

**Administration's reply to comments on the
Human Organ Transplant Ordinance**

1. *In providing exemption to unconscious patients, the Administration should have regard to the wish of recipients who might choose to refuse a specific organ from a specific person.*

REPLY:

We have taken this comment into account when preparing the Drafting Instructions of the proposed amendments. It also coincides with our view that the suggestion of deleting the requirements relating to recipients in section 5(4)(c) is not appropriate since we need to respect the wish and safeguard the interests of recipients.

2. *How to handle an application in which a patient had been interviewed by a suitably qualified person, but a donor was only identified after the patient had lapsed into a comatose state.*

REPLY:

This problem can be overcome by administrative arrangements. For instance, doctors may consult the recipient on whose organ he does not want to receive during the stage when he is still capable of making that decision.

3. *What is the benchmark for establishing facts of commercial dealings under section 5(4)(d) and (e).*

REPLY:

It is difficult to set hard and fast rules on such issues. In addition, it may not be desirable to set out rigid conditions or criteria which may in turn delay the transplant. Nevertheless, the Human Organ Transplant Board/doctors concerned are suggested to, among other measures, look for the existence of emotional tie between the donor and recipient to help ascertain whether there are commercial dealings involved.

4. *Enhancement of public education on organ donation and promotion of cadaveric organ donation.*

REPLY:

This has always been the Government's policy and we will continue to put effort on it in collaboration with the Hospital Authority.

5. *Since the requirement of establishing genetic relationship may pose a heavy burden on medical practitioners, penalties in the Ordinance are suggested to be lowered. A new provision provides for a statutory defence for medical practitioners should also be added.*

REPLY:

We have sought the views of the Department of Justice on this, and the legal advice is that the provision of a statutory defence for the medical practitioners in the Ordinance is unnecessary. If the medical practitioner is misled by false information, he will have a good defence because he does not have the intention to commit the offence.

6. *HKMA suggests that a transplant can be carried out even 5(4)(c) has not been complied with, provided that:*
- *two registered medical practitioners, not involved in the removal and/or transplant of the organ, confirm that the transplant is needed and is in the best interest of the recipient;*
 - *the registered next of kin of the recipient receive explanation on his behalf.*

REPLY:

On the first suggestion, we have proposed amendments in our Drafting Instructions to address this issue. On the second suggestion, we have been advised that it is not a viable option as there is no clear legal definition for "next of kin".

7. *Mr Tang Siu-tong suggests:*
- *to set a time limit on the process of vetting approval by the Board;*
 - *to set some precautionary measures for cases where the Board cannot make the decision within the time limit;*

- *to provide more flexibility to the Board to ensure urgent transplant operations can still be carried out even the Board fails to make a decision within a reasonable period of time.*

REPLY:

We envisage that to set a time limit, especially by making it a statutory requirement in the legislation, will create considerable practical problems which may in turn hinder the transplant process. Further, not every application is urgent and it is also difficult to designate a point of time as the beginning of the vetting process. We are happy to elaborate further at the next meeting.

8. *Mrs Sophie Leung suggests to amend the Regulation to provide medical practitioners more means to establish genetic relationship.*

REPLY:

The power of amending the Regulation rests with the Board. The Administration is prepared to give support on the drafting of amendments to the Regulation as suggested by the Board.