

Letterhead of HUMAN ORGAN TRANSPLANT BOARD
人體器官移植委員會的信頭

Your Ref.:

Our Ref.: HOT/T/2 X

Tel. No.: 2961 8951

Fax No.: 2527 9849

1 December 1998

Chairman
Subcommittee on the Human Organ Transplant Ordinance
House Committee
Legislative Council
8 Jackson Road
Central
Hong Kong

Dear Sir/Madam

Human Organ Transplant Ordinance, Cap 465

Thank you for the LegCo Panel on Health Services' invitation to the special meeting on 23 November 1998. The Human Organ Transplant Board (the Board) found that the meeting has come to a very clear and thorough understanding of the limitations of the Ordinance and the restrictions the Board has been facing with regard to its functions and powers.

Now that even with all the good intentions of the spirit of the Ordinance as established in 1992-1995, it is understood that there are views in the community of a different nature, which are seeking amendments to be made to the Ordinance. While waiting for the community to decide on this may take a long time, we believe that there are some areas of the Ordinance that can be quickly looked into. The Board would like to put forward the following views on such possible amendments to the Ordinance and Regulation for the consideration of the Subcommittee.

To alleviate the worries of medical practitioners in establishing the fact of genetic relationship

According to section 5 of the Ordinance, the medical practitioners may proceed with the transplant if the defined genetic relationship or the subsistence of the marriage between the donor and the recipient has been established. In such case, the prior written approval of the Board is not required. It has been noted that the

responsibility of establishing the relationship poses a heavy burden on the medical practitioners since an offence may cost them their career, apart from the penalties of a fine and imprisonment upon conviction.

The Board has therefore proposed that to alleviate the worries of the medical practitioners, a statutory defence can be added to section 5 so that if a medical practitioner has on reasonable grounds established the genetic relationship based on the means as prescribed in section 2 of the Human Organ Transplant Regulation (the Regulation), or on reasonable grounds believes that there is a marriage which has subsisted for not less than three years, he will not be guilty of an offence.

To achieve this end, the Board proposes to add a new subsection 5(7)(1) so that a clinician shall not be found guilty of an offence under subsection (7) if he has made all reasonable enquiries to satisfy himself of the genetic relationship between the donor and the recipient pursuant to section 2 of the Regulation and is not aware of any suspicious circumstances.

To widen the means of establishing the fact of genetic relationship

According to section 5(2) of the Ordinance, the medical practitioners must establish the fact of genetic relationship according to the means prescribed by the Board, by regulation. The means that have been prescribed are contained in section 2 of the Regulation and are by way of documentary evidence. The documents that can be used are birth certificates, marriage certificates and identity documents issued under the Births and Deaths Registration Ordinance (Cap 174), Marriage Ordinance (Cap 181), Marriage Reform Ordinance (Cap 178) and Registration of Persons Ordinance (Cap 177); as well as equivalent documents issued by the relevant overseas authorities.

To provide greater flexibility for medical practitioners in establishing the genetic relationship, the Board is considering to amend section 2 of the Regulation by providing more means to establish such relationship. To achieve this, the views and recommendations of the medical institutions as to whether procedures can be established and incorporated into the Regulation should be sought. Such procedures would operate where the genetic relationship could not be established by means of the prescribed documentary evidence, and may involve the requirement of interviews by relevant professionals (social workers, psychiatrists, clinical psychologists), supervised by the ethics committee of the relevant medical institution.

Organ transplants for unconscious patients

The problem with unconscious patients has been detailed in Appendix II of the Board's submission paper to the LegCo Health Panel. Where the conditions under sections 5(4)(c) and 5(5) have not been satisfied because the patient is unconscious and has not received the interviews, understood the explanation and

given consent, the Board cannot give its approval for the transplant to proceed.

The spirit of requiring interviews by professionals and obtaining consent from both the donor and the recipient as established in the LegCo in 1992-1995 is still prevailing. Until such time this is altered and relevant amendments to the Ordinance are in place, the Ordinance needs to operate under the existing spirit.

In the meantime, the Board has taken the initiative to send a letter to the Hospital Authority, private hospitals, medical bodies, other related organisations and all medical practitioners to reiterate the legal requirements of sections 5(4)(c) and 5(5) to avoid misinterpretation. It was also explicitly explained that in situations where the intended recipient has received the interviews, understood the explanation and given consent but fell unconscious before he signed his consent, the medical practitioners can provide other evidence to prove the compliance of sections 5(4)(c) and 5(5). The Board also stated that it has not encountered an application of such a nature so far. For reference, a copy of the letter is attached, please.

The Board urges the Subcommittee to put forward the Board's views as stated in this letter to the relevant government bureau for quick consideration and action.

With best regards,

Yours faithfully

(Mrs Sophie Leung)
Chairman, Human Organ Transplant Board

Letterhead of HUMAN ORGAN TRANSPLANT BOARD
人體器官移植委員會的信頭

Your Ref.:

Our Ref.: *HOT/5/7*

Tel. No.: *2961 8951*

Fax No.: *2527 9849*

30 November 1998

To: Hospital Authority, Private Hospitals, Medical Bodies, Other Related Organisations and All Registered Medical Practitioners

Dear Doctor/Sir,

Human Organ Transplant Ordinance (Cap 465)

With regard to the issue of unconscious patients in organ transplant, the Human Organ Transplant Board (the Board) would like to draw your attention to the legal requirements of interviewing the organ donor and the recipient as stipulated in the Human Organ Transplant Ordinance (the Ordinance).

The relevant sections in the Ordinance are sections 5(4)(c), 5(5) and 5(6) which are reiterated as follows -

S.5(4)(c) requires -

"a registered medical practitioner, who is not the medical practitioner who will remove the organ from the donor or transplant the donor's organ into another person, has explained to the donor and the recipient, and each has understood -

- (i) the procedure;*
- (ii) the risk involved; and*
- (iii) his entitlement to withdraw consent at any time."*

S.5(5) also requires that

"Before giving its approval, the board shall ensure that the donor and the recipient have each been interviewed separately by a person whom the board considers to be suitably qualified to conduct such an interview and the person has reported to the board on the donor's and recipient's understanding of the matters contained in subsection (4)(c) and (d)."

S.5(6) requires that

"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 the requirements referred to in subsection (4)(b) to (e) have been complied with."

It has been provided administratively for the organ recipient to show his understanding and consent to the procedure by signing on a form, which is the best way to prove the compliance of sections 5(4)(c) and 5(5). The purpose of drawing up these administrative guidelines is to facilitate the operation of the Ordinance and they are not intended to be exclusive. In fact, the applicant may produce other evidence to show that the requirements of the Ordinance have been met. If medical practitioners are in doubt, they can seek their own legal advice as to what other evidence may prove the compliance of these sections, in particular in situations where the intended recipient has received the interviews, understood the explanation and given consent but has fallen unconscious before he signed his consent. For your information, the Board has not encountered an application of such a nature so far.

A Subcommittee of the Legislative Council will quickly look into possible amendments to the Ordinance. Your input would of course be highly desirable. The Board would look upon your cooperation in upholding the spirit of the Ordinance.

Yours faithfully

(Ms Fausta Ng)
Secretary, Human Organ Transplant Board