

Legislative Council

**Bills Committee on
Chinese Medicine Bill**

**Consequential amendments to existing ordinances arising from the
proposed statutory regulation of Chinese medicine under
the Chinese Medicine Bill**

Purpose

Seven existing ordinances and/or some of their subsidiary legislation should be amended upon the establishment of a statutory framework for regulation of Chinese medicine under the future Chinese Medicine Ordinance. This paper provides a marked-up version of the proposed amendments for Members' consideration.

Background

2. The Administration informed Members at the Bills Committee meeting held on 5 May 1999 that a number of existing ordinances would have to be amended as a result of the proposed introduction of a statutory framework for regulation of Chinese medicine under the Chinese Medicine Bill. We propose that the amendments be treated as consequential amendments in relation to the Chinese Medicine Bill, and subject to Members' support, be introduced as Committee Stage amendments.

Proposed amendments

3. The following Ordinances and/or their subsidiary legislation are proposed to be amended -

Cap. 60	Import and Export (General) Regulations under the Import and Export Ordinance
Cap. 132	Public Health and Municipal Services Ordinance
Cap. 138	Pharmacy and Poisons Ordinance & its Pharmacy and Poisons Regulations

Cap. 161	Medical Registration Ordinance
Cap. 231	Undesirable Medical Advertisements Ordinance
Cap. 342	Customs and Excise Service Ordinance
Cap. 343	Medical Clinics Ordinance

4. The proposed amendments are mainly technical and for alignment purposes. The major purposes are as follows -

- (a) to replace broad references to "native herbalists" etc. in existing ordinances with proper references to "Chinese medicine practitioners";
- (b) to accord Chinese medicine practitioners similar status as other health care professionals under the relevant ordinances. For example, amendments will be proposed to section 28 of the Medical Registration Ordinance (Cap. 161) to make it clear that offences relating to the practice of medicine without registration under Cap. 161 will not be applicable to treatment given by a Chinese medicine practitioner by way of practising Chinese medicine. Similar exemption already applies to dentists and physiotherapists etc. in practising their respective professions;
- (c) to provide the necessary clarification. For example, a provision is proposed to be added to section 28 of the Medical Registration Ordinance to make it clear that offences in connection with the practice of Chinese medicine without registration will be prosecuted under the future Chinese Medicine Ordinance. This is to avoid double prosecution; and
- (d) specific references to Chinese herbal medicine and proprietary Chinese medicine will be brought into the relevant ordinances to ensure a proper interface with Western medicine and pharmaceutical products. For example, the definition of "drug" in the Public Health and Municipal Services Ordinance (Cap. 132) and "medicine" in the Undesirable Medical Advertisements Ordinance (Cap. 231) will be extended to

cover Chinese herbal medicine and proprietary Chinese medicine.

5. A marked-up version of a preliminary draft of the proposed consequential amendments to the relevant sections of the ordinances is attached at Annex for Members' easy reference. In the marked-up, additions are in bold and italics while deletions are crossed out so that members may easily identify what are proposed to be added and deleted. The specific purposes for the proposed amendments are provided in the relevant explanatory notes highlighted in boxes.

Health and Welfare Bureau

Government Secretariat

May 1999

Cap 60	Import and Export (General) Regulations under the Import and Export Ordinance
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First Schedule

PART I

1.	Pesticides.
2.	Pharmaceutical products and medicines as defined by section 2 of the Pharmacy and Poisons Ordinance (Cap 138).
2A.	<i>Chinese herbal medicines specified in Schedule 1 of the Chinese Medicine Ordinance (of 1999).</i>
2B.	<i>5 Chinese herbal medicines specified in Schedule 2 of the Chinese Medicine Ordinance (of 1999), namely, Flos Campsis (凌霄花) , Processed Radix Acontini (製川烏), Processed Radix Aconiti Kusnezoffii (製草烏), Radix Clematidis (威靈仙) and Radix Gentianae (龍膽).</i>
2C.	<i>Proprietary Chinese medicines as defined in section 2 of the Chinese Medicine Ordinance (of 1999).</i>
3.	Textiles, other than woven or knitted fabric swatches and sample yarn imported by air and not exceeding 0.8 m ² in size in the case of fabric swatches and 1.2 kg in weight in respect of each type of yarn.

explanatory note: to provide that import of every consignment of Chinese herbal medicines specified under Schedule 1 of the future Chinese Medicine Ordinance, any of the five Chinese herbal medicines specified in 2B and proprietary Chinese medicine shall require an import licence. The five Schedule 2 Chinese herbal medicines are included because they were previously involved in herbal poisoning incidents. These are additional measures to enhance the quality and safety of these herbal medicines.

Second Schedule

PART I

Item	Article	Country or place
1.	Textiles.	All countries.
2.	Pesticides.	All countries.
3.	Pharmaceutical products and medicines as defined by section 2 of the Pharmacy and Poisons Ordinance (Cap 138).	All countries.
3A.	<i>Chinese herbal medicines specified in Schedule 1 of the Chinese Medicine Ordinance (of 1999)</i>	<i>All countries</i>
3B.	<i>The following 5 Chinese herbal medicines specified in Schedule 2 of the Chinese Medicine Ordinance (of 1999) –</i> <i>Flos Campsis (凌霄花),</i> <i>Processed Radix Acontini (製川烏),</i> <i>Processed Radix Aconiti Kusnezoffii (製草烏),</i> <i>Radix Clematidis (威靈仙)</i> <i>Radix Gentianae (龍膽).</i>	<i>All Countries</i>
3C.	<i>Proprietary Chinese medicines as defined in section 2 of the Chinese</i>	<i>All countries</i>

	<i>Medicine Ordinance (of 1999).</i>	
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explanatory note: to provide that export of every consignment of any Chinese herbal medicines specified under Schedule 1 of the future Chinese Medicine Ordinance, any of the five Schedule 2 Chinese herbal medicines specified in 3B and proprietary Chinese medicines shall require an export licence. The five Schedule 2 Chinese herbal medicines are included because they were previously involved in herbal poisoning incidents. These are additional measures to enhance the quality and safety of these herbal medicines.

Third Schedule

Item	Article
1.	Pharmaceutical products and medicines as defined by section 2 of the Pharmacy and Poisons Ordinance (Cap 138).
<i>1A.</i>	<i>Chinese herbal medicines specified in Schedule 1 of the Chinese Medicine Ordinance (of 1999)</i>
<i>1B.</i>	<i>5 Chinese herbal medicines specified in Schedule 2 of the Chinese Medicine Ordinance (of 1999), namely,</i>

	<i>Flos Campsis</i> (凌霄花), <i>Processed Radix Aconiti</i> (製川烏), <i>Processed Radix Aconiti Kusnezoffii</i> (製草烏), <i>Radix Clematidis</i> (威靈仙) and <i>Radix Gentianae</i> (龍膽).
1C.	<i>Proprietary Chinese medicines as defined in section 2 of the Chinese Medicine Ordinance (of 1999).</i>
2.	Textiles.

explanatory note: to allow the import or export Chinese herbal medicines specified under Schedule 1 of the future Chinese Medicine Ordinance, any of the five Schedule 2 Chinese herbal medicines specified in 1B and proprietary Chinese medicines in the accompanied baggage of a person entering or leaving Hong Kong for his personal use without an import or export licence. The five Schedule 2 Chinese herbal medicines are included in view of the relevant proposed amendments to the First and Second Schedules above.

Cap 132	Public Health and Municipal Services Ordinance
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Section 2 - Interpretation

(1) In this Ordinance, unless the context otherwise requires-

"drug" (藥物) includes medicine, *Chinese herbal medicine or proprietary Chinese medicine* for internal or external use by man;

explanatory note: for the sake of clarity and purpose of this ordinance, the provisions relating to drug in this ordinance shall also apply to any Chinese herbal medicine or proprietary Chinese medicine.

Cap 138	Pharmacy and Poisons Ordinance
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~~Section 37 – Ordinances not to apply to traditional Chinese medicines~~

~~Nothing in this Ordinance shall apply to the sale, manufacturing, dispensing or compounding of traditional Chinese medicines as listed in the Chinese Herbal Materia Medica (本草綱目) or which are made from herbs customarily used by the Chinese people.~~

Section 37 – Ordinance not to apply to Chinese herbal medicines and proprietary Chinese medicines

- (1) Subject to subsection (2), nothing in this Ordinance shall apply to the sale, manufacture, dispensing or compounding of Chinese herbal medicines or proprietary Chinese medicines as defined in section 2 of the Chinese Medicine Ordinance (of 1999) or other materials of herbal, animal or mineral origin customarily used by the Chinese for medicinal purpose.*
- (2) Notwithstanding subsection (1), this Ordinance shall apply to pharmaceutical products [as defined in Cap. 138] containing any such Chinese herbal medicines or proprietary Chinese medicines or other materials of herbal, animal or mineral origin customarily used by the Chinese for medicinal purpose as active ingredients.*

explanatory note: to make it clear that nothing in this Ordinance shall apply to Chinese herbal medicines and proprietary Chinese medicine as defined in the future Chinese Medicine Ordinance except for pharmaceutical products containing both western medicines and Chinese medicines as active ingredients.

Cap 138	Pharmacy and Poisons Regulations Under the Pharmacy and Poisons Ordinance
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Regulation 36 - Registration of pharmaceutical products and substances

- (2) Application for the initial registration of a pharmaceutical product or substance shall be made in the form prescribed in the Eighth Schedule and shall be accompanied by the fee prescribed in the Ninth Schedule.
- (2A) *In considering an application for registration of a pharmaceutical product which contains as active ingredients any Chinese herbal medicines or proprietary Chinese medicines as defined in section 2 of the Chinese Medicine Ordinance (of 1999) or other materials of herbal, animal or mineral origin customarily used by the Chinese for medicinal purpose, the Board shall seek advice from the Chinese Medicines Board established under the Chinese Medicine Ordinance.*

Explanatory note: to specify that pharmaceutical products containing both western medicines and Chinese medicines as active ingredients shall seek registration from the Pharmacy and Poisons Board. The Chinese Medicines Board shall be consulted in determining such an application for registration.

Section 28 - Unlawful use of title etc. and practice without registration

- (1) Any person who -
- (a) wilfully or falsely pretends -
 - (i) to be qualified to practise medicine or surgery; or
 - (ii) to be registered; or
 - (iii) that his name is included in the Specialist Register; or
 - (b) wilfully or falsely takes or uses any name, title, addition or description implying that -
 - (i) he is qualified to practise medicine or surgery; or
 - (ii) he is registered; or
 - (iii) his name is included in the Specialist Register; or
 - (c) not being registered or provisionally registered or exempted from registration, professes to practise or publishes his name as practising medicine or surgery, commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 years.
- (2) Subject to subsection (3), any person who not being registered or provisionally registered or exempted from registration -
- (a) practises medicine or surgery commits an offence and is liable -
 - (i) on summary conviction to a fine at level 6 and to imprisonment for 3 years; or

- (ii) on conviction upon indictment to imprisonment for 5 years; or
 - (b) does any medical diagnosis, prescribes any medical treatment or performs any medical treatment (including surgery) in relation to a person which results in personal injury to that person commits an offence and is liable -
 - (i) on summary conviction to a fine of \$200,000 and to imprisonment for 3 years; or
 - (ii) on conviction upon indictment to imprisonment for 7 years.

- (3) Subsection (2) shall not apply to any treatment –
 - (a) by way of dentistry performed by a dentist registered, deemed to be registered or exempt from registration under the Dentists Registration Ordinance (Cap. 156);
 - (b) by way of the dispensation of medicine or poison by a pharmacist registered under the Pharmacy and Poisons Ordinance (Cap. 138);
 - (c) by way of the dispensation of poison by a seller of poisons listed under the Pharmacy and Poisons Ordinance;
 - (d) in the course of the practice of one of the professions listed in the Schedule to the Supplementary Medical Professions Ordinance (Cap. 359) given by a person registered or licensed under that Ordinance to practise that profession;
 - (e) by way of massage given in a massage establishment by or under the supervision of a person licensed to operate that massage establishment under the Massage Establishments Ordinance (Cap.

266);

(f) by way of chiropody, chiropractic or osteopathy; and

(g) by way of first aid; *and*

(h) by way of practising Chinese medicine by a Chinese medicine practitioner registered or listed under the Chinese Medicine Ordinance (of 1999) or a person who continues to practise Chinese medicine provisionally by virtue of section 90(7) of that Ordinance.

explanatory note: to give Chinese medicine practitioners [registered, listed or provisionally allowed to continue to practise under the future Chinese Medicine Ordinance] the same right as other health care professionals in giving respective treatment.

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(5) In subsection (3) "treatment" (治療) includes such diagnosis and prescription as is necessary for the purpose of giving treatment.

(6) Without prejudice to any Ordinance relating to the prosecution of criminal offences or to the powers of the Secretary for Justice in relation to the prosecution of criminal offences, prosecutions for an offence in connection with the practice of Chinese medicine shall only be brought under the Chinese Medicine Ordinance (of 1999).

explanatory note : to avoid double prosecution for offences in connection with the practice of Chinese medicine without registration.

Section 31 Chinese medicine

~~(1) Subject to the provisions of section 32 nothing in this Ordinance shall be deemed to affect the right of any person of Chinese race, not being a person taking or using any name, title, addition or description calculated to induce anyone to believe that he is qualified to practise medicine or surgery according to modern scientific methods, to practise medicine or surgery according to purely Chinese methods and to demand and receive reasonable charges in respect of such practice. (Amended 19 of 1958 s. 2)~~

~~(2) For the purposes of this section-~~

~~(a) the taking or using in Chinese by any person of the name, title, addition or description of or 中醫 or 中醫生 or 中醫師 or 唐醫 or 國醫 of any words or characters implying specialization when preceded by the afore-mentioned characters shall not be deemed to be the taking or using of a name, title, addition or description calculated to induce anyone to believe that he is qualified to practise medicine or surgery according to modern scientific methods:-~~

~~Provided that in any English translation of such characters the~~

word "Herbalist" must be included:-

~~(b) words or characters other than those specified in paragraph (a) shall be deemed to be the taking or using of a name, title, addition or description calculated to induce anyone to believe that he is qualified to practise medicine or surgery according to modern scientific methods and that he is registered.~~

(1) Nothing in this Ordinance shall be deemed to affect the right of a Chinese medicine practitioner registered or listed under the Chinese Medicine Ordinance (of 1999) or a person who continues to practise Chinese medicine provisionally by virtue of section 90(7) of that Ordinance to practise Chinese medicine in accordance with the provisions of that Ordinance, and not being a person taking or using any name, title, addition or description calculated to induce anyone to believe that he is qualified to practise medicine or surgery under this Ordinance.

explanatory note : to make clear that the Medical Registration Ordinance shall not affect the rights of a Chinese medicine practitioner to practice Chinese medicine under the future Chinese Medicine Ordinance.

(2) For the purpose of this section –

(a) the taking or using in Chinese by any person of the name, title,

addition or description of 西醫，醫生，醫師，醫士，醫學士，醫學博士，男醫，女醫，醫科，醫家，醫寓，醫院，醫務院，醫所，醫務所，醫療所，診療所，療病院， and the taking or using of words or characters implying specialization if preceded by or used in combination with words or characters other than “中” or “中醫” shall be deemed to be the taking or using of a name, title, addition or description calculated to induce anyone to believe that he is qualified to practise medicine or surgery under this Ordinance and that he is registered under this Ordinance;

explanatory note: to restrict the use of the above titles to persons registered under the Medical Registration Ordinance when 中 or 中醫 is not used together.

- (b) the taking or using in Chinese by a Chinese medicine practitioner registered or listed under the Chinese Medicine Ordinance (of 1999) or a person who continues to practise Chinese medicine provisionally by virtue of section 90(7) of that Ordinance of the name, title, addition or description of 醫生，醫師，醫士，醫學士，醫學博士，男醫，女醫，醫科，醫*

家，醫寓，醫院，醫務院，醫所，醫務所，醫療所，診療所，療病院 or any words or characters implying specialization, when preceded by or used in combination with the character “中” or characters “中醫” shall not be deemed to be the taking or using of a name, title, addition or description calculated to induce anyone to believe that he is qualified to practise medicine or surgery under this Ordinance or that he is registered under this Ordinance.

explanatory note: to exempt the use of the above titles by Chinese medicine practitioners as long as 中 or 中醫 is used together, so that they will not be prosecuted under the Medical Registration Ordinance.

Section 32 - Treatment of diseases of the eye

- (1) Notwithstanding the provisions of section 31 *and subject to subsection (1A)*, no person unless he is a registered medical practitioner or is provisionally registered shall hold himself out as being qualified, competent or willing to undertake the treatment of diseases of the human eye or the prescription of remedies therefor,

or the giving of advice in connection with the treatment thereof.

~~Provided that nothing in this section shall be taken to prohibit a person who is not a registered medical practitioner from holding himself out as being qualified, competent or willing to test refraction, visual acuity and colour vision, or to make or provide spectacles or other optical appliances for the remedy of defects of vision.~~

(1A) Nothing in this section shall be taken to prohibit –

(a) a person who is not a registered medical practitioner from holding himself out as being qualified, competent or willing to test refraction, visual acuity and colour vision, or to provide spectacles or other optical appliances for the remedy of defects of vision;

(b) a Chinese medicine practitioner registered or listed under the Chinese Medicine Ordinance (of 1999) or a person who continues to practise Chinese medicine provisionally by virtue of section 90(7) of that Ordinance from undertaking the treatment of diseases of the human eye or the prescription of remedies for such treatment, or the giving of advice in connection with such treatment in accordance with the provisions of that Ordinance.

<p><u>explanatory note</u> : to allow Chinese medicine practitioners to treat diseases of the human eye.</p>
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Cap 231	Undesirable Medical Advertisements Ordinance
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Section 2 - Interpretation

(1) In this Ordinance, unless the context otherwise requires-

"medicine" (藥物) includes any kind of medicament or other curative or preventive substance, and whether a proprietary medicine, a patent medicine, *a Chinese herbal medicine, a proprietary Chinese medicine* or purported natural remedy.

explanatory note: for the sake of clarity and for the purpose of this ordinance, to extend the definition of "medicine" to include Chinese herbal medicines and proprietary Chinese medicines.

Section 5 - Certain defences; provisions as to *Chinese medicine practitioners*

(1) In any proceedings for a contravention of section 3 or 4, it shall be a defence to prove that the advertisement to which the proceedings relate was made only in a publication of a technical character intended for circulation mainly amongst persons of the following

classes, or of one or some of them-

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(d) ~~persons of Chinese race practising medicine or surgery as herbalists according to purely Chinese methods in accordance with section 31(1) of the Medical Registration Ordinance (Cap 161).~~ *Chinese medicine practitioners registered or listed under the Chinese Medicine Ordinance (of 1999) or persons who continue to practise Chinese medicine provisionally by virtue of section 90(7) of that Ordinance.*

explanatory note : to make it clear that the defence currently available to Chinese medicine herbalists will instead be available to Chinese medicine practitioners.

(2) Nothing in the provisions of section 31 of the Medical Registration Ordinance (Cap 161) shall be taken to permit any ~~native herbalist~~ *Chinese medicine practitioner* or other person to take any part in an advertisement infringing the provisions of this Ordinance, except to the extent of the defence provided for in subsection (1).

explanatory note: to make it clear that the defence currently available to Chinese medicine herbalists will instead be available to Chinese medicine practitioners.

Section 17 - When members to be deemed on duty

A member who is off duty shall be deemed to be on duty whenever he encounters circumstances which would require him, if actually on duty, to act in enforcing this Ordinance or any of the Ordinances specified in Schedule 2.

Section 17A -General powers of arrest and search

- (1) A member may, without warrant, stop and search and arrest any person whom he may reasonably suspect of having committed an offence against this Ordinance or an Ordinance specified in Schedule 2.
- (2) If any person resists, or attempts to evade, search or arrest by a member, whether effected under this Ordinance or any other power, the member may use such force as is reasonably necessary to effect the search or arrest.
- (3) Where a member has arrested any person the member may search for and take possession of any thing found on his person or in or about the place at which the person has been arrested and which the member may reasonably suspect is related to or connected with the offence for which the person has been arrested or may throw light on

the character or activities of that person or any associate of his.

- (4) A person may be searched only by a member who is of the same sex.

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Schedule 2

Ordinances referred to in sections 17 and 17A

- Copyright Ordinance (Cap. 528)
- Import and Export Ordinance (Cap. 60)
- Post Office Ordinance (Cap. 98)
- Dutiable Commodities Ordinance (Cap. 109)
- Pesticides Ordinance (Cap. 133)
- Dangerous Drugs Ordinance (Cap. 134)
- Antibiotics Ordinance (Cap. 137)
- Pharmacy and Poisons Ordinance (Cap. 138)
- Acetylating Substances (Control) Ordinance (Cap. 145)
- Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187)
- Plant (Importation and Pest Control) Ordinance (Cap. 207)
- Weapons Ordinance (Cap. 217)
- Firearms and Ammunition Ordinance (Cap. 238)
- Dangerous Goods Ordinance (Cap. 295)
- Reserved Commodities Ordinance (Cap. 296)
- Air Pollution Control Ordinance (Cap. 311)
- Trade Descriptions Ordinance (Cap. 362)
- Control of Obscene and Indecent Articles Ordinance (Cap. 390)
- Ozone Layer Protection Ordinance (Cap. 403)

Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)

Rabies Ordinance (Cap. 421)

Toys and Children's Products Safety Ordinance (Cap. 424)

Organized and Serious Crimes Ordinance (Cap. 455)

Consumer Goods Safety Ordinance (Cap. 456)

Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)

Prevention of Copyright Piracy Ordinance (Cap. 544)

Chinese Medicine Ordinance (of 1999)

explanatory note: to provide that a member of the Custom & Excise may, without warrant, stop and search and arrest any person whom he may reasonably suspect of having committed an offence against the future Chinese Medicine Ordinance.

Cap 343	Medical Clinics Ordinance
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Section 2 - Interpretation

In this Ordinance, unless the context otherwise requires-

"clinic" (診療所) means any premises used or intended to be used for the medical diagnosis or treatment of persons suffering from, or believed to be suffering from, any disease, injury or disability of mind or body, but does not include-

- ~~(f) premises used exclusively for treatment given according to purely Chinese methods by person entitled by virtue of section 31 of the Medical Registration Ordinance (Cap 161) to practise medicine or surgery according to purely Chinese methods;~~
- (f) premises used exclusively by a Chinese medicine practitioner registered or listed under the Chinese Medicine Ordinance (of 1999) or a person who continues to practise Chinese medicine provisionally by virtue of section 90(7) of that Ordinance in the course of his practice.*

<p><u>explanatory note</u>: to provide that the definition of "clinic" shall exclude premises where a Chinese medicine practitioner practises.</p>
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"medical treatment" (醫療) means medical treatment of any description other than-

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- ~~(c) the dispensation of purely herbal medicines;~~
- ~~(d) treatment given according to purely Chinese methods by persons entitled, by virtue of section 31 of the Medical Registration Ordinance (Cap 161), to practise medicine or surgery according to purely Chinese methods;~~
- (c) the dispensation of Chinese herbal medicines under the Chinese Medicine Ordinance (of 1999);*
- (d) treatment given by a Chinese medicine practitioner registered or listed under the Chinese Medicine Ordinance (of 1999) or a person who continues to practise Chinese medicine provisionally by virtue of section 90(7) of that Ordinance.*

explanatory note : to provide that the definition of "medical treatment" shall not cover the treatment given by a Chinese medicine practitioner.