

新邨西醫協會的信頭
Letterhead of ESTATE DOCTORS ASSOCIATION LTD.

Our ref.: EDA/263/98/O
Your ref.: CB2/HS/1/98

By fax & mail

4th January, 1999

Clerk to the Subcommittee on the Human Organ Transplant Ordinance
Legislative Council Secretariat
3/F Citibank Tower
3 Garden Road
Central
Hong Kong

Dear Sir,

Re: Human Organ Transplant Ordinance

Referring to your letter of 8 December, 1998, the EDA Council has the following comments on the above Ordinance:-

1. Re: Establishment of Human Organ Transplant Board

- 1.1 It was noted from the Ordinance that the Board shall consist of 9 persons appointed by the Secretary for Health and Welfare.

To facilitate the discussion and decision making of a Human Organ Transplant by the Board, especially in case of emergency, we have two suggestions:-

- (a) The Board should consist of 11 persons instead of 9 persons. The two additional persons of the Board would be the Deputy Chairman and one lay member.
- (b) The Board should appoint a number of persons who are not members of the Board to form a Panel of Assessors for the purpose of forming a quorum and deliberating any urgent case of Human Organ Transplant whenever some members of the Board are unable to attend a Board Meeting.

For details on the establishment of a Panel of Assessors, please refer to the Clause 21B of the enclosed Medical Registration Ordinance regarding "Meetings of Medical Council for purpose of an inquiry".

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- 1.2 It was noted from the Ordinance that the Chairman of the Board should not be a registered medical practitioner.

We object to the above clause. We are of the opinion that it is absolutely unfair and unacceptable that only the registered medical practitioners are not allowed to be appointed as the Chairman of the Board.

According to the Equal Opportunities Ordinance, all registered medical practitioners should have the same equal right as other people for appointment to the post of Chairman of the Board.

2. Re: Restriction on transplants between persons not genetically related

- 2.1 We suggest that the following point should be added to the Ordinance:-

"In case a person(hereafter called the recipient) is unable to express his consent to receiving a human organ from the donor, two independent registered medical practitioners who do not have any clinical responsibility for the recipient can act on behalf of the recipient to give consent to receiving the organ provided that there is no objection from the immediate family members of the recipient. Then, the Board may give its approval to the Human Organ Transplant from the donor to the recipient."

- 2.2.1 It was noted from the Ordinance that the person into whom the organ is to be or, as the case may be, is transplanted must be genetically related to the person from whom the organ is removed.....(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.....

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- 2.2.2 It can easily be proved by the birth certificate or other legal document that a person is genetically related to the immediate members of his family namely :-
(a) his natural parents and children;
(b) his brothers and sisters of the whole or half blood.

Apart from the immediate family members of a person, it is in fact very difficult for the Board to prove within a very short time whether the recipient is genetically related to the donor or not.

- 2.2.3 Therefore, we suggest that **any donor who is not the immediate family member of the recipient must declare** that there is no commercial dealings in supplying his organs for transplant into the recipient in his application to the Board for approval of such transplant. The donor is guilty of an offence if he makes a false declaration.

3. **Human Organ Transplant involving the mentally incapacitated persons**

For further protection of the mentally incapacitated persons (MIP), we suggest that consent to the removal of a organ from the MIP for transplant or consent to receiving a organ by the MIP from the donor can only be obtained exclusively through the court and cannot be given by the guardian of the MIP.

Thank you for your kind attention.

Yours sincerely,

Dr. Yeung Chiu Fat Henry
Chairman
Estate Doctors Association

cc: Dr. C.H. Leong)
The President, Hong Kong Medical Association)
The Chairman, the Association of Licentiate of Medical Council) By fax & mail
of Hong Kong)
The Chairman, Practising Estate Doctors' Association Ltd.)
The Chairman, Association of Private Medical Specialists)

Encl.

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decision affirming or varying such order, the Council

- (a) shall, in the case of an order made under subsection (1)(i), (ii), (iii), (iia), (iib) or (iv), publish the order or the order as varied on appeal in the Gazette; and
- (b) may, in the case of an order made under subsection (1)(v), publish the order in the Gazette.
- (5A) Where an order under subsection (1)(iva) is made at the same time as any order under subsection (1)(i), (ii), (iii), (iia), (iib) or (iv) is made, the Council shall, as soon as possible, publish the orders in the Gazette.
- (6) Where any order is published in the Gazette under subsection (5) or (5A), the Council -
- (a) shall publish with such order sufficient particulars to acquaint the public with the nature of the matter to which the order relates; and
- (b) may publish with such order an account of the proceedings at the inquiry at which the order was made.

21A. Powers of Council in relation to fitness to practise of medical practitioners

- (1) Upon a recommendation by the Health Committee under section 20V(1)(c) and either, the time for appeal against the recommendation under section 20W has expired and there is no appeal, or the Council has decided on an appeal against the decision under section 20W, if the Council is satisfied that the registered medical practitioner concerned is, by reason of health, physically or mentally unfit to practise medicine, surgery or midwifery, the Council may, in its discretion, without a due inquiry under section 21 -
- (a) order the name of the registered medical practitioner to be removed from the General Register; or
- (b) order the name of the registered medical practitioner to be removed from the General Register for such period as it may think fit; or

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- (c) make any such order as aforesaid but suspend the application thereof, subject to such conditions as the Council may think fit, for a period, or periods in the aggregate, not exceeding 3 years; or
- (d) make any such order as aforesaid and further order that such order take effect upon its publication in the Gazette if the Council is satisfied that it is necessary to do so for the protection of the public or in the best interest of the registered medical practitioner.
- (2) Where an order under subsection (1) is made without an order under subsection (1)(d) being made at the same time, within 1 month after the expiry of the time within which an appeal against an order under subsection (1) may be made under section 26 or, if such an appeal has been made, within 1 month after a decision affirming or varying such order, the Council shall publish the order or the order as varied on appeal in the Gazette.
- (3) Where an order under subsection (1)(d) is made at the same time as any order under subsection (1)(a), (b) or (c) is made, the Council shall, as soon as possible, publish the orders in the Gazette.
- (4) Where any order is published in the Gazette under subsection (2) or (3), the Council -
- (a) shall publish with such order sufficient particulars to acquaint the public with the nature of the matter to which the order relates; and
- (b) may publish with such order an account of the proceedings at the hearing at which the order was made.

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21B. Meetings of Council for purpose of an inquiry

- (1) At any meeting of the Council held for the purpose of an inquiry under section 21, either -
- (a) 5 members of the Council; or
- (b) not less than 3 members of the Council and 2 assessors, on a rotational basis, from the panel appointed under subsection (2), at least one of whom shall be a lay member but subject to the majority being registered medical practitioners,

shall be a quorum.

(2) The Council shall appoint the following persons who are not members of the Council to form a panel of assessors for the purpose of conducting an inquiry under section 21 -

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- (a) 2 registered medical practitioners nominated by the Director;
- (b) 2 registered medical practitioners nominated by the Hospital Authority;
- (c) 2 registered medical practitioners nominated by the Academy of Medicine;
- (d) 2 registered medical practitioners nominated by the University of Hong Kong;
- (e) 2 registered medical practitioners nominated by the Chinese University of Hong Kong; and
- (f) 4 lay persons nominated by the Secretary for Health and Welfare.

(3) An inquiry conducted by members of the Council and assessors forming a quorum under subsection (1)(b) is deemed to be an inquiry by the Council and is as valid and effectual as an inquiry conducted by members of the Council forming a quorum under subsection (1)(a).

(4) An assessor shall hold office for a period of 1 year from the date of appointment and, at the expiry of his period of appointment or of any period for which he is reappointed, shall be eligible for reappointment for further periods of 1 year each.

(5) Any assessor may at any time resign by giving notice in writing to the Chairman.

(6) Section 3(6A) and (7) applies with respect to an assessor as it applies to a member of the Council.

22. Powers of Council and Health Committee in regard to obtaining of evidence and conduct at proceedings

(i) For the purposes of an inquiry under section 21 the Council shall have the following powers -

- (a) to hear, receive and examine evidence on oath;
- (b) to summon any person to attend the inquiry to give evidence or produce any document or other

thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession, subject to all just exceptions;

- (c) to admit or exclude the public or any member of the public from the inquiry;
- (d) to admit or exclude the press from the inquiry;
- (e) to award any person summoned to attend the inquiry such sum or sums as in the opinion of the Council may have been reasonably expended by him by reason of his attendance.

(1A) For the purpose of a hearing, the Health Committee shall have the following powers -

- (a) to hear, receive and examine evidence on oath;
- (b) to summon any person to attend the hearing or to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession, subject to all just exceptions;
- (c) to award any person summoned to attend the hearing such sum or sums as in the opinion of the Health Committee may have been reasonably expended by him by reason of his attendance.

(1B) A hearing by the Health Committee shall be held in private.

- (2) Summonses to witnesses may be in such form as the Council determines and shall be signed by the Chairman or the chairman of the Health Committee, as may be appropriate.
- (3) A summons to witness may be served personally, by post or by registered post.
- (4) If it appears to the Council or the Health Committee that it is necessary to do so in the interests of the complainant, the registered medical practitioner concerned in the inquiry or the hearing, or any witness concerned, the Council or the Health Committee may order that all or any information relating to the inquiry or hearing shall not be disclosed.
- (5) A person who does not comply with an order under subsection (4) commits an offence and is liable on summary conviction to a fine at level 3 and to imprisonment for 6 months.

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