

LN155-E

## Chinese Medicine Practitioners

### (Discipline) 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---

"Board" (中醫組) means the Chinese Medicine 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" (小組) means the Disciplinary Committee of Chinese Medicine Practitioners established under section 25(1)(a)(iii) of the Ordinance;

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

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

"complainant" (申訴人) means a person who makes a complaint mentioned in section 3, and where the context permits, includes an informant;

"defendant" (被告人), in relation to a complaint or information, means a registered Chinese medicine practitioner in respect of whom a complaint or information has been made, and includes a person who has ceased to be a registered Chinese medicine practitioner after a complaint or information has been made in respect of him;

"legal representative" (法律代表) means---

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

(b) a solicitor or counsel who holds a current practising certificate representing the defendant or complainant,

at an inquiry under this Regulation.

## PART II

### Proceedings Preparatory to Holding of a Disciplinary Inquiry by the Board

#### 3. Receipt and submission of complaint or information

If the Committee receives a complaint or information alleging or showing any conduct of a registered Chinese medicine practitioner into which the Board may inquire under the Ordinance, it shall deal with the complaint or information in accordance with the procedures laid down in this Regulation.

#### 4. Clarification and support for complaint or information

(1) The Committee chairman may---

- (a) require the complainant to set out the specific allegations in writing and the grounds for the allegation;
- (b) require the complainant to make clarifications or furnish evidence about the complaint or information;
- (c) direct the Committee secretary to seek any legal advice or any necessary assistance or advice from any relevant authorities with regard to the evidence about the complaint or information;
- (d) require that any matter alleged in the complaint or information be supported by one or more statutory declarations, unless the complaint or information is in writing and made by a public officer in the discharge of his duties.

(2) A statutory declaration referred to in subsection (1) must---

- (a) state the name, address and the Hong Kong Identity Card number or details of another document of identification of the declarant; and
- (b) state all the facts of the complaint or information to the best of the declarant's knowledge, or if any fact declared is not within his personal knowledge, state the source of the declarant's information and the grounds for his belief in the truth of those facts.

#### 5. Reference of case to Committee

(1) Where the Committee chairman considers that---

- (a) all further clarifications, evidence and statutory declarations that are necessary to enable the Committee to consider the complaint or information have been furnished; or
  - (b) it is impracticable to seek further clarifications, evidence or statutory declarations,
- he shall---

(i) if it appears to him that the complaint or information may be disposed of by the Committee making a decision referred to in section 6(6)(a) by resolution 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, he shall fix a date for the Committee to consider the complaint or information.

(2) When the Committee chairman has fixed a date under subsection (1), he shall arrange to notify the defendant in writing---

(a) of any matters or allegations which may constitute the subject-matter of an inquiry under section 98 of the Ordinance at least 1 month before the date fixed; and

(b) of the date on which the Committee will meet to consider the complaint or information.

(3) A notification under subsection (2) shall be accompanied by---

(a) a copy of the complaint or information;

(b) a copy of any statutory declaration furnished under section 4(1); and

(c) an invitation to the defendant to submit to the Committee in writing any explanation of his conduct or of any matter alleged or shown in the complaint or information.

(4) If the Committee chairman considers that in the particular circumstances of a case it is desirable that any personal particulars of any person contained in any documents mentioned in subsection (3)(a) or (b) should not be disclosed to the defendant, he may arrange for such necessary obliteration or other editorial modification of the copies of those documents to be supplied to the defendant so that those personal particulars are not disclosed.

## 6. Consideration of complaint, etc. by Committee

(1) A meeting of the Committee to consider a complaint or information shall be held in private.

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

(3) The Committee may postpone its consideration or decision of a complaint or information, in whole or in part, to such date or adjourn a meeting from time to time as it thinks fit.

(4) Where the Committee considers that any matter or allegation notified to the

defendant under section 5(2) should be amended, the Committee may direct the Committee secretary to---

- (a) make the amendment;
- (b) advise the defendant of the amendment; and
- (c) invite him to submit any further explanation.

(5) Before coming to a decision regarding a reference to the Board under subsection (6), the Committee may cause to be made such further investigations or further clarification from the defendant with regard to the case being considered by the Committee and with regard to his written explanation, and may seek such additional advice or assistance as it considers desirable.

(6) The Committee shall, having regard to any written explanation submitted by the defendant and all the materials before it, consider the case, and subject to subsections (4) and (5)---

(a) if the Committee is of the opinion that---

(i) the alleged conviction or finding of misconduct of the defendant who is a registered Chinese medicine practitioner does not affect his practice as a Chinese medicine practitioner;

(ii) the complaint or information is frivolous or groundless;

(iii) the defendant has ceased to be a registered Chinese medicine practitioner;

(iv) the complaint or information has previously been considered and disposed of by the Committee and no additional information has been provided,

it shall notify the defendant and the complainant that it decides not to refer the case to the Board under section 98(1) of the Ordinance; or

(b) may by written notification refer the case to the Board under section 98(1) of the Ordinance to hold an inquiry.

#### 7. Referral of case to the Board for inquiry

(1) The Committee chairman shall send a written notification mentioned in section 6(6)(b) to the Board chairman specifying the matters as identified by the Committee to be referred into which an inquiry is to be held.

(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 of the decision, who shall inform the defendant and the complainant accordingly.

(3) Unless the Board directs a shorter period of notice to which the defendant 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 defendant a notice of inquiry together with a copy of this Regulation and shall inform the complainant of the date fixed.

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

(a) specify the matters into which the inquiry is to be held in the form of charge; and

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

#### 8. Consolidation of charges and amendment of notice of inquiry

(1) Where the Board secretary receives any further complaint or information that he thinks is similar in nature to a complaint or information before the Board against the same defendant, he shall refer it to the Committee as soon as practicable.

(2) Upon the recommendation of the Committee to hold an inquiry into any further complaint or information against the same defendant, the Board may direct that--

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(a) the further complaint or information or any part thereof be inquired into at the same inquiry against the defendant, and where the Board makes that direction, evidence relating to the further complaint or information may be introduced at the inquiry; and

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

(3) Where before the opening of the inquiry and in the course of the inquiry, it appears to the Board chairman that a 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 defendant.

(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 defendant and to the complainant.

#### 9. 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.

#### 10. 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 any charge and

alleged to be in the possession of that other 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.

### PART III

#### Proceedings for a Disciplinary Inquiry by the Board

##### 11. 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 defendant and the complainant as directed.

##### 12. 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 any part of it as requested.

##### 13. 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 defendant is neither present nor represented by his 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 defendant and, on the Board being satisfied as to such evidence, the inquiry may be proceeded with to its conclusion notwithstanding the absence of the defendant.

(3) If the defendant is present at the inquiry, the Board chairman shall, immediately after the notice 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 defendant.

##### 14. Objections on point of law

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

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

15. Defendant may admit any charge

(1) After the opening of an inquiry under section 13 and objections on point of law under section 14 (if any), the defendant or his legal representative may admit any charge in the notice of inquiry.

(2) If the defendant or his legal representative admits any charge, the Board secretary shall read out to the Board such facts in support of the charge as agreed by the other party.

(3) If the Board secretary and the defendant or his legal representative fail to agree on the facts under subsection (2) or the Board considers that the agreed facts do not support the charge, the Board shall proceed to conduct the inquiry as provided in section 16.

(4) If the Board accepts the agreed facts and the defendant's admission to the charge, it may proceed to decide whether or not to postpone its determination under section 17; and where the Board decides not to postpone determination, the Board chairman shall announce the determination of the Board in the manner set out in section 17(3).

16. Order of procedures

(1) Subject to subsection (2) and sections 13, 14 and 15, the following order of proceedings must be observed at an inquiry---

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

(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 charge in respect of which evidence has been adduced---

(i) that the evidence adduced is not sufficient for the Board to find that the facts alleged in that charge have been proved;

(ii) that the facts alleged in the charge are not such as to constitute the charge,

and where 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 charge, the Board shall record a finding that the charge is not proved 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 defendant to state his case; (d) the defendant or his legal representative may then adduce evidence in support of the defendant's case and may make one and only one address to the Board, and where evidence has been adduced by or on behalf of the defendant the address may be made either before or after the evidence has been adduced; (e) at the conclusion of the defendant's case, the Board secretary or his legal representative may address the Board in reply, and if the Board secretary or his legal representative makes such reply, the other party may make one and only one address to the Board in reply to such address.

(2) At the request of the complainant or his legal representative, the Board may permit the complainant or his legal representative to present the case against the defendant if the Board thinks it appropriate in the circumstances of the case and in that event, a reference to the Board secretary in subsection (1) is to be read as a reference to the complainant.

#### 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 any charge.

(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 a charge stands postponed to a future meeting of the Board, the Board secretary shall serve on the defendant a notice specifying the date, time and place decided for the meeting of the Board and inviting him to appear at the meeting.

(2) The Board secretary shall send the complainant a copy of the notice served under subsection (1).

(3) At the adjourned meeting the Board chairman may invite the Board secretary to recall, for the information of the Board, the position in which the determination in respect of any charge was postponed and the Board may hear the other party to the proceedings for this purpose.

(4) 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. Postponement of making a disciplinary order

(1) After the announcement of the determination of the Board in respect of the charge, if the determination is that any of the charges is proved, the Board shall consider and decide whether or not to postpone consideration of making any order under section 98(3) of the Ordinance.

(2) If the Board decides to postpone the consideration under subsection (1), the consideration 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.

20. Address before making a disciplinary order

(1) At any meeting of the Board at which the Board is deciding whether to make any order under section 98 of the Ordinance in respect of a defendant, the Board secretary or other person presenting the case to the Board may produce to the Board the records of any previous meeting of the Board at which an order was made against the defendant under section 98 of the Ordinance.

(2) Before the Board decides what order, if any, should be made, the Board chairman shall ask the defendant whether he wishes to address the Board, and the defendant or his legal representative may address the Board on the question of whether the Board should make an order under section 98 of the Ordinance, and if so, what order should be made; and he may adduce evidence as to the circumstances leading to the charge, as to the character and antecedents of the defendant and as to the circumstances leading to any previous order produced to the Board under subsection (1).

(3) The Board shall then consider and decide what order, if any, should be made and the Board chairman shall announce the decision of the Board in such terms as the Board may approve.

21. Notice of postponement of disciplinary order

(1) Where, in accordance with section 19, the decision of the Board in regard to a possible order in respect of any charge stands postponed to a future meeting of the Board, the Board secretary shall serve on the defendant a notice specifying the date, time and place decided for the meeting of the Board and inviting him to appear at the meeting.

(2) The Board secretary shall send the complainant a copy of the notice served under subsection (1).

22. 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.

### 23. 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 matter.

(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.

## PART IV

### Miscellaneous

#### 24. Proof of service of documents

Service of a notice or other communication on any person under this Regulation may be proved by means of a sworn statement made by the Board secretary or the person responsible for effecting the service.

Daniel C. W. TSE

Chairman,

Chinese Medicine Council

of Hong Kong

15 May 2000

#### Explanatory Note

This Regulation provides for the procedures to be adopted by the Disciplinary Committee of Chinese Medicine Practitioners and the Chinese Medicine Practitioners Board in respect of disciplinary matters under the Chinese Medicine Ordinance (Cap. 549).