

立法會
Legislative Council

LC Paper No. CB(2)696/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/BC/18/98

Bills Committee on Chinese Medicine Bill

Minutes of meeting
held on Wednesday, 30 June 1999 at 8:00 am
in Conference Room A of the Legislative Council Building

Members Present : Hon HO Sai-chu, JP (Acting Chairman)
Hon LEE Kai-ming, JP
Hon CHAN Yuen-han
Dr Hon LEONG Che-hung, JP
Dr Hon Philip WONG Yu-hong
Hon SZETO Wah
Dr Hon TANG Siu-tong, JP

Members Absent : Prof Hon NG Ching-fai (Chairman)
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
Hon YEUNG Yiu-chung
Hon Ambrose LAU Hon-chuen, JP
Hon CHOY So-yuk
Hon LAW Chi-kwong, JP

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)

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

Submission from the Practising Pharmacists Association of Hong Kong
(LC Paper No. CB(2) 2436/98-99(01))

Members noted the submission from the Practising Pharmacists Association of Hong Kong.

Members' suggestions in respect of which no Committee Stage amendment (CSA) was proposed

2. At the invitation of the Acting Chairman, Principal Assistant Secretary for Health and Welfare (Medical)1 (PAS(HW)1) highlighted the following clauses in respect of which suggestions made by members had not been taken on board by the Administration -

Clause 4 (Composition of Council)

3. Referring to members' suggestion of having a Hospital Authority (HA) representative in the Chinese Medicine Council (CMC), PAS(HW)1 said that as there was currently no plan to introduce Chinese medicine service in public hospitals, there

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was no need to have an HA representative in CMC. If it was deemed necessary, a person with HA background might be appointed to CMC on an *ad personam* basis under the lay persons category.

4. Dr LEONG Che-hung said that as the public hospitals of Hong Kong would eventually provide Chinese medicine service, the inclusion of a HA representative in CMC would facilitate the development of Chinese medicine in Hong Kong. He added that the Medical Registration Ordinance (Cap. 161) (MRO) also specified two HA representatives in the Medical Council of Hong Kong. Miss CHAN Yuen-han, Mr LEE Kai-ming and Mr SZETO Wah supported Dr LEONG's view. Mr LEE Kai-ming added that Chinese bone-setting service was already provided in Kwong Wah Hospital, which was a hospital under HA. Dr Philip WONG however expressed reservation about the proposal as he was worried that the HA representative might have undue influence on the decisions of CMC.

5. Deputy Director of Health (DDH) said that the Chinese medicine service in Kwong Wah Hospital was operated by the Board of Directors of the Tung Wah Group of Hospitals and was not funded by HA. He stated that at present the Administration had no plan to introduce Chinese medicine service in public hospitals. He added that issues such as the composition of CMC would be reviewed in three years' time.

Clause 83 (Limited registration)

6. As regards members' suggestion of specifying in subsidiary legislation a list of educational or scientific research institutions from which applications for limited registration would be considered, DDH considered that the establishment of such a list would not be appropriate, as there was a large number of such institutions. CMC should be allowed more flexibility in dealing with the matter. To increase transparency, the criteria for assessing applications for limited registration and the list of institutions could be announced by way of a gazette notice not in the form of subsidiary legislation. As to Dr LEONG Che-hung's question whether such arrangement would be reflected in the Bill, DDH undertook to look into the issue with the Senior Assistant Legal Adviser (SALA).

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7. Dr LEONG Che-hung said that the drafting of clause 83 was too loose, as any person could establish a research institute and apply for limited registration. He added that it was difficult to differentiate between medical research and practice. Mr SZETO Wah added that a loose provision would not be beneficial to the development of Chinese medicine. Miss CHAN Yuen-han added that with a loose provision, it might be very difficult for CMC to determine whether an institution fell under the category of educational or scientific institution under the clause. In response, DDH said that the Administration would propose criteria for CMC's consideration. He reiterated however that some flexibility should be given to CMC.

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Clause 39 (Establishment of committees)

8. DDH said that the Administration had considered members' suggestion of renaming the term "小組" to reflect the importance of committees. As the term was found in many parts of the Bill, the renaming of the term would result in a large number of consequential amendments. As the Chinese medicine sector had not raised any objection to the use of the term "小組", he suggested that no change be made to clause 39. Members agreed to the suggestion.

Draft CSAs

(LC Paper No. CB(2) 2439/98-99(01))

9. Members then examined the draft CSAs. Their deliberations were given in the following paragraphs.

Clause 2 (Interpretation)

10. Dr LEONG Che-hung referred to the definition of proprietary Chinese medicine and said that caution should be exercised to ensure that the drafting would not be in conflict with the protection of endangered species. In response, PAS(HW)1 said that the amendment only involved addition of the word "solely" to the original definition in the Bill, on which consultation had been made with relevant Government departments such as the Agriculture and Fisheries Department and the Government Laboratory. She added that proprietary Chinese medicine containing material of herbal or animal origin would be subject to the Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187).

Clauses 48(Transaction of business by circulation of papers) and 49 (Standing orders relating to meetings)

11. Members noted that it had been agreed at an earlier meeting that clauses 48 and 49 be combined to subject the transaction of business by circulation of papers to the standing orders of CMC. They also noted the draft CSA to clause 49(a), which provided for CMC to make standing orders governing the transaction of business by circulation of papers.

12. On the question of why clause 48 was not deleted, Senior Assistant Law Draftsman (SALD) explained that the clause was commonly found in legislation relating to the transaction of business. SALA considered that the scope of clause 48 was too wide. He suggested that a provision might be incorporated in clause 48 to subject it to standing orders made under clause 49(a). The suggestion was agreed.

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

13. PAS(HW)1 explained that the CSA to clause 56(1)(e) sought to rectify a technical error. The draft CSA to clause 56(1)(f) and 56(2) sought to provide that a registered address could be within or outside Hong Kong.

Clause 73 (Certificate verifying registration and certificate of standing)

14. SALA said that it was agreed at an earlier meeting that Chinese medicine practitioners (CMPs) should be allowed to use the title "中醫生". However, no CSA to this effect was proposed to the clause. PAS(HW)1 responded that the clause sought to set out the title of registered Chinese medicine practitioners. The difference in the titles of CMPs and medical practitioners was addressed under the consequential amendments to MRO.

Clause 76(3) (Registered Chinese medicine practitioner not to practise without practising certificate)

15. Members recalled that in the course of clause-by-clause examination, some concerns were expressed about the clarity of clause 76(3). The Acting Chairman requested SALD and SALA to look into the issue.

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SALA

Clause 84 (Application for limited registration)

16. SALA pointed out that while the English version of sub-clause (1) set out the requirement that an application for limited registration should be made to the Practitioners Board, the Chinese version did not specify the body to which application was to be made. SALD agreed to draft a CSA to bring the requirement in the Chinese version in line with that of the English version.

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

17. Dr LEONG Che-hung said that it had been agreed at an earlier meeting that exemption under clause 108 should be provided for the use of acupuncture, being of a type with distinguishable differences from the acupuncture based on traditional Chinese medicine, by medical practitioners, physiotherapists and dentists. The Preparatory Committee on Chinese Medicine (PCCM) also supported the suggestion. He questioned why the CSA to clause 108 did not provide for medical practitioners and dentists to practise acupuncture within their scope of practice. In response, PAS(HW)1 said that the Administration had consulted the relevant medical professions, some of which had expressed reservation about the proposal. The Administration therefore considered that confining the exemption to the acupuncture practice of physiotherapists would be in the interest of the health of the public.

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18. Dr LEONG Che-hung said that if a dispute relating to the issue was brought to the court, the latter would examine the legislative intent. The Administration's proposal was different from the legislative intent of the Bills Committee. DDH responded that physiotherapists were allowed to continue their acupuncture practice because formal training in acupuncture was provided in their training. The Medical Council of Hong Kong had expressed reservation about the use of acupuncture by medical practitioners. The PCCM considered that any person wishing to practise acupuncture under traditional Chinese medicine should take the relevant licensing examination and register as a CMP. Exemption could not be granted to chiropractors, as the registration system for the profession was not yet in place. Dr LEONG Che-hung expressed strong objection to confining exemption under clause 108 to physiotherapists only. He suggested that consideration be given to the comments of the PCCM in the drafting of the provision. Dr TANG Siu-tong supported the view that medical practitioners and dentists should be allowed to use acupuncture within their scope of practice. The Acting Chairman suggested that the issue be further discussed at the next meeting.

Clause 111 (Restriction on sale, etc. of Schedule 2 medicines)

19. PAS(HW)1 explained that restaurants selling soups containing Chinese herbal medicines such as Radix Ginseng or Cordyseps would not be subject to the requirements under the clause, as soup was regarded as a kind of food rather than Chinese herbal medicine.

Clause 149 (Protection of public officers)

20. SALA recalled that members had requested the Administration to consider extending the coverage of the protection under the clause to members of CMC, its boards and committees. In response, PAS(HW)1 said that as the issue would have a wide implication on other statutory bodies, it would have to be examined in the context of the Administration's policy on all statutory bodies. She added that to her knowledge, claims for personal liability were mostly made against public officers involved in implementation. Appeals could be lodged against any decisions made by CMC.

Clause 165 (Treatment of diseases of the eye)

21. In response to SALA, SALD said that proposed section 32(1A)(a) of MRO was an existing provision. The CSA only involved the addition of proposed section 32(1A)(b) to MRO.

22. Dr LEONG Che-hung said that in relation to the treatment of eye disease, there should be a proper balance between allowing CMPs to play a role in the treatment of

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eye diseases and protecting the public against the unnecessary risks of improper eye treatment. In response, PAS(HW)1 said that the Administration considered that if CMPs were allowed treatment of other diseases, there should also be allowed treatment of eye diseases. The Administration would launch publicity in respect of the circumstances under which treatment should be sought from CMPs or medical practitioners. Dr LEONG Che-hung said that he had no objection to the treatment of eye diseases by CMPs. However, a delay of one to two days in the treatment of serious eye problems could result in blindness. He added that publicity would not be adequate for addressing the issue. Dr Philip WONG said that the problem of delay in treatment was also found with medical practitioners. He enquired how the issue was addressed by medical practitioners. DDH responded that in the case of medical practitioners, general practitioners who attended to the patients first would determine whether referral to specialists should be made. The code of practice for medical practitioners required a medical practitioner to provide services that were within his competence. He said that it would be important for this requirement to be reflected in the code of practice for CMPs.

Clause 173 (Registration of pharmaceutical products and substance)

23. PAS(HW)1 informed members that the Administration would liaise with SALA on a few CSAs of a technical nature to be proposed to clause 173.

II. Date of next meeting

24. Members agreed to re-schedule the next meeting for 1 July 1999 at 10:00 am. Dr Philip WONG requested SALA to re-examine whether there were other concerns expressed by members that had not been addressed by the Administration in the draft CSAs.

25. The meeting ended at 10:03 am.

Legislative Council Secretariat
22 December 1999