

**立法會**  
**Legislative Council**

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**Paper for the House Committee Meeting  
on 13 February 2004**

**Legal Service Division Report on  
Undesirable Medical Advertisements (Amendment) Bill 2004**

**I. SUMMARY**

1. **Object of the Bill**                      To prohibit or restrict the advertising of six types of health claims for some orally consumed products and to make some other miscellaneous amendments.
  
2. **Comments**
  - (a) The Administration intends to regulate the advertisement of certain claims for some health food.
  
  - (b) The advertising of claims for an orally consumed product relating to the prevention, elimination or treatment of breast lumps, regulation of the function of the genitourinary system and regulation of the endocrine system is to be prohibited.
  
  - (c) The advertising of claims for an orally consumed product relating to the regulation of body sugar or glucose and/or alteration of the function of the pancreas, regulation of blood pressure and regulation of blood lipid or cholesterol is to be restricted.
  
3. **Public Consultation**                A public consultation exercise was held in the last quarter of 2003. The medical professional bodies and academics are supportive of the proposal, while the major opposing views come from the trade.
  
4. **Consultation with LegCo Panel**            At the meeting of the Panel on Health Services on 8 December 2003, members expressed divergent views and the Chairman of the Panel urged the Administration to withhold its plan to introduce the Bill in early 2004.
  
5. **Conclusion**                            As some controversial policy issues are likely to be raised, a Bills Committee should be set up to deliberate on the Bill.

## **II. REPORT**

### **Object of the Bill**

To amend the Undesirable Medical Advertisements Ordinance (Cap. 231) ("the Ordinance") so as to prohibit or restrict the advertising of six types of health claims for some orally consumed products and to make some miscellaneous amendments.

### **LegCo Brief Reference**

2. File Ref. HWF CR1/3231/03 Pt. 3 dated 5 February 2004 issued by the Health, Welfare and Food Bureau.

### **Date of First Reading**

3. 11 February 2004.

### **Comments**

4. The Ordinance restricts advertisements relating to medical matters. This Bill seeks to widen the scope of the Ordinance so as to regulate the advertising of six types of undesirable claims for orally consumed products. These six types of claims will be subject to two levels of restriction. With the following three types of claims, advertisements for orally consumed products will be prohibited, i.e.

- (a) prevention, elimination or treatment of breast lumps;
- (b) regulation of the function of the genitourinary system and/or improvement of symptoms of genitourinary problems; and
- (c) regulation of the endocrine system and/or maintenance or alteration of hormonal secretions.

5. With the following three types of claims, advertisements may be allowed if a specified disclaimer is added onto the packaging and in the advertisement of the orally consumed product, i.e.

- (a) regulation of body sugar or glucose and/or alteration of the function of the pancreas;
- (b) regulation of blood pressure; and
- (c) regulation of blood lipids or cholesterol.

6. According to the Administration, the Bill is intended to regulate claims for "health food" products such as medicines, shark's cartilage capsules and fish oil capsules and not conventional food such as cereals, cooking oil, fruit and vegetables. Claims for these products have to be regulated because they may imply the prevention or treatment of certain diseases, which may cause members of the public to delay seeking proper medical advice and treatment.

7. The Bill will also make the following amendments so as to -

- (a) increase the penalties for contravention of the Ordinance;
- (b) empower the Director of Health to appoint inspectors to enforce the provisions under the Ordinance, such as to enter and search premises and take possession of property for prosecution purposes; and
- (c) make some minor textual amendments.

### **Public Consultation**

8. According to the Administration, an Expert Committee consisting of representatives from the Consumer Council, Chinese medicine practitioners, medical practitioners, pharmacists and a nutritionist was set up at the end of 2002 to study and recommend a list of health claims to be prohibited in orally consumed products. The Committee recommended that nine types of health claims should be prohibited. A public consultation exercise was held during the last quarter of 2003 on those nine types of health claims. In general, the medical professional bodies and academics are supportive of the proposal, while the major opposing views come from the trade. In light of the comments received, the Administration has excluded three types of health claims from regulation, i.e. the regulation of the immune system, the promotion of detoxification and slimming/fat reduction since these claims pose relatively lesser risks to public health.

### **Consultation with LegCo Panel**

9. The Administration consulted the Panel on Health Services on 8 December 2003 on the proposal to regulate health claims. The following views were expressed by Members -

- (a) using the Ordinance to regulate "health food" was patently wrong as these products did not contain any medicine. A new piece of legislation should be enacted to regulate misleading or exaggerated claims and that all health food should be required to undergo testing to substantiate their claims before they could be offered for sale in Hong Kong;

- (b) there were numerous deficiencies in the Administration's proposal. Regulation of health claims should best be carried out after the completion of registration of proprietary Chinese medicine in several years' time;
- (c) the revised proposal still had too many grey areas; and
- (d) in view of the reservations expressed by members on the proposal, the Chairman of the Panel urged the Administration to withhold its plan to introduce the Bill in early 2004.

### **Conclusion**

10. As some controversial policy issues are likely to be raised, a Bills Committee should be set up to deliberate on the Bill.

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