

**Bills Committee on
Certification for Employee Benefits (Chinese Medicine)
(Miscellaneous Amendments) Bill 2005**

**Administration's Response to Issues Raised
at the Bills Committee Meeting Held on 13 July 2005**

Introduction

This paper provides information requested by Members of the Bills Committee at its meeting held on 13 July 2005 to examine the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Bill 2005 ("the Bill").

A second opinion should be given by a registered Chinese medicine practitioner (CMP) if the first opinion was given by a registered CMP, and a medical practitioner (MP) if the first opinion was given by an MP

2. At present, sections 15AA and 31R of the Employment Ordinance (EO) provide that an employer may require an employee who has produced a medical certificate as to the employee's unfitness for certain work to submit to a medical examination for obtaining a second opinion. The Bill proposes that an employer may choose to arrange for such examination to be conducted by either an MP or a registered CMP.

3. At the Bills Committee meeting on 13 July 2005, the Administration was requested to consider only allowing an employer to seek a second opinion from a practitioner of the same medical discipline as that certifying the unfitness of his employee so that the Bill would not be favouring one medical discipline over another. We wish to point out that the proposed new sections 15AA(3A) and 31R(3A) under the EO seek to give an employer a choice between registered MPs and registered CMPs when he considers it necessary to seek a second opinion on the fitness of his employee for certain work. Therefore, we consider that the legislative proposal simply allows the

employer to obtain a second opinion from the broadest pool of medical professionals and the Bill is not favouring one medical discipline over another. Where there is disagreement between the two medical opinions, there is a mechanism under the EO in which the employer may turn to the Commissioner for Labour for a determination.

Outside Hong Kong experience and legislation in the recognition of medical treatment, examination and certification given by a CMP

4. At the same meeting, Members also requested the Administration to provide information on experience in recognising various medical functions performed by CMPs in places outside Hong Kong, and specifically in Singapore, Malaysia, Taiwan, Mainland, Japan and Germany. In addition to the six places mentioned by Members, we have also tried to include information on practices in the USA, Canada, UK, Australia and South Korea in order to provide a more comprehensive picture. The information is mainly based on desktop research on the Internet, clarification with relevant labour authorities and recent visit by officers of the Labour Department (LD) to Guangdong province. Annex A summarises the information collected by the Administration.

5. Since the relevant laws and detailed information in different places could be downloaded from the respective web site, we have not attached them to the paper. The respective web site addresses are also provided in Annex A.

Differences between the functions of a registered CMP and an MP after the passage of the Bill

6. The proposed recognition of registered CMPs under the EO, Employees' Compensation Ordinance (ECO) and the Pneumoconiosis (Compensation) Ordinance (PCO) ("the three labour ordinances") for the purpose of entitlement to employee benefits is anchored on the principle that where registered CMPs are capable of performing the medical functions stipulated under labour legislation, they should be recognised for performing

those functions. This principle is also accepted by the Chinese Medicine Practitioners Board (CMPB)¹.

7. In preparing the Bill, the Administration has studied the medical functions under the EO, ECO, PCO, the Occupational Safety and Health Ordinance (OSHO), the Factories and Industrial Undertakings Ordinance (F&IUO), and the Occupational Deafness (Compensation) Ordinance (ODCO).

8. According to the principle outlined in paragraph 6 above, a registered CMP will be recognised under the EO for performing by and large the same functions as that of an MP, which includes mainly the issuance of certificates regarding sick leaves and pregnancy-related matters. However, a registered CMP will not be recognised for certifying the date of confinement of a pregnant employee since CMPs are not trained to attend a woman in childbirth.

9. Under the ECO, a registered CMP will be recognised for performing by and large the same functions as that of an MP, except that he will not be recognised for conducting pre-employment medical examination under section 33(1) of the Ordinance. Before employing an employee in a trade, industry or process which is specified in the Second Schedule of the ECO on Occupational Diseases, an employer may require the employee to undergo a medical examination by an MP at the employer's cost. Such medical examinations are conducted for collecting baseline health data of the employee against which subsequent changes after employment can be evaluated. As the medical data are often collected through laboratory and radiological investigations which are outside the scope of traditional Chinese medicine, registered CMPs will not be recognised for performing such examinations.

10. Under the PCO, a registered CMP will be recognised for performing largely the same functions as that of an MP, except that he will not be recognised for (a) giving advice to the Pneumoconiosis Compensation Fund

¹ The CMPB is established under the Chinese Medicine Ordinance for, among others, implementing the registration and disciplinary measures for regulation of Chinese medicine practitioners.

Board² on the use of medical appliances (such as oxygen cylinders and dosage) by a person suffering from pneumoconiosis; and (b) measuring the forced vital capacity of a person suffering from pneumoconiosis, thereby assessing the loss of lung function and the degree of incapacity. The reason is that CMPs are not trained in these aspects. For the same reason, registered CMPs will not be appointed to the Pneumoconiosis Medical Board³.

11. Under the OSHO, MPs are required to notify incidents of occupational diseases to the Commissioner for Labour. Having considered that the diagnosis of most occupational diseases requires radiological or laboratory investigations which CMPs do not have relevant training, registered CMPs will not be required to perform such functions under the OSHO.

12. Under the F&IUO, employees who have to work underground, in compressed air, or in environments susceptible to exposure to carcinogenic substances and asbestos are required to be examined by an MP. Such examinations are required to ensure that workers' health would not be seriously affected by the hazardous working conditions. Having considered that such examinations require radiological or laboratory investigations in which registered CMPs are not trained, registered CMPs will not be recognised for performing such medical examinations under the F&IUO.

13. Under the ODCO, MPs are recognised for diagnosing whether a person suffers from noise-induced deafness and assessing the degree of such hearing loss. At present, such medical examinations are conducted by a specialist in otorhinolaryngology or occupational medicine with the assistance of specific equipment and devices. As CMPs are not trained to use such equipment and devices and to interpret the hearing test results, registered CMPs will not be recognised under the Ordinance. For the same reason, they will not be appointed to the Occupational Deafness Compensation Board⁴ or

² The Pneumoconiosis Compensation Fund Board is set up by statute to administer the PCO.

³ The Pneumoconiosis Medical Board is set up under the PCO to determine if the person is suffering from pneumoconiosis, the degree of incapacity and whether a pneumoconiotic's death resulted from pneumoconiosis.

⁴ The Occupational Deafness Compensation Board (ODCB) is set up by statute to administer the ODCO.

the Occupational Deafness Medical Committee⁵.

14. Annex B sets out the details of the respective medical functions to be performed by an MP and a registered CMP under the aforesaid labour legislation after the passage of the Bill.

Reference Guide issued by the Chinese Medicine Practitioners Board on sick leave duration

15. With the assistance of the Department of Health, the CMPB of the Chinese Medicine Council of Hong Kong⁶ (CMC) had in November 2002 set up a Liaison Group for the purpose of drafting a set of reference guideline for the issuance of sick leave. The guideline also carries the mission of enhancing the acceptance of the community, including insurers, employers' associations and the public at large, of sick leave certificates issued by registered CMPs. The Liaison Group which was convened by renowned Chinese medicine academics comprised representatives from eleven major local Chinese medicine associations. Experts from different Chinese medicine specialties worked in three sub-committees to formulate guidelines according to the diagnoses and patterns of different diseases under respective specialties. In finalizing the guidelines, the Liaison Group has further consulted the views of more than 40 local Chinese medicine associations. After being endorsed by the CMPB and the CMC, the "Reference guide on issuance of sick leave certificates by registered CMPs" ("the Reference Guide") was published and distributed in February 2004 to all registered CMPs, major employers' associations and insurers underwriting medical and employees' compensation insurance.

16. The Reference Guide stipulates, amongst others, that registered CMPs should be professionally and ethically responsible to their patients and that sick leave certificates should be issued in conformity with the

⁵ The Occupational Deafness Medical Committee is set up under the ODCO to advise the ODCB on the medical, professional and technical aspects of hearing tests and audiological examinations for the diagnosis and assessment of noise-induced deafness.

⁶ The CMC is set up as a statutory authority under the Chinese Medicine Ordinance (CMO) to devise and implement control measures to regulate the practice of Chinese medicine and the use, manufacture and trading of Chinese medicines.

professional expertise of Chinese medicine, and should not be issued unscrupulously. Special reference has been made to the “Code of Practice for registered CMPs” which prohibits the receipt of undue benefits and issuance of untruthful or misleading certificates. Regarding criteria for determining sick leave duration, the Reference Guide has reminded registered CMPs to consider the duration of sick leaves according to the conditions of patient’s sickness and whether the disease actually affects a patient’s working capacity. While normally speaking the duration of sick leave granted in one consultation should not exceed seven days, further sick leaves could be considered when the patient seeks treatment again.

17. Through its regular newsletter, the CMPB has also emphasized to CMPs the need to uphold a high professional standard in the issuance of medical certificates and the grave consequence of malpractice in this regard. The newsletter is a publication issued by the CMPB from time to time to enhance the understanding of registered CMPs of the practising criteria and provide information on matters related to the regulation of CMPs.

18. Since its introduction, the Reference Guide is widely accepted by the Chinese medicine profession. Feedbacks from registered CMPs on the Reference Guide were that its contents were rich, clearly focused, encompassing, and had succeeded in reflecting accurately the clinical experiences of traditional Chinese medicine. The recommendations on duration of sick leaves for different diseases are also appropriate.

19. A copy of the Reference Guide is attached at Annex C. The Reference Guide is only available in Chinese.

Competency of registered CMPs in performing the proposed tasks

20. Currently, there are 5 014 registered CMPs in Hong Kong. The CMPB is of the view that given that the registered CMPs in Hong Kong have acquired their registration status either by virtue of their long years of practising experiences, a recognised academic qualification, or their having passed the Registration Assessment or Licensing Examination, overall speaking registered CMPs are capable of performing the proposed medical

functions in the Bill.

Objections to assessments made by an Employees' Compensation Assessment Board on the employee's permanent loss of earning capacity

21. The Employees' Compensation Assessment Board, set up under the ECO with members appointed by the Commissioner for Labour, is responsible for assessing the percentage of loss of earning capacity permanently caused to a worker by the work injury and the period of absence from duty necessary as a result of the injury. The ECO provides that in case of any objection to an assessment made by an Assessment Board, whether raised by the employee or the employer, the Assessment Board shall review its assessment and state the result of the review assessment in a specified certificate for issue to the employee, the employer and the Commissioner for Labour. Under the ECO, an appeal to the review assessment shall be made to the District Court. In such cases, the Labour Department (LD) assists by referring the claimant to the Legal Aid Department (LAD) for assistance to lodge his appeal in court.

22. In 2003 and 2004, the Assessment Boards conducted 17 132 and 16 680 assessments respectively. In the same years, the Assessment Boards completed 2 746 and 2 803 review assessments respectively. Referrals made to the LAD for assistance to lodge an appeal to the assessment results in 2003 was 57, while that for 2004 was 26. There is no breakdown on the number of objections on the permanent loss of earning capacity.

Training and experience required of a registered CMP for appointment to an Employees' Compensation Assessment Board

23. The Bill proposes that a registered CMP could be appointed by the Commissioner for Labour as member of an Employees' Compensation Assessment Board. When the Commissioner for Labour appoints a registered CMP to sit on an assessment board, he would consider the following aspects relating to the concerned registered CMP: (a) formal training and qualification; (b) clinical experiences in the specialty; (c) recognition of the concerned registered CMP by the local Chinese medicine

profession, taking into account any teaching, writings, or repute he has in the profession. The Commissioner for Labour will exercise due care in ensuring that the suitable person is selected for appointment according to the circumstances of each case.

Training and continued education provided to MPs and registered CMPs to facilitate their assessment of permanent loss of earning capacity

24. As mentioned in paragraph 21 above, assessment of permanent loss of earning capacity is conducted by the Employees' Compensation Assessment Board (ECAB). In making the assessments under the ECO, the Boards adopt the criteria laid down in section 9 and the First Schedule of the ECO. The First Schedule contains a set of clear and objective standards making references to injuries to different parts of the body like loss of an arm, or loss of a thumb and so on. Where there is an injury not specified in the First Schedule, the ECO specifies that the percentage of the compensation shall be assessed as a percentage having regard to the scale of percentages specified in the First Schedule. An example would be a worker suffering double vision or visual field loss after work injury. Such kinds of injuries are not specified in the First Schedule. If the extent of double vision or visual field loss is tantamount to loss of sight of one eye, the ECAB would assess the loss of earning capacity having regard to the 50% loss of earning capacity for loss of sight of one eye as specified in item 38 of the First Schedule.

25. In the past five years, the LD conducted eleven seminars for doctors, physiotherapists and nurses of different clusters/hospitals of the Hospital Authority. These seminars featured major provisions of the ECO, procedures in handling employees' compensation claims, work of the assessment boards, and assessment principles.

26. Apart from the above-mentioned seminars, a Labour Officer of the LD would, prior to the commencement of the assessment board meetings, brief members who have not participated in assessments on the relevant stipulations of the ECO. About 450 such briefings were held in the past five years.

27. For assessment of new diseases such as the severe acute respiratory syndrome (SARS), we have held special briefing sessions for doctors taking part in such assessments. During such sessions, information on the ECO and principles of assessment as laid down by the Ordinance was provided. Where necessary, officers of the LD also visited the medical members of the assessment boards. In the past two years, we conducted a total of 30 such briefings to specialist doctors.

28. Officers of the LD also speak from time to time in conferences organized by associations of MPs in specialized disciplines. In such conferences, LD officers would explain the stipulations of the ECO and how the assessment system is implemented.

29. As far as registered CMPs are concerned, the LD plans to organise seminars with Chinese medicine training institutes to provide training to registered CMPs on the assessment criteria of the ECO. We also observe that there are registered CMPs in Hong Kong who have experiences in conducting injury assessments in their capacity as Chinese medicine professionals in other places.

Adequacy of manpower in the Labour Department for the provision of occupational health services

30. The Occupational Health Service (OHS) of the LD is responsible for the provision of occupational health service to the public. Through its Occupational Health Clinic, the OHS provides clinical consultation and medical examination for workers exposed to occupational hazards, conduct investigation of occupational diseases, and provide occupational health education and counselling services for workers suffering from work-related diseases. The workplaces of the patients are inspected if necessary to identify and evaluate occupational health hazards in the work environment. The service of the OHS also includes the promotion of occupational health by delivering health talks, publication of educational materials and participation in large-scale publicity programmes.

31. In 2004, 8 126 clinical consultations were rendered, and 2 435

investigations on suspected work-related or occupational diseases were conducted. A total of 5 953 workplace inspections were performed for occupational hygiene assessment. In addition, the OHS conducted 52 645 interviews with claimants for employees' compensation for purpose of conducting preliminary assessment of their sick leave durations and whether there would likely be permanent loss in earning capacity. The Administration considers that the LD is adequately staffed to provide occupational health service to those in need.

Economic Development and Labour Bureau
September 2005

**Overseas experience in the recognition of medical treatment,
examination and certification given by a CMP**

The following information on overseas experiences/practices in the recognition of medical treatment, examination and certification given by Chinese medicine practitioners (CMP) focuses mainly on the relevance of such recognition to labour laws and employee benefits. The available information is mainly based on desktop research through the Internet, clarification with relevant labour authorities and recent visit by officers of the Labour Department to Guangdong province.

Overview

2. Chinese medicine (CM) is increasingly accepted worldwide. In places where the community is mainly Chinese such as the Mainland and Taiwan, CM treatment has long been an integral part of the health care system, with CM practitioners enjoying the same status as western medicine practitioners.

3. In the international arena, the growing popularity of CM treatment in recent years among people of different races has prompted many overseas jurisdictions to embark on normalizing the provision of CM through regulatory regimes. Alongside this normalization is a growing provision of CM service in the health care system. In some jurisdictions, employees who are incapacitated from work due to illness or work injury can, to various extents, have access to medical assistance rendered by acupuncturists.

I. Mainland and Taiwan

4. In both the Mainland and Taiwan, CM treatment is commonly sought by employees because of its deep-rooted history in the Chinese

community and its long recognised efficacy. For the same reasons, employers also give CM the same regard as that of western medicine. CM practitioners offer medical treatment, issue sick leave certificates, and conduct medical examinations on a par with practitioners of western medicine.

Mainland

5. On the Mainland, the Chinese Medicine Law of the People's Republic of China stipulates that it is the national policy to protect, maintain, and develop Chinese medicine, and to implement an equality policy for Chinese and Western medicine¹. In 2004, there were 2 868 CM hospitals in the Mainland², with more than 95% of all hospitals having CM departments³.

6. Medical treatment for illness and work injuries is provided through a social security system⁴. This social security system has included basic medical insurance and compensation for work injuries. Social insurance institutions would enter into contracts with medical institutions for them to become designated medical institutions for provision of medical services for employees. The law stipulates that qualified CM medical institutions should also be designated medical institutions.⁵ As far as we know, the lists of designated hospitals in Beijing and Guangzhou include some CM hospitals, indicating that CM hospitals are recognised for provision of medical service for employees in their treatment of ordinary sickness or work injuries.

7. The medical certificates issued by medical practitioners in

¹ Section 3, "Chinese Medicine Law of the People's Republic of China", promulgated by the State Council in 2003.

² Reference is made to "The current development and management of Chinese Medicine, 8 October 2004" on the website of the State Administration of Traditional Chinese Medicine of the People's Republic of China.

³ "Practice of Chinese medicine in PRC, Taiwan and Singapore (December 1999)," Labour Department.

⁴ Section 73, "Labour Law of the People's Republic of China", promulgated by the State Council in 1994.

⁵ Section 5, "Decision on Establishing the Basic Health Insurance Scheme for Urban Employees", promulgated by the State Council in 1998.

designated hospitals include certification on diagnosis, medical reports, sick leave recommendation, certification of health, and medical history of a person. Such certifications can be used as evidence for employees in claiming medical or work injury insurance.

8. Employees suffering from work injuries are required to seek treatment from hospitals designated for treatment of work injuries. Medical costs are borne by work injury insurance funds. If such designated medical institutions provide CM treatment, the medicines prescribed to the injured worker are reimbursable.

9. Where appropriate, CM practitioners also conduct injury assessments the results of which are adopted by government agencies as the basis for determining the compensation amount. To our knowledge, the Guangdong province has set up a databank of Chinese medicine experts at the county, municipality and provincial level for conducting injury assessments. Employees seeking CM treatment are given the same entitlement as they would have if they seek western medicine treatment.

Taiwan

10. In Taiwan, under the Physicians Law 1943 which regulates the practices of Doctor of Chinese medicine, physicians and dentists, these medical professionals have equal status. Medical care is provided for citizens and employees by a health insurance programme which operates through a number of contracted medical care institutions. In 2001, the contracted medical care institutions included 44 CM hospitals and 2 225 CM clinics.

11. Taiwan's labour law stipulates that when a worker takes leave because of ordinary injury, sickness, or a work accident, he shall be entitled to allowances/compensation from the fourth day of incapacitation. When applying for payments of injury or sickness benefits, written medical diagnosis of the injury or sickness must be supplied. Such written medical diagnosis can be issued by doctors of CM.

12. An insured worker suffering from work injury or occupational

disease can receive medical treatment in any hospital specially contracted for the purpose. The medical costs, including that incurred by CM treatment, are reported to and payable under the health insurance programme.

II. North America

United States of America (USA)

13. In the USA, the practice of acupuncture or Chinese herbology is permitted in most of the states and is regulated through the requirement of a practising certificate which entails the passing of a professional examination⁶. In California where 6 300 acupuncturists were licensed as in 2003⁷, the Labor Code includes acupuncturists as one of the categories of “physicians” in the compensation system for workers injured at work⁸. An employer shall pay for acupuncture treatment that is reasonably necessary to cure or relieve the injured worker from the effects of the injury. An acupuncturist, if appointed as a Primary Treating Physician, may give views on the duration of sick leave an injured worker should have. Such views are important in determining temporary disability benefit payments in a claim for worker’s compensation. In Florida, acupuncture treatment for a worker injured at work is reimbursable if supported by a physician or a recognised practitioner⁹. But such reimbursement is limited to one treatment a day for a period not exceeding four weeks unless specifically authorized by the insurer as medically necessary.

Canada: Overview

⁶ The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) certification is a requirement for licensure in most states of the USA. NCCAOM offers four distinct national certification programs in Oriental medicine, acupuncture, Chinese herbology and Asian bodywork therapy. Certification is granted to those who meet the eligibility criteria and pass the examination(s).

⁷ “Acupuncture in California” (April, 2003), The Center for the health professions, University of California, San Francisco.

⁸ Section 3209.3, “Labor Code”, California.

⁹ Florida Workers’ Compensation Health Care Provider Reimbursement Manual, 2005 Second Edition, Florida's Division of Workers' Compensation.

14. In Canada, major provinces like Quebec and Alberta have included acupuncture in their regulated health professions¹⁰, while British Columbia has included both practitioners of acupuncture and CM into its health regulatory regime¹¹.

15. Although these three provinces do not statutorily require an employer to give an employee paid sick leave, such benefits may be provided by employers in their employees benefit packages either individually or in their collective agreements for unionized employees. In some cases, these benefits include CM treatment.

16. These three provinces have also included acupuncture treatments in their health insurance or compensation for workers injured at work. In these jurisdictions, employees who are incapacitated from work due to illness or work injury can, to various extents, have access to medical assistance rendered by acupuncturists.

Quebec

17. For workers injured on duty, only the attending medical practitioner of the injured worker is recognised for certifying the worker's temporary incapacity. Acupuncture treatments, if prescribed by the attending physician of the injured worker, are payable by the Commission de la santé et de la sécurité du travail (CSST)¹².

British Columbia (BC)

18. As of mid-2003, there were 1 278 registered traditional Chinese medicine (TCM) practitioners and acupuncturists in the Province of BC¹³.

¹⁰ The practice of acupuncture is regulated by the “La Loi sur l'acupuncture” in the Province of Quebec and the “Health Disciplines Act – Acupuncture Regulation” in the Province of Alberta.

¹¹ The law is “The Health Professions Act – the Traditional Chinese Medicine Practitioners and Acupuncturists Regulation 2000.”

¹² The CSST of Quebec is responsible for the administration of the system on employees' compensation and occupational safety and health in Quebec.

¹³ “Canada Asia Commentary”(December 2003), Asia Pacific Foundation of Canada.

Many collective agreements and non-union employers provide extended health benefit (EHB) coverage over and above the provincial medical services plan. It is observed that many EHB provide coverage for a limited number of CM visits per year.¹⁴

19. The Workers' Compensation Board of BC (WorkSafeBC) is responsible for determining the compensation of workers who are injured at work. In making such determination, a WorksafeBC officer would consider the duration which the worker has been unable to work, and the percentage of his permanent functional loss. Medical evidence is necessary to substantiate such decision. Medical evidence usually takes the form of a signed medical report which TCM practitioners or acupuncturists are not authorized to provide. Upon approval by the WorkSafeBC, a worker injured at work may receive up to five acupuncture treatments over two weeks¹⁵, the costs of which would be payable by the Board.

Alberta

20. For workers injured on duty, registered acupuncturists are not authorised to determine the wage loss benefits in respect of the period of absence. However, the worker may seek a limited number of acupunctural treatments which costs will be paid by the Workers' Compensation Board of Alberta.

III. Europe

Germany

21. The practice of acupuncture is widely accepted. It is estimated that about 30 000 physicians have been using acupuncture in ambulant treatment and there are approximately 30 medical centres specialized in

¹⁴ Information supplied by the BC Labour Relations Board.

¹⁵ Reference is made to "Acupuncturists and the WCB" on the website of the Workers' Compensation Board of BC.

CM methods and 11 private hospitals with CM clinics¹⁶.

22. In the event of sickness, financial protection of employees is provided by a compulsory health insurance which most of the working population are required to take out. CM treatment is not covered by this compulsory health insurance scheme, though there are some supplementary insurance packages covering CM treatment.

23. Germany includes acupuncture treatments in their employees' compensation system¹⁷. The German Berufsgenossenschaften (BGs) (i.e. Institutions for Statutory Accident Insurance and Prevention) which provide free medical care to victims of occupational accidents and diseases, are responsible for appointing accident insurance consultants, who are usually physicians, to assist the injured worker to recover. If an injured worker received acupuncture treatment as prescribed by the accident insurance consultants, he can receive all benefits which the statutory accident insurance scheme provides.

United Kingdom

24. The United Kingdom is vigorously preparing for the regulation of CM¹⁸. Its labour legislation has not yet provided for any benefits relating to CM.

IV. Australia

25. In Australia, the State of Victoria has enactment to regulate the practice of both acupuncture and CM¹⁹. As of August 2005, there were

¹⁶ Information supplied by the International Social Policy Section of HVBG.

¹⁷ Information supplied by the International Social Policy Section of HVBG.

¹⁸ The consultation paper for Regulation of herbal medicine and acupuncture was published on 2 March 2004 by the UK Health Departments and the report on the consultation was issued in February 2005. Preparation of draft Order under section 60 of the Health Act 1999 will be the next step in the regulatory process.

¹⁹ The Chinese Medicine Registration Act 2000 (CMR Act) provides for the statutory regulation of Chinese herbal medicine practitioners, acupuncturists and Chinese herbal dispensers.

813 registered CM practitioners in the State of Victoria²⁰.

26. Medical certificates for ordinary illness or injury must be issued by a registered medical practitioner²¹. According to the Accident Compensation Act 1985, a claim for weekly compensation for injury at work must be accompanied by a Workcover Certificate of Capacity which should be issued by a registered medical practitioner. However, the Victorian WorkCover Authority (VWA) will pay the reasonable costs of acupuncture treatment for a maximum of ten services provided that the service is referred by a registered medical practitioner and the service is provided by an acupuncturist approved by the VWA to the injured worker²².

V. Other Asian Countries

Malaysia

27. Malaysia established the Traditional Medicine Committee²³ to register practitioners practising traditional medicine, including CM. In 2004, there were some 800 members in their Chinese medicine practitioners' unions. There is no information showing CM treatment is recognised as far as employees' benefits are concerned.

South Korea

28. Instead of CM, South Korea adopts "Oriental medicine" which originated from CM and was subsequently adapted to become a medical stream of its own. Probably because of its origin, the basic philosophy of Oriental medicine like Yin Yang and the Five-Elementary Theory is basically similar to that of CM²⁴. Oriental medicine has the same legal

²⁰ Reference is made to "Registration and Information" on the website of the Chinese Medicine Registration Board of Victoria.

²¹ Section 1C Sick leave, Workplace Relations Act 1996 (Volume 2).

²² Section 10.5.1 Acupuncture, Claims manual of Victorian Workcover Authority.

²³ Reference is made to "The development of traditional medicine in Malaysia" (26.9.2003) on the website of the State Administration of Traditional Chinese Medicine of the People's Republic of China."

²⁴ Reference is made to "Information" on the website of the Association of Korean

status as Western medicine under the Medical Service Act. Oriental Medical Doctors are entitled to practise all the medical functions of Oriental medicine, including acupuncture and prescribing traditional medicines. As of December 2002, there were 149 oriental medical hospitals and 8,119 herb medical clinics²⁵.

29. Under the Labour Standard Act, an employer is not obliged to pay wages during a worker's sick leave. For workers injured at work, the wage replacement benefits shall be paid for the period in which the worker concerned is unable to work due to the medical care. We have not been able to obtain information on whether Oriental Medical Doctors can issue certification on temporary incapacity.

30. For workers injured or contracted disease related to work, the Industrial Accident Compensation Insurance provides medical care benefits, which covers the total amount of the medical care expenses permitted by insurance facilities installed by the Workers Accident Medical Corporation (WAMC) or the medical institution affiliated to the Corporation²⁶. Under the control of the WAMC, there are nine industrial accident hospitals within which some have established a medical service system combining the oriental and western joint-care system with medical rehabilitation function²⁷.

Japan

31. There is no statutory regulation particularly for CM practitioners. Where there are CM medical specialists, they are virtually medical practitioners trained in western medicines. According to the information we have, some CM originated proprietary medicines and also part of the costs for acupunctural treatments are reimbursable²⁸. Many western

Oriental Medicine.

²⁵ Reference is made to "Health Care Institution" on the website of National Health Insurance System, Ministry of Health and Welfare, South Korea.

²⁶ Article 40, Medical Care Benefits, Industrial Accident Compensation Insurance Act.

²⁷ Reference is made to "Affiliated Hospitals and Institutions" on the website of Workers Accident Medical Corporation.

²⁸ Kampo (based on traditional Chinese medicine but adapted to Japanese culture) remedies and prescriptions are approved for reimbursement under Japan's National

medicine hospitals also have CM departments.

32. There is no statutory paid sickness day and no statutory provision on the certification of paid sickness days in the Labour Standards Law. When an employee is injured as a result of a work accident, he should seek medical treatment from a hospital designated to provide medical treatment under the Workers' Accident Compensation Insurance²⁹ to entitle him to medical compensation benefit. There are 39 such hospitals. There is no provision in the Workers' Accident Compensation Insurance Law indicating the capacity of the medical professional who certifies the period of incapacity of such an injured employee.

Singapore

33. Singapore enacted the Traditional Chinese Medicine Practitioners Act 2000³⁰ to regulate the practice of CM. There are about 800 CM clinics in Singapore. Under the Employment Act, only the certification given by a medical practitioner or a dentist is recognised for an employee's entitlement to paid sick leave³¹. For workers injured at work, only medical practitioners are recognised for certifying their period of temporary incapacity³². Employers are not required to reimburse the consultation fees for treatment given by a CM practitioner.

Health Insurance system.

²⁹ Reference is made to "Foreign Workers' Handbook: Industrial Injury" on the website of General Union, Japan.

³⁰ Reference is made to "TCM Practitioners" on the website of Ministry of Health Singapore.

³¹ Section 44, Employment Act.

³² Third Schedule, Workmen's Compensation Act.

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Paper

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Differences between the functions of a registered Chinese Medicine Practitioner (CMP) and a Medical Practitioner (MP) after the passage of the Bill

The following table summarizes the differences between the functions of a registered CMP and that of an MP under respective ordinances when the Bill is passed.

Medical functions of MPs under respective Ordinances (Respective current sections in brackets)	Whether registered CMPs are recognised for performing the same function (Respective clauses of the Bill in brackets)
<i>Employment Ordinance (EO)</i>	
Certification of sickness day for the purpose of a claim for sickness allowance (Section 33(5)(a), 33(5A) & 33(6)(b))	Yes (Clause 7)
Certification in relation to <ul style="list-style-type: none"> - pregnancy (Section 13(1)) - expected date of confinement (Section 13(1)) - date of confinement (Section 13(1)) - illness or disability arising out of pregnancy or confinement (Section 13(2)) - a pregnant employee's unfitness to handle heavy, hazardous or harmful work (Section 13(2)) 	Yes (Clause 4) Yes (Clause 4) No Yes (Clause 4) Yes (Clause 4)

<p align="center">Medical functions of MPs under respective Ordinances (Respective current sections in brackets)</p>	<p align="center">Whether registered CMPs are recognised for performing the same function (Respective clauses of the Bill in brackets)</p>
<p>An MP to conduct medical examination arranged by an employer for his pregnant employee for the purpose of obtaining a second opinion as to her fitness to undertake the work at issue (Section 15AA(3))</p>	<p align="center">Yes (Clause 5)</p>
<p>Certification of an employee’s permanent unfitness for his current work (Section 10(aa))</p>	<p align="center">Yes (Clause 3)</p>
<p>An MP to conduct a medical examination arranged by an employer for his employee for the purpose of obtaining a second opinion as to whether the employee is permanently unfit for his current work (Section 31R(3))</p>	<p align="center">Yes (Clause 6)</p>
<p>A recognised scheme of medical treatment operated by an employer may include the medical treatment provided by an MP (Section 34(1))</p>	<p align="center">Yes (Clause 8)</p>
<p>Certification of an employee being incapable of work in consequence of sickness or injury for the purposes of the concept of “continuous contract” (Paragraph 3(2)(a), First Schedule)</p>	<p align="center">Yes (Clause 10)</p>
<p>Certification of the fitness of a child for employment (Regulation 8(c), Employment of Children Regulations)</p>	<p align="center">Yes (Clause 11)</p>
<i>Employees’ Compensation Ordinance (ECO)</i>	
<p>Certification of a period of temporary incapacity resulting from an accident (Section 10(2))</p>	<p align="center">Yes (Clause 13)</p>

<p align="center">Medical functions of MPs under respective Ordinances (Respective current sections in brackets)</p>	<p align="center">Whether registered CMPs are recognised for performing the same function (Respective clauses of the Bill in brackets)</p>
<p>An employee injured at work is entitled to medical expenses for the medical treatment given by an MP (Sections 3(1) & 10A(1))</p>	<p align="center">Yes (Clause 12)</p>
<p>Certification of a period during which the employee receives medical treatment for the purposes of a claim for medical expenses (Section 10A(3))</p>	<p align="center">Yes (Clause 14)</p>
<p>An employer shall not be liable to pay medical expenses if he/ she has provided to the employee free medical treatment given by an MP (Section 10A(4))</p>	<p align="center">Yes (Clauses 12 & 14)</p>
<p>Upon an employer's request, to conduct medical examination for an employee who has given notice of an accident at work or is in receipt of a periodical payment (Section 16(1))</p>	<p align="center">Yes (Clause 16)</p>
<p>To be appointed by the Commissioner for Labour to the Employees' Compensation (Ordinary Assessment) Board for assessment of permanent incapacity and duration of sick leaves (Section 16D(2)(a))</p>	<p align="center">Yes (Clause 17)</p>
<p>To be appointed by Director of Health to the Prostheses and Surgical Appliances Board to determine whether a prosthesis or surgical appliance required by an injured employee is necessary and to assess the cost of such an appliance (Section 36M(1)(a))</p>	<p align="center">Yes (Clause 20)</p>

<p align="center">Medical functions of MPs under respective Ordinances (Respective current sections in brackets)</p>	<p align="center">Whether registered CMPs are recognised for performing the same function (Respective clauses of the Bill in brackets)</p>
<p>To carry out pre-employment medical examination for workers who would be employed in trades, industries or processes specified in the Second Schedule on Occupational Diseases (Section 33(1))</p>	<p align="center">No</p>
<p align="center"><i>Pneumoconiosis (Compensation) Ordinance (PCO)</i></p>	
<p>Pneumoconiotics are entitled to medical expenses in respect of the medical treatment given by an MP (Sections 2(1) & 12(1))</p>	<p align="center">Yes (Clause 22)</p>
<p>A pneumoconiotic shall not be entitled to medical expenses if his/ her employer provides to him/ her free medical treatment given by an MP (Sections 2(1) & 12(2)(c))</p>	<p align="center">Yes (Clauses 22 & 23)</p>
<p>An MP's advice may be sought by the Pneumoconiosis Compensation Fund Board in determining a claim for medical expenses (Section 12B(3))</p>	<p align="center">Yes (Clause 25)</p>
<p>An MP's advice may be sought by the Pneumoconiosis Compensation Fund Board in determining a claim for medical appliances (Section 12B(3))</p>	<p align="center">No</p>
<p>To be appointed by the Director of Health to the Pneumoconiosis Medical Board to conduct medical assessment in connection with pneumoconiosis (Section 22)</p>	<p align="center">No</p>

<p align="center">Medical functions of MPs under respective Ordinances (Respective current sections in brackets)</p>	<p align="center">Whether registered CMPs are recognised for performing the same function (Respective clauses of the Bill in brackets)</p>
<p>An MP may give an opinion on a pneumoconiotic's likelihood of imminent total incapacity for the purpose of advancing the further medical examination (Section 23A(3)(a))</p>	<p align="center">No</p>
<p>An MP may give an opinion on the imminence of the death of a pneumoconiotic for the purpose of advancing the further medical examination (Section 23A(3)(a))</p>	<p align="center">Yes (Clause 26)</p>
<i>Occupational Safety and Health Ordinance (OSHO)</i>	
<p>MPs are required to notify incidents of occupational diseases to the Commissioner for Labour (Section 15)</p>	<p align="center">No</p>
Factories and Industrial Undertakings Ordinance (F&IUO) and its subsidiary legislation	
<p>To carry out medical examination on employees who have to work underground (Regulation 16C, Cap.59A), in compressed air (Regulation 26, Cap.59M), or in environments susceptible to exposure to carcinogenic substances (Regulation 8, Cap.59AA) and asbestos (Regulation 17, Cap.59AD).</p>	<p align="center">No</p>
<i>Occupational Deafness (Compensation) Ordinance (ODCO)</i>	
<p>Medical examination provided for under the Ordinance is to be conducted by designated MPs (Sections 16 & 18)</p>	<p align="center">No</p>

<p align="center">Medical functions of MPs under respective Ordinances (Respective current sections in brackets)</p>	<p align="center">Whether registered CMPs are recognised for performing the same function (Respective clauses of the Bill in brackets)</p>
<p>MPs can be appointed as members of the Occupational Deafness Compensation Board (Paragraph 3(1), First Schedule) and members of the Occupational Deafness Medical Committee (Paragraph 1(1), Second Schedule)</p>	<p align="center">No</p>