

立法會
Legislative Council

LC Paper No. CB(2)643/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/BC/18/98

Bills Committee on Chinese Medicine Bill

Minutes of meeting
held on Saturday, 19 June 1999 at 2:00 pm
in Conference Room B 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 Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHAN Yuen-han
Dr Hon LEONG Che-hung, JP
Dr Hon TANG Siu-tong, JP
Hon LAW Chi-kwong, JP

Members Absent : Hon Michael HO Mun-ka
Hon LEE Kai-ming, JP
Dr Hon LUI Ming-wah, JP
Hon Ronald ARCULLI, JP
Dr Hon Philip WONG Yu-hong
Hon YEUNG Yiu-chung
Hon Ambrose LAU Hon-chuen, JP
Hon CHOY So-yuk
Hon SZETO Wah

Public Officers Attending : Dr P Y LAM
Deputy Director of Health

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

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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 Joanne MAK
Senior Assistant Secretary (2) 4

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

I. Clause-by-clause examination

The Bills Committee continued scrutiny of the Bill from clause 33.

Clause 33 - Terms of appointment to committees under this Part

Clause 34 - Replacement members

Clause 35 - Vacation of office

Clause 36 - Temporary members

Clause 37 - Disqualification

Clause 38 - Cessation of membership

2. Members had no comment on the above clauses.

V. Miscellaneous Committees

Clause 39 - Establishment of committees

3. Mr LAW Chi-kwong enquired whether the Chinese Medicine Council (the CMC) by subclause 39(b) could vary, modify or extend the functions of the six committees (clauses 26 - 31) established under the Chinese Medicine Practitioners Board (the Practitioners Board) and the Chinese Medicines Board (the Medicines Board). In response, Senior Assistant Law Draftsman (SALD) said that only the Secretary for Health and Welfare could, after consultation with the Council and by order published in the Gazette, amend the functions of the six committees in Schedule 4 as provided in clause 25(2). Clause 39 merely provided for the CMC to establish

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committees under the two Boards for the purposes of performing other functions as may be prescribed by the CMC.

Clause 40 - Appointment to committees

4. Mrs Selina CHOW enquired about the arrangement for appointment of members of the Practitioners and the Chinese Medicines Boards and other committees in case the views of the CMC members were divided. Deputy Director of Health (DDH) replied that before confirming the offer of an appointment, the Secretariat of the CMC should, after consulting the chairman, seek the views of members and related committee(s) at meetings or by circulation of papers as provided in clause 48. In case members of the CMC had divided views, the Secretariat would arrange a meeting of the CMC to discuss the issue. He envisaged that the proposed system for membership appointment of the two Boards and committees would work.

Clause 41 - Chairmen of committees

5. Members had no comment on the above clause.

Clause 42 - Legal Adviser to committees

Clause 43 - Dissolution of committees

Clause 44 - Application of provisions

6. Members had no comment on the above clauses.

VI. Meetings

Clause 45 - Meetings

7. Dr LEONG Che-hung suggested that the Bill should specify that the CMC should hold a minimum number of meetings in a year. The Chairman, Mrs Selina CHOW, Mr LAW Chi-kwong and Miss CHAN Yuen-han supported the suggestion. The Administration agreed to move an amendment to provide that the CMC should meet at least twice a year.

Adm

Clause 46 - Validity of proceedings

8. Mrs Selina CHOW sought clarification as to the legal meaning and significance of "any defect" in the clause. She was concerned that under the provision, the validity of any proceedings of the CMC, a board or committee would not be affected by any defect in the appointment of any member of the CMC, board or committee or by any vacancy in membership. Mr LAW Chi-kwong shared the concern of Mrs CHOW. Mrs CHOW and Mr LAW further agreed that if a defect had significantly influenced the decision of the Council which had brought about substantial damage or

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loss to a person, the CMC should provide a channel for the victim to appeal against the decision. Mr HO Sai-chu, Mr David CHU and Mr TANG Siu-tong were of the view that the provision of immunity to the CMC and its executive organs against legal claims as a result of such "defects" was appropriate. Responding to the Chairman, Senior Assistant Legal Adviser (SALA) referred members to section 51(b) of the Interpretation and General Clauses Ordinance (Chapter 1) which specified that the powers of any board, tribunal, commission, committee or similar body established by or under any Ordinance shall not be affected by any defect in the appointment or qualification of a person purporting to be a member thereof.

Adm 9. Members understood the need to provide an immunity against legal claims for the CMC and its committees, but agreed that the proposed appeal mechanism under clause 97 should provide a channel for innocent victims to appeal to the CMC against a decision which was significantly influenced by a defect subsequently identified. Responding to the Chairman, SALA said that such flexibility could be provided to the CMC by proposing an appropriate amendment to clause 97. At members' request, Principal Assistant Secretary for Health and Welfare (Medical) 1 (PASHW(M)) undertook to consider redrafting clause 97 to make provisions for handling such cases.

Clause 47 - Questions to be decided by majority

10. Members had no comment on the above clause.

Clause 48 - Transaction of business by circulation of papers

Clause 49 - Standing orders relating to meetings

Adm 11. Members objected to the provision of the above clause which allowed transaction of business by circulation of papers by the CMC, a board or committee. The Administration agreed to move amendments to clauses 48 and 49 to stipulate that it would be subject to any standing orders made under clause 49(a).

Clause 50 - Application of Part VII of Interpretation and General Clauses Ordinance

12. Members had no comment on the above clause.

VII. Registration of Chinese Medicine Practitioners

Clause 51 - Registrar

13. Members had no comment on the above clause.

Clause 52 - Register

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Adm

14. SALA suggested to refine the drafting of the Chinese version of "other particulars of all persons" in clause 52(1) by adding "該等人士的" before "其他詳情". At members' request, SALD agreed to amend the Chinese version.

Clause 53 - Publication of Register and evidence of registration, etc.

15. Dr LEONG Che-hung sought clarification as to the definition of address under clause 53(1). Members suggested and PASHW(M) agreed that a Chinese medicine practitioner should be allowed the option of providing either his residential or correspondence address as his registered address.

16. Mrs Selina CHOW asked why the qualifications of registered Chinese medical practitioners were not shown in the Register. After discussion, members suggested and the Administration agreed to add qualifications to the list of information to be published in the Gazette.

Clause 54 - Alterations to Register

Clause 55 - Powers of Practitioners Board to direct or order alterations to Register

17. Members had no comment on the above clauses.

Clause 56 - Powers of Practitioners Board to order removal of names from Register

Adm

18. In discussing the implications of the clause 56(1)(c), Mrs Selina CHOW and Dr LEONG Che-hung expressed concern about the Practitioners Board's power to remove a Chinese medicine practitioner from the Register by reason of health. They suggested that before seeking a judicial review, the Chinese medicine practitioner should be allowed to appeal to the CMC. Dr LEONG Che-hung said and SALA confirmed that a registered medical practitioner could appeal to the Medical Council of Hong Kong against the recommendation of the Health Committee to remove his name from the General Register by reason of health. Miss CHAN Yuen-han added that the lodging of an appeal to the Court of Appeal could mean a substantial financial burden to the Chinese medical practitioner concerned. After discussion, members urged the Administration to consider redrafting of the subclause to provide for an objective assessment of the registered Chinese medicine practitioner concerned in order to determine his unfitness to practise. The Administration agreed.

19. Dr LEONG Che-hung and Mrs Selina CHOW expressed concern that under subsection 56(1)(f), the Practitioners Board may order the removal from the Register the name of a Chinese medicine practitioner for reason that he had failed to supply the Registrar with an address in Hong Kong at which notices might be served on him. Dr LEONG pointed out that under the Medical Registration Ordinance, a registered medical practitioner, who was resident outside Hong Kong and had ceased to practise in Hong Kong, was allowed to apply to the Registrar for the transfer of his name from

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Adm the resident list to the non-resident list . The Administration agreed to delete "in Hong Kong" from clause 56(1)(f).

20. Mrs Selina CHOW was of the view that the other five conditions for removal of a name from the Register were all of a serious nature, but failure to provide the Registrar with an update address was not a serious one. She considered that subclauses (1)(f) and (2) could be combined to serve the purpose. The Administration undertook to examine the issue and propose an appropriate amendment.

Clause 57 - Service of notice and order of removal from Register

Clause 58 - Restoration to Register

21. Members had no comment on the above clauses.

Date of next meeting

22. At the request of the Administration, members agreed to hold an additional meeting at 8:30 am on 22 June 1999.

II. Any other business

23. There being no other business, the meeting ended at 4:00 pm.

Legislative Council Secretariat

16 December 1999