

# Pharmacy and Poisons Ordinance

## (Cap. 138)

### Contents

<b>Section</b>		<b>Page</b>
<b>Part 1</b>		
<b>Preliminary</b>		
1.	Short title	1-2
2.	Interpretation	1-2
<b>Part 2</b>		
<b>Pharmacy and Poisons Board</b>		
3.	The Pharmacy and Poisons Board	2-2
4.	Chairman of Board and meetings	2-4
4A.	Power of Board to establish executive committees	2-6
4B.	Codes of conduct and codes of practice	2-10
<b>Part 3</b>		
<b>Pharmacists: Requirements for Registration and Practising Certificate</b>		
5.	The register of pharmacists	3-2
6.	Evidence of registration	3-4
7.	Correction of register	3-4
8.	Qualifications for registration as pharmacists	3-6

---

<b>Section</b>		<b>Page</b>
9.	Certificate of registration as a pharmacist	3-8
9A.	Certificate of good standing	3-10
10.	Misuse of certificates of registration	3-10
10A.	Registered pharmacist not to practise without practising certificate	3-12
10B.	Recovery of practising fees	3-14
<b>Part 4</b>		
<b>Retail Sale of Poisons</b>		
11.	Authorized sellers of poisons	4-2
12.	Premises required to be under the control of a registered pharmacist	4-2
13.	Registration of premises	4-4
13A.	Display of logo	4-8
14.	Annual return	4-10
<b>Part 5</b>		
<b>Registered Pharmacists and Authorized Sellers of Poisons: Disciplinary Proceedings and Restriction on Use of Titles</b>		
15.	Appointment of Disciplinary Committee	5-2
16.	Powers of a Disciplinary Committee	5-4
16A.	Powers of Disciplinary Committee at inquiries	5-20
17.	Liability of authorized sellers of poisons for acts of employees	5-22
18.	Voting of Disciplinary Committee	5-24

<b>Section</b>		<b>Page</b>
19.	Provisions as to directions or findings given by Disciplinary Committee	5-24
20.	Restriction on use of certain titles, etc.	5-26
<b>Part 6</b>		
<b>Sale and Possession of Poisons</b>		
21.	Conditions of sale of Part 1 poisons	6-2
22.	Limitations on sale of Part 1 poisons	6-2
23.	Possession of Part 1 poisons prohibited	6-4
24.	Possession of poisons by retailers	6-6
25.	Listed sellers of poisons	6-6
26.	Conditions of sale of Part 2 poisons	6-10
27.	Poisons to be labelled, etc.	6-10
28.	Exemption with regard to medicines	6-12
<b>Part 7</b>		
<b>Import and Export of Pharmaceutical Products</b>		
28A.	Restriction on import and export of pharmaceutical products	7-2
<b>Part 8</b>		
<b>Miscellaneous</b>		
29.	Power to make regulations	8-2
29A.	Power of Board to specify forms	8-14
30.	Pharmacy and Poisons Appeal Tribunal	8-14

## Pharmacy and Poisons Ordinance

T-8

Cap. 138

---

<b>Section</b>		<b>Page</b>
30A.	Right of appeal to Court of First Instance	8-22
31.	Poisons Committee	8-22
32.	Exemption with respect to sales wholesale and sales to certain persons	8-24
33.	Offences	8-26
34.	Penalty	8-28
34A.	Recovery of costs and expenses of collecting or analysing poisons or pharmaceutical products etc.	8-28
35.	Inspection and enforcement of Ordinance	8-28
36.	Forfeiture	8-32
37.	Ordinance not to apply to Chinese herbal medicines and proprietary Chinese medicines, etc.	8-34

To consolidate and amend the law relating to pharmacy, pharmaceutical products and poisons.

*(Amended 2 of 2015 s. 3)*

[1 January 1970] *L.N. 186 of 1969*

*(Format changes—E.R. 3 of 2015)*

## Part 1

### Preliminary

*(Added 2 of 2015 s. 73)*

#### 1. Short title

This Ordinance may be cited as the Pharmacy and Poisons Ordinance.

#### 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

***authorized seller of poisons*** (獲授權毒藥銷售商) means a registered pharmacist, body corporate or unincorporated body of persons that is authorized to carry on a business of retail sale of poisons under section 11; *(Replaced 58 of 1986 s. 2. Amended 2 of 2015 s. 4)*

***Board*** (管理局) means the Pharmacy and Poisons Board established under section 3;

***certificate of good standing*** (良好聲譽證明書) means a certificate issued under section 9A; *(Added 68 of 1995 s. 24)*

**code of conduct** (《行為守則》) means a code of conduct issued under section 4B as revised from time to time under that section; (*Added 2 of 2015 s. 4*)

**code of practice** (《執業守則》) means a code of practice issued under section 4B as revised from time to time under that section; (*Added 2 of 2015 s. 4*)

**court** (法庭) includes a magistrate; (*Added 2 of 2015 s. 4*)

**dispense** (配發、配藥) means supplying a medicine or poison on and in accordance with a prescription given by a registered medical practitioner, a registered dentist or a registered veterinary surgeon; and also means the compounding or mixing of substances, including poisons, and the supplying of the same and **dispensing** (配發、配藥) shall be construed accordingly; (*Added 58 of 1986 s. 2. Amended 96 of 1997 s. 39*)

**institution** (機構) means—

- (a) any hospital or maternity home within the meaning of the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165);
- (b) any clinic within the meaning of the Medical Clinics Ordinance (Cap. 343); (*Amended 84 of 1992 s. 7*)
- (c) any such hospital, maternity home or clinic maintained by the Government; (*Amended 84 of 1992 s. 7; 2 of 2012 s. 3*)
- (ca) any military hospital or any maternity home or clinic of the Hong Kong Garrison; or (*Added 2 of 2012 s. 3*)
- (d) any hospital, maternity home or clinic managed or controlled by the Hospital Authority established under the Hospital Authority Ordinance (Cap. 113); (*Added 84 of 1992 s. 7*)

**label** (標籤) means any statement forming part of or affixed to a container in which pharmaceutical products are sold, which statement may, subject to any regulations made under this Ordinance, be printed in English or Chinese; (*Amended 68 of 1995 s. 2*)

**licensed manufacturer** (持牌製造商) means a holder of a licence to manufacture pharmaceutical products issued under any regulations made under section 29; (*Added 2 of 2015 s. 4*)

**licensed wholesale dealer** (持牌批發商) means a holder of a wholesale dealer licence; (*Added 2 of 2015 s. 4*)

**listed seller of poisons** (列載毒藥銷售商) means a person whose name is entered on the list kept under section 25 of persons entitled to conduct the retail sale of poisons included in Part 2 of the Poisons List; (*Amended E.R. 4 of 2015*)

**manufacture** (製造) means— (*Amended 2 of 2015 s. 4*)

- (a) the preparation of pharmaceutical products, from purchase or acquisition of materials, through processing and packaging, to their completion as finished products for sale or distribution; or
- (b) the repackaging of pharmaceutical products as finished products for sale or distribution,

but does not include the individual dispensing on a prescription or otherwise of any pharmaceutical product, and **manufacturer** (製造商) has a corresponding meaning; (*Amended 2 of 2015 s. 4*)

**pharmaceutical product** (藥劑製品) and **medicine** (藥物) mean any substance or combination of substances— (*Amended 2 of 2015 s. 4*)

- (a) presented as having properties for treating or preventing disease in human beings or animals; or
- (b) that may be used in, or administered to, human beings or animals, either with a view to—

- (i) restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action; or
- (ii) making a medical diagnosis; (*Replaced 50 of 1977 s. 2. Amended 2 of 2015 s. 4*)

***poison*** (毒藥) means a substance which is specified in the Poisons List;

***Poisons List*** (毒藥表) means the Poisons List prescribed by regulations made under section 29; (*Amended 2 of 2015 s. 4*)

***practising certificate*** (執業證明書) means a certificate issued under section 10A; (*Added 50 of 1977 s. 2*)

***registered*** (註冊) means—

- (a) in relation to a pharmacist, a person whose name has been entered on the register of pharmacists under section 5;
- (b) in relation to premises, such premises as are entered on the register of premises under section 13;
- (c) in relation to a medical practitioner, a person duly registered or deemed to be registered under the Medical Registration Ordinance (Cap. 161);
- (d) in relation to a dentist, a person duly registered or deemed to be registered under the Dentists Registration Ordinance (Cap. 156);
- (e) in relation to a veterinary surgeon, a person duly registered under the Veterinary Surgeons Registration Ordinance (Cap. 529); (*Added 96 of 1997 s. 39*)

***sale by way of wholesale dealing*** (以批發經營方式銷售) means the sale of goods to a person who is authorized by this Ordinance to resell such goods;

***Secretary*** (秘書) means the secretary to the Board;



**sell** (售、銷售) includes—

- (a) offer or expose for sale;
- (b) supply without payment; and
- (c) offer or expose for supply without payment,

and **sold** (售、銷售) and **seller** (銷售商) shall be construed accordingly; (*Replaced 58 of 1986 s. 2*)

**specified form** (指明格式), in relation to a purpose under this Ordinance, means the form specified for that purpose by the Board under section 29A; (*Added 2 of 2015 s. 4*)

**Tribunal** (審裁處) has the meaning assigned to it by section 30; (*Added 50 of 1980 s. 2. Amended 2 of 2015 s. 4*)

**wholesale dealer licence** (批發商牌照) means a wholesale dealer licence issued under any regulations made under section 29. (*Added 2 of 2015 s. 4*)

(*Amended 38 of 1977 s. 24; 96 of 1997 s. 39*)

(1A) In the definition of **manufacture** in subsection (1)—

**packaging** (包裝) means any operation, including filling and labelling, that a bulk product (being a product that has completed all processing stages up to, but not including, final packaging) has to undergo to become a finished product. (*Added 2 of 2015 s. 4*)

(2) It shall be a sufficient compliance with any requirement in this Ordinance that premises be under the personal control of a registered pharmacist if for not less than two-thirds of the hours of each day the premises are open for business a registered pharmacist is present at the premises and exercises control and supervision over the persons employed therein.

(3) Where in this Ordinance any document is required to be signed by any person, that person shall write his name or

## Pharmacy and Poisons Ordinance

Part 1

1-12

Section 2

Cap. 138

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make his mark on the document but the affixing of a chop shall not be an adequate signature.

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## Part 2

### Pharmacy and Poisons Board

*(Added 2 of 2015 s. 73)*

#### 3. The Pharmacy and Poisons Board

- (1) There shall be for the purposes of this Ordinance a Board to be called the Pharmacy and Poisons Board.
- (2) The Board shall consist of—
  - (a) the Director of Health; *(Amended L.N. 76 of 1989)*
  - (b) *(Repealed 58 of 1986 s. 3)*
  - (c) the Government Chemist;
  - (d) the Assistant Director of Health in the Drug Office of the Department of Health; *(Replaced 2 of 2015 s. 5)*
  - (e) 1 medical officer in the Department of Health appointed by the Chief Executive;
  - (f) 1 legally qualified person appointed by the Chief Executive to act as the legal adviser to the Board;
  - (fa) 1 person qualified in pharmacology who is on the full time teaching staff of the University of Hong Kong nominated by the University of Hong Kong and appointed by the Chief Executive; *(Added 58 of 1986 s. 3)*
  - (fb) 1 person qualified in pharmacology who is on the full time teaching staff of The Chinese University of Hong Kong nominated by The Chinese University of Hong Kong and appointed by the Chief Executive; *(Added 58 of 1986 s. 3)*

- (g) 3 registered pharmacists (not being public officers) nominated by the Pharmaceutical Society of Hong Kong and appointed by the Chief Executive; and (*Amended 2 of 2015 s. 5*)
  - (h) 1 registered medical practitioner (not being a public officer) nominated by the Hong Kong Medical Association and appointed by the Chief Executive. (*Amended 2 of 2015 s. 5*)
  - (i) (*Repealed 2 of 2015 s. 5*)
- (3) The members of the Board appointed by the Chief Executive shall hold office for a period of 3 years from the date of their appointment or for such lesser period as the Chief Executive may appoint.
- (4) There shall be a Secretary to the Board who shall be appointed by the Chief Executive. (*Added 31 of 1972 s. 2*)  
(*Amended 60 of 2000 s. 3*)

#### **4. Chairman of Board and meetings**

- (1) The Director of Health shall be the Chairman of the Board and as Chairman shall have both a deliberative and a casting vote. (*Amended L.N. 76 of 1989*)
- (2) If the Chairman of the Board is absent from any meeting of the Board, the members present at such meeting shall elect from among their number a member to act as chairman and the person so elected shall have all the powers of the Chairman for the purposes of that meeting.
- (3) The Board shall meet at such times and at such places as the Chairman shall from time to time direct.
- (4) 5 members of the Board shall constitute a quorum at meetings.

- (5) A vacancy among the members of the Board or any defect in their appointment shall not affect the validity of any proceedings of the Board.
- (6) At meetings of the Board all questions shall be decided by the votes of a majority of the members of the Board present.
- (6A) (a) The Board may transact any of its business by circulation of papers and, subject to paragraphs (b) and (c), a resolution in writing which is approved in writing by all the members present in Hong Kong (being not less than the number required to constitute a majority of the Board) shall be as valid and effectual as if it had been passed at a meeting of the Board by the votes of the members so approving the resolution.
- (b) Any member of the Board may, by notice in writing to the Chairman of the Board, require any business which is being transacted by circulation of papers to be transacted at a meeting of the Board.
- (c) Where a notice under paragraph (b) has been given to the Chairman of the Board, any resolution in respect of the business the subject of the notice, which has been approved in writing by the members under paragraph (a) shall be void. (*Added 68 of 1995 s. 25*)
- (7) The Board may make standing orders for regulating the procedure and the conduct of its meetings.

#### **4A. Power of Board to establish executive committees**

- (1) The Board may establish such number of executive committees as it may deem fit for the purpose of performing such functions relating to—
- (a) the registration, licensing or certification under this Ordinance of persons, poisons or pharmaceutical products; or

- (b) the entering of the names of persons on the list kept under section 25 of persons entitled to conduct the retail sale of poisons included in Part 2 of the Poisons List, (*Amended E.R. 4 of 2015*)
- as may be prescribed in respect of any such committee by regulations made under section 29.
- (2) A committee established under this section shall consist of—
- (a) such member of the Board as the Board may appoint to be chairman of the committee; and
- (b) such other persons, whether members of the Board or not, as the Board may appoint to be members thereof,
- and any person so appointed shall hold office on such terms and for such period as the Board may determine.
- (3) A member of a committee established under this section may resign his office at any time by notice in writing addressed to the Chairman of the Board.
- (4) The procedure of every committee established under this section shall be such as the Board may determine.
- (5) The establishment of a committee under this section shall be notified by the Board in the Gazette, and such notice shall specify the purpose for which the committee has been established.
- (6) The Board may at any time vary, modify or extend the purpose for which any committee has been established under this section and shall notify any such variation, modification or extension in the Gazette; and references in this Ordinance to the purpose for which any such committee has been so established shall be construed as references to such purpose as so varied, modified or extended.
- (7) A committee established under this section may be dissolved by the Board at any time and, without prejudice to anything

already done by the committee, such dissolution shall be notified by the Board by notice in the Gazette and shall take effect on the date of publication of the notice.

- (8) Where any regulations made under section 29 provide for the performance by a committee established under this section of any functions referred to in subsection (1) and such committee has not been so established at the commencement of the regulations or is dissolved under this section, the regulations shall have effect, until such committee has been so established or, as the case may be, such functions are vested under this Ordinance in another committee established under this section, as if for references to such committee there were substituted references to the Board.
- (9) A committee existing at the commencement\* of the Pharmacy and Poisons (Amendment) Ordinance 1980 (50 of 1980) which was established prior to the commencement of that Ordinance by regulations made under section 29 for the purpose of performing any functions referred to in subsection (1) shall be deemed to be a committee established by the Board under this section, and this section shall apply accordingly in relation to such committee.

*(Added 50 of 1980 s. 3)*

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Editorial Note:

\* Commencement date: 1 January 1981

#### **4B. Codes of conduct and codes of practice**

- (1) The Board may issue codes of conduct and codes of practice that it considers suitable for providing practical guidance in respect of this Ordinance.
- (2) A code of conduct or code of practice—
- (a) may consist of a code, standard, rule, specification or any other documentary form of practical guidance

- prepared by the Board or any other body or authority;  
and
- (b) may apply, incorporate or refer to a document that has been formulated or published by a body or authority either as in force at the time when the document is so applied, incorporated or referred to or as amended, formulated or published from time to time.
- (3) If a code of conduct or code of practice is issued, the Board must by notice published in the Gazette—
- (a) identify the code; and
- (b) specify the date on which the code is to take effect.
- (4) The Board may from time to time revise the whole or any part of a code of conduct or code of practice.
- (5) If a code of conduct or code of practice is revised, the Board must by notice published in the Gazette—
- (a) identify the code or part revised; and
- (b) specify the date on which the revision is to take effect.
- (6) The Board must make a copy of every code of conduct and code of practice available for inspection by the public free of charge—
- (a) at the office of the Secretary during normal office hours;  
and
- (b) in any other manner the Board thinks fit.
- (7) A code of conduct, code of practice and notice published under subsection (3) or (5) are not subsidiary legislation.
- (8) To avoid doubt, different codes of conduct or codes of practice may be issued under this section for different purposes of this Ordinance.



Pharmacy and Poisons Ordinance

Part 2

2-14

Section 4B

Cap. 138

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*(Added 2 of 2015 s. 6)*

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## Part 3

### Pharmacists: Requirements for Registration and Practising Certificate

*(Added 2 of 2015 s. 73)*

#### 5. The register of pharmacists

- (1) The Board shall cause the Secretary to enter in a register (in this Ordinance referred to as the register of pharmacists), the names and addresses of all persons qualified to be registered as pharmacists under this Ordinance.
- (2) The Secretary must make the register of pharmacists available for inspection by the public free of charge at the office of the Secretary during normal office hours, and in any other manner the Secretary thinks fit, so as to enable a member of the public—
  - (a) to ascertain whether a person is a registered pharmacist; and
  - (b) to ascertain the particulars of the registration of the person. *(Replaced 2 of 2015 s. 7)*
- (3) The Board shall cause a copy of the register of pharmacists to be published in the Gazette once every 12 months.
- (4) The register kept in accordance with the provisions of the repealed Pharmacy and Poisons Ordinance (Cap. 138 1964 Ed.) shall be deemed to be, for the purposes of this Ordinance, the register under this section and every person whose name appears therein shall be deemed to be a pharmacist registered in accordance with this Ordinance.

*[cf. 1954 c. 61 s. 2 U.K.]*

**6. Evidence of registration**

A certificate purporting to be under the seal of the Board and signed by the Chairman or the Secretary, or a copy of the Gazette containing a copy of the register of pharmacists printed within the preceding 12 months, shall, until the contrary is proved, be evidence in any court that the persons whose names are set out in such certificate or copy of the Gazette were registered as pharmacists at the date shown on such certificate or Gazette.

*[cf. 1954 c. 61 s. 6 U.K.]*

**7. Correction of register**

- (1) The Secretary may amend the register of pharmacists as to the address or any other particulars relating to a pharmacist whose name appears therein, if satisfied that such amendment is necessary for the purposes of preserving the accuracy of the register.
- (2) The Secretary shall make such entries in the register of pharmacists as the Board in the exercise of its powers under this Ordinance may direct.
- (3) The Board may direct the deletion of any entry in the register of pharmacists relating to a pharmacist who—
  - (a) requests in writing that his name be so deleted;
  - (b) has died;
  - (c) has been absent from Hong Kong for a period of not less than 2 years without giving to the Secretary or the Board notice of his intention to return; (*Amended 60 of 2000 s. 3*)
  - (d) the Board is satisfied obtained registration by fraudulent means;

- (e) being a person required to be the holder of a practising certificate, has practised as a pharmacist in Hong Kong for a period exceeding 6 months without having obtained such a certificate; (*Added 50 of 1977 s. 3*)
- (f) is no longer practising as a pharmacist in Hong Kong. (*Added 50 of 1977 s. 3*)

[*cf. 1954 c. 61 s. 13 U.K.*]

## 8. Qualifications for registration as pharmacists

- (1) Subject to the provisions of this Ordinance, there may be registered as a pharmacist any person who—
  - (a) holds a diploma in pharmacy of the University of Hong Kong;
  - (b) is duly registered as a pharmaceutical chemist or chemist and druggist with the Pharmaceutical Society of Great Britain;
  - (c) holds a certificate of a Commonwealth pharmaceutical institution which has entered into an agreement for reciprocity of registration with the Pharmaceutical Society of Great Britain;
  - (d) has successfully completed a course of training and study and who has passed any examinations thereon that may have been prescribed by the Board; or (*Amended 32 of 2000 s. 48*)
  - (e) holds any diploma or certificate, other than a certificate to which paragraph (c) refers, and who has satisfied the Board by examination or otherwise that he has the skill and experience in pharmacy equivalent to that possessed by a person to whom paragraphs (a) to (d) relate.
- (2) Notwithstanding anything contained in subsection (1), the Board may require any applicant for registration to pass such

examinations as it may determine or to undergo such period of training as the Board may specify. (*Replaced 50 of 1977 s. 4*)

- (3) For the purposes of conducting examinations on behalf of the Board, there shall be a committee of examiners consisting of the following persons—
  - (a) 1 person qualified in pharmacology who is on the full time teaching staff of the University of Hong Kong or The Chinese University of Hong Kong and appointed by the Board; (*Replaced 58 of 1986 s. 4*)
  - (b) the Government Chemist;
  - (c) the Assistant Director of Health in the Drug Office of the Department of Health; (*Replaced 2 of 2015 s. 8*)
  - (d) 1 medical officer in the Department of Health appointed by the Board; and (*Amended L.N. 76 of 1989*)
  - (e) 1 registered pharmacist (not being a public officer) appointed by the Board.

[*cf. 1954 c. 61 ss. 3 & 4 U.K.*]

## **9. Certificate of registration as a pharmacist**

- (1) Upon the registration of a person as a pharmacist the Secretary shall issue to him a certificate of registration as a pharmacist in the specified form. (*Amended 31 of 1972 s. 3; 2 of 2015 s. 9*)
- (2) If a certificate issued under subsection (1) is lost or destroyed, or if for any other reason a registered pharmacist requires a duplicate certificate to be issued, the Secretary shall, on being satisfied that the original certificate of registration has been lost or destroyed or that a duplicate certificate is required for good reason, and upon payment of a prescribed fee (if any),

issue to the pharmacist a certified duplicate of the certificate of registration.

- (3) If the name of any pharmacist is removed from the register of pharmacists in accordance with a direction of a Disciplinary Committee under section 16, that pharmacist shall forthwith return to the Secretary the certificate of registration and any certified duplicate thereof (if any), or if the said certificate or duplicate has been lost or destroyed the pharmacist shall deliver to the Secretary a signed statement to that effect.

*[cf. 1954 c. 61 s. 5 U.K.]*

#### **9A. Certificate of good standing**

The Secretary may, upon application and upon payment of the prescribed fee, issue to a person whose name has been entered on the register of pharmacists under section 5 a certificate of good standing.

*(Added 68 of 1995 s. 26)*

#### **10. Misuse of certificates of registration**

- (1) Any person who, with intent to deceive—
- (a) forges, or uses, or lends to or allows to be used by any other person a certificate of registration as a pharmacist or any other certificate issued under any enactment, whether of Hong Kong or elsewhere, relating to pharmacy; or *(Amended 60 of 2000 s. 3)*
  - (b) makes or has in his possession a document so closely resembling any such certificate as aforesaid as to be calculated to deceive,
- shall be guilty of an offence.

- (2) In this section, the expression *forges* (偽造) has the same meaning as in Part IX (forgery and related offences) of the Crimes Ordinance (Cap. 200).

*(Amended 2 of 2015 s. 10)*

*[cf. 1954 c. 61 s. 20 U.K.]*

**10A. Registered pharmacist not to practise without practising certificate**

- (1) Subject to this section, a registered pharmacist shall not practise as a pharmacist in Hong Kong, unless he is the holder of a practising certificate which is then in force.
- (2) Subject to the payment of the prescribed fee for the issue of a practising certificate, the Secretary, on application made to him for that purpose by a registered pharmacist, shall issue to him a certificate to the effect that he is, subject to any conditions and restrictions specified in the certificate, entitled to practise as a pharmacist in Hong Kong.
- (2A) A practising certificate must be in the specified form. *(Added 2 of 2015 s. 11)*
- (3) Where a practising certificate is issued pursuant to an application made during the course of a year in respect of that year, the certificate shall, subject to subsection (5), be in force from the time of its issue until the end of that year.
- (4) Where a practising certificate is issued pursuant to an application made during the course of a year in respect of the following year, the certificate shall, subject to subsection (5), be in force for a period of 12 months commencing on 1 January in that following year.
- (5) If at any time during the currency of a practising certificate issued under this section, the holder of the certificate ceases to be registered under this Ordinance, the certificate shall thereupon be deemed to be cancelled.

- (6) Any person who is required under this section to be the holder of a practising certificate under this section shall be deemed to have obtained the certificate when he has duly applied to the Secretary and paid the prescribed fee for the issue of the practising certificate.
- (7) A person who is required under this section to be the holder of a practising certificate shall not be entitled to recover any fees, costs or other remuneration on any cause of action unless he was, at the time when the cause of action arose, the holder of a valid practising certificate.
- (8) This section applies to any person whose name has been entered on the register of pharmacists.

*(Added 50 of 1977 s. 5)*

**10B. Recovery of practising fees**

- (1) If any registered pharmacist contravenes subsection (1) of section 10A, the amount of the prescribed fee payable by him under subsection (2) of that section shall be recoverable as a civil debt.
- (2) In any proceedings under this section a certificate purporting to be under the hand of the Secretary to the effect that the registered pharmacist concerned had not paid the prescribed fee for the issue of a practising certificate shall, until the contrary is proved, be evidence of non-payment of the fee.
- (3) On recovery from a registered pharmacist of a prescribed fee under this section the Secretary shall, if the registered pharmacist's name appears on the register of pharmacists, issue the registered pharmacist with the appropriate practising certificate.

*(Added 50 of 1977 s. 5)*



## Part 4

### Retail Sale of Poisons

*(Added 2 of 2015 s. 73)*

#### 11. Authorized sellers of poisons

- (1) Subject to section 16, a registered pharmacist, body corporate or unincorporated body of persons (*seller*) is authorized to carry on a business of retail sale of poisons if the actual sale of poisons is conducted on premises registered in respect of the seller under this Ordinance by a registered pharmacist or in his presence and under his supervision. *(Amended 2 of 2015 s. 12)*
- (2) The name, the certificate of registration and a notice setting out the hours of attendance of each registered pharmacist engaged in, or employed by an authorized seller of poisons in, the business shall be displayed in a conspicuous place in the premises where he is so engaged or employed.
- (3) No registered pharmacist employed by an authorized seller of poisons shall at the same time engage in the retail sale of poisons on his own account and in employment with any other authorized seller of poisons without first obtaining the written authority of the Board.
- (4) The Board may grant a registered pharmacist written authority under subsection (3) on such conditions as it thinks fit.

*[cf. 1933 c. 25 ss. 8 & 9 U.K.]*

#### 12. Premises required to be under the control of a registered pharmacist

Each set of premises of an authorized seller of poisons where poisons are kept for the purposes of retail sale shall be under the

personal control of a registered pharmacist.

*[cf. 1933 c. 25 ss. 8 & 9 U.K.]*

### **13. Registration of premises**

- (1) No premises of an authorized seller of poisons, where poisons are kept for the purposes of retail sale, shall be kept or used for such purposes unless the premises are registered under subsection (3).
- (2) An application to register premises under subsection (3) shall be made to the Board in the specified form and prescribed manner. *(Amended 2 of 2015 s. 13)*
- (3) Subject to subsection (4), the Board may register premises in respect of which an application is made under subsection (2), and may impose such conditions relating to the registration of the premises as it thinks fit.
- (4) The Board shall not register premises under subsection (3) unless it is satisfied, in relation to the retail sale of poisons at such premises, that—
  - (a) the authorized seller of poisons is a fit and proper person to conduct the retail sale of poisons;
  - (b) the premises are suitable for conducting the retail sale of poisons thereon;
  - (c) the actual sale of poisons will be conducted on the premises by a registered pharmacist, or in the presence and under the supervision of a registered pharmacist, in accordance with section 11(1); and *(Amended 2 of 2015 s. 13)*
  - (d) the premises will be under the control of a registered pharmacist in accordance with section 12.
- (4A) Without limiting any other ground on which the Board may be satisfied that a person is not a fit and proper person to

- conduct the retail sale of poisons at any premises for the purposes of subsection (4)(a), a person is not such a fit and proper person if—
- (a) the person is disqualified from being an authorized seller of poisons under a direction made under section 16(2)(b)(i); and
  - (b) the period of disqualification has yet to expire. (*Added 2 of 2015 s. 13*)
- (5) On the registration of premises under subsection (3) the Secretary shall—
- (a) issue to the authorized seller of poisons a certificate of registration in the specified form; and (*Amended 2 of 2015 s. 13*)
  - (b) enter the address of the premises and the name of the authorized seller of poisons, in a register to be kept for the purposes of this section (in this Ordinance referred to as the *register of premises*).
- (6) The registration of premises under subsection (3) shall—
- (a) not take effect except on payment of the prescribed fee; and
  - (b) authorize the authorized seller of poisons to conduct the retail sale of poisons thereon for such period being not more than 1 year, expiring on such date as shall be specified in the certificate of registration.
- (7) An authorized seller of poisons may, before the expiration of a certificate of registration issued to him under subsection (5), apply to the Board for the certificate to be renewed for a further period of not more than 1 year from the date of expiry and—

- (a) this section shall apply with necessary modifications, to an application for renewal made under this subsection as it applies to an application made under subsection (2);
  - (b) the Board may in respect of the renewed certificate of registration impose any condition in addition to or instead of any condition previously imposed by it under subsection (3); and *(Amended 2 of 2015 s. 13)*
  - (c) the authorized seller of poisons must pay the prescribed fee for the renewal of the certificate of registration. *(Added 2 of 2015 s. 13)*
- (7A) An authorized seller of poisons may apply to the Board for approval to alter the entry, contained in the register of premises, relating to any premises registered in respect of the authorized seller of poisons. *(Added 2 of 2015 s. 13)*
- (7B) If the Board approves the alteration, the authorized seller of poisons must pay the prescribed fee for the alteration. *(Added 2 of 2015 s. 13)*
- (8) An applicant who is aggrieved by a decision of the Board under subsection (3) or (7) may, in the prescribed manner, appeal against such decision to the Tribunal.
- (Replaced 58 of 1986 s. 5)*

### **13A. Display of logo**

- (1) An authorized seller of poisons who conducts the retail sale of poisons on premises registered under section 13, may cause to be displayed at such premises, a logo in the prescribed form.
- (2) Any person who is the proprietor of a business carried on at premises where—
  - (a) a logo in the form prescribed under subsection (1); or

(b) any logo, emblem or other thing which so resembles a logo in the form prescribed under subsection (1) as to be mistaken for such logo,

is displayed shall, if such premises are not registered under section 13, be guilty of an offence.

*(Added 58 of 1986 s. 6)*

#### **14. Annual return**

- (1) An authorized seller of poisons shall in the month of January in each year send to the Secretary a list showing the addresses of all sets of premises where he conducts the retail sale of poisons and showing the name of the registered pharmacist having personal control of each such set of premises.
- (2) Where any change occurs in the address of the business of an authorized seller of poisons or where any registered pharmacist whose name is displayed in any premises registered under this Ordinance ceases to be employed or engaged in such premises, the authorized seller of poisons shall, within 28 days, give the Secretary notice in writing setting out particulars of such change.
- (3) An authorized seller of poisons who fails to comply with the provisions of this section shall be guilty of an offence.

*[cf. 1933 c. 25 s. 13 U.K.]*

## **Part 5**

### **Registered Pharmacists and Authorized Sellers of Poisons: Disciplinary Proceedings and Restriction on Use of Titles**

*(Added 2 of 2015 s. 73)*

#### **15. Appointment of Disciplinary Committee**

(1) If—

- (a) a complaint is received by the Board regarding the conduct of a registered pharmacist or an employee of a registered pharmacist, or it appears to the Board that a registered pharmacist has contravened a code of conduct applicable to the registered pharmacist;
- (b) a complaint is received by the Board regarding the conduct of an authorized seller of poisons or an employee, officer or partner of an authorized seller of poisons, or it appears to the Board that an authorized seller of poisons has contravened a code of practice applicable to the authorized seller of poisons;
- (c) any of the persons mentioned in paragraph (a) or (b) is convicted of—
  - (i) an offence under this Ordinance, the Dangerous Drugs Ordinance (Cap. 134), the Antibiotics Ordinance (Cap. 137) or the Undesirable Medical Advertisements Ordinance (Cap. 231); or
  - (ii) an offence under section 52, 54 or 61 of the Public Health and Municipal Services Ordinance (Cap. 132) or section 7, 7A or 9 of the Trade Descriptions Ordinance (Cap. 362);

- (d) it appears to the Board that a condition imposed under section 13 in respect of the registration of any premises of an authorized seller of poisons has been contravened; or
- (e) it otherwise appears necessary or desirable to the Board to inquire into the conduct of any of the persons mentioned in paragraph (a) or (b),
- the Board may appoint a Disciplinary Committee to inquire into the conduct of the person concerned. (*Added 2 of 2015 s. 14*)
- (1A) A Disciplinary Committee is to consist of— (*Amended 84 of 1992 s. 8; 68 of 1995 s. 27; 2 of 2015 s. 14*)
- (a) the medical officer in the Department of Health appointed by the Chief Executive under section 3(2)(e) who shall be the chairman of the Disciplinary Committee; and (*Amended L.N. 76 of 1989*)
- (b) 2 registered pharmacists (not being public officers) nominated by the Pharmaceutical Society of Hong Kong.
- (2) The Chief Executive shall appoint a legally qualified person to act as the legal adviser to a Disciplinary Committee.
- (Amended 60 of 2000 s. 3)*

## 16. Powers of a Disciplinary Committee

- (1) A Disciplinary Committee appointed under section 15 shall hold an inquiry into the conduct of any person in respect of whom it is appointed and shall cause notice thereof to be served on the person concerned at least 28 days before the date of such inquiry. (*Amended 2 of 2015 s. 15*)

- (1A) A Disciplinary Committee shall conduct an inquiry in accordance with the prescribed procedure. *(Added 31 of 1972 s. 4)*
- (2) A Disciplinary Committee may, if it thinks fit, at the conclusion of an inquiry under this section—
- (a) where the inquiry is in respect of a registered pharmacist or an employee of a registered pharmacist, direct the Secretary— *(Amended 2 of 2015 s. 15)*
    - (i) to censure the registered pharmacist; *(Amended 2 of 2015 s. 15)*
    - (ia) to issue a warning letter to the registered pharmacist; or *(Added 2 of 2015 s. 15)*
    - (ii) to remove his name from the register of pharmacists and not to re-enter it thereon for such period as the Disciplinary Committee directs; *(Amended 2 of 2015 s. 15)*
  - (b) where the inquiry is in respect of an authorized seller of poisons or an employee, officer or partner of an authorized seller of poisons— *(Amended 84 of 1992 s.9; 2 of 2015 s. 15)*
    - (i) direct that that authorized seller of poisons be disqualified, for such period as may be specified in the direction, from being an authorized seller of poisons; *(Amended 84 of 1992 s.9; 2 of 2015 s. 15)*
    - (ii) direct that any or all of the premises of that authorized seller of poisons be removed by the Secretary from the register of premises, either until the expiry of the certificate of registration issued to that authorized seller of poisons in respect of the premises under section 13(5) or for a shorter period as may be specified in the direction; *(Amended 84 of 1992 s. 9; 2 of 2015 s. 15)*



- (iia) direct that variations be made to the conditions relating to the registration of any or all of the premises of that authorized seller of poisons; or (*Added 2 of 2015 s. 15*)
  - (iii) direct the Secretary that a warning letter be served on that authorized seller of poisons. (*Added 84 of 1992 s. 9. Amended 2 of 2015 s. 15*)
- (2A) Subject to subsections (2B) and (2C), a direction under subsection (2) takes effect—
  - (a) immediately if the Disciplinary Committee considers it in the public interest to bring the direction into immediate effect; or
  - (b) in any other case—
    - (i) if no appeal has been lodged under subsection (3), on the date specified by the Disciplinary Committee having regard to all the circumstances of the case, being a date—
      - (A) after the expiry of the period for lodging an appeal under subsection (3)(a); and
      - (B) on or before the expiry of 3 months from the date on which the direction is made; or
    - (ii) if an appeal has been lodged under subsection (3), on the date on which the appeal is finally determined. (*Added 2 of 2015 s. 15*)
- (2B) The Disciplinary Committee may, subject to any conditions it thinks fit to impose, suspend for a period not exceeding 3 years (*suspension period*) the operation of a direction made under subsection (2)(a)(ii) or (b)(i) or (ii) so that the direction takes effect only if a condition so imposed is contravened during the suspension period. (*Added 2 of 2015 s. 15*)

- (2C) The Disciplinary Committee, on finding that a contravention mentioned in subsection (2B) has been committed, must specify a date on which the direction is to take effect having regard to all the circumstances of the case, being a date—
- (a) after the expiry of the period for lodging an appeal against the finding under subsection (3)(a); and
  - (b) on or before the expiry of 3 months from the date on which the finding is made. *(Added 2 of 2015 s. 15)*
- (3) (a) A person in respect of whom a direction or finding has been made under subsection (2) or (2C) may, within 28 days after receipt of notice under section 19(1), appeal to the Court of First Instance.
- (b) On any such appeal, the Court of First Instance may affirm, reverse or vary the direction or finding of the Disciplinary Committee. *(Amended 25 of 1998 s. 2; 10 of 2008 s. 24; 2 of 2015 s. 15)*
- (4) The Disciplinary Committee may, on or after the date on which a direction under subsection (2) (as varied on appeal, if applicable) takes effect, cause the direction to be published in the Gazette, with or without an account of the proceedings. *(Amended 2 of 2015 s. 15)*
- (5) *(Repealed 2 of 2015 s. 15)*
- (6) The Disciplinary Committee may, of its own motion or on the application of the person concerned— *(Amended 2 of 2015 s. 15)*
- (a) without fee or on payment of such fee not exceeding the amount of the fee payable on registration as a pharmacist as the Disciplinary Committee determines, direct the Secretary to restore to the register of pharmacists the name of any person which has been removed therefrom;

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- (b) direct that a disqualification from being an authorized seller of poisons shall cease;
  - (c) without fee or on payment of such fee not exceeding the amount of the fee payable on registration of premises as the Disciplinary Committee determines, direct that any premises removed from the register of premises be restored thereto.
- (7) For the purposes of subsection (2A), an appeal to the Court of First Instance shall be deemed to be finally determined when the earliest of the following events occurs, whichever is applicable in the circumstances— (*Amended 2 of 2015 s. 15*)
- (a) when the appeal to the Court of First Instance is withdrawn or abandoned;
  - (b) subject to subsection (8), when the specified period expires without an appeal having been lodged to the Court of Appeal against a judgment of the Court of First Instance made under subsection (3);
  - (c) subject to subsection (8), if, before the expiry of the specified period referred to in paragraph (b), an appeal is lodged to the Court of Appeal, when the appeal to the Court of Appeal is withdrawn or abandoned;
  - (d) when the specified period expires without an application for leave to appeal having been made to the Court of Appeal;
  - (e) if, before the expiry of the specified period, an application for leave to appeal is made to the Court of Appeal—
    - (i) when the application is withdrawn or abandoned;
    - (ii) if the application is refused, when the specified period expires without an application for leave

- to appeal having been made to the Court of Final Appeal; or
- (iii) if the application is granted, when the appeal to the Court of Final Appeal is withdrawn, abandoned or disposed of; or
- (f) if, before the expiry of the specified period, an application for leave to appeal is made to the Court of Final Appeal—
- (i) when the application is withdrawn, abandoned or refused; or
  - (ii) if the application is granted, when the appeal to the Court of Final Appeal is withdrawn, abandoned or disposed of. (*Added 10 of 2008 s. 26*)
- (8) Notwithstanding subsection (7)(b) and (c), an appeal to the Court of First Instance shall be deemed to be finally determined, if, in respect of a judgment of the Court of First Instance made under subsection (3), a certificate is granted under section 27C of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) and leave to appeal is granted under section 27D of that Ordinance, when the appeal to the Court of Final Appeal under section 27B of that Ordinance is withdrawn, abandoned or disposed of, but only if the following conditions are satisfied—
- (a) the certificate is granted on an application made within 14 days from the date on which the judgment is given as referred to in section 27C(3) of that Ordinance; and
  - (b) the leave to appeal is granted on an application made within 28 days from the date on which a certificate is granted under section 27C of that Ordinance as referred to in section 27D(1) of that Ordinance or, on an application made within that period of 28 days for

an extension of time, such other longer period as so extended. (*Added 10 of 2008 s. 26*)

(9) In subsection (7)—

***application for leave to appeal*** (上訴許可申請) means an application made to the Court of Appeal or the Court of Final Appeal under section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) for leave to appeal to the Court of Final Appeal from a judgment of the Court of Appeal;

***specified period*** (指明限期)—

(a) in the case of an appeal to the Court of Appeal against a judgment of the Court of First Instance made under subsection (3), means—

(i) subject to subparagraph (ii), the period of 28 days within which the notice of appeal referred to in Order 59, rule 4(1) of the Rules of the High Court (Cap. 4 sub. leg. A) is required to be served; or

(ii) if, on an application made within the period of 28 days referred to in subparagraph (i), the Court of Appeal extends that period, the period as so extended,

however, in a case where an appeal may lie from a judgment of the Court of First Instance under Division 3 of Part II of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), the following period of time shall be disregarded in determining the period of 28 days referred to in subparagraph (i) or (ii)—

(iii) where an application has been made under section 27C of that Ordinance (that is, within 14 days from the date on which the judgment is given as referred to in section 27C(3) of that Ordinance), the period from the date on which the judgment is given to the date on which the application is determined; or

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- (iv) where an application has been made under section 27D of that Ordinance (that is, within 28 days from the date on which a certificate is granted under section 27C of that Ordinance as referred to in section 27D(1) of that Ordinance or, on an application made within that period of 28 days for an extension of time, such other longer period as so extended), the period from the date on which the judgment is given to the date on which the application is determined;
- (b) in the case of an application for leave to appeal made to the Court of Appeal, means—
- (i) subject to subparagraph (ii), the period of 28 days within which the notice of motion referred to in section 24(2) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is required to be filed; or
  - (ii) if, on an application made within the period of 28 days referred to in subparagraph (i), the Court of Appeal extends that period, the period as so extended; or
- (c) in the case of an application for leave to appeal made to the Court of Final Appeal, means—
- (i) subject to subparagraph (ii), the period of 28 days within which the notice of motion referred to in section 24(4) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is required to be filed; or
  - (ii) if, on an application made within the period of 28 days referred to in subparagraph (i), the Court of Final Appeal extends that period, the period as so extended. (*Added 10 of 2008 s. 26*)

[*cf. 1954 c. 61 ss. 8, 10 & 11 U.K.*]

### **16A. Powers of Disciplinary Committee at inquiries**

- (1) For the purpose of an inquiry under section 16 the Disciplinary Committee may, subject to subsection (4)—
  - (a) hear and examine witnesses on oath;
  - (b) summon any person to attend the inquiry to give evidence or produce any document or other thing in his possession and examine him as a witness or require him to produce any document or other thing in his possession.
- (2) A summons under subsection (1) shall be in the prescribed form and shall be signed by the chairman.
- (3) Subject to subsection (4), any person who—
  - (a) being summoned under subsection (1) to attend any inquiry to give evidence or to produce any document or other thing in his possession, refuses or neglects to do so; or
  - (b) being examined under subsection (1) as a witness by or before the Disciplinary Committee, refuses or neglects to answer any question put to him by or with the concurrence of the Disciplinary Committee, or to produce any document or other thing in his possession when required to do so,shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 3 months.  
*(Amended 2 of 2015 s. 16)*
- (4) Any person who appears as a witness before the Disciplinary Committee shall be entitled to the same privileges in respect of the giving of evidence and the production of any document and other thing as he would be entitled to if appearing as a

witness in civil proceedings before the Court of First Instance.  
(Amended 25 of 1998 s. 2)

- (5) Any person who—
- (a) behaves in an insulting manner or uses any threatening or insulting expression to or in the presence of the Disciplinary Committee; or
  - (b) wilfully disrupts the proceedings of the Disciplinary Committee,

shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 3 months.  
(Amended 2 of 2015 s. 16)

(Added 31 of 1972 s. 5)

## 17. Liability of authorized sellers of poisons for acts of employees

- (1) In any case under section 16, where the person convicted of an offence or guilty of misconduct is an employee of the authorized seller of poisons, the Disciplinary Committee shall not give any direction unless proof is given to its satisfaction of some one or more of the facts specified in subsection (2), and it is of the opinion that having regard to the facts so proved the authorized seller of poisons ought to be regarded as responsible for the offence or misconduct.
- (2) The facts as to some one or more of which the Disciplinary Committee must be satisfied before giving any such direction as is mentioned in subsection (1) are—
  - (a) that the offence or misconduct in question was instigated or connived at by the authorized seller of poisons or in the case of a body corporate, by an officer of that body corporate or in the case of an unincorporated body of persons, by any member of such body;



- (b) that the authorized seller of poisons or any person employed by him, or, in the case of a body corporate or an unincorporated body of persons, any officer or member of such body, as the case may be, had been guilty, at some time within 12 months before the date upon which the offence or misconduct in question took place, of a similar offence or misconduct and that the authorized seller of poisons had, or ought reasonably to have had, knowledge of that previous offence or misconduct;
  - (c) if the offence or misconduct in question was a continuing offence or continuing misconduct, that the authorized seller of poisons had, or reasonably ought to have had, knowledge of the continuance thereof;
  - (d) in the case of an offence mentioned in section 15(1)(c), that the authorized seller of poisons had not used due diligence to enforce the execution of the relevant Ordinance. (*Amended 68 of 1995 s. 28; 2 of 2015 s. 17*)
- (3) In this section references to the responsibility, knowledge or diligence of an authorized seller of poisons shall, in the case of a body corporate or an unincorporated body of persons, be construed as references to the responsibility, knowledge or diligence of that body as a whole.

*[cf. 1954 c. 61 s. 9 U.K.]*

## **18. Voting of Disciplinary Committee**

In any inquiry conducted by the Disciplinary Committee the decision of the Committee shall be taken on the vote of a majority of the members.

## **19. Provisions as to directions or findings given by Disciplinary Committee**

*(Amended 2 of 2015 s. 18)*

- (1) The Secretary shall cause notice of any direction or finding given by the Disciplinary Committee to be given to the registered pharmacist or authorized seller of poisons, as the case may be, to whom the direction or finding relates, and, where the Disciplinary Committee refuses an application for a direction the Secretary shall cause notice of the refusal to be given to the applicant. A notice required by this subsection to be given to any person shall be sent to him by registered letter to his address shown in the register of pharmacists or the register of premises, as the case may be, and if more than one address is shown in such register to any of his addresses shown therein. *(Amended 2 of 2015 s. 18)*
- (2) *(Repealed 2 of 2015 s. 18)*
- (3) Where a direction given by the Disciplinary Committee has taken effect the Secretary shall make such alterations in the register of premises as are necessary to give effect to the direction.

*[cf. 1933 c. 25 s. 14 U.K.]*

## **20. Restriction on use of certain titles, etc.**

- (1) Any person, other than a registered pharmacist or an authorized seller of poisons, who takes or uses in connection with any business engaged in the retail sale of poisons, or in the dispensing, compounding, or manufacturing of drugs, poisons or pharmaceutical products, any title, emblem or description which might reasonably be taken to suggest that he or any person employed by him is a registered pharmacist or that he is an authorized seller of poisons or that he or any person employed by him possesses any academic qualification other than the academic qualifications that he or his employee in fact possesses shall be guilty of an offence.

- (2) For the purposes of this section the terms “chemist”, “druggist”, “pharmacist”, “pharmaceutical chemist”, “pharmaceutist”, “member of the Pharmaceutical Society”, or the Chinese terms “化學師” (Fa hok sz), “藥師” (Yeuk sz), “藥劑師” (Yeuk tsai sz), “藥劑化學師” (Yeuk tsai fa hok sz), “藥劑學家” (Yeuk tsai hok ka), “藥學會會員” (Yeuk hok wui wui yuen), or any combination of such terms in any language shall be deemed to be calculated to suggest that the person having control of the business is a registered pharmacist or that a registered pharmacist is employed in that business.
- (3) For the purposes of this section the terms “pharmacy”, “dispensary”, “drug-store” or the Chinese term “藥房” (Yeuk fong) used in connection with premises shall be deemed to be calculated to suggest that such premises are premises registered under this Ordinance as premises of an authorized seller of poisons and are under the control of a registered pharmacist.

*[cf. 1954 c. 61 s. 19 U.K.]*

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## **Part 6**

### **Sale and Possession of Poisons**

*(Added 2 of 2015 s. 73)*

#### **21. Conditions of sale of Part 1 poisons**

*(Amended E.R. 4 of 2015)*

Subject to sections 28 and 32, no poison included in Part 1 of the Poisons List shall be sold except on premises duly registered under this Ordinance as premises of an authorized seller of poisons by a registered pharmacist or in his presence and under his supervision.

*(Amended E.R. 4 of 2015)*

*[cf. 1933 c. 25 s. 18(1)(a) U.K.]*

#### **22. Limitations on sale of Part 1 poisons**

*(Amended E.R. 4 of 2015)*

- (1) Subject to this Ordinance, no authorized seller of poisons shall sell any poison included in Part 1 of the Poisons List to any person unless that person is a fit and proper person to whom the poison may be sold and is either— *(Amended E.R. 4 of 2015)*
  - (a) so certified in the specified form and in the manner prescribed by regulations by a person authorized by regulations to give a certificate for the purposes of this section; or
  - (b) known by the seller or by some registered pharmacist in the employment of the seller at the premises where the sale is affected.
- (2) Every authorized seller of poisons shall keep in each set of registered premises at which poisons included in Part 1 of the

Poisons List are sold a poisons book in the specified form.  
(*Amended E.R. 4 of 2015*)

- (3) The seller of any poison included in Part 1 of the Poisons List shall not deliver it until— (*Amended E.R. 4 of 2015*)
- (a) he has made or caused to be made an entry in the poisons book stating the date of the sale, the name, number of identity card and address of the purchaser and of the person by whom any certificate under subsection (1)(a) was given, the name and quantity of the article sold, and the purpose for which it was stated by the purchaser to be required; and (*Amended 68 of 1995 s. 29*)
- (b) the purchaser has affixed his signature to the entry in the poisons book and the registered pharmacist by or in the presence of whom the sale was made has immediately thereafter countersigned such entry.
- (3A) In this section, ***identity card*** (身分證) has the meaning assigned to it by section 1A of the Registration of Persons Ordinance (Cap. 177). (*Added 68 of 1995 s. 29*)
- (4) Any authorized seller of poisons who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine at level 2. (*Amended 84 of 1992 s. 10*)

(*Amended 2 of 2015 s. 19*)

[*cf. 1933 c. 25 s. 18(2) U.K.*]

### **23. Possession of Part 1 poisons prohibited**

(*Amended E.R. 4 of 2015*)

- (1) No person shall have in his possession any poison included in Part 1 of the Poisons List otherwise than in accordance with the provisions of this Ordinance, the proof whereof shall lie upon him.

- (2) Nothing in this Ordinance shall prohibit the possession by any person of any poison included in Part 1 of the Poisons List where such poison is obtained in the circumstances set out in section 28(1)(a), (b), (c) or (d). *(Added 45 of 1984 s. 3)*  
*(Amended E.R. 4 of 2015)*

#### **24. Possession of poisons by retailers**

Every person other than an authorized seller of poisons or a listed seller of poisons carrying on a retail business in premises at which poisons are found shall until the contrary is proved be presumed to have such poisons in his possession for the purposes of sale.

#### **25. Listed sellers of poisons**

- (1) The Board shall cause to be kept for the purposes of this Ordinance a list of persons who, not being authorized sellers of poisons within the meaning of this Ordinance are, subject to the provisions of this Ordinance, to be entitled to conduct the retail sale of a class or classes of poisons included in Part 2 of the Poisons List, and shall cause to be entered on that list of persons the name of any person who being the occupier of any premises makes an application to be entitled to conduct the retail sale of that class or those classes of poisons on those premises and whose application is granted in accordance with this Ordinance. *(Amended 50 of 1980 s. 4; E.R. 4 of 2015)*
- (2) For the purposes of subsection (1) the Board shall cause to be issued to each listed seller of poisons a licence which shall set out the class or classes of poisons which that listed seller is entitled to sell.
- (2A) The Board may impose any conditions subject to which a person's name is entered on the list. *(Added 2 of 2015 s. 20)*
- (2B) A person whose name is on the list and who wishes to retain the name on the list must pay to the Board the prescribed

annual fee for retaining the name on the list. (*Added 2 of 2015 s. 20*)

- (2C) A person whose name is on the list—
- (a) may apply to the Board for approval to alter the entry relating to the person on the list; and
  - (b) if the Board approves the alteration, must pay the prescribed fee for the alteration. (*Added 2 of 2015 s. 20*)
- (3) The Board may direct the Secretary not to enter in, or to remove or suspend for a period specified by the Board from, the list the name of any person who fails to pay the fees prescribed, who has contravened a code of practice applicable to the person or a condition imposed in respect of the person under subsection (2A), or who in the opinion of the Board is, for any sufficient reason relating to him personally or to his premises, not fit to be on the list. In the case of a direction to remove or suspend the name of any person from the list, the Board shall serve a notice on that person stating its grounds for such removal or suspension and advising him of his right to appeal under subsection (5). (*Amended 2 of 2015 s. 20*)
- (3A) If a listed seller of poisons has contravened a code of practice applicable to, or a condition imposed under subsection (2A) in respect of, the listed seller of poisons, the Board may—
- (a) direct the Secretary to issue a warning letter to the listed seller of poisons; or
  - (b) direct that variations be made to a condition imposed under that subsection in respect of the listed seller of poisons. (*Added 2 of 2015 s. 20*)
- (3B) The Board may, subject to any conditions it thinks fit to impose, suspend for a period not exceeding 3 years (*suspension period*) the operation of a direction made under subsection (3) so that the direction takes effect only if a condition so imposed is contravened during the suspension

period, and in the case of such a contravention, the direction takes effect on the date specified by the Board having regard to all the circumstances of the case. *(Added 2 of 2015 s. 20)*

- (4) *(Repealed 58 of 1986 s. 7)*
- (5) Any person aggrieved by a decision or direction made in respect of the person under subsection (2A), (3), (3A) or (3B) may, in the prescribed manner, appeal against the decision or direction to the Tribunal. *(Replaced 50 of 1980 s. 4. Amended 2 of 2015 s. 20)*
- (6) Any listed seller of poisons shall be guilty of an offence if he uses in connection with his business any title, emblem or description reasonably calculated to suggest that he is entitled to sell any poison other than a poison which he is under this Ordinance entitled to sell.

*[cf. 1933 c. 25 s. 21 U.K.]*

## **26. Conditions of sale of Part 2 poisons**

*(Amended E.R. 4 of 2015)*

Subject to sections 28 and 32, no poison included in Part 2 of the Poisons List shall be sold except by authorized sellers of poisons on premises duly registered under this Ordinance or by listed sellers of poisons.

*(Amended E.R. 4 of 2015)*

*[cf. 1933 c. 25 s. 18(1)(b) U.K.]*

## **27. Poisons to be labelled, etc.**

No person who is authorized to sell poisons included in either Part 1 or Part 2 of the Poisons List shall sell any such poison unless the container of the poison is labelled in accordance with regulations and displays— *(Amended E.R. 4 of 2015)*

- (a) the name of the poison;



- (b) in the case of a preparation of which one or more of the ingredients is a poison, particulars as to the proportion each poison bears to the total of the ingredients in the preparation;
- (c) for a medicine, the text prescribed in respect of the medicine or the class to which the medicine belongs;  
*(Replaced 2 of 2015 s. 21)*
- (ca) for a substance or mixture of substances that is not a medicine—
  - (i) the text prescribed in respect of the substance or mixture or the class to which the substance or mixture belongs; or
  - (ii) if no text is prescribed, “Poison 毒藥”; and *(Added 2 of 2015 s. 21)*
- (d) the name of the seller of the poison and the address of the premises in which it was sold.

*[cf. 1933 c. 25 s. 18(1)(c) U.K.]*

## **28. Exemption with regard to medicines**

- (1) Except as provided by regulations, nothing in sections 21, 22, 26 and 27 shall apply to— *(Amended 50 of 1980 s. 5)*
  - (a) a medicine which is supplied by a registered medical practitioner for the purposes of medical treatment, by a registered dentist for the purposes of dental treatment or by a registered veterinary surgeon for the purposes of animal treatment; or *(Amended 96 of 1997 s. 40)*
  - (b) a medicine which, for the purpose of medical treatment, is supplied by a person who, although not a registered medical practitioner, practises medicine in a clinic in such circumstances that, by virtue of section 8(8) of the Medical Clinics Ordinance (Cap. 343), he is not

- by reason solely of such practice guilty of an offence under section 28 of the Medical Registration Ordinance (Cap. 161), if, but only if, the medicine is supplied by him in the course of his practice in that clinic; or
- (c) a medicine which is dispensed by an authorized seller of poisons on premises duly registered under this Ordinance; or
  - (d) a poison forming part of the ingredients of a medicine which is supplied by an authorized seller of poisons on premises duly registered under this Ordinance,
- if the provisions of this section are satisfied in relation thereto.
- (2) The medicine shall be distinctly labelled with the name and address of the person by whom it is supplied or dispensed.
  - (3) In the case of medicine referred to in subsection (1)(b), (c) or (d), on the day on which the medicine is supplied or dispensed, or, if that is not reasonably practicable, on the day next following that day, there shall be entered in a book which is used regularly for the purpose, the following particulars— (*Amended 58 of 1986 s. 8*)
    - (a) the date on which the medicine was supplied or dispensed;
    - (b) the ingredients of the medicine and the quantity of the medicine supplied;
    - (c) if the medicine was dispensed by an authorized seller of poisons, the name or initials of the person by whom, and the name, and if it is known, the address of the person to whom, and the date on which, the prescription was given.
  - (3A) In the case of medicine referred to in subsection (1)(a), on the day on which the medicine is supplied, or, if that is

not reasonably practicable, on the day next following that day, there shall be entered in the record of treatment or other document relating to the supply thereof the following particulars—

- (a) the date on which the medicine was supplied;
  - (b) the name and address of any person to whom or on whose behalf it was supplied; and
  - (c) the ingredients of the medicine and the quantity, dosage and duration of supply. (*Added 58 of 1986 s. 8*)
- (4) The provisions of subsection (3) shall, in the case of a medicine supplied on a prescription on which the medicine has been supplied by the seller on a previous occasion, be deemed to be complied with if, when the medicine is supplied, the date and the quantity supplied are entered in the book on that day or, if that is not reasonably practicable, on the day next following that day, together with a sufficient reference to an entry in the book duly recording the dispensing of the medicine on the previous occasion.
- (5) In the case of a medicine which is supplied or dispensed by a person who is an authorized seller of poisons and is compounded by the person supplying or dispensing it or by a person in his employment, the medicine shall have been compounded by or in the presence of and under the supervision of a registered pharmacist.

*[cf. 1933 c. 25 s. 19 U.K.]*

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## Part 7

### Import and Export of Pharmaceutical Products

*(Added 2 of 2015 s. 73)*

#### 28A. Restriction on import and export of pharmaceutical products

- (1) A person must not carry on business as an importer of pharmaceutical products unless—
  - (a) the person is a licensed wholesale dealer; or
  - (b) the person is a licensed manufacturer and the products are imported by the person for the purpose of manufacturing the person's own pharmaceutical products.
- (2) A person must not carry on business as an exporter of pharmaceutical products unless—
  - (a) the person is a licensed wholesale dealer; or
  - (b) the person is a licensed manufacturer and the products to be exported are manufactured by the person.
- (3) If—
  - (a) a person was registered under this section, as in force before the commencement date of the Pharmacy and Poisons (Amendment) Ordinance 2015 (2 of 2015) (*amending Ordinance*), to carry on business as an importer or exporter of pharmaceutical products; and
  - (b) that registration was in force immediately before that date,then, for the remainder of the period for which that registration would have continued to be valid had section 22 of the amending Ordinance not been enacted, the person is to

## Pharmacy and Poisons Ordinance

Part 7

7-4

Section 28A

Cap. 138

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be regarded as a licensed wholesale dealer and this Ordinance applies to the person accordingly.

*(Replaced 2 of 2015 s. 22)*

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## Part 8

### Miscellaneous

*(Added 2 of 2015 s. 73)*

#### 29. Power to make regulations

- (1) Subject to the approval of the Legislative Council and to section 31, the Board may make regulations—
  - (a) prescribing the nature and scope of courses of training and study, and examinations to be completed by persons to qualify for registration as pharmacists, and the fees payable in respect of such courses and examinations;
  - (aa) prescribing the fees payable on the issue of a practising certificate for a registered pharmacist; *(Added 50 of 1977 s. 6. Amended 2 of 2015 s. 23)*
  - (ab) the disposal of any fee paid or recovered under this Ordinance; *(Added 50 of 1977 s. 6)*
  - (b) prescribing the fees payable on the issue of a certificate of registration as a pharmacist and for the issue of duplicates of certificates of registration; *(Amended 2 of 2015 s. 23)*
  - (ba) prescribing the procedure to be followed in inquiries held by the Disciplinary Committee under the provisions of section 16; *(Added 31 of 1972 s. 6)*
  - (bb) prescribing fees for furnishing, to any party to an inquiry referred to in paragraph (ba), a copy of any record of the inquiry; *(Added 21 of 1992 s. 2)*
  - (bc) prescribing the fees to be paid on the issue of a certificate of good standing; *(Added 68 of 1995 s. 30)*

- (c) regulating the making and determination of applications under section 13 in respect of the registration of premises and providing for appeals; *(Replaced 58 of 1986 s. 9. Amended 2 of 2015 s. 23)*
- (ca) prescribing fees for the registration and renewal of registration of premises under section 13 and for a change of name, ownership or any other particulars relating to the premises; *(Added 58 of 1986 s. 9. Amended 2 of 2015 s. 23)*
- (cb) prescribing the form of logo under section 13A; *(Added 58 of 1986 s. 9)*
- (d) dispensing with or relaxing all or any of the provisions of sections 22, 27 and 28;
- (e) dispensing with or relaxing with respect to poisons any of the provisions of this Ordinance relating to the sale of poisons;
- (ea) exempting any article or substance from the provisions of this Ordinance; *(Added 45 of 1975 s. 2)*
- (f) prescribing the manner of a certification for the purposes of section 22(1)(a) and specifying the class of persons authorized to give a certificate for the purposes of that section; *(Replaced 2 of 2015 s. 23)*
- (g) *(Repealed 2 of 2015 s. 23)*
- (ga) regulating the making and determination of applications under section 25(1) in respect of the entering of names on the list kept under that section and providing for appeals against refusals of such applications; *(Added 50 of 1980 s. 7)*
- (h) providing for the licensing of wholesale dealers in poisons or pharmaceutical products, for the revocation, suspension or variation of conditions of a wholesale

- dealer licence, for the issue of warning letters to licensed wholesale dealers, and for appeals against a refusal, revocation, suspension or variation of conditions of a wholesale dealer licence or issue of warning letters; *(Replaced 50 of 1980 s. 7. Amended 2 of 2015 s. 23)*
- (ha) providing for the keeping of such registers or records by licensed wholesale dealers or licensed manufacturers as may be prescribed; *(Added 45 of 1975 s. 2. Amended 2 of 2015 s. 23)*
- (i) regulating and controlling the sale of poisons included in Part 2 of the Poisons List by listed sellers of poisons, prescribing fees for the making of entries in and alterations to the list of listed sellers of poisons, for the retention of the name of any person on that list for any year subsequent to that of the first entry, and for a change of ownership or address of the business; *(Amended E.R. 4 of 2015)*
- (j) providing for the licensing of manufacturers of poisons or pharmaceutical products, for the revocation, suspension or variation of conditions of a licence for manufacturers on the ground of a contravention of the principles and guidelines referred to in paragraph (ja)(ii) or any other ground, for the issue of warning letters to licensed manufacturers, and for appeals against a refusal, revocation, suspension or variation of conditions of such a licence or issue of warning letters; *(Replaced 50 of 1980 s. 7. Amended 2 of 2015 s. 23)*
- (ja) providing for the control of the manufacture of poisons or pharmaceutical products including— *(Amended 2 of 2015 s. 23)*
- (i) the qualifications, experience, appointment, duties and responsibilities of persons to be employed or engaged for the purpose of the manufacture and the



- number of persons to be so employed or engaged;  
and
- (ii) the establishment and issue of the principles and guidelines of good manufacturing practice in respect of pharmaceutical products; (*Added 45 of 1975 s. 2. Amended 2 of 2015 s. 23*)
  - (jb) providing for the registration and renewal of registration of any person or class of persons referred to in paragraph (ja)(i), for the cancellation, suspension or variation of conditions of the registration, for the issue of warning letters to any such person, and for appeals against a refusal, cancellation, suspension or variation of conditions of the registration or issue of warning letters, and prescribing the fees payable on the issue of a certificate of registration or renewed certificate of registration; (*Added 2 of 2015 s. 23*)
  - (jc) providing for the keeping of a register of the persons referred to in paragraph (ja)(i) and for the alteration to the register; (*Added 2 of 2015 s. 23*)
  - (k) providing for the regulation of the type of containers in which various poisons or pharmaceutical products or classes of poisons or pharmaceutical products may be stored or sold and for the labelling of containers in which such poisons or pharmaceutical products are sold; (*Amended 2 of 2015 s. 23*)
  - (l) providing for the regulating of the storage and transport of medicines and poisons;
  - (m) prescribing fees for the licensing of wholesale dealers in poisons or pharmaceutical products and of manufacturers; (*Amended 2 of 2015 s. 23*)
  - (n) (*Repealed 96 of 1997 s. 41*)

- (o) generally providing for the regulating and controlling of the selling, purchasing, compounding and dispensing of poisons and medicines; (*Amended 31 of 1972 s. 6*)
- (p) providing for the licensing of retail sellers of pharmaceutical products who are not authorized sellers of poisons or listed sellers of poisons;
- (q) providing for the registration and renewal of registration of pharmaceutical products manufactured in or imported into Hong Kong and for the payment of fees in respect thereof (including the fees payable for carrying out inspections for determining an application for such registration and renewal of registration), for the deregistration, suspension or variation of conditions of such registration, for the issue of warning letters to holders of registration certificates, and for appeals against a refusal, deregistration, suspension or variation of conditions of such registration or issue of warning letters; (*Replaced 50 of 1980 s. 7. Amended 2 of 2015 s. 23*)
- (qa) providing for the provisional registration of pharmaceutical products and for the issue of certificates and duplicate certificates and the payment of fees in respect thereof; (*Added 50 of 1980 s. 7. Amended 2 of 2015 s. 23*)
- (qb) providing for the control of the conduct of clinical trials on human beings and medicinal tests on animals, for the issue of clinical trial certificates and medicinal test certificates, for the cancellation, suspension or variation of conditions of such certificates, for the issue of warning letters to holders of such certificates, for appeals against a refusal, cancellation, suspension or variation of conditions of such certificates or issue of warning letters, and for the payment of fees in respect

- of the application for conducting such trials or tests and the issue of such certificates; (*Replaced 2 of 2015 s. 23*)
- (r) prescribing a list of poisons, to be called the Poisons List, which list shall have 2 divisions to be known as Part 1 and Part 2 respectively; (*Amended 2 of 2015 s. 23; E.R. 4 of 2015*)
  - (s) prescribing matters required or permitted to be prescribed by this Ordinance; (*Added 2 of 2015 s. 23*)
  - (t) providing for the specification of forms for the purposes of the regulations; (*Added 2 of 2015 s. 23*)
  - (u) making the incidental, consequential, evidential, transitional, savings and supplemental provisions necessary or expedient for giving full effect to the provisions of this Ordinance; and (*Added 2 of 2015 s. 23*)
  - (v) generally providing for the better carrying out of the provisions and purposes of this Ordinance. (*Added 2 of 2015 s. 23*)
- (1A) Any regulations made under subsection (1)(aa) may prescribe different fees to be payable by different categories of pharmacists. (*Added 50 of 1977 s. 6*)
- (1B) Despite subsection (1), the Board may, subject to the approval of the Secretary for Food and Health and section 31, by regulation, amend—
- (a) the Poisons List; or
  - (b) any list, in a regulation made under subsection (1), of any substances or articles—
    - (i) to which a provision in this Ordinance applies; or
    - (ii) which are exempt from any such provision. (*Added 2 of 2015 s. 23*)

- (2) A regulation made under this section may provide that a contravention thereof shall be an offence and may prescribe penalties for such offence not exceeding the penalties specified in section 34. (*Added 45 of 1975 s. 2*)

[*cf. 1933 c. 25 s. 23 U.K.*]

### **29A. Power of Board to specify forms**

- (1) The Board may specify forms to be used for any provision of this Ordinance.
- (2) If a form is specified under this section, the Board must make copies of the form available for inspection by the public free of charge—
- (a) at the office of the Secretary during normal office hours; and
  - (b) in any other manner the Board thinks fit.

(*Added 2 of 2015 s. 24*)

### **30. Pharmacy and Poisons Appeal Tribunal**

(For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.)

- (1) There shall be a Pharmacy and Poisons Appeal Tribunal (in this Ordinance referred to as *the Tribunal*) with jurisdiction to hear and determine—
- (a) any appeal against a decision of the Board under section 13(3) or (7); (*Replaced 58 of 1986 s. 10*)
  - (aa) any appeal against a decision or direction of the Board under section 25(2A), (3), (3A) or (3B); (*Added 58 of 1986 s. 10. Amended 2 of 2015 s. 25*)
  - (ab) any appeal against a decision of the Board under any regulations made under section 29; and (*Added 2 of 2015 s. 25*)

- (b) any appeal against—
  - (i) a decision of a committee of the Board in respect of which provision authorizing such appeal is made in regulations under section 29; or
  - (ii) a decision of the Board in the performance by the Board under section 4A(8) of any function of a committee of the Board which, if made by the committee in exercise of such functions, would be a decision to which subparagraph (i) applies.
- (2) The Tribunal shall consist of—
  - (a) the following persons appointed by the Chief Executive to be members thereof— (*Amended 60 of 2000 s. 3*)
    - (i) a legally qualified person who shall be the chairman of the Tribunal;
    - (ii) a registered medical practitioner;
    - (iii) a registered pharmacist;
    - (iv) a person qualified in pharmacology;
  - (b) such person from the panel referred to in subsection (3)(a) as the Director may nominate from time to time to act as a member representing pharmacists' associations;
  - (c) such person from the panel referred to in subsection (3)(b) as the Director may nominate from time to time to act as a member representing the pharmaceutical industry; and
  - (d) such person from the panel referred to in subsection (3)(c) as the Director may nominate from time to time to act as a member representing the retail pharmaceutical trade.
- (3) For the purposes of subsection (2)(b), (c) and (d), the Chief Executive may appoint— (*Amended 60 of 2000 s. 3*)

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- (a) a panel consisting of persons nominated by pharmacists' associations;
- (b) a panel consisting of persons nominated by pharmaceutical industry associations; and
- (c) a panel consisting of persons nominated by the retail pharmaceutical trade associations,
- and may at any time terminate any such appointment or make any alternative or additional appointment as he may deem fit.
- (4) A person appointed to be a member of the Tribunal under subsection (2)(a) shall hold office for such period not exceeding 3 years as the Chief Executive may determine, and may resign at any time by notice in writing addressed to the Chief Executive. (*Amended 60 of 2000 s. 3*)
- (5) A person nominated by the Director to act as a member of the Tribunal under subsection (2)(b), (c) or (d) shall hold such office during any period for which he is so nominated to act, and such person may resign from the panel of which he is a member at any time by notice in writing addressed to the Chief Executive. (*Amended 60 of 2000 s. 3*)
- (6) If the chairman of the Tribunal is unable to attend at the hearing of any appeal, such other member of the Tribunal appointed under subsection (2)(a) as the Director may designate to act as chairman shall preside at the hearing.
- (7) The Tribunal may act notwithstanding any vacancy in its membership and, for the purpose of hearing and determining any appeal under this section, the Tribunal shall be duly constituted if it consists of the chairman (or the member designated under subsection (6) to act as chairman) and not less than 2 other members sitting together throughout the hearing and determination.
- (7A) Where—

- (a) a member resigns, or his term of office expires, and he is not immediately reappointed to be or renominated to act as a member of the Tribunal; and
- (b) at the time of the member's resignation or expiry of his term of office the hearing of an appeal under this section is continuing,

then for the purpose of hearing and determining the appeal—

- (i) the member shall continue to hold office; and
- (ii) the appointment or nomination of any person to the office previously held by the member shall take effect subject to this subsection. (*Added 6 of 1989 s. 2*)

(7B) Where—

- (a) at the date of the commencement of the Pharmacy and Poisons (Amendment) Ordinance 1989 (6 of 1989) the hearing of an appeal under this section is continuing; and
- (b) a member of the Tribunal hearing the appeal resigned or his term of office expired after the commencement of the hearing,

then for the purpose of hearing and determining the appeal the member shall be deemed to continue to hold office until the appeal is determined; and the appointment or nomination of any person to the office previously held by the member shall have effect subject to this provision. (*6 of 1989 s. 3 incorporated*)

- (8) The Tribunal may examine any person as a witness on oath or otherwise, and may summon any person to attend and give evidence or to produce any document relating to any appeal before the Tribunal, as the Tribunal may deem necessary for the determination of the appeal.

- (9) In determining any appeal under this section, the Tribunal may dismiss the appeal or allow the appeal wholly or in part, and may, subject to regulations made under subsection (10), in either case give such reasons for its decision as it may deem fit.
- (10) The Secretary for Food and Health may make regulations— (*Amended 68 of 1995 s. 31; L.N. 106 of 2002; L.N. 130 of 2007*)
- (a) regulating appeals under this section and the practice and procedure of the Tribunal;
  - (b) prescribing fees in respect of such appeals and matters connected therewith.
- (11) In this section *the Director* (署長) means the Director of Health. (*Amended L.N. 76 of 1989*)

*(Added 50 of 1980 s. 8)*

### **30A. Right of appeal to Court of First Instance**

Any person whose appeal is dismissed or allowed in part only by the Tribunal under section 30 may, not later than 28 days after the decision of the Tribunal, appeal to the Court of First Instance against that decision.

*(Added 50 of 1980 s. 8. Amended 25 of 1998 s. 2; 10 of 2008 s. 25)*

### **31. Poisons Committee**

- (1) For the purposes of advising the Board on the classification and distribution of poisons in Part 1 and Part 2 of the Poisons List and matters relating to the control of the manufacture and distribution of poisons and pharmaceutical products, there shall be a Poisons Committee consisting of— (*Amended E.R. 4 of 2015*)



- (a) the registered medical practitioner appointed under section 3(2)(h); and (*Amended 2 of 2015 s. 26*)
  - (b) 5 other members of the Board appointed by the Board, including 2 of the members appointed under section 3(2)(g).
- (2) In determining the distribution of poisons in Part 1 and Part 2 of the Poisons List the Board shall, after considering the advice of the Poisons Committee, have regard to the desirability of restricting to Part 2 substances which are in common use, or are likely to come into common use, and which it is reasonably necessary to include in the said Part 2 if the public are to have adequate facilities for obtaining them. (*Amended E.R. 4 of 2015*)

[*cf. 1933 c. 25 ss. 16 & 17 U.K.*]

**32. Exemption with respect to sales wholesale and sales to certain persons**

Except as provided by regulations, nothing in this Ordinance shall extend to or interfere with—

- (a) the sale of poisons by way of wholesale dealing; or
- (b) the sale of poisons to be exported by a person referred to in section 28A(2) to purchasers outside Hong Kong; or (*Amended 50 of 1980 s. 9; 60 of 2000 s. 3; 2 of 2015 s. 27*)
- (c) the sale of a substance to a registered medical practitioner, registered dentist or registered veterinary surgeon for the purpose of his profession; or (*Amended 96 of 1997 s. 42*)
- (d) the sale or supply of a substance for use in or in connection with an institution; or

- (e) the sale of a substance by a person carrying on a business, in the course of which poisons are regularly sold to either—
- (i) a person who requires the substance for the purpose of his trade or business; or
  - (ii) a Government department or an officer of the Government requiring the substance for the purpose of the public service; or (*Amended 60 of 2000 s. 3*)
  - (iii) a person or institution concerned with education or scientific research, if the substance is required for the purposes of that education or research.

[*cf. 1933 c. 25 s. 20 U.K.*]

### 33. Offences

- (1) Any person who contravenes section 21, 23, 26, 27, 28 or 28A shall be guilty of an offence. (*Amended 2 of 2015 s. 28*)
- (2) In the case of proceedings against a person under this Ordinance for or in connection with the sale, exposure for sale or supply of a poison effected by an employee—
  - (a) it shall not be a defence that the employee acted without the authority of the employer; and
  - (b) any material fact known to the employee shall be deemed to have been known to the employer.
- (3) Notwithstanding any provision in any Ordinance prescribing the period within which summary proceedings may be commenced, proceedings for an offence under this Ordinance may be commenced at any time within the period of 12 months next after the date of the commission of the offence.

[*cf. 1933 c. 25 s. 24 U.K.*]

**34. Penalty**

Any person who is guilty of an offence under this Ordinance shall, unless a penalty is otherwise expressly provided, be liable on conviction to a fine at level 6 and to imprisonment for 2 years.

*(Amended 31 of 1972 s. 7; 84 of 1992 s. 11; 68 of 1995 s. 32; 2 of 2015 s. 29)*

*[cf. 1933 c. 25 s. 24 U.K.]*

**34A. Recovery of costs and expenses of collecting or analysing poisons or pharmaceutical products etc.**

- (1) If a person is convicted of an offence under this Ordinance, the court may order the person to pay to the Government the sum the court considers appropriate for the costs and expenses reasonably incurred by the Government in relation to the collection, analysis or examination of a poison, pharmaceutical product or any other substance for the purpose of the criminal proceedings.
- (2) A sum ordered to be paid under subsection (1) is recoverable as a civil debt.
- (3) To avoid doubt, this section does not affect any power conferred on the court under the Costs in Criminal Cases Ordinance (Cap. 492).

*(Added 2 of 2015 s. 30)*

**35. Inspection and enforcement of Ordinance**

- (1) The Chairman may authorize in writing any public officer to be an inspector for the purposes of this Ordinance.
- (2) An inspector authorized under this section shall, for the purpose of enforcing the provisions of this Ordinance, have power— *(Amended 45 of 1975 s. 3)*

- (a) at all reasonable times to enter—
    - (i) any premises which are on the register of premises; and
    - (ii) any premises at which any listed seller of poisons carries on business; and
    - (iii) the premises of a person licensed to sell or supply poisons wholesale on such premises in accordance with regulations made under section 29; and
    - (iv) any premises where the dispensing or manufacturing of pharmaceutical products is carried on;
  - (b) upon the production of his authority as an inspector, at any time to enter and search any place and to stop, board and search any vessel, vehicle, train or aircraft in which he has reason to suspect that an offence under this Ordinance is being or has been committed;
  - (c) in any premises entered pursuant to paragraph (b), to seize and detain any article, document or thing which appears to him to be or to contain evidence of an offence against this Ordinance;
  - (d) to make such examination and inquiry and to do such other things, including the taking, on payment therefor, of samples, as may be necessary for the purposes of the inspection;
  - (e) to seize and detain any substance or article consisting of or containing any poison which he has reasonable cause to suspect is in the possession of any person in contravention of section 23.
- (3) Any person who wilfully delays or obstructs an inspector in the exercise of any powers under this section, or refuses to allow any sample to be taken in accordance with this section,

or fails without reasonable excuse to give any information which he is duly required under this section to give shall be guilty of an offence.

- (4) Any person appearing to an inspector to be in charge of premises where a business which includes the sale of poisons is conducted shall be guilty of an offence if, without reasonable excuse, he fails to disclose particulars sufficient to identify the owner of the business upon being required so to do by the inspector.
- (5) Nothing in this section shall authorize an inspector appointed under this Ordinance to enter or inspect the premises of a registered medical practitioner, a registered dentist or a registered veterinary surgeon, other than those premises where the dispensing, manufacturing or compounding of pharmaceutical products is carried on. (*Amended 96 of 1997 s. 43*)

[*cf. 1933 c. 25 s. 25 U.K.*]

### **36. Forfeiture**

- (1) Any magistrate may, on application by the Government, order to be forfeited any pharmaceutical product or medicine or any substance or article consisting of or containing any poison with respect to which any offence under this Ordinance has been committed, whether any person has been convicted of such offence or not, and upon the making of any order of forfeiture such substance or article shall be deemed to be the property of the Government free from all rights of any person. (*Amended 58 of 1986 s. 11; 60 of 2000 s. 3*)
- (2) In any proceedings on application under subsection (1), any statement or other indication of the nature of any substance or article written upon or attached to any substance, article or container shall, until the contrary is proved, be deemed to be

a true description of the substance or article or of the contents of the container, as the case may be.

**37. Ordinance not to apply to Chinese herbal medicines and proprietary Chinese medicines, etc.**

- (1) Subject to subsection (2), nothing in this Ordinance shall apply to the sale, manufacturing, dispensing or compounding of Chinese herbal medicines or proprietary Chinese medicines as defined in section 2 of the Chinese Medicine Ordinance (Cap. 549) or other materials of herbal, animal or mineral origin customarily used by the Chinese for medicinal purpose.
- (2) Notwithstanding subsection (1), this Ordinance shall apply to pharmaceutical products containing any such Chinese herbal medicines or proprietary Chinese medicines or other materials of herbal, animal or mineral origin customarily used by the Chinese for medicinal purpose as active ingredients.

*(Replaced 47 of 1999 s. 163)*