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**Subcommittee on
Regulations relating to Occupational Safety and Health**

**Minutes of Meeting
held on Thursday, 21 October 1999 at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Andrew CHENG Kar-foo (Chairman)
Hon HO Sai-chu, SBS, JP
Hon Cyd HO Sau-lan
Hon Michael HO Mun-ka
Hon LEE Kai-ming, SBS, JP
Hon Ronald ARCULLI, JP
Hon CHAN Wing-chan
Dr Hon LEONG Che-hung, JP
Hon TAM Yiu-chung, GBS, JP
- Members Absent** : Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, JP
- Public Officers Attending** : Mr Herman CHO
Principal Assistant Secretary for Education and Manpower
- Mr Samson LAI
Assistant Secretary for Education and Manpower
- Mr Simon LI
Labour Officer, Labour Department
- Dr LEUNG Lai-man
Occupational Health Consultant, Labour Department

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Mr J D SCOTT
Senior Assistant Law Draftsman

Ms Anastasia KWONG
Senior Government Counsel

Attendance by Invitation : Hong Kong College of Community Medicine

Prof LAM Tai-hing
President

Mr WONG Chi-wai
Council Member

The Hong Kong College of Family Physicians

Dr Donald K T LI
President

Estate Doctors Association Ltd.

Dr YEUNG Chiu-fat
Chairman

Dr LAM Ying-ming
Council Member

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Stanley MA
Senior Assistant Secretary (2) 6

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I. Meeting with deputations and the Administration

[LC Paper Nos. CB(2)2855/98-99(04), CB(2)2896/98-99(01), CB(2)2900/98-99(04) - (05), CB(2)37/99-00(01) and CB(2)166/99-00(01) - (02)]

The Chairman said that since the last meeting on 27 September 1999, three organizations had requested to make oral representation to the Subcommittee.

2. At the invitation of the Chairman, representatives of the three deputations presented their views to the Subcommittee.

Hong Kong College of Community Medicine (HKCCM)
[Paper Nos. CB(2)2855/98-99(04) and CB(2)2900/98-99(04)]

3. Prof LAM Tai-hing of HKCCM said that HKCCM strongly supported the proposed Factories and Industrial Undertakings (Medical Examinations) Regulation (the Regulation), and the recommendation of the Expert Working Group on Occupational Health Services that only appointed medical practitioners (AMPs) should be allowed to carry out the mandatory medical examinations. In addition, HKCCM held the following views -

- (a) the purpose of the medical examinations was to ensure early detection and prevention of occupational diseases, especially those with long latent periods, so as to avoid permanent damage to workers' health and to enable early improvement to the working environment;
- (b) it was generally recognized overseas and supported by the International Labour Organizations that such medical examinations should be conducted by doctors qualified in occupational medicine and these doctors would also need to make recommendations on how to prevent workers from further exposure to hazardous substances; and
- (c) enactment of the Regulation would encourage more doctors to receive training in occupational medicine and would in the long term promote overall occupational health services in Hong Kong.

4. Mr WONG Chi-wai of HKCCM supplemented that the Chinese University of Hong Kong (CUHK) had since 1985 offered the Diploma in Occupational Medicine course (the diploma course). The course timetable was revised in 1995 to facilitate attendance of serving doctors. The diploma course comprised half-day sessions each week for about nine months. He said that the course content could be tailored to meet the requirements of the Regulation.

The Hong Kong College of Family Physicians (HKCFP)
[Paper No. CB(2)2896/98-99(01)]

5. Dr Donald K T LI of the HKCFP said that HKCFP supported the Regulation but objected to the proposal that only AMPs could conduct the mandatory medical examinations. He said that HKCFP had the following comments -

- (a) family physicians were specialists who had undergone extensive medical training and were capable of performing the mandatory medical examination. They were willing to take a qualifying examination to attain the status of AMPs, but they questioned the need for attending a nine-month course in occupational medicine;
- (b) workers who were diagnosed by AMPs as suffering from occupational diseases would normally receive follow up treatment by family physicians. There should be closer co-operation between AMPs and family physicians; and
- (c) as there were only about 30 AMPs in private practice, it was very likely that these AMPs would contract out the mandatory medical examinations to general medical practitioners.

Estate Doctors Association Limited (EDA)
[Paper Nos. CB(2)2900/98-99(05), CB(2)37/99-00(01) and CB(2)166/98-99(02)]

6. Dr YEUNG Chiu-fat of EDA tabled a further submission at the meeting. He said that EDA supported the Regulation but objected to the proposal that only AMPs could perform the mandatory medical examinations. He said that EDA considered that all registered medical practitioners were competent to conduct the medical examinations under the Regulation. The requirement that only AMPs could conduct the medical examinations would create unfair competition and was contrary to the competition policy.

7. Dr YEUNG also pointed out that only Singapore had a similar legislation requiring AMPs to conduct medical examinations for workers exposed to hazardous substances and physical agents.

8. Dr YEUNG said that given the large demand (about 195 000 employees) and the limited number of AMPs (around 30) in the private sector, it was most likely that AMPs would contract out the medical examinations. He suggested that Government could register those doctors who were interested in providing medical examination services under the Regulation. The Government could

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issue guidelines and standards for registered doctors to follow. Arrangements could also be made for registered MPs to visit factories and construction sites to familiarize them with the working environment in industrial undertakings.

9. Dr YEUNG added that the proposal of requiring only AMPs to conduct the mandatory medical examinations was in conflict with Government's fair competition policy.

Discussion

10. Mr HO Sai-chu and Dr LEONG Che-hung expressed concern as to whether there would be sufficient AMPs to perform the regular medical examinations for some 195 000 workers on an on-going basis. Dr LEONG asked whether CUHK could increase the capacity of the diploma course to meet the large demand for medical examinations following the enactment of the Regulation. The Chairman also asked whether HKCCM had estimated the number of doctors who would likely enroll in the diploma course if the Regulation was enacted.

11. Mr WONG Chi-wai of HKCCM said that following enactment of the Regulation, more doctors would have interest to become qualified AMPs. To meet the anticipated demand, CUHK could increase its training capacity to around 40 places a year. Assuming that the Regulation would be implemented by phases in two years, there would be over 100 AMPs in private practice after two years and this should be sufficient to meet the demand.

12. Miss Cyd HO said she did not entirely agree with the view that requiring AMPs to conduct the medical checks would create a monopoly situation. She was of the view that unless specific barriers were set for the enrolment of the diploma course, the requirement would not in itself constitute a discriminatory act. She therefore sought clarification on the admission criteria and the fees for the diploma course.

13. Prof LAM Tai-hing of HKCCM responded that the course was open to all registered doctors. The course operated on a cost-recovery basis without Government subsidy and its programme was comparable to that of international standards. Mr Wong Chi-wai of HKCCM supplemented that the nine-month course comprised some 280 hours of class lectures and practical lessons. The current course fee was around \$25,000, which was comparable to other nursing and medical courses.

14. Mr CHAN Wing-chan expressed concern that there were only 30 qualified AMPs in occupational medicine as the course had been in operation for some 14 years. He also asked whether the course was open to other allied medical personnel.

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15. Mr WONG Chi-wai of HKCCM responded that the course content was revised in 1995 to meet the requirements of occupational health services. CUHK had also organized past graduates to attend remedial course on occupational medicine in order to be qualified as AMPs. So far 36 graduates were in possession of the necessary qualification. He estimated that there were now some 50-60 doctors qualified as AMPs in Hong Kong including the specialists working in hospitals. He envisaged that more doctors would enrol for the course after enactment of the Regulation. He added that the diploma course was designed for registered doctors while other relevant courses were organized for occupational nurses, and occupational and environmental hygienists.

16. Mr Michael HO stressed that the legislative intent was to enhance protection of workers' health, rather than to attract doctors to pursue further study in occupational medicine. The issue was whether it was necessary for doctors to acquire the qualification in occupational medicine before they were considered capable of performing the medical examinations.

17. The Chairman asked whether other countries imposed similar requirements, or whether general practitioners and family physicians were equally capable of conducting such examinations.

18. Dr YEUNG Chiu-fat of EDA considered that both family physicians and general practitioners were competent in conducting the mandatory medical examinations in accordance with the specified standards. He added that general medical practitioners were already performing medical examinations for educational and employment purposes.

19. Dr Donald K T LI of the HKCFP commented that while the legislative intent was to enhance protection of workers' health, the Regulation emphasized on mandatory medical examinations instead. He opined that a worker suffering from an occupational disease would often require long-term treatment which could be provided by family physicians. He considered that all medical doctors were qualified to conduct medical assessments and that the requirement for specialist qualification was unnecessary.

20. Prof LAM Tai-hing of HKCCM held a different view. He said that the medical examinations required under the proposed Regulation were much more than the general medical examinations. He stressed that the AMP would need to assess the fitness of a worker in continuing employment in a particular occupation and to give recommendations on improvement measures acceptable to both the employer and the employee. The AMP would need to have expert knowledge of environmental hygiene factors contributing to occupational health problems in order to make reasonable and practicable proposals.

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21. Dr LAM Ying-ming of EDA suggested that the basic medical tests could be performed by general medical practitioners in accordance with the standards and procedures to be issued by HKCCM. He was of the view that the great majority of the 195 000 workers covered under the Regulation should be physically fit to continue work in their occupations. He said that to make effective use of social resources, general practitioners should be allowed to conduct the basic medical assessments while those suspected of contracting occupational diseases would be referred to the AMPs for in-depth examination.

22. Mr LEE Kai-ming remarked that under the existing Employment Ordinance, recommendations on paid sickness days in excess of 36 days would need to be made by hospital doctors. He wondered whether such provision was also a form of discrimination against doctors in private practice.

23. Dr YEUNG Chiu-fat of EDA responded that currently all registered specialists and general medical practitioners would assess and treat patients in need of any type of medical services.

24. Prof LAM Tai-hing of HKCCM stressed that the mandatory medical examinations for workers exposed to hazardous substances and physical agents involved detailed analysis and critical judgement which were much more than simple medical tests and assessments. He reiterated that the primary purpose of the Regulation were to facilitate early detection of occupational diseases and improve occupational health in the workplaces. The Regulation therefore required qualified AMPs to recommend appropriate follow-up measures to both employers and employees.

25. Dr LEONG Che-hung pointed out that the major task of an AMP was to determine whether a worker suffering from an occupational disease could continue employment in the specified occupation and to made recommendation on measures to improve the working environment.

26. Dr YEUNG Chiu-fat of EDA responded that general medical practitioners could follow up on the workers' health problems as detected in the medical examinations. For employment-related medical examinations, general medical practitioners were also required to advise the employers on proper care of the employees and work arrangements in workplaces.

27. Dr LAM Ying-ming of EDA supplemented that only a very small proportion of workers would have contracted occupational diseases and that around 85% of the workers covered by the Regulation were exposed to excessive noise. He was confident that general medical practitioners were competent to conduct the necessary hearing tests and give recommendation to these workers in normal circumstances. The more serious and complicated cases would be referred to AMPs for special treatment and follow-up actions. He reiterated that

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it would be a waste of medical resources to use specialists instead of general medical practitioners to perform basic medical assessments.

28. The Chairman noted that Dr CHOI representing the Practising Estate Doctors' Association [Paper No. CB(2)166/99-00(01)] had suggested that all doctors who claimed to have experience or expertise on occupational medicine should be allowed to sit the AMP examination. The EDA had however suggested a two-tier medical examination system with the general medical practitioners performing the basic tier of medical assessments. He also noted that HKCCM was of the view that there would be more doctors enrolling in the diploma course of CUHK after enactment of the Regulation. In this connection, he sought the views of the deputations the feasibility of these options.

29. Dr YEUNG Chiu-fat of EDA said that the diploma course currently comprised 40 sessions, three of which were site visits. Participants would need to attend 80% of the sessions and to pass the written examination. He suggested that there should be more emphasis on occupational medicine in the undergraduate medical courses in universities so that medical graduates could also conduct medical examinations in relation to occupational diseases.

30. Prof LAM Tai-hing of HKCCM was of the view that the undergraduate medical courses in the two universities were to provide fundamental medical training to medical students. He pointed out that most specialist qualifications required attendance of a relevant training course before examination. He stressed that AMPs should not be regarded as specialists in occupational medicine. The purpose of the diploma course was to provide appropriate training to general practitioners who were interested to enhance their professional knowledge in the field. As enactment of the Regulation would generate more demand for occupational medical examinations, he envisaged that more doctors would enrol in the diploma course. In response to Mr Michael HO, he agreed that nursing and para-medical professional had important roles to play in enhancing occupational health.

31. Dr Donald K T LI of HKCFP commented that the community should not place too much emphasis on medical specialties, neglecting the contribution of general medical practitioners and nursing professionals. He considered that specialists and basic medical staff could share the responsibilities in conducting the medical assessments under the Regulation. He had also proposed that family physicians should be allowed to attend a qualifying examination for AMPs without the need to attend a training course. Mr WONG Chi-wai of HKCCM said that doctors in Singapore had to attend a six-month part-time course in order to be qualified as Designated Factory Doctors. Some industries in Australia and the United States also required specially trained doctors to carry out the required medical examinations for workers.

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32. The Chairman thanked deputations for their views and suggestions.

II. Meeting with the Administration

[Paper Nos. CB(2)117/99-00(01) and (02)]

33. At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS(EM)) took members through the paper giving the Administration's response to the Subcommittee's concerns raised at the last meeting [Paper No.CB(2)117/99-00(01)].

Medical examination fee

34. Mr CHAN Wing-chan asked who would be responsible for paying the medical examination fees of casual workers and daily-rated employees working in the specified industries.

35. PAS(EM) responded that the Construction Industry Training Authority (CITA) would co-ordinate medical examinations for all construction workers including casual and daily-rated workers with an additional 0.03% levy from the construction industry. As regards the arrangements for casual workers in other industries such as kitchen workers in the catering industry, he undertook to provide a written response.

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Employees protection and compensation

36. Mr CHAN Wing-chan expressed concern that workers would face difficulties if they were assessed to be unfit to continue their present employment. As workers with less than five years service would not be entitled to long service payment under the Employment Ordinance, he urged the Administration to seriously consider providing protection of workers' employment or compensation in the case of permanent suspension of employment. The Chairman and Dr LEONG Che-hung expressed support for a review of existing legislation to provide ex-gratia payment or compensation for workers suspended from employment.

37. In response, PAS(EM) clarified that a worker whose employment was terminated was entitled to benefits and long service payments from his employer in accordance with the provisions of the Employment Ordinance. It was also very likely that the worker would be entitled to other compensation under the existing legislation on employees' compensation and occupational diseases. He considered that improvements to employees' benefits and entitlements should more appropriately be dealt with under the Employment Ordinance.

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38. Mr Ronald ARCULLI remarked that the problem of termination of workers' employment was given rise by the mandatory medical examinations proposed under this Regulation. He expressed concern that compensation would lead to additional financial burden on proprietors of small and medium organizations.

39. On workers' entitlements to compensation, Mr LEE Kai-ming sought further clarification on the current legislative provisions for the protection of workers with less than five years service if they were dismissed on the ground that they had contracted an occupational disease. Labour Officer, Labour Department replied that the Employment Ordinance had provided protection for workers who were unreasonably dismissed. Occupational Health Consultant, Labour Department (OHC(LD)) added that the existing legislation providing employees' compensation included the 17 occupational diseases covered by the Regulation. Any new occupational diseases to be regulated would be dealt with separately.

Competition policy

40. Mr LEE Kai-ming enquired whether the proposed requirement for AMPs to carry out mandatory medical examinations was in conflict with the competition policy.

41. PAS(EM) disagreed that the requirement would create unfair competition. He added that the requirement was based on the recommendation of the Expert Working Group on Occupational Health Services chaired by the Deputy Director of Health. No barrier or specific entry requirement was set for enrolment in the CUHK diploma course, and that the AMPs would not be a closed circle. In response to members, Assistant Legal Adviser 5 said that there was no specific law on market competition in Hong Kong. It was only a general Government policy that a level playing field should be provided for market participants.

42. Dr LEONG Che-hung stressed the importance of the independence of AMPs and expressed concern about the appointment of agents to arrange mandatory medical examinations for workers. He was of the view that AMPs should be free from interference from any persons or agents in their professional assessments. In this respect, he considered that the process of selecting AMPs should be transparent, as AMPs would have statutory power to recommend suspension of employment and environmental improvement measures.

Monitoring mechanism

43. Dr LEONG Che-hung said that the Administration should set up a mechanism to ensure that the Regulation would achieve its legislative intent of

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promoting workers' health and improving environmental hygiene in workplaces. Otherwise, the Regulation would only have the effect of terminating the employment of workers who had occupational diseases.

44. PAS(EM) said that there would be sufficient monitoring by the Labour Department and that proprietors were also required to put in place a safety management system in workplaces. He explained that when a worker was found to have contracted an occupational disease, the responsible AMP had the legal obligation to notify Labour Department which would investigate the causes leading to the worker's contracting the disease. The proprietor would also have legal responsibility to implement measures recommended by the AMPs to improve the working procedures and environment. LD would follow up on the implementation of the improvement measures and would take enforcement actions in accordance with the relevant regulations under the Factories and Industrial Undertakings ordinance (FIUO) where appropriate.

45. Mr Michael HO was of the view that the Regulation appeared to concentrate on the mandatory medical examinations rather than the protection of workers' health. He expressed reservation about the benefits of the Regulation and the effectiveness of the monitoring mechanism for improving occupational health in workplaces.

46. PAS(EM) responded that apart from Labour Department's follow-up investigation on the work environment for each reported case, AMPs would advise workers contracted with occupational diseases on appropriate measures such as the use of personal protective equipment to prevent deterioration of health and recurrence of the diseases.

47. Dr LEONG Che-hung shared similar concerns as Mr Michael HO. He requested LD to provide statistics on the results of its follow-up actions to demonstrate the effectiveness of its monitoring mechanism. He said that the information should include the number of site inspections and prosecutions, and details on implementation of improvement measures by proprietors.

48. OHC(LD) said that Labour Department had received over 900 reported cases of occupational diseases from medical practitioners in 1998. It would examine the effects of the work environment on those identified occupational diseases and checked whether the proprietors concerned had taken the necessary precautionary measures. Labour Department would take enforcement actions against proprietors who failed to comply with the legislative requirements. He said that the medical checks provided in the Regulation would enable workers to receive health advice and counselling. This would complement the law enforcement measures in promoting occupational health.

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49. Mr Michael HO considered that the findings of LD's investigation into the 900 cases should help identify the causes and measures for improving occupational health in the workplaces. He requested LD to provide further information on the improvements achieved.

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50. In concluding discussion, the Chairman requested the Administration to provide a written response to members' concerns expressed at the meeting.

Date of next meeting

51. Members agreed to hold the next meeting at 8:30 am on 10 November 1999.

III. Any other business

52. There being no other business, the meeting ended at 12:50 pm.

Legislative Council Secretariat
2 May 2000