



TRADITIONAL CHINESE MEDICINE PRACTITIONERS BOARD

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TCMB 14:1/1-1

10 November 2009

TCM Practitioners Board Notice 2009/3

Procedure in Investigation of Complaints Made Against Registered Persons

To: All Registered TCM Practitioners

- 1 It appears to the Board that some registered TCM practitioners are unclear as to the procedure involved in the investigation of complaints made against registered TCM practitioners and the corresponding appeal process.
- 2 Under the circumstances, the Board wishes to highlight the following issues in respect of the Board's role in investigating complaints made against registered TCM practitioners pursuant to the Traditional Chinese Medicine Practitioners Act and Regulations (the "Act and Regulations").

The Possibility of an Amicable Resolution after a Complaint has been Lodged with the Board

- 3 When a complaint against a registered TCM practitioner is lodged with the Board, it is the Board's legal duty and function to investigate into the complaint. It is not the Board's role or function to act as a mediator to resolve disputes between TCM practitioners and the complainants.
- 4 Notwithstanding, if the registered TCM practitioner wants to explore the possibility of an amicable resolution with the complainant, it is within his prerogative to approach the complainant. It is not within the Board's purview to compel or be involved in such a process.
- 5 As such, the Board would wish to highlight to all registered TCM practitioners that any registered TCM practitioner who wants to resolve the dispute amicably with the complainant should do so on his own initiative; the Board will not be involved in such a mediation process.

Procedure at the Inquiry

- 6 Upon considering a complaint lodged with the Board, the Board will consider whether, on the face of the complaint, an inquiry into the complaint should be conducted. If the Board considers that an inquiry should be conducted, a copy of the complaint will be sent to the registered TCM practitioner in question and the registered TCM practitioner

will be invited to submit an explanation to the Board concerning the events complained of.

- 7 Under Regulation 4(3) of the Traditional Chinese Medicine Practitioners (Investigation of Complaints) Regulations, upon considering the registered TCM practitioner's explanation, the Board may:
 - (a) direct that the complaint be dismissed; or
 - (b) direct that the registered TCM practitioner's registration be cancelled or, where applicable, that any such other following measure specified in Section 19 (2) of the Act be taken against him:
 - i) caution or censure him;
 - ii) impose on him a penalty not exceeding S\$10,000;
 - iii) order that his registration be subject to such conditions as may be imposed by the Board for a period not exceeding 3 years;
 - iv) suspend his registration for a period not exceeding 3 years; or
 - (c) direct that the matter be referred to an Investigation Committee for an inquiry.
- 8 According to Regulation 11 of the Traditional Chinese Medicine Practitioners (Investigation of Complaints) Regulations, any inquiry conducted by an Investigation Committee is to be held in private. This means that only the Investigation Committee, the legal assessor, counsel for the Board and Board representative(s), the registered TCM practitioner and his appointed legal counsel are involved in the proceedings.
- 9 During the inquiry, both parties will be given an opportunity to present their case and to cross-examine the opposing party's witnesses. The entire inquiry before the Investigation Committee will be recorded via audio recording.
- 10 At the end of the inquiry, the Investigation Committee will come to a decision on whether the complaint has been made out. If the Investigation Committee concludes that the complaint has been made out, the registered TCM practitioner will be given an opportunity to address the Investigation Committee in mitigation.
- 11 The Investigation Committee will then prepare a report on its findings and recommendations for the Board's consideration. Upon considering the report, the Board may decide to accept the Investigation Committee's recommendations or direct further investigations to be made. In addition, the Board will also consider and decide whether the TCM practitioner should pay for the legal costs, expenses and disbursements incurred by the Board for the inquiry or investigation conducted by the Board and the Investigation Committee on the complaint pursuant to Section 20(1) of Traditional Chinese Medicine Practitioners Act. These would only include the actual costs, expenses and disbursements incurred by the Board. The Board does not levy any fees for itself. Such costs, expenses and disbursements shall be recoverable from the TCM practitioner as a debt to the Board.
- 12 Once the Board has reached a decision, the Board will inform the registered TCM practitioner accordingly of its decision and the sanctions (if any) against him as well as the Board's decision on the legal costs, expenses and disbursements payable by the TCM practitioner.

Appeal Procedures

- 13 If a registered TCM practitioner wishes to appeal to the High Court of Singapore (the "High Court") against the Board's decision, pursuant to Section 21 of the Act, he should do so within 30 days of the date of the Board's decision.
- 14 Should the registered TCM practitioner decide to appeal against the Board's decision, it is his responsibility to compile certain documents, including the Record of Proceedings of the inquiry. The Record of Proceedings comprises of copies of all relevant documents and statements used during the inquiry, the Investigation Committee's report and "information obtained at the inquiry".
- 15 As the inquiry proceedings are audio recorded, "information obtained at the inquiry" would refer to the transcripts of the audio recordings. It should be noted that Regulation 17 of the Traditional Chinese Medicine Practitioners (Investigation of Complaints) Regulations only allows the Board to release transcripts of the inquiry proceedings upon payment of the prescribed fees but not the actual audio recording.
- 16 The Board wishes to highlight that only upon the application and payment by the registered TCM practitioner for the transcripts of the inquiry proceedings, the Board would then engage transcribers to transcribe and translate the relevant audio recordings.
- 17 The Board would also wish to point out that all transcription and translation are done by external private transcribers engaged by the Board. As such, the fees which are quoted and payable by registered TCM practitioner in this regard are quoted by these external private transcribers and the quantum of such fees would vary depending on factors such as the length of proceedings and the amount of translation required. In addition, a further fee amounting to 10% of the cost payable for the transcripts would be levied by the Board in accordance to The Schedule in the Traditional Chinese Medicine Practitioners (Investigation of Complaints) Regulations.
- 18 As stated above, the Board cannot and will not release the tapes/discs of the audio recordings and would only furnish the registered TCM practitioner with the transcripts of the audio recordings.
- 19 As such, in addition to the merits of his appeal, a registered TCM practitioner who is considering appealing to the High Court may want to take into account factors such as the cost of transcription and translation when deciding whether to pursue an appeal and whether to appeal against part of or the entire decision of the Board.

Translation of Audio Recordings of the Inquiry Proceedings

- 20 Lastly, as mentioned above, the audio recordings of inquiry proceedings would be transcribed and translated upon application and payment by the registered TCM practitioner to the Board. However, while the audio recordings will be transcribed in either English or Chinese as recorded, only the portions in Chinese (ie spoken in Mandarin) will be translated into English. The transcribers would not, as a matter of course, translate the portions in English into Chinese. This is because English is the official working language for both the Board as well as the High Court.

- 21 In the circumstances, should any registered TCM practitioner require the portions of the recording in English to be translated into Chinese, he should formally inform the Board of his request. The Board will consider the request and decide on a case by case basis whether to agree to the request. Nonetheless, all TCM practitioners should take note that any request of such additional translation (ie, to translate portions of English recordings to Chinese) would result in a higher cost of transcription and translation to be borne by the TCM practitioner.
- 22 The Board hopes that the above has clarified the procedures involved in the investigation of complaints made against registered TCM practitioners and appeals to the High Court.

The Registrar
Traditional Chinese Medicine Practitioners Board



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中医管理委员会通告 2009/3

对注册中医执业者投诉的调查程序

致：所有注册中医执业者

- 1 中医管理委员会 (简称“管委会”) 察觉到，有一些注册中医执业者对注册中医执业者被投诉的调查及向高等法庭提出上诉的程序并不清楚了解。
- 2 在此，管委会依据中医注册法令及有关条例 (Traditional Chinese Medicine (TCM) Practitioners Act and Regulations)，对注册中医执业者所面对的投诉事件所负责的调查任务重点阐述如下。

接收到投诉后进行和解的可能性

- 3 在接收到对某个注册中医执业者的投诉后，管委会有法律责任和职责对投诉事件进行调查，但没有任务以调解人身份调解中医执业者与投诉人之间的纠纷。
- 4 如果注册中医执业者有意要与投诉人探讨和解的可能办法，他可以自行与投诉人接触。管委会在所赋予的权限内，没有权力强行或介入调解过程。
- 5 因此，管委会吁请所有的注册中医执业者注意，若任何注册中医执业者有意与投诉人达至妥协和解纠纷，他们应该自行采取主动，管委会不能介入调解过程。

听证会程序

- 6 管委会在考虑所收到的投诉后，会就投诉的表面陈情考虑是否应进行听证会来进一步调查投诉。如果管委会认为应进一步进行调查，就会将投诉信件寄给有关注册中医执业者，邀请他针对投诉事件给予管委会书面解释。
- 7 在中医执业者(调查投诉)条例的第 4(3)条例 (Regulation 4(3) of TCM Practitioners (Investigation of Complaints) Regulations Regulation)下，及在考虑了有关注册中医执业者的书面解释后，管委会可能作出下列的任何一项决定：

a) 指示撤销投诉；或

- b) 指示撤销有关注册中医执业者的注册资格；或在可适用的情况下，依据中医注册法令第 19(2)条款 (Section 19(2) of TCM Practitioners Act)，对有关注册中医执业者采取下列任何一项惩罚措施：
- i) 向他提出警告/谴责；或
 - ii) 命令他缴付罚款不超过 S\$10,000；或
 - iii) 对他的执业资格设置条件，为期不超过 3 年；或
 - iv) 吊销他的注册资格，为期不超过 3 年
- c) 指示将投诉事件交给一个调查组进行听证会。
- 8 依据中医执业者(调查投诉)条例的第 11 条例 (Regulation 11 of TCM Practitioners (Investigation of Complaints) Regulations)，调查组所进行的任何听证会均不对外公开，只让调查组成员、调查组的法律咨询律师、管委会的代表律师、管委会的有关代表、有关注册中医执业者及其律师参与听证过程。
- 9 在听证会上，双方均有发言、自我陈词及盘问对方的证人。整个调查组的听证过程均有录音记录。
- 10 在听证完毕后，调查组会决定投诉事件是否成立。如果调查组决定投诉事件成立，调查组会给有关注册中医执业者一个向调查组陈情的机会。
- 11 调查组接下来会呈交调查报告给管委会并推荐处理办法，以便管委会考虑。在考虑了调查组的报告后，管委会可能决定接受调查组的推荐或指示调查组再作进一步的调查。再者，在中医注册法令第 20(1)条款 (Section 20(1) of TCM Practitioners Act) 下，管委会也会考虑及决定有关注册中医执业者是否应缴付管委会在进行调查工作及听证会时所付出的法律费用及其他交付的费用。这些费用只包括管委会所付出的费用，管委会本身并不收取任何费用。管委会所付出的费用，将以债务的形式向有关注册中医执业者收回。
- 12 一旦作了决定，管委会就会通知有关注册中医执业者管委会的决定、对他所采取的处分办法(如有的话)，以及有关收回管委会付出的法律费用及其他费用的决定。

上诉程序

- 13 在中医注册法令第 20(1)条款 (Section 20(1) of TCM Practitioners Act) 下，如果有关注册中医执业者要针对管委会的决定向高等法庭提出上诉，他应该在管委会作出决定的 30 天内提出。
- 14 如果有关注册中医执业者决定对管委会的决定提出上诉，他本身应负责准备所应呈交的文件，包括听证会的听证记录。听证记录包含所有的有关文件、陈词、调查组的报告及在听证会上所收到的信息资料。

- 15 由于听证会有录音，听证会上所收到的信息资料指的是录音的抄本 (transcripts of audio recording)。中医执业者(调查投诉)条例的第 17 条例 (Regulation 17 of TCM Practitioners (Investigation of Complaints) Regulations) 允许管委会在收到有关的录音抄本费用后发放听证会的录音抄本，而不是发放录音带。
- 16 管委会要强调的是，管委会只在收到录音抄本费用后，才会聘请录音抄本专人对录音进行抄本及翻译。
- 17 管委会也要指出，录音抄本是由管委会所聘用的私人录音抄本专人进行的，由私人录音抄本专人提供的报价就是有关注册中医执业者所应交付的费用。录音抄本的报价是依据案件时间的长短、翻译部份的多少等因素来决定。此外，管委会也会依据中医执业者(调查投诉)条例第 17 条例下的收费表(The Schedule under Regulation 17 of TCM Practitioners (Investigation of Complaints) Regulations)，向有关注册中医执业者收取 10%的录音抄本及翻译费。
- 18 就如上面所说的，管委会不能也不会发放录音带，只能提供有关注册中医执业者录音抄本。
- 19 因此，有意向高等法庭提出上诉的注册中医执业者，在决定是否要提出上诉、或是否要针对管委会的全部决定或部分决定提出上诉时，除了考虑上诉的法律依据外，也应该考虑到其他因素如录音抄本及翻译的费用。

听证会录音的翻译

- 20 最后，就如上面所说的，在接到注册中医执业者的申请及付费后，管委会才会安排抄录及翻译听证会录音的工作。不过，抄录的是所录下的英文或中文录音，只有中文的录音部分会被翻译成英文。一般上，录音抄本专人是不会将英文录音部分翻译成中文，因为英文是管委会和高等法庭的正式工作语言。
- 21 在个别情况下，如果任何中医执业者有意要求将英文录音部分也译成中文，他应该正式向管委会提出他的要求。管委会将会考虑所提出的要求，依情个别决定是否同意中医执业者所提出的要求。不过，所有中医执业者必须注意到，这额外的翻译工作(即将英文录音部分翻译成中文)会增加录音抄本及翻译的工作量和费用，这额外的费用必须由中医执业者负担。
- 22 管委会希望上述各点有助于各位注册中医执业者进一步了解管委会对投诉事件及到高等法庭提出上诉的处理程序。

中医管理委员会注册官
2009年11月10日