioners meeting the registration requirements, many training opportunities would be provided by tertiary educational institutions on Chinese medicine; and
- (c) The case of the registration for dentists was not relevant, as it could not be specified which kinds of acupuncture should be performed by the Registered Chinese Medicine Practitioner (Acupuncture) and which kinds should be performed by those who could not meet the registration requirements.

13. Dr LUI Ming-wah suggested that the Bills Committee should pay a visit to the Guangzhou University of Traditional Chinese Medicine to enhance members' understanding of the training in and practice of Chinese medicine. The Chairman supported Dr LUI's suggestion and further proposed that the visit should cover hospitals of traditional Chinese medicine in Guangzhou.

14. Mr Michael HO Mun-ka asked whether or not practitioners of western medicine on the Mainland were allowed to use acupuncture in the treatment of patients. In reply, AD(TCM) said that they were allowed to prescribe some Chinese herbal medicines and use acupuncture as these subjects were included in their studies in the universities. Likewise, the training in Chinese medicine there also included learning the prescription of western medicines. Therefore, Chinese medicine practitioners on the Mainland were allowed to prescribe some western medicines for patients.

15. Mr Michael HO Mun-ka recalled that the representatives of the Association of Licentiates of Medical Council of Hong Kong had submitted that they had actually received formal university training in Chinese medicine on the Mainland. In the treatment of patients, they prescribed proprietary Chinese medicines for them and some of them used acupuncture as well. They therefore requested that they should be allowed to continue practising Chinese medicine after the passage of the Bill. In response, AD(TCM) said that these medical practitioners would be allowed to do so

Action

under the transitional arrangements, provided that they had been practising as well Chinese medicine in Hong Kong. At the end of the transitional period, they could continue to do so only if they met the requirements for registration as Chinese medicine practitioners. Then after registration, they could practise both as Chinese medicine practitioners and medical practitioners. AD(TCM) said he understood that there were concerns about the interface issues between practising Chinese medicine and practising Western medicine. However, the Administration was of the view that how far Chinese medicine could make use of the technical advantages of Western medicine or vice versa should be sorted out by the future Chinese Medicine Council (CMC) and the Medical Council of Hong Kong. DS(HW)1 supplemented that in the event of any disputes arising between health care professions over their respective scopes of practice, the Administration would play a coordinating role and helped the professions to resolve their discrepancies in views.

16. The Chairman asked if the Administration would consider to allow the existing medical practitioners and other health care professionals to continue to use acupuncture until they retired or left the service. He pointed out that these people might not even have the interest to apply for registration as Chinese medicine practitioners. All they wanted was only to use acupuncture to supplement Western cures and they had no intention to practise as Chinese medicine practitioners. In response, DS(HW)1 said that the policy if adopted might have an adverse impact on the long term development of Chinese medicine. Moreover, it would be difficult to ensure the standard of the acupuncture service provided by these practitioners.

17. Dr LEONG Che-hung asked if there was any information on the profiles of existing Chinese medicine practitioners and the age distribution of those who had been specializing in particular areas in Chinese medicine. In response, AD(TCM) informed members the Preparatory Committee on Chinese Medicine (PCCM) had conducted a survey in 1996 with the following findings -

- (a) 70% of the 6 890 Chinese medicine practitioners surveyed were found to have been practising Chinese medicine for 15 years or more;
- (b) The remaining 2 000 respondents had been practising Chinese medicine for less than 15 years; and
- (c) About 1 000 of the respondents practised acupuncture only. Most of them had more than 15 years' experience.

AD(TCM) supplemented that the information had yet to be verified and updated by the Administration.

18. Dr LEONG Che-hung was concerned that those who had only concentrated on the practice of acupuncture would have great difficulty to meet the full registration requirements. DS(HW)1 said that under the current proposals, these people would be

Action

allowed to continue with their practice. They would be given a transitional period to acquire the necessary knowledge and skills for registration as Chinese medicine practitioners.

19. Mrs Selina CHOW considered that the Administration's proposal of disallowing the practice of acupuncture by health care professionals other than Chinese medicine practitioners was against the world trend. Moreover, it had neglected the needs of patients. Mr Michael HO Mun-ka added the following comments -

- (a) Given their professional knowledge, the medical practitioners in question should not be required to embark on another five years' studies on Chinese medicine in order to be allowed to use acupuncture; and
- (b) It should not be the CMC to conduct assessments of the standards of these medical practitioners or other health care professionals in their use of acupuncture.

20. Mrs Selina CHOW agreed with Mr HO and pointed out that there might be a conflict of interest for the CMC to assess medical practitioners' standards in their practice of acupuncture. She believed that the medical profession would have great reservations about the proposal.

21. However, the Chairman considered that should acupuncture be viewed as part of Chinese medicine, the CMC should be vested with the power to approve applications for the practice of acupuncture and to assess the standards of the applicants. At the same time, he agreed with Mr Michael HO Mun-ka that the CMC should not impose the same requirements on medical practitioners having regard to their professional training background.

22. Mrs Selina CHOW said the use of acupuncture by medical practitioners and other health care professionals would be a growing trend. Therefore, the Administration should be more forward-looking and make provisions in the Bill to facilitate the practice by them. However, Dr LEONG Che-hung pointed out that Hong Kong was still far from the stage of promoting integrated use of Chinese medicine and Western medicine. The main task at this stage was to explore ways to accommodate the existing Chinese medicine practitioners under the new regulatory system.

23. Mr Michael HO Mun-ka believed that the scope of "practising Chinese medicine" and the scope of "practising Western medicine" definitely overlapped in some areas and that these overlapping areas would continue to increase. He pointed out that as it was an established practice for health care professions to define their respective scopes of practice in the light of their training received, there was no reason in this case to break this tradition and pass a law to forbid Chinese medicine practitioners from any particular practice.

Action

24. Miss CHOY So-yuk considered that medical practitioners should not be given exemption from assessments by the CMC if they wanted to practise acupuncture. However, Mr Michael HO Mun-ka took the view that such assessments should only be conducted by the respective professional bodies of the health care professionals concerned. Mr LEE Kai-ming considered that if a person had learnt acupuncture and passed the relevant assessment conducted by the professional body concerned or by the Department of Health, he should not be deprived of the right to practise it because of the passage of the Bill. In addition, he supported that the CMC should be vested with the power to regulate the provision of this service. Dr LEONG Che-hung further pointed out that other professional bodies apart from the CMC would lack the expertise to assess the applicants.

25. In response to Mrs Selina CHOW's enquiry, DS(HW)1 said that Part IX of the Bill dealt with the transitional arrangements. However, after examining the provisions, members present unanimously considered that Part IX of the Bill only provided for transitional arrangements for those who intended to register as Chinese medicine practitioners but did not address the issue of use of acupuncture by medical practitioners or other health care professionals under discussion. Moreover, members considered that the CMC might have difficulty in verifying the experience claimed by these practitioners in their use of acupuncture.

26. With reference to the definition of "practising Chinese medicine" given in the Bill, members asked if it was true that a health care professional with just any amount of experience in practising acupuncture could register as a listed Chinese medicine practitioners. In response, Senior Assistant Law Draftsman (SALD) explained that it would be determined by the CMC which was responsible for scrutinizing each application based on its own merits. Senior Assistant Legal Adviser (SALA) referred to clause 90(1)(a) and advised that the CMC could refuse to include those who practised acupuncture infrequently into the grandfathering list. DS(HW)1 confirmed that those who used acupuncture infrequently would not be covered by the transitional arrangements. However, Mr Michael HO Mun-ka considered that it was hard to define what was meant by "frequent" or "infrequent" and clarified that members were not pursuing a policy to allow those who seldom used acupuncture to be able to register as listed Chinese medicine practitioners. DS(HW)1 said that as explained before, the CMC would look at the applications for registration as a listed Chinese medicine practitioner by considering whether or not the applicant's practice was based on the theories of Chinese medicine.

27. The Chairman said he noted that members in general supported that -

- (a) The existing medical practitioners or other health care professionals who had been using acupuncture should be allowed to continue with the practice. However, they could not claim themselves as Acupuncturists; and

Action

- (b) For those medical practitioners who wanted to register as Chinese medicine practitioners, they should not be imposed the same registration requirements as those applied to other applicants who had not received formal training in medicine.

Adm

Mrs Selina CHOW suggested that the physiotherapist profession should be consulted as to whether any other areas of their practice (apart from acupuncture) which might be considered as falling within the scope of "practising Chinese medicine".

28. Dr LEONG Che-hung clarified that he supported that the arrangements described in paragraph 27(a) above should be only applicable to the existing medical practitioners and other existing health care professionals. He remained of the view that acupuncture should be used only by registered Chinese medicine practitioners. Therefore, he considered that in the future any new comers joining any of the health care professions should be required to study Chinese medicine and apply for registration if they wanted to use acupuncture in their treatment of patients. However, Mr Michael HO Mun-ka took a different view and considered that the new comers should be also subject to the proposed mechanism to be adopted in respect of existing practitioners as there was a growing trend of adoption of Chinese medicine cures in Western medicine.

29. Mr LEE Kai-ming considered that since the purpose of the Bill was to promote the development of Chinese medicine, standardized requirements on the qualifications of Chinese medicine practitioners were necessary. Mrs Selina CHOW agreed with Dr LEONG and supported that after passage of the transitional period, only registered Chinese medicine practitioners should be allowed to use acupuncture in order to raise the standards of the practice of acupuncture. In other words, by then any other health care professionals who wanted to use acupuncture would have to first acquire the qualifications required for registration as Chinese medicine practitioners. Mr Michael HO Mun-ka said that he accepted broadly Dr LEONG's proposal as he noted that the transitional period would be reasonably long and that the policy could be reviewed in the light of the future development in respect of the interface between practising Chinese medicine and practising Western medicine.

30. DS(HW)1 said what he understood was that members in general were in support of the following arrangements -

- (a) With the passage of the Bill, the existing medical practitioners or allied health professionals, who had learnt the use of acupuncture and had been using it, should register with the CMC if they wanted to continue with the use of it;
- (b) On approval of their applications, they would be granted exemptions from the relevant restrictions and be allowed to continue to use

Action

acupuncture; and

- (c) The above transitional arrangements would not be applicable to the "new comers" who would have to apply for registration as Chinese medicine practitioners if they wanted to use acupuncture in treating patients.

Adm

31. DS(HW)1 undertook to further deliberate on the detailed arrangements along the above lines.

Clause 94(1)(b)(ii) - the meaning of "acceptable qualification"

Adm

32. DS(HW)1 explained that these qualifications would be stipulated by the CMC. In response to Mrs Selina CHOW's concerns, DS(HW)1 agreed that the CMC should release to the public the criteria they had adopted in stipulating the qualifications. However, he pointed out that there would be technical problems to list the criteria in the subsidiary legislation. Mrs CHOW considered that the qualification issue would be quite controversial. Moreover, the power vested with the Medicines Board would be too great if the Board could stipulate the qualifications based on any criteria it liked. Dr LEONG Che-hung and Mr LEE Kai-ming agreed with Mrs CHOW and supported that the criteria should be listed as far as possible in the relevant subsidiary legislation as guidelines for the Medicines Board. Moreover, this would avoid future disputes over decisions made by the Medicines Board concerning the qualifications. DS(HW)1 agreed to consider the suggestion.

Allowing renowned Chinese medicine practitioners on the Mainland to come to Hong Kong to practise Chinese medicine

33. Members and the Administration did not support this proposal to allow renowned Chinese medicine practitioners on the Mainland to come to Hong Kong to practise Chinese medicine on the following grounds -

- (a) There would be practical difficulty to verify the status and experience of these practitioners and it would be easy to lead to abuses of the system;
- (b) It would be unfair to the local practitioners who had to pass examinations or assessments in order to practise Chinese medicine; and
- (c) Clause 83 of the Bill had already provided for limited registration to enable an educational or scientific research institution to engage suitable Chinese medicine practitioners to carry out predominantly teaching and research work. The arrangement was sufficient to serve the purpose of promoting the development of Chinese medicine in Hong Kong.

Members also noted that other than the provisions for temporary registration which was restricted to four specified institutions, there were no such provisions under the

Action

Medical Registration Ordinance (MRO) to allow overseas renowned medical practitioners to come to Hong Kong for the purpose of practising medicine. Mrs Selina CHOW suggested that the Bill should mirror the MRO in this regard.

Clause 83 - limited registration

34. Dr LEONG Che-hung noted that there were many so-called "Chinese medicine research institutes" in Hong Kong. He was worried that there might be abuses of the limited registration system and suggested that only statutory academic institutions should be allowed to use the mechanism of limited registration. Mrs Selina CHOW asked what was meant by "educational or scientific research institution". In reply, AD(TCM) said that the Administration was considering to revise it to be "universities or scientific research institution". Members agreed to further discuss the definition of "scientific research institution" during the clause by clause examination of the Bill.

Experience of practising Chinese medicine in places outside Hong Kong should be recognized for registration

35. DS(HW)1 said that the Administration did not accept the proposal as there would be great difficulty in verifying the experience gained outside Hong Kong. Mrs Selina CHOW pointed out that the transitional arrangements proposed by the PCCM were to cover those who had been practising Chinese medicine "in Hong Kong" for a continuous period of not less than 15 years.

Verification of the number of years of practising experience of an applicant for registration

36. DS(HW)1 said that the Chinese Medicine Practitioners Board would consider the applications case by case based on their own merits. He explained that it was hard to say now what kinds of evidence would or would not be acceptable.

Concerns of the traders of proprietary Chinese medicines

37. Mrs Selina CHOW said that she had recently met and discussed with the trade about their concerns and she would prepare a paper to elaborate their views. She agreed to provide the paper to members by the next meeting. She said that in brief, the trade was very concerned about the intellectual property protection of the formulae and ingredients of their products. At members' request, the Administration agreed to arrange for representatives from the Intellectual Property Department to attend the next meeting to brief members on the existing legislation on the intellectual property protection of western medicines and Chinese medicines.

Action

Clause 125 - De-registration of proprietary Chinese medicines

38. DS(HW)1 said that this clause would be invoked when it was found that a particular Chinese medicine was harmful to consumers' health. In response to Mr Michael HO Mun-ka's enquiry, AD(TCM) said that in the case of western medicines, the power of the de-registration was vested with the Pharmacy and Poisons Board whereas in the case of Chinese medicines, the power would be vested with the Medicines Board. SALD drew members' attention to clause 125(2) by which the Medicines Board would be obliged to first inform the holder of the certificate of registration of its intention to de-register a proprietary Chinese medicine and allow time for the holder to submit representation or explanation in writing. Clause 140 further provided for an appeal mechanism for lodging complaints against any decisions made by the Medicines Board. However, Mrs Selina CHOW took the view that the term "public interest" seemed to be too broad and requested that it should be more clearly explained to show that it was in relation to the safety aspect of the medicines. The Administration agreed to re-consider the drafting.

Adm

39. Mr Michael HO Mun-ka noted that the Trade Marks Bill had just been presented to the Legislative Council for scrutiny. He sought SALA's views as to whether or not it had any implications on proprietary Chinese medicines. SALA agreed to revert back at the next meeting.

SALA

III. Date of next meeting

40. Members agreed to schedule the next meeting for 25 May 1999 at 10:45 am to further discuss the Bill. .

41. The meeting ended at 12:40 pm.

Legislative Council Secretariat

3 December 1999