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By Fax

LETTERHEAD OF Health and Welfare Bureau
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The People's Republic of China

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23 October 1998

Ms Doris Chan
Clerk to Bills Committee
on Human Reproductive Technology Bill
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Chan,

Information requested by the Bills Committee further to the 2nd meeting held on 14 October 1998

In response to your letter dated 15 October 1998 to Mr Gregory Leung of this bureau regarding the captioned, I am pleased to provide you with the following information.

Overseas practices on the system of "checks and balance" featured by the licensee and the person responsible

The Human Fertilisation and Embryology Act 1990 (UK Act) does not require the "licensee" and the "person responsible" to be separate persons. Nevertheless, in response to an enquiry from our Provisional Council on Reproductive Technology, the UK Human Fertilisation and Embryology Authority (HFEA) advised that it was important that the "person responsible" and the "licensee" were not the same person.

The practices differ from state to state in **Australia**. In some states, all individuals involved in reproductive technology (RT) procedures, including clinicians, scientists and counsellors must be licensed. Such kind of monitoring applies to everyone involved in the practice, the spirit underlying which does not deviate much from our legislative intention to introduce a "checks and balance" system within which the "licensee" and the "person responsible" are separate persons.

Types of health care professionals qualified to carry out various RT procedures in other countries

According to the information from HFEA of UK, the "person responsible" at any RT centre is not required to be a clinician although in the vast majority of cases the "person responsible" is a medical practitioner. We are also given to understand that in some centres which carry out in-vitro fertilisation and donor insemination, the "person responsible" may be a hospital manager, a nurse or an embryologist. On the other hand, the "person responsible" in a storage-only-centre is usually a scientist, while that in a research-only-centre, an academic consultant or a scientist.

In **Australia**, generally speaking, where licensing is in place specific qualifications are required. According to the guidelines drawn up by the Reproductive Technology Accreditation Committee which is a self-regulatory body for RT services in Australia and New Zealand, the responsibility for conduct of clinical procedures should be vested in a medical practitioner.

In **USA**, only a medical licence (for general medicine practice) is required for practising RT. On the other hand, some parts of a RT laboratory may fall under the jurisdiction of a federal programme that requires a laboratory director to be in charge. There are no specific requirements for researchers' qualifications.

Overseas practices on the confidentiality of semen donor's identity and the right for people to ascertain whether they were born following a RT procedure and to have access to certain non-identifying information about the donor

In **UK**, a person aged 18 or above who was born through RT procedures has the right to access non-identifying information of the donor contained in a register.

One state in **Australia** requires not only non-identifying information but also identifying information be made available when the child born through RT procedures reaches the age of 18 years old. The rationale behind this is not so much the risk of accidental incest (which is considered to be extremely unlikely), but more the right of people to know of their origins.

Most states in **USA** address only the filial issue of a child born through RT procedures, but not whether a child should have access to donor's information. Some states require that donor's identity be kept confidential, unless specified by court order in case of grave medical importance, and do not establish a right of the child to access the donor's information.

Parent and Child Ordinance (Cap 429)

I attach sections 9 to 12 of Cap 429 for your reference. Essentially, they provide for the meanings of "mother" and "father" where birth or pregnancy results from medical treatment. In short:

- the woman who carries a child as a result of RT procedures is to be regarded as the mother of the child;

- the husband of the above-mentioned woman, or her male partner who together with her, obtains RT treatment services, is to be regarded as the Father of the child. The sperm donor himself is not regarded as the father of the child.

On the other hand, by section 12 of Cap 429, the court may by order provide for a child to be regarded in law as the child of the parties to a marriage, even if the child has been carried by a woman not being the

wife of the concerned marriage. One of the conditions under which the court order may be granted, is that the gametes of the husband or the wife (of the concerned marriage) or both, have been used to bring about the creation of the embryo.

I hope the above information is of use to Members of the Bill Committee.

Yours faithfully,

(Mrs Vicki Kwok)
for Secretary for Health and Welfare

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c.c. Director of Health (Attn: Dr Thomas Chung)
Department of Justice (Attn: Mr Geoffrey Fox
Miss Frances Hui)