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FIGHT BETWEEN SECRET OF TRADITIONAL CHINESE MEDICINE PRESCRIPTIONS AND RIGHT TO KNOW

Man Teng Iong*

Abstract: Different from the conventional medicine, the secret Traditional Chinese Medicine (TCM) prescriptions play an important role in China for the reputation and profits of TCM doctors and TCM producing enterprises. The Chinese Law attributes these doctors and enterprises a right to keep those prescriptions secret from the public. In contrast, the Chinese Law confers to patients a right to know the content of those secret prescriptions. This paper intends to reveal ways to harmonize the conflict between these laws.

Despite their duty to disclose all of the ingredients, we suggest that TCM doctors do not need to disclose all of the ingredients of their secret prescriptions or are not required to reveal the dose of each of the ingredients

Keywords: Traditional Chinese Medicine Prescriptions; Trade Secrets; Intellectual Property Right; Duty to Inform; Right to Know; Informed Consent; China.

1. INTRODUCTION

In the Chinese legal framework, on the one hand, the secret of TCM prescriptions can be protected by the Regulations on Protection of Traditional Chinese Medicines and the Law Against Unfair Competition of the People's Republic of China (PRC). On the other hand, patients have the right to know the content of those secret prescriptions on the basis of the Measures for the Administration of Prescriptions. Therefore, we can find an existing conflict between the right to keep TCM prescriptions secret from the public and the right to know of patients. This paper aims at suggesting solutions to harmonize both rights.

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In the first place, this paper discusses why the secret of TCM prescriptions need to be protected according to the Chinese laws and what legal documents can protect the abovementioned secrecy. We also discuss that, even though the secret TCM prescriptions can be patentable, the Chinese patent law cannot protect the secret of TCM prescriptions as it requires a disclosure of their content before obtaining the patent. In the second section, this paper analyses that, although the lack of a legal standard about the ambit of duty to inform and divergences between the Chinese authors, TCM doctors have the duty to inform the drug name and dose of their prescriptions under the Chinese law. Finally, this paper shows the existing conflict between a right to keep TCM prescriptions secret from the public and a right to know of patients and suggests solutions for harmonizing the conflict.

For harmonization of both rights, this paper suggests that TCM doctors do not need to disclose all of the ingredients of their secret prescriptions or, even with the necessary demonstration of all ingredients, they do not need to manifest the dose of each ingredient.

2. SECRET OF TRADITIONAL CHINESE MEDICINE PRESCRIPTIONS

2.1. Necessity of Protection

First of all, we need to confirm the necessity of protecting the secret of TCM under the Chinese laws; otherwise there might be no conflict with the right to know for patients.

Some phenomena, which influence TCM doctors and TCM producing enterprises or patients, urge us on necessary protection of the secret of TCM according to the Chinese laws.

The first phenomenon relates to the use of conservative treatments. In some cases, TCM is handed down from generation to generation and considered as home secret recipes, which can create huge profits and good reputation to their owners. If the Chinese legal framework requires fulfilment of duty to inform by revealing those secret recipes to patients, TCM doctors will have liability in case of infringement even where there is no damage caused to patients. To avoid the liability and disclosure of those secret recipes, TCM doctors normally use more conservative treatments against the patients conditions,¹ - treatments that usually are not more effective than the secret recipes and

1 Zhang & Mang 2012, p. 34-36.

can delay much more time to cure the existing diseases. In this phenomenon, the final victim must be the patients, who sometimes pay more money for the conservative treatments.

Another phenomenon refers to the barrier of TCM development and progress. If TCM doctors or TCM producing enterprises are obliged to reveal their secret recipes for respecting the patient's informed consent, they will be less inclined to create new TCM prescriptions and techniques given the lack of economic benefits and competitive advantage in the profession.²

In addition, a further phenomenon relates to misappropriation of TCM prescriptions without any authorization. Sometimes the secret prescriptions are divulged not only to patients, but also to local or international merchants and companies, who use those prescriptions for greater profits and to limit the original owner to use them through the intellectual property law.³ Nowadays, it is frequent and usual for someone to copy the secret prescription of another.⁴ It is also normal for someone, who has obtained the secret prescription content, to increase or reduce the prescription quantity or elements and apply this so-called 'new secret prescription' for a patent against the original owner.⁵

Hence, phenomena exist to urge us to defend the necessary protection of the secret of TCM under the Chinese laws. In consequence, it is important to know how the Chinese laws protect the secret of TCM.

2.2. Regulations on Protection of Traditional Chinese Medicines⁶

These Regulations, whose object is the types of TCM produced and manufactured in the Chinese region, are intended to improve the quality of types of TCM, protect the legitimate rights and interests of TCM producing enterprises, and boost the development of TCM. The protection of legitimate rights and interests of TCM producing enterprises aims at protecting the secret of TCM,⁷ in addition to the protection of other rights and interests of TCM producing enterprises.

2 *Id.*

3 *Id.*, p. 35-36.

4 Shi & Wen 2017, p. 70-71.

5 Yang, Qian & Su 2009, p. 45.

6 Promulgated by Decree No. 106 of the State Council of the PRC on 14 October 1992, and effective as of 1 January 1993, available at <http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn336en.pdf> (accessed on 3 December 2017).

7 Articles 1 and 2 of Regulations on Protection of Traditional Chinese Medicines.

According to this legal document, the prescriptions and pharmaceutical techniques of types of TCM under first class protection shall be kept secret and cannot be published; otherwise the ones who do not respect this regulation will be imposed with disciplinary sanctions and with crime which has been constituted according to laws.⁸ In addition, the prescriptions and pharmaceutical techniques of types of TCM under first class protection belong to technical secrets, for which these Regulations provide an administrative protection.⁹

2.3. Law Against Unfair Competition¹⁰

Exactly as the Regulations on Protection of Traditional Chinese Medicines, this Law includes the right to trade secrets and is also intended to protect the rights and interests of business operators¹¹.

In terms of this Law, trade secrets shall not be infringed by: (1) unfair means such as stealing, luring, and intimidation; (2) disclosing, using, or allowing others to use the trade secrets obtained by unfair means mentioned above; (3) disclosing, using, or allowing others to use the trade secrets in violation of the agreement or against the right holder's demand for keeping trade secrets.¹²

Nonetheless, we need to know if the secrets of TCM prescriptions (as technical secrets mentioned above) can be considered as 'trade secrets' defined in this Law, which refers to 'any technology information or business operation information which is unknown to the public, can bring about economic benefits to the obligee, and has practical utility about which the obligee has adopted secret-keeping measures'. In accordance with this definition, the secrets of TCM prescriptions only correspond with 'trade secrets' while having the following three requisites: (1) secret nature; (2) economic nature; (3) practical utility.

8 Articles 13 and 22 of Regulations on Protection of Traditional Chinese Medicines.

9 Wei (2005), p. 66.

10 Adopted by the Third Session of the Standing Committee of the Eighth National People's Congress on 2 September 1993 and came into force on 1 December 1993, available at: <http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn011en.pdf> (accessed on 3 December 2017).

However, this law was revised and adopted at the 30th Session of the Standing Committee of the Twelfth National People's Congress of the People's Republic of China on 4 November 2017 and will come into force on 1 January 2018, available at: [http://www.qbpc.org.cn/inc/uploads/ckeditor/s%20Republic%20of%20China\(1\).pdf](http://www.qbpc.org.cn/inc/uploads/ckeditor/s%20Republic%20of%20China(1).pdf) (accessed on 3 December 2017).

11 Article 1 of the Law of the PRC Against Unfair Competition.

12 Article 10 of the Law of the PRC Against Unfair Competition.

Regarding the secrecy, it implies that the public cannot easily and directly obtain commercial information. Therefore, TCM prescriptions are secret when they are not known to the public. No one doubts the secret nature of those prescriptions given that they can be kept secret from the public. Even though some TCM prescriptions are disclosed, their combination, preparation, and matching proportion are shielded by their right holders and are unknown to the public.¹³

On the other hand, the economic nature means that the trade secret, through the current or future use, can give its right holder current and potential economic profits, competitive advantage, and reputation among other benefits.¹⁴ This is the reason why their right holders undertake all efforts to keep their secret prescriptions unknown to the public. It is easy to understand that many patients find these miracle-working TCM doctors who hold the secret TCM prescriptions if the mentioned prescriptions are very effective for the treatment of their diseases. Thus, there is no doubt that the right holders of the secret TCM prescriptions have huge loss in cases of disclosure of their secret prescriptions.

Lastly, the practical utility refers to the trade secret's definite applicability with real production and business activities, meet certain social needs, or produce a positive social effect.¹⁵ No one doubts the practical utility of TCM as it has therapeutic efficacy, which in some cases is better than the efficacy of conventional medicine. In spite of the long-time treatment of TCM, it cures the diseases, not the symptoms, when the contrary situation occurs in the conventional medicine.¹⁶

In accordance with above, we conclude that the secrets of TCM prescriptions (as technical secrets) refer to the 'trade secrets' regulated in this Law. For that reason, there is an imposition of a fine from 10,000 yuan to 200,000 if someone does not respect or infringes upon the secrets of TCM prescriptions¹⁷, implying an administrative protection.

2.4. Patent Law Protection?

The Patent Law of the PRC was adopted at the 4th Meeting of the Standing Committee of the Sixth National People's Congress on 12 March 1984 and

13 Liu (2011), p. 77.

14 Liu (2011), p. 24.

15 *Id.*, p. 25.

16 Liu (2011), p. 77.

17 Article 25 of the Law of the PRC Against Unfair Competition.

amended three times, respectively on 4th September 1992, 25th August 2000, and 27th December 2008. In order to join the World Trade Organization (WTO), China was trying various and effective ways coinciding with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to protect traditional medicine investors¹⁸ and, finally, has been a member of WTO since 11th December 2001.

From 2002 to the present, China has released various development plans for implementation of the national intellectual property strategy. The recent one¹⁹ was launched on 13 January 2017, which is intended to improve the patent law in the ambit of TCM and to strengthen the protection of TCM by creating a complex protection system and a protection list for traditional knowledge, in addition to other purposes.

However, even as China pushes to protect the TCM knowledge and some phenomena urge us to defend secret TCM prescriptions through the Chinese laws, we are facing another problem: can the secret TCM prescriptions meet the three criteria – novelty, creativeness, and practical applicability – to be considered as intellectual property and be patentable, according to the current Patent Law of the PRC?

Under the Patent Law of the PRC, there are three types of invention-creation for which the patent rights are to be granted: inventions, utility models, and design.²⁰ As the objects of patent law protection in traditional medicine include pharmaceutical products, methods, and usage,²¹ inventions and utility models are the types to which we should pay attention. They relate to new technical solutions, respectively, to ‘a product, a process or improvement’²² and to ‘the shape, the structure, or their combination, of a product, which is fit for practical use’.²³ To put it simply, TCM prescriptions can be either inventions or utility models, which should have novelty, creativeness, and practical use.²⁴

18 World Health Organization 2000, p. 22.

19 Available at http://www.gov.cn/zhengce/content/2017-01/13/content_5159483.htm (accessed on 5 December 2017). This is not a proper way to cite this policy.

20 Rule 2 of the Implementing Regulations of the Patent Law of the People’s Republic of China, available at http://english.sipo.gov.cn/laws/lawsregulations/200804/t20080416_380326.html (accessed on 7 August 2017).

21 World Health Organization 2000, p. 22.

22 Rule 2 of the Implementing Regulations of the Patent Law of the People’s Republic of China.

23 *Id.*

24 Article 22 of the Patent Law of the PRC, available at http://english.sipo.gov.cn/laws/lawsregulations/201101/t20110119_566244.html (accessed on 7 August 2017).

In the context of TCM, the novelty and creativeness of secret recipes have been the most questioned and criticised by many authors, given the similar composition of the secret recipes with the Chinese ancient prescriptions or because of the small change dose in one of the ingredients of the known TCM prescriptions.²⁵

On the basis of the Patent Law of the PRC, '[n]ovelty means that the invention or utility model is not an existing technology, and prior to the date of application, no entity or individual has filed an application heretofore with the patent administrative department of the State Council for the identical invention or utility model and recorded it in the patent application documents or patent documents released after the said date of application.'²⁶ The term 'existing technology' mentioned in this legal norm refers to the 'technologies known to the general public both at home and abroad prior to the date of application'.²⁷ In other words, the Patent Law of the PRC is based on the 'principle of exact equivalence of technological solution' to confirm the novel nature and principle which means that the technological solution is not novel when it is the same with the existing technology before the application date.²⁸

No one doubts that the Chinese ancient prescriptions in the ancient medical texts²⁹ for many years are not novel as they have been publicly revealed in China. If the owners can successfully keep the TCM prescriptions secret from the public, they are still novel even if they have been used or traded.³⁰

According to the same law, '[i]nventiveness means that, as compared with the technology existing before the date of application the invention has prominent substantive features and represents a notable progress and that the utility model has substantive features and represents progress.'³¹ From this definition we can know that the inventiveness of TCM prescription depends on two requisites: (prominent) substantive features and (notable) progress. The prominent

25 Shi & Wen 2017, p. 70.

26 Article 22 of the Patent Law of the PRC. In detail, see also Guidelines for Patent Examination (2010), Part II, Chapter 3, available at <http://www.sipo.gov.cn/zhfwpt/zlsqzn/sczn2010eng.pdf> (accessed on 14th August 2017).

27 Id.

28 Fang, Hou & Li 2008, p. 786.

29 For example, the most famous ones are *Huangdi Neijing* (黄帝内经), *Bencao Gangmu* (本草纲目), *Shennong Bencaojing* (神农本草经), *Shanghan Zabing Lun* (伤寒杂病论).

30 Chen 2013, p. 91-92.

31 Article 22 of the Patent Law of the PRC. In detail, see also Guidelines for Patent Examination (2010), Part II, Chapter 4, 2.2.

substantive features mean that, considering the prior art, the invention is non-obvious to a person skilled in the art. Namely, the invention cannot be obtained just by logical analysis, inference, or limited experimentation based on the prior art.³² On the other hand, the notable progress refers to production of advantageous technical effect of invention comparing with the prior art (for example, overcoming the defects and deficiencies in the existing technology, providing a different solution to settle a certain problem, standing for a new trend of development, etc.).³³

As we know, the TCM prescriptions can be single herb prescriptions or multiple herb prescriptions, which are respectively called *danfang* and *fufang* in Chinese, with the latter more commonly used than the former.³⁴ It is easy to understand that single herb prescriptions, which have only one ingredient, do not have inventive nature as they certainly are not non-obvious to the existing ones and do not represent any notable progress. Despite this, we can recognize its inventiveness when its production process and method have been improved.³⁵

Nevertheless, it is more complicated when we analyse the inventiveness of multiple herb prescriptions. Some authors understand that, before the date of application and comparing with the existing TCM prescriptions, if a TCM prescription is new and created by its owner, its inventive nature can be recognized.³⁶ However, this understanding is not completely correct given it does not mean that the new TCM prescription has a notable progress under the Chinese patent law even though it can have prominent substantive features as it is new and non-obvious to the existing TCM prescription.

According to the Chinese patent law, we defend the inventiveness of the home secret receipts as they cannot be obtained easily just by logical analysis, inference, or limited experimentation based on the prior and existing prescriptions, and can produce advantageous technical effect (for example, more effective than the existing ones).

However, some home secret receipts can be made just by addition or reduction of ingredients or ingredient doses of the existing TCM prescriptions. In this situation, can we admit their inventiveness? Some authors give the positive

32 Guidelines for Patent Examination (2010), Part II, Chapter 4, 2.2.

33 *Id.*, Part II, Chapter 4, 2.3.

34 Wang & Chan 2000, p. 1.

35 Yang 2009, p. 132.

36 Shi & Zhang 2014, p. 216.

answer, defending that those home secret receipts have prominent substantive features and represent a notable progress if the progress, such as the change of application position, availability of applying for another disease, significant improvement of healing efficacy, or reduction of the existing toxic and side effects, etc., are non-obvious for technical personnel in the TCM field.³⁷

On the other hand, possessing practical applicability is also one of the necessary requirements for an invention or utility model application being granted a patent right. In accordance with the Patent Law of the PRC, '[p]ractical applicability means that the invention or utility model can be made or used and can produce effective results'.³⁸ The expression 'can be made or used' means that 'it is possible for the technical solution of an invention or utility model to be made or used industrially',³⁹ when the expression "produce effective results" implies that "on the date of filing the application, the economic, technical, or social effects produced by the invention or utility model can be expected by a person skilled in the art... these effects shall be positive and advantageous".⁴⁰

According to the definition mentioned above, the practical applicability of TCM prescriptions only can be confirmed when they can have medical effects and be produced industrially.⁴¹ The practical applicability of TCM prescriptions is the one that many authors do not question, as they normally produce positive and advantageous medical effects without any side or negative effect, as well as can be produced easily in their industry.

On the basis of above, the secret TCM prescriptions can be patentable and protected by the Patent Law of the PRC⁴² as they are the ones which have been kept secret from the public (novelty). The notion of novelty cannot be obtained easily just by logical analysis, inference, or limited experimentation based on the existing TCM prescriptions, have notable progress comparing with the existing ones (inventiveness), and have positive and advantageous medical effects and can be produced industrially (practical applicability).

37 Yang, Qian & Su 2009, p. 46-47.

38 Article 22 of the Patent Law of the PRC. In detail, see also Guidelines for Patent Examination (2010), Part II, Chapter 5.

39 Guidelines for Patent Examination (2010), Part II, Chapter 5, 3.2.

40 *Id.*, Part II, Chapter 5, 2.

41 Fang, Hou & Li 2008, p. 787. Zheng (2003), p. 16.

42 Nevertheless, it does not mean that this law can protect them well. However, this goes beyond the scope of this paper.

Despite the patentability of TCM prescriptions, the right holders need to disclose the content of their secret prescriptions to the public, a prerequisite of obtaining a patent to monopolize the use of the prescriptions over a certain period.⁴³ Thus, if the procedure of obtaining a patent requires a divulgation of the content of the secret TCM prescriptions at the beginning, it is sure that the prescriptions do not have any secrecy. In other words, the Patent Law of the PRC cannot protect the secrecy of TCM prescriptions. This means that, under the Chinese patent law, we cannot see any conflict between the secret of TCM prescriptions and patients' right to know.

3. RIGHT TO KNOW

3.1. Applicability of Informed Consent to Traditional Chinese Medicine

Right to know is a concept relating to informed consent, which requires five elements: disclosure, competency, understanding, voluntariness, and decision.⁴⁴ The element of "disclosure" is the one on which this paper concentrates as it implies a doctor's duty to inform, namely a reverse side of the right to know of patients. In other words, when a legal framework requires a duty to inform of doctors, it simultaneously grants the right to know to patients. We can say that duty to inform is another face of the same coin regarding to the right to know.

As informed consent is a concept created for conventional medicine which is very different from TCM, we may ask if that concept is applicable to TCM. However, even as TCM is very distinct from the conventional medicine in ambit of theories and methods of diagnosis and treatments, one thing should be clear: patients have private autonomy on treatments suggested by doctors, which is a principal demonstration of self-determination regardless of conventional medicine or TCM or any other medicine.

Under the Chinese legal framework – given some legal norms require duty to inform of doctors, such as Article 55 of the Tort Law of the PRC, Article 26 of the Law on Practicing Doctors of the PRC, Article 11 of Regulation on the Handling of Medical Accidents, and Article 33 of Regulation on the Administration of Medical Institutions –, the duty to inform has a legal nature. As those legal documents apply to both conventional medicine and TCM, TCM doctors have also a duty to inform.

43 Pu, Deng & Guo (2014), p. 248.

44 About these elements in detail, see Zhao 2005, p. 13.

3.2. Duty to Inform and Traditional Chinese Medicine Prescriptions

Even though it is clear that TCM doctors have a legal duty to inform under the Chinese legal framework, we need to resolve further questions: what information should they provide to their patients? Does the information include the content of TCM prescriptions?

In the Chinese legal system, we cannot find any standard about the ambit or dimension of duty to inform as the legal norms only provide an exemplary enumeration regarding the information that they should give to their patients.⁴⁵

The Chinese doctrine does not have a unanimous understanding referring to the applicable standard. For example, when one author creates a new standard entitled ‘Medical Service Standard’, a means of verifying if the service provided by doctors and required by patients corresponds to *leges artis* and legal provisions and not focusing on doctors or patients themselves,⁴⁶ another author designs a new standard named ‘Professional and Inquiry Told Standard (the standard of an express specific patient)’, intended for a situation where after conferring the information according to the reasonable physician standard, doctors should also answer in an easy way the questions that patients want to ask.⁴⁷ As a result, Chinese authors have different opinions in this aspect.⁴⁸

In the absence of an applicable and unanimous standard, we can see judicial chaos of judgments regarding the duty to inform of doctors.⁴⁹

Despite the lack of a legal standard and divergences in Chinese doctrine regarding the ambit of the duty to inform, the Chinese law is very clear in terms of the content of prescriptions when it requires a writing of a drug name and dose in a prescription, among others.⁵⁰ As a result, even without a legal standard regulating the ambit of duty to inform, the Chinese law is clear when

45 Deng 2012, p. 65.

46 Yin 2014, p. 202.

47 Deng 2012, p. 66. According to this standard, TCM doctors have duty to inform every information, including the whole content of their secret prescriptions, which their patients want to know.

48 Even with the existing divergences, majority of Chinese authors disagree with application of the traditional standards, such as the ‘Reasonable Physician Standard’, ‘Reasonable Patient Standard’, ‘Subjective Standard’, ‘Reasonable Physician and Subjective Standard’ and ‘Reasonable Patient and Subjective Standard’, by reason of their deficiencies.

49 Deng 2012, p. 65.

50 Article 6, line (4), of Measures for the Administration of Prescriptions, available at <http://en.pkulaw.cn.libezproxy.umac.mo/display.aspx?cgid=89198&lib=law>.

requiring a writing of drug name and dose in prescriptions. In other words, TCM doctors have a duty to inform the content of their TCM prescriptions.

4. CONFLICT AND SOLUTIONS

Incorporating the analysis above, we conclude that on the one hand TCM doctors or TCM producing enterprises have a right to keep their prescriptions secret from the public according to the Regulations on Protection of Traditional Chinese Medicines and the Law Against Unfair Competition of the PRC. Yet on the other hand, patients have a right to know the content of those receipts on the basis of Measures for the Administration of Prescriptions. As a consequence, there is an existing conflict between both rights under the Chinese legal framework.

Facing the mentioned conflict, legislation and jurisprudence can be the formal ways for its solution. However, this paper is intended to provide substantial solutions for the existing conflict, which do not aim at protecting one of the rights and harming the other. Hence, in this paper we suggest solutions which can reconcile both rights.

For protecting both of the rights, we should not simultaneously require TCM doctors or TCM producing enterprises to disclose the content of their secret prescriptions and confer to patients a right to know that content. Consequently, it seems it is impossible to protect both of the rights at the same time. However, TCM doctors need to demonstrate the information that is relevant and impacts their patients' decision⁵¹ and health.

It is sure that if the secret TCM prescriptions are not suitable to clinical situations of certain patients, TCM doctors do not need to mention the existence of those prescriptions. However, if those receipts are suitable for patients and need to be disclosed, we suggest the following ways to protect both the TCM doctors' and patients' rights.

TCM doctors do not need to disclose all of the ingredients of their secret home receipts, but only the ingredients which can cause nonconformity or impact patients' health, such as adverse reactions, side effects, or toxic reactions.⁵² In this context, the secret of TCM prescriptions can be protected by divulging

51 Yang 2012, p. 257.

52 For example, TCM doctors should inform the existence of the ingredient called 'Aconitum Carmichaelii', as it should be boiled or cooked at least 30 to 60 minutes, otherwise it does not produce its therapeutic effect and causes poisoning phenomenon.

only part of the ingredients while the informed consent of patients can also be protected and respected.

However, if TCM doctors need to reveal all of the ingredients of their secret home receipts attending the patients' health, it is not necessary to require them to disclose the dose of each ingredient, because the dose is not important information which can influence the patient's health and decision, except in situations of overdose.⁵³ As the same herbal medicine with different doses can produce different therapeutic effects, the public cannot easily know the content of secret home receipts without the doses. Accordingly, the secret of TCM prescriptions and right to know can be simultaneously protected if TCM doctors do not need to disclose the doses of ingredients of their secret home receipts.

5. CONCLUSION

We concluded an existing conflict between the right to keep TCM prescriptions secret from the public and the right to know the content of the mentioned prescriptions, as the Chinese law protects both parties' rights. Facing the existing conflict, we suggested that TCM doctors do not need to divulgate all of the ingredients of their secret prescriptions, but only inform the patient about the ingredients which can cause nonconformity or impact patient's health. They do not need to show the dose of each ingredient as it is not an important information which can influence the health and decision of patients. These suggestions can harmonize and protect the patients' and TCM doctors' rights.

For the harmonization and protection of both rights, it is very important to resolve the existing conflict through the legislative or jurisprudential way, which can facilitate the judgments of Chinese courts and let the courts judge this type of case in a uniform way.

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53 In this situation, the TCM doctor has a duty to inform the dose as it can influence a patient's health (for example, adverse reactions, side effects or toxic reactions).

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