

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 Friday, 25 June 1999 at 6:10 pm
in Conference Room B of the Legislative Council Building

- Members Present** : Prof Hon NG Ching-fai (Chairman)
Hon HO Sai-chu, JP
Hon LEE Kai-ming, JP
Hon CHAN Yuen-han
Dr Hon LEONG Che-hung, JP
Hon SZETO Wah
- Members Absent** : Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Hon Michael HO Mun-ka
Dr Hon LUI Ming-wah, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, 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 LAW Chi-kwong, JP
Dr Hon TANG Siu-tong, JP
- Public Officers Attending** : 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)

Mr CHAN Ling-fung, Frank
Scientific Officer, Department of Health

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

Eligibility of persons with limited registration for the relevant functional constituency election

Dr LEONG Che-hung asked whether persons with limited registration would be entitled to participate in the relevant functional constituency election. In response, Principal Assistant Secretary for Health and Welfare (Medical)1 (PAS(HW)1) said that such persons were regarded as registered Chinese medicine practitioners (CMPs) under the Chinese Medicine Bill (the Bill). They would be eligible for participating in the relevant functional constituency election. Members noted that they could convey their views on the issue to the relevant bills committee when the relevant election-related legislation was introduced into LegCo.

Clause-by-clause examination of the Bill

2. Members then continued to examine clauses 99 to 118 of the Bill. No comments were made on clauses 99, 101, 102, 103, 104, 105, 106, 116 and 117. Their deliberations on other clauses were given below.

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Clauses 100 and 107

Adm 3. In response to Senior Assistant Legal Adviser (SALA), Senior Assistant Law Draftsman (SALD) undertook to look into whether it was mandatory for a witness to give evidence on oath. Assistant Director of Health (Traditional Chinese Medicine) (ADH(TCM)) added that under other legislation, such as that for pharmacists, the witness had the choice of whether or not to give evidence on oath. If he chose to give evidence on oath, his evidence might be given more weight. However, he would be subject to cross-examination by counsel.

SALA 4. SALA said that while clause 100(1)(a) was related to the examination of evidence on oath, it was unclear as to whether a witness must give evidence on oath. He said that the requirement might be set out in the subsidiary legislation to be made in respect of inquiries procedures. He undertook to look into the issue with the Administration.

Clause 108 (Unlawful use of title, etc. and practise without registration)

5. Members noted that the maximum levels of fines and years of imprisonment for unlawful use of title and practise without registration were the same as those for medical practitioners.

6. PAS(HW)1 explained that sub-clause (3) sought to put it beyond doubt that the dispensing of Chinese herbal medicines under a retailer licence would not be regarded as practising Chinese medicine.

Clause 109 (Restriction on sale, etc. of Schedule 1 medicines)

7. In response to Dr LEONG Che-hung, SALD referred to the definition in clause 2 and explained that "wholesale" included the importing and selling of Chinese herbal medicine or proprietary Chinese medicine to a manufacturer or a person for selling to a third party. Deputy Director of Health (DDH) added that separate licences would be required for the retail and wholesale of Chinese herbal medicines. The importing and sale of dangerous drugs were dealt with under the Dangerous Drugs Ordinance (Cap.134).

Clause 110 (Possession of Schedule 1 medicines)

8. SALA enquired whether a patient would be in breach of the clause for possession of medicine prescribed by a CMP. ADH(TCM) referred to clause 157(3) and replied that clause 110 would not apply to a person in bona fide possession of any Chinese herbal medicine specified in Schedule 1 if such medicine had been supplied to him in accordance with a prescription given by a registered CMP.

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Clauses 111 to 113

9. In response to members, DDH said that a retailer licence was not required for the sale of Chinese herbal medicines not specified in Schedules 1 or 2.

10. Dr LEONG Che-hung said that many Chinese herbal medicines specified in Schedule 2 could currently be purchased easily from a supermarket without any restriction. He enquired whether supermarkets would need a retailer licence before it could continue selling such medicines. He also asked whether there would be any restriction in respect of pre-packed soup ingredients containing Chinese herbal medicine.

11. DDH said that it should not be difficult for retailers wishing to continue selling such medicines to apply for a retailer licence. He added that pre-packed soup ingredients containing Chinese herbal medicine, especially those claiming to have a curing effect, should be regulated.

12. Dr LEONG Che-hung enquired whether products such as ginseng candies, ginseng wines and ginseng chicken essence would be regarded as medicines under Schedule 2. In response, PAS(HW)1 said that the sale of ginseng in the raw or processed form would require a retailer licence. Products containing ginseng, such as ginseng chicken essence, would only need to be registered by the manufacturer as proprietary Chinese medicine. It was not necessary for the retailer of such proprietary Chinese medicine to have a retailer licence.

13. As regards Chinese herbal tea shops, DDH said that such shops were currently subject to licensing control by the two provisional municipal councils while the Department of Health would examine any new formulas for preparing herbal teas. The Administration considered that the current arrangement was already adequate for ensuring the safety standard of these shops. Nevertheless, it would in the future review the need to regulate Chinese herbal tea shops.

14. Dr LEONG Che-hung was concerned that upon the enactment of the Bill, a herbal tea shop would have to apply for a retailer licence in addition to a licence issued by the provisional municipal council. He was also concerned that a large number of retailers would have to apply for a retailer licence for the sale of items specified in Schedule 2 and nearly all Chinese food restaurants had to apply for a retailer licence. He added that the use of one single licence for both Schedules 1 and 2 would create problems as the more stringent requirements imposed on the Chinese herbal medicines specified in Schedule 1 might present difficulties.

15. DDH reiterated that a retailer licence would not be required for the sale of proprietary Chinese medicine. Restaurants would not be required to apply for a licence for the sale of food containing Chinese herbal medicines. PAS(HW)1 added

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that if members considered it necessary, an exemption could be made under clause 160(5)(q). ADH(TCM) added that clause 112 provided that the Chinese herbal medicines specified in Schedules 1 and 2 would apply to the dried or processed form of such medicines. The manufacturer of a product would only need to have a manufacturer licence and register the product as a proprietary Chinese medicine.

Clause 114 (Licensing of retailers in Chinese herbal medicines)

Adm

16. SALA conveyed Mrs Selina CHOW's view that in respect of sub-clause 2(b)(ii), there should be more than one deputy to act in the absence of the person responsible for the supervision of dispensing of Chinese herbal medicines. PAS(HW)1 agreed to consider increasing the number to two deputies.

Adm

17. Dr LEONG Che-hung was concerned that no requirement was laid down on the qualifications and experience of the person responsible for the supervision of dispensing of Chinese herbal medicines. He was also concerned that there was no formal training in respect of dispensing Chinese herbal medicine. PAS(HW)1 responded that subsidiary legislation in respect of the requirements on the experience and knowledge of the person could be made under clause 160(5)(i). The name of the person and his deputies would be specified in the licence. She said that requirements on qualifications would be made as subsidiary legislation. In the trade, there were titles indicating the experience of a practitioner. DDH added that local universities were starting to organize courses in Chinese herbal medicine. Dr LEONG Che-hung requested the Administration to include an undertaking in the Secretary for Health and Welfare's speech on resumption of the Second Reading debate that the Chinese Medicine Council would be asked to consider members' suggestion of classifying retailers into a number of categories with different levels of licensing requirements.

Clause 115 (Licensing of wholesale dealers in Chinese herbal medicines)

18. SALA conveyed Mrs Selina CHOW's view that "public interest" in sub-clause (4) should be subject to the condition of "serious danger". PAS(HW)1 responded that the imposing of the condition of "serious danger" might give rise to arguments about whether the danger was serious. She added that provisions on "public interest" were also found in other legislation of similar nature. ADH(TCM) added that the provision was mainly related to wholesale dealers with facilities and environment which failed to meet the required standards. Reasons would need to be given in the refusal of an application. There would also be mechanism for appeal. In drafting the provision, reference had been made to the requirements in respect of Western medicine. In response to Dr LEONG, he said that sub-clause (2)(b) would only require an application to specify the relevant Schedule but not a full list of Chinese herbal medicines to which the application related.

19. SALA said that sub-clause (2)(a) provided that an application should be made

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in such form as the Chinese Medicines Board (Medicines Board) might specify. The issue could therefore be addressed by administrative arrangements.

Clause 118 (Provision for transitional licensing of Chinese herbal medicines traders)

20. SALA conveyed Mrs Selina CHOW's view on sub-clause 1(b) that sufficient time should be allowed for applications to be made to the Medicines Board for a retailer licence or wholesaler licence. She hoped that a lower limit for the period of time for application would be set out in the Bill. In response, DDH assured that a reasonable time period would be allowed for such application. PAS(HW)1 added that the clause was drafted in a way to maintain flexibility so that the application period could be easily extended when necessary. Dr LEONG Che-hung commented that the number of applications might be very large.

21. Dr LEONG Che-hung enquired about the criteria for assessing the eligibility of existing retailers of medicines specified in Schedule 1. PAS(HW)1 responded that the licensing requirements would be made as subsidiary legislation. Stringent requirements would be laid down in respect of the records, storage and restrictions on the purchasers. Medicines in Schedule 1 could only be purchased with a prescription issued by a CMP. A person who satisfied the conditions laid down in sub-clause (1) (a) and (b) would be deemed to have been granted a licence, which would continue in effect until one of the conditions in sub-clause (1)(b)(i), (ii) or (iii) was satisfied.

II. Date of next meeting

22. Members noted that the next meeting would be held on 26 June 1999 at 2:30 pm to continue clause-by-clause examination of the Bill.

23. The meeting ended at 7:15 pm.

Legislative Council Secretariat
21 December 1999