

On the Self-discipline Supervision of the TCM Health Care Industry Association

GAO Chenhui

(Law school China University of Political Science and Law, Beijing 100088, China)

Abstract: *The theoretical basis of self-regulation of industry associations lies in the theory of limited government and industry autonomy. The government is not omnipotent and all-round. It is more appropriate for industry associations to exercise autonomy in some matters in the TCM health care industry. To improve the self-regulation of industry associations, it is necessary to focus the macro and micro levels. At the macro level, the division of regulatory authority for the TCM health care industry should follow the principles of self-regulation priority, appropriate administrative supervision, and regulatory benefits; at the micro level, the TCM health care industry bad practice record mechanism should be established under the responsibility of industry associations. It is a civil legal act in nature and an integral part of the construction of a credit system in the TCM health care industry.*

Keywords: *Chinese medicine health care industry; self-regulation by industry associations; regulatory authority; bad practice record mechanism*

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I. STATEMENT OF PROBLEM

At the legal level, the Law on Traditional Chinese Medicine points out that it is necessary to “develop traditional Chinese medicine health care services and support social forces to establish standardized Chinese medical health care institutions”. This is the first time that traditional Chinese medicine health care services have been written into the law. At the policy level, the “Opinions of the Central Committee of the Communist Party of China and the State Council on Promoting the Inheritance, Innovation and Development of Traditional Chinese Medicine” emphasizes that “vigorously popularize the knowledge of traditional Chinese medicine health care and health maintenance methods such as Tai Chi and Health Qigong (such as Baduan Jin), and promote the concept of TCM treatment of disease prevention. “Healthy Work and Lifestyle”, “Outline of the Strategic Plan for the Development of Traditional Chinese Medicine (2016-2030)” pointed out that it is necessary to “accelerate the construction of the TCM health care service system” and “enhance the ability of TCM health care services”, which has made important contributions to the development of TCM health care services. The principled regulations provide policy support for the development of the TCM health care industry. At the social level, with the rapid development of economy and society, the public’s concept of health care has become stronger and stronger. With the inheritance and development of Chinese medicine, Chinese medicine health care services have become more and more popular among the public. However, there are also some problems in the development of the TCM health care industry itself, such as uneven qualifications of practitioners, lack of uniform standards for service items, and lack of effective rectification of the industry environment. In general, while the TCM health care industry is booming, it is also facing some problems that need to be resolved.

The “Traditional Chinese Medicine Law” does not provide clear and specific regulations on the supervision of the TCM health care industry. At this stage, the administrative supervision of the TCM health care industry is in a leading position, and the self-regulation of industry associations has not yet attracted attention. In fact, as an important part of social organizations, industry associations have dual attributes of rights and powers. The attributes of rights are aimed at the country. The industry associations enjoy some rights. The country must not infringe the rights of the industry associations. At the same time, it is obliged to protect some of the industry associations’ rights. The power attribute is aimed at the members of the association. Joining an industry association means that the members of the association need to accept a certain degree of self-regulation by the industry association. “The regulatory system is based on the market economy and pays attention to respect for the liberal approach.”[1] The self-regulation of industry associations conforms to the liberal concept and fully embodies the self-discipline and agreement between civil entities. The “Decision of the Central Committee of the Communist Party of China on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law” states that it is necessary to “support industry associations, chambers of commerce, and social organizations to exert industry self-discipline and professional service functions”, and emphasize the role of industry organizations to develop and improve industry association self-discipline supervision for the health preservation of Chinese medicine. The supervision of the health care industry is of great significance. In view of this, this

article will research the supervision of the TCM health care industry based on the self-regulation of industry associations.

II. THE THEORETICAL BASIS FOR THE INTRODUCTION OF SELF-REGULATORY SUPERVISION OF TRADE ASSOCIATIONS INTO THE HEALTH CARE INDUSTRY OF CHINESE MEDICINE

The “Guiding Opinions of the State Administration of Traditional Chinese Medicine on Promoting the Development of Traditional Chinese Medicine Health Care Services” issued by the State Administration of Traditional Chinese Medicine pointed out that “Chinese medicine health care services are using traditional Chinese medicine (ethnic medicine) concepts, methods and technologies to carry out physical and mental health care, prevent diseases, improve physical fitness, and promote health activities, including related services provided by non-medical institutions and medical institutions.” This definition is representative. Combined with this definition, it can be seen that the TCM health care industry refers to TCM health care institutions and their employees. An industry that protects the health of the public and promotes the culture of Chinese medicine by providing traditional Chinese medicine health care services. In terms of nature, the TCM health care industry is a service industry, but compared with ordinary service industries, there are three differences: First, the service items are more closely related to the life and health of the public and have greater risks; second, compared with other services, the effect is mainly dependent on subjective feelings, which is difficult to quantify; third, the public is more enthusiastic and more sensitive to TCM health care services. According to the “Approval on the Supervision of Traditional Chinese Medicine in the Special Action against Illegal Practice of Medicine” issued by the State Administration of Traditional Chinese Medicine and the former National Health and Family Planning Commission, “Chinese medicine diagnosis and treatment activities are for the purpose of disease diagnosis and treatment, and are guided by the theory of Chinese medicine. Through various examinations, the use of drugs, technology, equipment, and surgery to make judgments on diseases, eliminate them, relieve the condition, relieve pain, improve functions, prolong life, and help patients restore their health.” The concepts of TCM diagnosis and treatment activities and TCM health care services are similar, but their nature is very different. TCM health care services emphasize disease prevention and health promotion, while TCM diagnosis and treatment activities emphasize diagnosis and treatment. At the same time, there are obvious differences.

Self-regulation of trade associations means that trade associations are the main body and regulate and supervise the business activities of members of the association. The TCM Health Care Industry Association is a social organization in nature, and the self-regulatory basis of the industry association is that the TCM Health Care Industry Association has the power of autonomy. The autonomy of the trade association refers to the right of the trade association to formulate rules based on the authorization of the members of the association and enforce these rules within the scope of the authorization of its members. [2] The basis for the self-regulation of industry associations mainly comes from the following two aspects: First, the clear provisions of national laws, which are mostly abstract and principled. For example, in accordance with the relevant provisions of Article 9 of the Food Safety Law, food industry associations should strengthen industry self-discipline and be responsible for matters in certain areas of the industry. Second, the normative basis formed by the industry association through the association's articles of association, association specifications and other documents. As a result, not only can the abstract and principled provisions of the law be implemented, but also the members of the association can surrender their rights so that the industry association can exercise self-regulation over all members. The self-regulation of trade associations has a sufficient theoretical basis. At the same time, with the development of social practice, self-regulation of trade associations has been practiced in many fields. The introduction of self-regulation of trade associations in the TCM health care industry is justified.

(1) Limited government theory

The limited government theory believes that the government's ability is limited, and there are areas where the government's ability is inferior. The objective limitation of government's ability requires the government to do something, which constitutes the objective boundary of government power. [3] In recent years, my country has gradually promoted the transition from “omnipotent government” to “limited government”. While playing the role of administrative supervision, it also pays attention to the role of industry associations, the public and other subjects. The subject of supervision has changed from unity to Diversity. The government is not omnipotent, and administrative supervision is not omnipotent. In some areas of the TCM health care industry, administrative supervision is difficult to play an effective role, or administrative supervision is not suitable for intervention. Self-regulation by industry associations should be introduced, for example, the establishment of a bad practice record mechanism. The responsibility of industry associations can not only reduce the cost of administrative supervision, but also help members of the association consciously abide by relevant regulations. The limited government theory is not to deny the rationality of administrative supervision, but to demonstrate the necessity of introducing self-regulatory supervision of trade associations into the TCM health care industry

through the government's limitedness. "Groups of related parties to associations dominated by industries, but they are obviously non-governmental." [4] In addition, the limited government theory helps to clarify the principles of the division of two types of regulatory powers at the macro level, and then clarify administrative supervision and industry. The associations self-regulate their respective regulatory scopes.

(2) Industry Autonomy Theory

Industry autonomy has a constitutional basis. The right to freedom of association is a basic right of citizens. Citizens can establish industry associations by exercising their right to freedom of association, thereby realizing autonomy within the industry. [5] Market regulation is not omnipotent, and there is a risk of market failure; in order to compensate for market failure, government intervention has gradually emerged, but government macro-control is not omnipotent, and there is also the risk of government failure. At this time, the industry autonomy can play a role. To a positive effect. The foundation for the existence and development of industry associations is the industry autonomy of the member companies. The member companies jointly form the industry association and transfer part of their autonomy to the industry association. The industry association thus obtains the transfer rights of the member companies and obtains its autonomy. [6] The TCM health care industry is in a stage of vigorous development, and its healthy and long-term development is inseparable from industry autonomy. The introduction of industry association self-regulation is not only a requirement of modern democratic politics, but also a need to protect the rights of industry operators. The TCM health care industry association should formulate its own charter based on the specific conditions of the industry. The formulation of the charter of the association represents the interests of all members of the association, so it is easier to be recognized and accepted by the members of the association, and it is also convenient for the industry association to conduct self-regulatory supervision.

As a collection of the will of the members of the association, the TCM Health Care Industry Association has some unique advantages in self-regulatory supervision: First, the supervision methods are flexible. The basis of administrative supervision is related legal norms. Although legal norms have the advantages of authority and stability, they also have a certain degree of lag and conservativeness. The basis for self-discipline supervision of trade associations is mainly the articles of association, association regulations, etc., which are in nature a contract between civil entities. The TCM health care trade association can stipulate some flexible supervision methods according to the particularity of the industry and special circumstances, such as bad practice recording mechanism, evaluation, and recognition, etc. When the behavior of the business operator does not constitute an illegal crime, but has the risk of harming the society, the industry association can effectively supervise it in accordance with the rules and regulations of the association. [7] Second, the efficiency of supervision is higher. Administrative supervision must strictly follow the basic principles such as the principle of proportionality and the principle of due process. This fully reflects the concept of governing the country by law. In order to ensure fairness and justice to the greatest extent, efficiency may be affected in some cases. The basis for the self-discipline supervision of the TCM health care industry association is mainly based on the association's constitution and the association's regulations. These documents fully reflect the democratic nature and have a certain morality. They are more easily recognized and accepted by the members of the association. In contrast, the efficiency of supervision is relatively high. Third, the cost of supervision is relatively low. The TCM health care industry association is professional. Whether it is the industry association itself or the staff of the industry association, they have a better understanding of the development of the industry, existing problems, and hidden dangers. In terms of information acquisition, the TCM Health Care Industry Association can obtain business information of TCM health care institutions in a more timely and effective manner, which can not only prevent some problems, but also easily detect violations of laws and regulations by members of the association, and reduce supervision costs.

III. THE INTRODUCTION AND EXPERIENCE OF SELF-REGULATION OF FOREIGN TRADE ASSOCIATIONS

In recent years, the self-regulation of industry associations has received more and more attention. There are mature and perfect practices in some countries and regions. The self-regulation of industry associations in other countries and regions may provide us with some useful thinking. In view of this, the author will analyze its reference to my country based on a brief introduction to the self-regulation of American and German industry associations.

(1) U.S. Industry Association Self-Regulation

The United States, as a representative of the Anglo-American law system, has a relatively small number of laws. This is also true in the field of industry associations. The United States does not have a special law to regulate industry associations. "Because people generally think that the establishment of social organizations is a natural power, not a special right granted by the government. Therefore, the establishment of social organizations is very natural." [8] Most industry associations in the United States are formed spontaneously by the market, but in

some fields, The emergence of industry associations has a close relationship with the government, such as the National Coal Association and the American Railroad Association in the United States. The government played an important role in their establishment. [9] It should be pointed out that even though the government has played a role in the establishment of the industry association, when the industry association is established, it has greater autonomy, the government will not interfere with the normal work of the industry association, and the industry association is more independent. The self-regulation of industry associations in the United States has generally gone through two stages. The first stage is from the 1930s to the 1970s, when excessive de-administration led to the weakening of the industry association's autonomy; the second stage is from the 1970s to the present. The autonomy of industry associations and the government's macro-control have formed a positive interaction. The self-regulation of trade associations focuses on prevention. Taking the autonomy of the American Bar Association as an example, trade associations can take soft measures such as public criticism and cancellation of membership for members who violate the articles of association, but they cannot take some rigid measures enforced by law. [10] In fact, the administrative agencies in the United States will give greater support to industry associations, and even leave some matters to the industry associations for autonomy, such as the formulation of standards, to reduce the pressure of administrative supervision, improve the ability of industry associations to self-regulate, and realize the benign interaction between administrative supervision and self-regulation of industry associations.

The self-regulatory supervision of the American industry associations has at least the following two lessons to be learned from the supervision of the TCM health care industry in my country: First, the administrative agency provides necessary supervision and guidance to the TCM health care industry association. Even if self-regulation has advantages in some areas, it still needs to accept the supervision of administrative agencies to prevent industry associations from harming public interests in order to protect the common interests of all members of the association. [11] It is reasonable for the TCM health care industry association to accept the guidance and supervision of the administrative agency. What needs to be vigilant is the improper interference of the administrative agency in the industry association. The guidance and supervision of the administrative agency should be appropriate and prudent, not administrative. The agency can control the industry association at will. Second, the TCM Health Care Industry Association and the administrative agency support each other. On the one hand, the TCM health care industry association should provide administrative agencies with some of the information they have. The industry associations have advantages in information acquisition and provide some information they have to the administrative agencies to facilitate the administrative agencies to conduct daily inspections and other supervision work. On the other hand, the administrative agency should give the necessary support to the TCM health care industry association and support it to carry out self-regulation. The reason why the American industry association can play a role in many fields is related to the strong support of the government, such as the American Chamber of Commerce and the United States. Manufacturers' associations maintain close contact with the federal government and parliament, and industry associations will mediate when conflicts arise between government and enterprises. [12]

(2) Self-regulation of German industry associations

As a representative of the civil law system in Germany, the existence of industry associations is based on Article 9 of the German Basic Law and the German Civil Code and the Law of Associations. Article 9(1) of the German Basic Law stipulates: "All Germans have equal rights to form a trade association." Similarly, Article 53 of my country's Constitution stipulates: "Citizens of the People's Republic of China have the freedom of speech, publication, assembly, association, procession, and demonstration." Unlike Germany, There is no specific law on industry associations in our country. The legal status of German industry associations is clarified by relevant laws, which is different from American industry associations. German industry associations are less restricted, have good independence and autonomy, and play an important role in some fields, such as the formulation of industry standards. The industry associations are professional. The standards set by them are not only scientific, but also can supervise the members of the association to consciously abide by them, which fully reflects the advantages of self-discipline supervision. In addition, vocational training and other matters of practitioners are also in charge of industry associations. For example, industry associations are responsible for organizing vocational training, organizing examinations for qualification examination, and improving the skills and literacy of practitioners. [13] In general, Germany follows market principles more, and many matters are handed over to industry associations for self-regulatory supervision, and administrative supervision is less involved.

The self-regulatory supervision of German industry associations has at least the following two lessons to be learned from the supervision of my country's TCM health care industry: First, to enhance the independence and autonomy of TCM health care industry associations. Trade associations are not affiliates of administrative organs, nor are they a substitute for administrative organs. As a social organization, trade associations carry out self-regulation and supervision as one of the important contents of social autonomy. The self-regulation of German industry associations has a clear legal basis. Chinese law should clarify the legal status, rights and obligations, and legal responsibilities of the TCM health care industry association, so that industry associations

can better carry out self-regulation. At present, our country has begun to de-administrate the industry associations. The industry associations in the traditional Chinese medicine health care industry are still in the development stage. They need to pay more attention to cultivating their independence and autonomy, so as to better play the role of industry associations in self-regulation and reduce administration and improper intervention by the agency. Second, clarify the respective regulatory scopes of administrative supervision and self-regulation of industry associations, and the scope of self-regulation of TCM health care industry associations should be expanded. German industry associations have extensive autonomy in the training and evaluation of practitioners and standard setting. In contrast to my country's traditional Chinese medicine health care industry, the scope of self-regulation by industry associations is relatively small. In the final analysis, the scope between industry association self-regulation and administrative supervision is unclear. It is necessary to clarify the scope of the two types of supervision.

IV. IMPROVE AND PERFECT THE SELF-REGULATION OF THE INDUSTRY ASSOCIATIONS IN THE TCM HEALTH CARE INDUSTRY

(1) Macro level: clarify the principle of division of supervisory authority

The current law does not provide administrative supervision and self-regulation of industry associations in the respective regulatory scopes of the TCM health care industry. The decision-making power on certain professional issues is either the administrative agency or the social organization. [14] Only by clarifying the respective regulatory scopes of the two types of supervision in the TCM health care industry can they be better targeted and effectively supervised. The division of regulatory authority should follow certain principles, which are abstract and instructive, which is particularly important for us to clarify the scope of the two types of regulation.

The first is the priority principle of self-regulation. When market failures occur, the first thing we think of should be the autonomy of industry associations, rather than immediately resorting to government intervention. When neither the market nor the industry associations can solve it, government macro-control should be carried out. [15] The TCM Health Care Industry Association has close ties with the members of the association, and conducts self-regulation while serving the members of the association. Self-discipline supervision is an important measure for the autonomy of the TCM health care industry. The principle of priority of self-regulation mainly includes two levels of meaning: First, priority in setting. Due to the lack of special laws and regulations in the supervision of the TCM health care industry, the establishment of supervision matters for the TCM health care industry should give priority to whether it can be subject to the self-regulatory supervision of the industry associations, and the matters that cannot or should not be subject to the self-regulatory supervision of the industry associations. Authorities supervise, for example, the training and assessment of practitioners in the traditional Chinese medicine health care industry should be self-regulated by industry associations. Second, exercise priority. Regarding some matters in the TCM health care industry, when both administrative supervision and self-regulatory supervision of industry associations have the right to intervene, self-regulatory supervision of industry associations is in a priority position. Only when industry associations neglect self-regulatory supervision or self-regulatory supervision is invalid, then the administrative agency shall Supervision, for example, should focus on the role of industry associations in daily inspections, rather than administrative inspections by administrative agencies. Adhering to the self-regulation of industry associations is intended to focus on the intrinsic role of market mechanisms and expand the scope of industry associations' self-regulation in the TCM health care industry. This is not only conducive to changing the situation of excessive reliance on administrative supervision, but also in line with the concept of streamlining administration and delegating power.

The second is the principle of appropriate administrative supervision. Adhere to the principle of appropriate administrative supervision, focus on controlling public powers, and prevent administrative agencies from over-regulating the health care industry of traditional Chinese medicine. "In a country under the rule of law, the state's interference in the personal life of citizens is limited to the minimum necessary, and the scope of administrative activities is correspondingly much smaller." [16] The principle of appropriate administrative supervision is based on the balance between supervision and development. To prevent the suppression of the healthy development of the TCM health care industry due to excessive supervision. Administrative supervision is indispensable to the TCM health care industry. What needs to be considered is what level of administrative supervision that we need. The principle of appropriate administrative supervision has two main requirements: First, careful supervision. Administrative supervision should not be excessive. Administrative agencies are required to exercise restraint and prevent repeated supervision and excessive supervision for the sake of private and illegal gains. Second, reasonable supervision. When conducting supervision, administrative agencies need to perform reasonable administration, adhere to objective and fairness, and prevent administrative power from being abused and causing damage to the legitimate rights and interests of administrative counterparts. In addition, the principle of appropriate administrative supervision emphasizes that the administrative agency's supervision of the TCM health care industry association should also be appropriate, to prevent the excessive supervision of the

administrative agency from affecting the self-regulatory effect of the industry association. It needs to be pointed out that the “moderate” of the principle of moderation in administrative supervision is not static, but will make corresponding adjustments with the development of society and economy. Administrative agencies should make corresponding adjustments in a timely manner in accordance with the changes in the TCM health care industry. In the health-preserving and health-care industry that seriously damages citizens’ right to life and health, administrative agencies should increase industry supervision.

The third is the principle of regulatory benefits. There are many factors that need to be considered in the supervision of the TCM health care industry. It is not only necessary to consider factors such as the maintenance of the industry order and the protection of civil rights, but also the cost of investment, possible risks, and other factors. Supervision that only seeks results and ignores benefits is not Optimal supervision. The principle of regulatory benefits pursues efficient and win-win regulation, and avoids duplication of regulation and lack of regulation. Adhering to the principle of regulatory benefits is in line with the concept of cost-benefit law in economics, and can achieve good supervision while saving manpower, material resources, and financial resources. The principle of regulatory benefits mainly has the following two requirements: First, clarify the superior regulatory fields of the two types of supervision. Administrative supervision has an advantageous position in the investigation and punishment of illegal activities in the TCM health care industry, and the protection of consumer rights and interests, while the self-regulation of industry associations has an advantageous position in the prevention of violations of laws and regulations and the establishment of legal business concepts in the TCM health care industry. It is necessary to conduct supervision in the respective superior areas of the two types of supervision to improve their respective supervision efficiency. Second, strengthen the coordination of the two types of supervision. The two types of supervision are not an antagonistic or exclusive relationship, but a benign interactive relationship. Even if one supervisory entity is responsible for supervision matters, the other supervisory entity should provide necessary assistance to strengthen the cooperation between the TCM health care industry association and the administrative agency. Cooperation helps to avoid the occurrence of friction, and is also conducive to the formation of a cooperation and win-win supervision situation, and to improve supervision efficiency.

(2) At the micro level: establishing a bad practice record mechanism

The “Development Plan for Traditional Chinese Medicine Health Services (2015-2020)” clearly stated: “Establish a system of bad practice records, incorporate the integrity management and practice conditions of traditional Chinese medicine health service institutions and their practitioners into a unified credit information platform, and guide industry self-discipline.” The establishment of a bad practice record mechanism in the TCM health care industry has attracted the attention of the country, but the document does not specify who is responsible for the record and how to record it. The author advocates that industry associations are responsible for the bad practice record mechanism of TCM health care institutions and their practitioners. The bad practice record mechanism is a deterrent for service organizations and their practitioners that violate laws and regulations, and for service organizations and their practitioners that operate in good faith. The bad practice record mechanism in the TCM health care industry is an effective means of self-discipline supervision of the industry association, and the resulting legal relationship between it and the members of the association is in principle a civil legal relationship.

The establishment of a bad practice record mechanism is one of the contents of the construction of the credit system of the TCM health care industry. Some problems in the TCM health care industry are ultimately caused by the lack of integrity. Strengthening the construction of the industry credit system requires service agencies and practitioners to consciously operate with integrity. On the other hand, it is necessary to strengthen industry credit supervision to prevent the phenomenon of “bad money driving out good money”. The theoretical basis of the construction of the industry credit system lies in the principle of good faith. The bad practice record mechanism is a new supervision method. By recording the bad practice behaviors of TCM health care institutions and their practitioners, it will give full play to the role of credit supervision and help to build good faith operations Industry atmosphere.

The establishment of a bad practice record mechanism in the TCM health care industry has the following significance: First, the record function. Recording bad practice is the primary function of the bad practice record mechanism. When bad practice needs to bear related administrative and criminal legal responsibilities, the industry association should report it to the relevant authorities in a timely manner and assist in the legal investigation of service organizations and their practitioners. responsibility. At the same time, recording bad practices can facilitate follow-up supervision and help focus supervision on TCM health care institutions that have problems. Second, the publicity function. By publicizing the bad practice behaviors of TCM health care institutions and their practitioners, the public can be aware of such behaviors and be able to distinguish TCM health care institutions. At the same time, it can play a role as a warning and help other association members to consciously abide by relevant regulations and operate with integrity. The third is to guide and nurture functions. In addition to direct functions such as recording and publicizing, the bad practice record mechanism also has

potential functions such as guidance and cultivation. “In terms of behavioral guidance and self-conscious cultivation, industry self-regulatory organizations have a much larger role space than state agencies, and their actual effects are much more significant.” [17] The bad practice record mechanism can negatively encourage TCM health care institutions and their institutions. Practitioners consciously abide by relevant regulations and guide and cultivate TCM health care institutions and practitioners to operate in good faith. In contrast, the disadvantages threatened when disobeying can play a more important role than the benefits promised when obeying. [18]

An important issue that needs to be clarified in the establishment of a bad practice record mechanism is the standard of bad practice. According to the relevant provisions of Article 2 of the “National Construction Market Registered Practitioners’ Bad Behavior Record Identification Standard (Trial)”, “bad behavior refers to bad behavior that violates relevant laws, regulations, and departmental rules and is subject to administrative penalties.” Therefore, the standard for identifying bad behavior records of registered market practitioners is that they violate relevant laws and regulations and are subject to administrative penalties. Both requirements are indispensable. The bad practice record mechanism that should be established in the TCM health care industry is the responsibility of the industry association, which is more flexible. The author recommends to clarify the components of bad practice behaviors in the TCM health care industry as follows: One is TCM health care organization and its employees violated relevant regulations. The relevant regulations of the TCM health care industry include three categories, all of which should be recorded, including violations of relevant laws and regulations, violations of ethics, and violations of association regulations. The second is the occurrence of damage consequences. Including, but not limited to, damage to the legitimate rights and interests of consumers, adverse effects on the reputation of the industry, etc. The occurrence of damage consequences means that the behavior is harmful and needs to be recorded. If no damage consequences have occurred, the service organization and its employees only violate relevant regulations, and the industry association can criticize and educate them, and there is no need to conduct bad practice records.

The establishment of a bad practice record mechanism in the traditional Chinese medicine health care industry needs to focus on the following procedures: First, find bad practice behaviors. Industry associations should strengthen self-discipline and supervision, and promptly discover bad practices of service organizations and their employees. At the same time, industry associations should encourage members of the association and the public to actively report, and can set certain bonuses to motivate this and stimulate other entities to discover enthusiasm to report bad practice. Second, record bad practice behaviors. The record of bad practice is permanent, and the industry association shall record bad practice in time and keep it properly. In addition, industry associations should promptly notify administrative agencies of the relevant circumstances of bad practice records, so that the administrative agencies can be informed of industry information in a timely manner, and strengthen the collaboration between administrative supervision and self-regulatory supervision of industry associations. Third, publicize bad practice behaviors. Publicity includes not only internal publicity, but also external publicity. Industry associations should inform other members of the association and the public through appropriate means, on the one hand, to alert other members of the association, on the other hand, to protect the public’s right to know. Market supervision aims to ensure that information is paired, and emphasizes the importance of publicity and explanation. [19] Industry associations can publicize bad practices through the association's official website and the association's office area. It should be noted that public information should not harm the legitimate rights and interests of relevant subjects, such as privacy rights and reputation rights. Finally, strengthen follow-up key supervision. Recording and publicizing bad practice does not mean the end of the procedure. TCM health care institutions and practitioners with bad practice records mean that their business activities are at greater risk. Not only should industry associations increase the proportion and frequency of spot checks, administrative Authorities should also conduct key supervision over them.

V. CONCLUSION

In recent years, the Chinese government has continued to transform to a service-oriented government. The self-regulation of industry associations conforms to the concept of streamlining administration and decentralization. By giving play to the role of industry associations’ autonomy, the pressure on administrative supervision can be reduced, and good supervision results can be achieved while reducing supervision cost. To perfect the supervision of the TCM health care industry requires equal emphasis on administrative supervision and self-regulation of industry associations, adhere to the self-regulation of industry associations as the basis and supplementary administrative supervision, and strive to overcome market failures and government failures in order to give full play to the functional advantages of the two types of supervision. Administrative agencies should respect industry autonomy, and industry associations should conduct self-discipline supervision with an independent and autonomous identity. At the same time, administrative agencies and industry associations should strengthen cooperation and work together to supervise the TCM health care industry. Regarding the subject of supervision, the legal status of the industry association’s self-regulation should be clarified through local

regulations or departmental rules, and the relationship between the industry association and the administrative agency should be clarified. That is, the industry association should accept the guidance and supervision of the administrative agency, but the administrative agency must intervene in the industry association. Regarding supervision methods, it is necessary to innovate supervision methods and establish a bad practice record mechanism under the responsibility of trade associations. As a means of self-regulation by trade associations, it is a civil legal act in nature. As one of the contents of the industry's credit system construction, the bad practice record mechanism has record, publicize, guide, cultivate and other functions.

NOTES:

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