

**Letterhead of DEPARTMENT OF SURGERY**  
香港大學醫學中心的信頭  
**University of Hong Kong Medical Centre Queen Mary Hospital**  
瑪麗醫院外科學系

4<sup>th</sup> January, 1999

Hon. Ronald Arculli  
Chairman, Subcommittee on Human Organ Transplant Ordinance  
Legislative Council  
3/F Citibank Tower  
3 Garden Road  
Central  
Hong Kong.

Fax no: 25243802

Dear Sir,

Thank you for your letter dated 8<sup>th</sup> December, 1998 inviting the Faculty of Medicine of The University of Hong Kong to submit views on the Human Organ Transplant (HOT) Ordinance. As an academic institute with substantial clinical and research activities related to organ transplantation, we fully support the primary objective of the Ordinance in preventing organ trading. However, since the Ordinance came into effect on 1<sup>st</sup> April, 1998, it became apparent that the stringent requirement of the Ordinance and the operational mechanism of the HOT Board have had effects that far exceeded this primary objective. In particular, we are most concerned that the survival of critically ill patients who require a life-saving transplant operation may be adversely affected. The following issues of the Ordinance need clarification and improvement:

- 1) Section 5(4) and 5(5) of the Ordinance require that both the donor and recipient receive an interview by a medical practitioner and a person whom the Board considers to be suitably qualified to explain the risk of the procedure. Such a requirement, however, can not be fulfilled in patients with acute liver failure requiring urgent liver transplantation. The decision for the need of urgent liver transplantation is based on well-established criteria as described in the medical literature, and hepatic encephalopathy with clouding of consciousness would be present in all patients. The successful use of emergency liver transplantation from a living donor for patients with acute liver failure has provided an option for desperately ill patients in countries where cadaveric organ donor is scarce, and The University of Hong Kong is one of the pioneer in this innovative approach. It is ironical that a patient should be deprived of the opportunity of an effective treatment by organ transplant by reason of the very condition that makes the transplant necessary. The same problem applies to other organ transplants when the potential recipient is a minor, or is mentally incapacitated, and cannot receive an interview from the medical practitioner. Such statutory requirement as set in the Ordinance prohibits the medical profession from providing life-saving treatment for these patients without giving them the benefit of doubt;

- 2) The responsibility and efficacy of the HOT Board should be better defined in the Ordinance. The provision of the best medical care to a patient has always been the primary responsibility of the health care personnel only. The addition of the requirement for approval from the HOT Board for a life-saving operation has taken this responsibility away from the medical profession and has serious implications. First, the Board should be prepared to act promptly in a manner similar to what the medical professionals are expected to do. Any delay due to administrative problems of the Board would jeopardize the chance of recovery of the patient, and the medical profession should not be responsible for the consequence. Second, the responsibility of the Board is to confirm the absence of commercial dealing or coercion of donor before an application is approved. It is obvious that such a judgement can hardly be made based on a piece of legal document or a declaration signed by the donor. Before the enactment of the Ordinance, the medical profession has always taken an active process in assessing the intention of the donor by interviews with different professionals such as medical social worker or clinical psychologist. If the Board should be given the power to overrule the transplant team and make the final decision, it should have the responsibility to ensure that this decision be based on reliable information. A direct interview with the donor, the recipient, and their family members is essential, and should be promptly performed.
- 3) In a letter issued to all registered medical practitioners on 4<sup>th</sup> June, 1998, the Board emphasized that “if the genetic relationship is not established by means as prescribed in Section 2 of the Regulation, it may be treated as cases where the genetic relationship is not established and prior written approval of the Board will have to be sought”. The Board should provide better guidelines in Section 2 of the Regulation for other means of substantiating the genetic or marital relationship in order to justify the donation.
- 4) The present Ordinance has placed significant emphasis on the responsibility of the medical practitioner to provide documentary proof of the genetic or marital relationship, to confirm the absence of commercial dealing, and to make the application to the Board, failing which he will be guilty of an offence. It is important to note that medical practitioners are trained to provide good-quality medical care and not to verify legal documents or investigate commercial dealing. The application for approval for the organ transplant operation is made upon the request of the donor and recipient, based on the medical practitioner's clinical obligation to provide all possible care for the benefit of the patient. As such, there should be a statutory defense for the medical practitioner provided that he has, on reasonable grounds, fulfilled or believed that he has fulfilled the requirement of the Ordinance.

Finally, we should bear in mind that there has never been any documented case of organ trading in the history of organ transplantation in Hong Kong. While it is wise to be proactive and to develop measures to prevent this from happening in future, it is crucial that such measures will not deprive the right of truly voluntary donors to save the life of their beloved family members. We would appreciate the opportunity to discuss these issues from a clinical perspective with members of the Subcommittee

Yours sincerely,

Sheung-Tat Fan  
Professor and Chair

Chung-Mau Lo  
Associate Professor