

LN154-E

Chinese Medicine Practitioners

(Registration) Regulation

(Made by the Chinese Medicine Council of Hong Kong with the approval of the Secretary for Health and Welfare under section 161(5) of the Chinese Medicine Ordinance (Cap. 549))

PART I

Preliminary

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Health and Welfare by notice in the Gazette.

2. Interpretation

In this Regulation, unless the context otherwise requires---

"applicant" (申請人) in Parts II to IV, means a person---

(a) who has applied for registration under section 68 of the Ordinance;

(b) on whose behalf an application has been made under section 83 or 89 of the Ordinance; or

(c) who has applied to restore his name to the Register under section 58(1) of the Ordinance;

"Board" (中醫組) means the Practitioners Board established by section 12(a) of the Ordinance;

"Board chairman" (中醫組主席) means the chairman of the Board mentioned in section 13(a) of the Ordinance;

"Board secretary" (中醫組秘書) means the secretary of the Board appointed under section 23(2) of the Ordinance;

"Committee chairman" (小組主席) means the chairman of the Disciplinary Committee mentioned in section 28(a) of the Ordinance;

"Committee secretary" (小組秘書) means the secretary of the Disciplinary Committee;

"Council secretary" (管委會秘書) means the Council secretary mentioned in section 10(1)(a) of the Ordinance;

"Disciplinary Committee" (紀律小組) means the Disciplinary Committee of Chinese Medicine Practitioners established under section 25(1)(a)(iii) of the Ordinance.

PART II

Practising Certificates and Renewal of Limited Registration

3. Form of practising certificate

A certificate issued or renewed under section 76(3) or 77(2) of the Ordinance

shall be in the form prescribed in the Schedule.

4. Copies of certificates

(1) The Board secretary may, upon receipt of the appropriate prescribed fee, issue a duplicate copy of a certificate of passing a Licensing Examination to the person to whom the certificate has been issued.

(2) The Registrar may, upon receipt of the appropriate prescribed fee, issue a certified true copy of an entry in the Register kept under section 52 of the Ordinance.

5. Renewal of limited registration

(1) An educational or scientific research institution making an application under section 89 of the Ordinance shall apply to the Board in such form as may be determined by the Board.

(2) An application mentioned in subsection (1) shall be accompanied by---

(a) such documents and particulars as may be reasonably necessary and requested by the Board for the purpose of determining the application; and

(b) a declaration by the applicant stating, as from the time when he was last registered under section 85 or 89 of the Ordinance (whichever is the later), whether he has or has not been convicted of any offence in Hong Kong or elsewhere punishable with imprisonment and whether he has or has not been found guilty in Hong Kong or elsewhere of misconduct in a professional respect; and if he has been so convicted or found guilty, the nature of each such offence or misconduct and the place of conviction or finding.

PART III

Procedures Relating to References to the Disciplinary Committee

6. Reference to the Disciplinary Committee

(1) Where it has come to the notice of the Board that an applicant may have been---

(a) convicted in Hong Kong or elsewhere of an offence punishable with imprisonment; or

(b) found guilty in Hong Kong or elsewhere of misconduct in a professional aspect, the Board shall refer the relevant details that are available to it to the Disciplinary Committee.

(2) Upon receipt of a reference by the Disciplinary Committee under subsection (1), the Committee chairman may---

(a) require the applicant or any person who has provided the information mentioned in subsection (1) to make clarifications, whether by way of statutory declarations or otherwise, or furnish evidence about the alleged conviction or finding;

(b) direct the Committee secretary to seek any legal advice or any necessary assistance or advice from any relevant authorities with regard to the alleged

conviction or finding.

(3) When the Committee chairman considers that---

(a) all further clarifications, evidence and statutory declarations that are necessary to enable the Disciplinary Committee to consider the application have been furnished; or

(b) it is impracticable to obtain any further clarifications, evidence or statutory declarations,

he shall---

(i) if it appears to him that the reference may be disposed of by means of a resolution of the Disciplinary Committee making a recommendation mentioned in section 7(5)(a) upon circulation of papers under section 48 of the Ordinance, arrange for such circulation of papers; or

(ii) if he thinks that it is not appropriate to arrange for circulation of papers in the particular case or that a resolution mentioned in paragraph (i) is unlikely to be made, fix a date for the Disciplinary Committee to consider the reference and arrange to---

(A) notify the applicant of the nature of the reference and the date fixed under this subsection at least 1 month before that date; and

(B) invite the applicant to submit to the Disciplinary Committee any representations concerning the reference.

7. Consideration of reference

(1) A meeting of the Disciplinary Committee to consider a reference under section 6(1) shall be held in private.

(2) Within a reasonable period before any meeting of the Disciplinary Committee to consider a reference, the Committee secretary shall provide all members of the Disciplinary Committee who will consider the reference with copies of all the documents relating to the reference that he has received.

(3) The Disciplinary Committee may postpone its consideration or determination of a reference to such date or adjourn a meeting from time to time as it thinks fit.

(4) Before coming to a decision under subsection (5), the Disciplinary Committee may cause to be made such further investigations or further clarification from the applicant with regard to the reference being considered by the Disciplinary Committee and with regard to any clarifications and declarations made by him and any evidence furnished by him, and may seek such additional advice or assistance as it considers desirable.

(5) The Disciplinary Committee shall, having regard to any written explanation submitted by the applicant and all the materials before it, consider the reference, and may---

(a) if it is of the opinion that even if there was a conviction or finding as alleged, the applicant is suitable for registration or restoration as applied, by written notification recommend to the Board that the applicant be considered so suitable; or

(b) by written notification recommend to the Board that an inquiry be held into the alleged conviction or finding under section 58, 70 or 88 of the Ordinance.

8. Referral of case to the Board for inquiry

(1) The Committee chairman shall send the written notification mentioned in section 7(5) to the Board chairman specifying the details of the alleged conviction or finding.

(2) On receipt of a notification under subsection (1), if the Board decides that an inquiry---

(a) should be held, the Board chairman shall fix the date of inquiry; or

(b) should not be held, the Board secretary shall notify the Committee secretary and the applicant accordingly.

(3) Unless the Board directs a shorter period of notice to which the applicant has consented in writing, the Board secretary shall, within 2 months of the receipt of the notification under subsection (1) and at least 1 month before the date fixed for the inquiry, serve on the applicant a notice of inquiry together with a copy of this Regulation.

(4) A notice served under subsection (3) must---

(a) specify the alleged conviction or finding into which the inquiry is to be held; and

(b) state the date, time and place at which the inquiry is to be held.

(5) If the Board secretary receives any further information or materials that he thinks is relevant to the alleged conviction or finding into which the inquiry is to be held, he shall refer such further information or materials to the Board as soon as practicable.

9. Consolidation of subject matters and amendment of notice of inquiry

(1) Where an inquiry under Part IV is to be held in respect of an alleged conviction or finding of professional misconduct of an applicant, if the Board secretary receives any further information showing that the applicant may have been convicted of another offence or found guilty of other misconduct in a professional aspect that has not been brought before the Board, he shall refer it to the Disciplinary Committee as soon as practicable.

(2) Upon the recommendation of the Disciplinary Committee to hold an inquiry into any other alleged conviction or finding of the same applicant, the Board chairman may direct that---

(a) any such other alleged conviction or finding be inquired into at the same inquiry against the applicant, and where the Board chairman makes that direction, evidence relating to the other alleged conviction or finding may be introduced at the inquiry; and

(b) the notice of inquiry be amended accordingly and served on the applicant within such period of time as may be specified in the direction.

(3) Where before the opening of an inquiry and in the course of an inquiry, it appears to the Board chairman that the notice of inquiry is defective, the Board chairman may give such directions for its amendment as he thinks necessary to remedy the defect unless, having regard to the merits of the case, he thinks that to make the required amendment will be unjust to the applicant.

(4) The Board secretary shall, as soon as it is practicable after an amendment of a notice of inquiry has been made under subsection (3), give notice of the amendment to the applicant.

PART IV

Proceedings at an Inquiry of the Board

10. Documents to be available to other party

(1) A party to an inquiry shall furnish to the other party, not less than 10 days before the date of an inquiry or such lesser period as both parties may agree, copies of all documents upon which he intends to rely on at the hearing of the inquiry.

(2) If any document mentioned in subsection (1) has not been furnished in accordance with that subsection, the Board may adjourn the inquiry.

11. Notice to produce

The Board chairman may at any time before the hearing of an inquiry, upon application by either party to the inquiry, order the other party to produce any material, record (in whatever form) or document which is relevant to the alleged conviction or finding alleged to be in the possession of that party and, on failure to produce the material, record or document, the party who applied for the production may, with the permission of the Board chairman, prove it or the content of it by any alternative method.

12. Adjournment of inquiry

(1) The Board chairman may adjourn an inquiry to such date as he thinks fit.

(2) The Board secretary shall, when he is so directed by the Board chairman, give notice of an adjournment to the applicant.

13. Record of proceedings

(1) The Board may direct the Board secretary to cause the proceedings to be recorded on tape or electronically and may arrange for the transcription of the tape recording or electronic record into a verbatim record in writing.

(2) If a verbatim record of the proceedings or any part of it has been prepared, the Board chairman shall, on application to him by any party to the proceedings who has paid the appropriate prescribed fee, furnish the party with a copy of the record or of any part of it as requested.

14. Opening of inquiry

(1) At the opening of an inquiry, the Board secretary shall read the notice of inquiry to the Board.

(2) If the applicant is neither present nor represented by a legal representative at the opening of the inquiry, the Board secretary shall furnish to the Board such evidence as the Board may require to prove that the notice of inquiry was served on the applicant and, on the Board being satisfied as to such evidence, the inquiry may be proceeded with to its conclusion notwithstanding the absence of the applicant.

(3) If the applicant is present at the inquiry, the Board chairman shall, immediately after the notice of inquiry has been read, inform him of his right to cross-examine witnesses, to give evidence and to call witnesses on his behalf.

(4) After an inquiry has been opened under this section, it may be proceeded with to its conclusion notwithstanding the absence of the applicant.

(5) At an inquiry---

(a) the Board secretary may be represented by a solicitor or counsel who holds a current practising certificate or a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87); and

(b) the applicant may be represented by a solicitor or counsel who holds a current practising certificate,

and such person is referred to as "legal representative" in this Part.

15. Objections on point of law

(1) After the reading of the notice of inquiry, the applicant or his legal representative may object to any contents of the notice of inquiry on a point of law, and upon such objection the other party may reply to the objection and the applicant or his legal representative may answer the reply.

(2) If the Board upholds the objection, it shall consider the notice of inquiry only as it is modified by the objection so upheld.

16. Order of procedures

Subject to sections 14 and 15, the following order of procedures must be observed at an inquiry---

(a) the Board secretary or his legal representative shall present his case against the applicant and adduce evidence in support of it and shall close his case against the applicant;

(b) after the case of the Board secretary has been closed, the other party may make

either or both of the following submissions in relation to any matter in respect of which evidence has been adduced that---

(i) the evidence adduced is not sufficient for the Board to find that the conviction or finding alleged in the notice of inquiry has been proved;

(ii) the conviction or finding as alleged is not one that should render the applicant unsuitable for registration as applied, and where any such submission is made, the Board secretary or his legal representative may make a reply to it, and the other party may answer such reply;

(c) if a submission is made under paragraph (b), the Board shall consider and determine whether the submission shall be upheld, if the Board---

(i) upholds the submission in respect of any conviction or finding alleged in the notice of inquiry, the Board shall record a finding that it is not satisfied that there was such conviction or finding or that the conviction or finding is not one that should render the applicant unsuitable for registration as applied and the Board chairman shall announce the determination of the Board; or

(ii) rejects the submission, the Board chairman shall announce the determination of the Board and shall call upon the applicant to state his case;

(d) the applicant or his legal representative may then adduce evidence in support of the case of the applicant and may make one and only one address to the Board, and where evidence has been adduced by or on behalf of the applicant the address may be made either before or after the evidence has been adduced;

(e) at the conclusion of the case of the applicant, the Board secretary or his legal representative may address the Board in reply, and if such reply is made, the other party may make one and only one address to the Board in reply to such address.

17. Postponement of determination

(1) At the conclusion of the proceedings held in accordance with section 16, the Board shall consider and decide whether to postpone determination on the case.

(2) If the Board decides to postpone its determination, the determination of the Board shall stand postponed until such future meeting of the Board as the Board may decide, and the Board chairman shall announce the decision of the Board in such terms as the Board may approve.

(3) If the Board decides not to postpone determination, the Board chairman shall announce the determination of the Board in such terms as the Board may approve.

18. Notice of determination

(1) When, under section 17(2), the determination of the Board in respect of any matter stands postponed to a future meeting of the Board, the Board secretary shall serve on the applicant a notice specifying the date, time and place decided for the meeting of the Board and inviting him to appear at the meeting.

(2) At the adjourned meeting the Board chairman may invite the Board secretary to recall, for the information of the Board, the position of the case at the time the determination was postponed and the Board may hear the other party to the proceedings for this purpose.

(3) The Board shall then consider and make its determination and the Board chairman shall announce the determination of the Board in such terms as the Board may approve.

19. Evidence

(1) The rules of evidence do not apply to the proceedings of an inquiry.

(2) Evidence may be taken by the Board by oral statement on oath or by written deposition or statement and the Board chairman may administer an oath for this purpose.

(3) Every witness shall be examined by the party calling him and may then be cross-examined by the other party and only upon matters arising out of the cross-examination may be re-examined by the party calling him.

(4) The Board may decline to admit the evidence of any deponent to a document who is not present for, or who declines to submit to, cross-examination.

(5) The Board chairman and any member of the Board at an inquiry may put such questions to the parties or to any witness as he thinks desirable.

(6) The Board may at the hearing of an inquiry admit or take into account any statement, document, information or matter whether or not it would be admissible in a court of law.

20. Deliberation of the Board

(1) In the taking of the votes of the Board on any matter to be decided by it, the Board chairman shall call upon the members to signify their votes and shall thereupon declare the decision of the Board in respect of such question.

(2) Where the decision of the Board so declared by the Board chairman is challenged by any member of the Board, the Board chairman shall call upon each member severally to declare his vote, declare his own vote and announce the number of members of the Board who have voted each way, and the result of the vote.

(3) No person other than members of the Board and the legal adviser to the Board may be present when the Board votes on any matter.

21. Powers of the Board in regard to obtaining of evidence and conduct at proceedings

(1) For the purpose of conducting an inquiry under this Part, the Board has the following powers---

(a) to hear, receive and examine evidence on oath;

(b) to summon any person to attend the inquiry to give evidence or produce any book, document or other thing in his possession and to examine him as a witness or require him to produce any book, document or other thing in his possession;

(c) to award any person summoned to attend the inquiry such sum or sums as in the opinion of the Board may have been reasonably expended by him for attending the inquiry.

(2) Summonses to witnesses shall be in such form as the Board may determine and shall be signed by the Board chairman.

(3) A summons to witness may be served personally, by post or by registered post.

(4) If it appears to the Board that it is necessary to do so in the interests of the applicant or any witness concerned, it may order that all or any information relating to the inquiry may not be disclosed.

PART V

Procedure for Review

22. Application for review

(1) Any person requesting a review under section 62, 66 or 96 of the Ordinance shall make the request in writing to the Board secretary within 14 days of the receipt of the written notification given under the relevant section of the Ordinance.

(2) A request made in accordance with subsection (1) must set out---

(a) the result or decision to be reviewed, as the case may be;

(b) the grounds for requesting a review; and

(c) any written representations that the person wishes the Board to consider at the review.

(3) The Board secretary shall, within 14 days of the receipt of the request and the appropriate prescribed fee (where payable), refer the request to the Board.

23. Consideration of representations

On a review upon a request made in accordance with section 22(1), the Board shall consider any written representations submitted by the person making the request before it makes a decision.

24. Notification of decision

The Board secretary shall, within 1 month after the Board has made the decision mentioned in section 23, notify in writing the person who made the request of---

(a) the decision; and

(b) where the Board has on review confirmed or varied the result or decision in respect of which a request has been made under section 62 or 66 of the Ordinance as the case may be, the applicant's right of appeal to the Council under section 97 of the Ordinance.

PART VI

Procedure on Appeal

25. Application for appeal under section 97 of Ordinance

(1) An appeal under section 97 of the Ordinance shall be made by---

- (a) submitting a notice of appeal to the Council secretary within the time specified in that section; and
- (b) serving at substantially the same time a copy of the notice of appeal on the Board secretary.

(2) The Chairman shall fix the date, time and place of the hearing of an appeal.

(3) The Council secretary shall notify the appellant and the Board secretary of the date, time and place fixed for the hearing at least 14 days before the date so fixed.

26. Withdrawal of appeal

An appellant may at any time before the hearing of his appeal withdraw the appeal by notice in writing addressed to the Council secretary and copied to the Board secretary.

27. Representations and appearance at hearing of appeal

(1) The appellant and the Board may submit written representations relating to the appeal for consideration by the Council at the hearing of the appeal, which shall be sent to the Council secretary and the other party to the appeal at least 7 days before the day fixed for the appeal.

(2) The appellant may appear in person and may be represented by a solicitor or counsel who holds a current practising certificate at the hearing of the appeal.

(3) The Board may appear at the hearing of an appeal and may be represented by any member or the Board secretary, and may be represented by a solicitor or counsel who holds a current practising certificate or a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87).

(4) Parties to the appeal are entitled to make opening statements, call witnesses and cross-examine witnesses called by the other party and address the Council.

28. Non-appearance of parties

(1) If either or both parties to the appeal fail to either appear or be represented at the hearing of the appeal, the Council may---

- (a) adjourn the hearing to a later date;
- (b) proceed to hear the appeal; or
- (c) if the appellant fails to either appear or be represented, dismiss the appeal.

(2) If the Council hears an appeal in the absence of either or both parties, it shall consider any representations submitted under section 27(1).

29. Hearing to be in public

Subject to any decision of the Council, all appeals shall be heard in public.

30. Powers of Council

(1) The Chairman may---

- (a) extend the time set down in this Part (except section 25(1)(a)) for doing any act notwithstanding that the time so set down may have expired;
- (b) postpone the day or time fixed for the hearing of any appeal or adjourn any hearing of an appeal;
- (c) at the request of the appellant or the Board, by notice summon any person to appear before the Council on the hearing of an appeal;
- (d) administer an oath for the purpose of any hearing under this Part.

(2) In a hearing under this Part, the Council may---

- (a) examine any witness appearing; and
- (b) admit or take into account any statement, document, information or matter, whether or not it would be admissible in a court of law, and the rules of evidence do not apply to any hearing under this Part.

31. Notification of decision

The Council secretary shall, within 1 month of a decision on the appeal made by the Council, notify the appellant in writing of the decision.

32. Council may regulate its own procedure

Subject to this Regulation, the Council may regulate its own procedure in relation to the hearing of an appeal made under section 97 of the Ordinance.

PART VII

Inclusion in the List and Alternative

Qualifying Requirements

33. Application for inclusion in the list

(1) An application under section 90 of the Ordinance shall---

- (a) be made in such form as decided by the Board;
- (b) be delivered to the Board secretary, together with 2 copies of a recent photograph of the applicant; and
- (c) be accompanied by evidence showing that the applicant was practising Chinese medicine on 3 January 2000.

(2) The applicant must produce his Hong Kong Identity Card or another document of identification on request for verification by the Board secretary or a person authorized by him.

34. Alternative qualifying requirements

For the purposes of making an assessment under section 92 of the Ordinance, the Board may require---

(a) the person being assessed to produce or provide---

(i) evidence showing that the person has been practising Chinese medicine in Hong Kong for such continuous period as specified under section 93, 94 or 95 of the Ordinance, as the case may be;

(ii) evidence of the qualification that the Board is asked to consider under section 93(b)(ii) or 94(1)(b)(ii) of the Ordinance;

(iii) any other document or evidence, including a statement of experience of the applicant acceptable to the Board; and

(b) that such document or evidence be supported by a declaration made by the person.

PART VIII

Miscellaneous

35. Proof of service of documents

Service of a notice or other communication on an applicant mentioned in Parts I to IV may be proved by means of a sworn statement made by the Board secretary or the person responsible for effecting the service.

36. Obligation to attend and give evidence

(1) Subject to subsection (2), any person who being summoned to attend as a witness at an inquiry held in accordance with Part IV or a hearing held in accordance with Part VI---

(a) refuses or neglects to do so; or

(b) refuses to answer any question put to him---

(i) by the Council or the Board; or

(ii) with the concurrence of the Council or the Board, commits an offence and is liable to a fine at level 3 and to imprisonment for 6 months.

(2) Notwithstanding subsection (1), no person shall be bound to incriminate himself and every witness shall, in respect of any evidence given by him before the Council or the Board, be entitled to the privileges to which he would be entitled if he was giving evidence before a court of justice.

SCHEDULE [s. 3]

FORM

《中醫藥條例》

(香港法例第 549 章)

CHINESE MEDICINE ORDINANCE

(Chapter 549)

註冊中醫執業證明書

Practising Certificate for

Registered Chinese Medicine Practitioner

按照《中醫藥條例》(第 549 章) 第 76、77 或 81 條，註冊中醫

(註冊編號)
有權在香港從事中醫執
業，直至 ，但須遵守下列條件和限制：
(日期)

In accordance with section 76, 77 or 81 of the Chinese Medicine Ordinance (Cap. 549),

(Registration No.)
, a registered Chinese medicine
practitioner, is entitled to practise Chinese medicine in Hong Kong until ,
(Date)
subject to compliance with the following conditions and restrictions:

()

中醫註冊主任

Registrar of Chinese Medicine Practitioners

日期：

Date :

Daniel C. W. TSE

Chairman,

Chinese Medicine Council

of Hong Kong

15 May 2000

Explanatory Note

This Regulation which is made under the Chinese Medicine Ordinance (Cap. 549) ("the Ordinance")---

- (a) provides for the procedures to be adopted in relation to applications for renewal of limited registration as Chinese medicine practitioners under the Ordinance;
- (b) provides for procedures relating to reference of applications for registration to the Disciplinary Committee and the Chinese Medicine Practitioners Board and the conduct of inquiries into such applications;
- (c) provides for the procedures for a review under section 62, 66 or 96 of the Ordinance or an appeal under section 97 of the Ordinance;
- (d) provides for the procedures for applications for inclusion in the list of Chinese medicine practitioners maintained under section 90 of the Ordinance;
- (e) enables the Chinese Medicine Practitioners Board to require evidence for the purpose of assessing whether a person meets alternative qualifying requirements under section 92 of the Ordinance; and
- (f) prescribes the form of the practising certificate for registered Chinese medicine

practitioners.