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**Proposed section 5 of the  
Human Organ Transplant Ordinance (Cap. 465)**

**PLEASE NOTE :**

- (1) material added to the existing section 5 is underlined; and
- (2) material taken out of the existing section 5 is crossed out.

**5. Restriction on transplants between living persons**

- (1) Subject to subsection (3), a person is guilty of an offence if he -
  - (a) removes from a living person an organ intended to be transplanted into another person; or
  - (b) transplants an organ removed from a living person into another person, unless the person into whom the organ is to be or, as the case may be, is transplanted -
    - (i) is genetically related to the person from whom the organ is removed; or
    - (ii) is, at the time of the transplant and as established by such means as may be prescribed by the board by regulation, the spouse of the

person from whom the organ is removed and the marriage has subsisted for not less than 3 years.

- (2) For the purposes of this section a person is genetically related to -
  - (a) his natural parents and children;
  - (b) his brothers and sisters of the whole or half blood;
  - (c) the brothers and sisters of the whole or half blood of either of his natural parents; and
  - (d) the natural children of his brothers and sisters of the whole or half blood or of the brothers and sisters of the whole or half blood of either of his natural parents,

but persons shall not in any particular case be treated as related in any of those ways unless the fact of the relationship has been established by such means as may be prescribed by the board by regulation.

(3) A person is not guilty of an offence under subsection (1) if, before an act referred to in subsection (1) (a) or (b) is performed, the board has given its approval in writing.

- (4) The board may give its approval under subsection (3) if it is satisfied that -

- (a) the person who has caused the matter to be referred to the board has clinical responsibility for the donor;
- (b) the donor has reached the age of -
  - (i) 18 years; or
  - (ii) 16 years and is married;

- (c) an independent medical practitioner -
  - (i) has explained to the donor, and the donor has understood, the procedure, the risk involved and his entitlement to withdraw consent at any time; and
  - (ii) has explained to the recipient, and the recipient has understood, the procedure, the risk involved and his

entitlement to withdraw consent at any time;

- (d) the donor has given his consent to removal of the organ without coercion or the offer of inducement and has not subsequently withdrawn his consent; and
- (e) no payment prohibited by this Ordinance has been, or is intended to be, made.

(5) The board shall not give its approval under subsection (3) unless a person whom the board considers to be suitably qualified for the purposes of this subsection -

- (a) has interviewed the donor separately from the recipient and has reported to the board on the donor's understanding of the matters contained in subsection (4) (c) (i) and (d); and
- (b) has interviewed the recipient separately from the donor and has reported to the board on the

recipient's understanding of the matters contained in subsection (4) (c) (ii).

(6) Before removing from a living person an organ intended to be transplanted into another person, the person removing it shall, where the approval of the board is not required under subsection (3), satisfy himself that, subject to subsection (6A), the requirements referred to in -

(a) subsection (4) (b), (c) (i), (d) and (e); and

(b) subsection (4) (c) (ii),

have been complied with.

(6A) Notwithstanding subsections (4) (c) (ii) and (5) (b) or, as the case may be, subsection (6) (b), in the case of the recipient -

(a) the board may give its approval under subsection (3); or

(b) the person who will remove from a living person an organ intended to be transplanted into another person where the approval of the board is not required under subsection (3) may remove the organ,

if the board or person, as the case may require, is satisfied that -

- (i) an independent medical practitioner has certified in writing that the recipient is incapable of understanding the explanation mentioned in subsection (4) (c) (ii) by reason of -

  - (A) his suffering any illness;
  - (B) his being a minor;
  - (C) his being a patient or a mentally handicapped person, within the meaning of the Mental Health Ordinance (Cap. 136) as read with the Mental Health (Amendment) Ordinance 1997 (81 of 1997); or
  - (D) his suffering an impaired state of consciousness;
- (ii) an independent medical practitioner has certified in writing that it would not be in the best interests of the recipient to wait until he is capable of understanding such an explanation; and
- (iii) the registered medical practitioner who is to transplant the organ into the recipient has kept a medical report in writing stating the reason why subsection (4) (c) (ii) cannot be complied with in respect of the recipient.

(6B) Where subsection (6A) is applicable -

(a) in the case of subsections (4) (c) (ii) and (5) (b), the board shall not give its approval under subsection (3) unless there has been submitted to it copies of the certificates concerned required under subsection (6A) (i) and (ii) and a copy of the report concerned required under subsection (6A) (iii);

(b) in the case of subsection (6) -

(i) the registered medical practitioner who is to transplant the organ into the recipient concerned shall not do so until there has been submitted to him copies of the certificates required under subsection (6A) (i) and (ii) in respect of the recipient;

(ii) the registered medical practitioner who has transplanted the organ into the recipient shall, not later than 30 days after the transplant or within such longer period as the board, on application, may allow, submit to the board copies of the certificates required under

subsection (6A) (i) and (ii) and a copy of the report required under subsection (6A) (iii) in respect of the recipient.

(7) A person guilty of an offence under subsection (1) shall be liable upon a first conviction to a fine at level 5 and to imprisonment for 3 months and upon a subsequent conviction to a fine at level 6 and to imprisonment for 1 year.

(8) Any person who in purported compliance with -

(a) regulations made for the purposes of subsection (1) (ii); or

(b) subsection (6A),

knowingly or recklessly supplies information, or makes a certification, which is false or misleading in a material respect is guilty of an offence and is liable upon conviction to a fine at level 5 and to imprisonment for 3 months.

(9) A registered medical practitioner who, without reasonable excuse, fails to comply with subsection (6B) (b) (i) or (ii) shall be guilty of an offence and is liable upon conviction to a fine at level 5.

(10) In this section, "independent medical practitioner" ( ), in relation to a donor and a recipient of an organ, means a registered medical practitioner who will



neither remove the organ from the donor nor transplant the organ into the recipient.