

(Summary Translation)

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A reason for care Sentiments within the law
Comment on the controversy over organ transplant

In October, a patient in Hong Kong died of liver failure without getting the timely transplant as he was lapsed in a comatose state and could not sign to consent a living non-related transplant and the Human Organ Transplant Board (“the Board”) did not accept his family members' signature for consent. The family members of the patient declared that they would take legal actions against the Board for mishandling the case. As it was a matter of life and death, the general public and the Legislative Council reacted strongly and requested for amending the Ordinance and examining the role of the Board.

Mr. D B Gould, Principal Assistant Secretary for Health and Welfare then held a meeting with LegCo members to “profess” the Government’s stance and announce a “flexible” procedure on human organ transplant. It was learnt that the Government intended to introduce the Human Organ Transplant (Amendment) Bill into the Legislative Council next March. There would be two main proposals. Firstly, the composition of the existing Board would be expanded to include a legal adviser, so that the Board could assess its legal liabilities. Secondly, the Board would be empowered with discretionary power to approve transplant operations on unconscious patients. We do not agree to the rationale behind these two proposed amendments.

The Board has the legal basis but not the sentiments

Hong Kong is a society rule by law. Of course we have to respect the spirit of the Ordinance to prohibit human organ trading and the rights of the organ donor and recipient to learn the risk involved in organ transplant and their entitlements to withdraw their consent at any time. At present, the Board consists of 9 persons appointed by the Secretary for Health and Welfare. Apart from the Chairman (who is not a registered medical practitioner), there are 4 registered medical practitioners, 1 social worker, 1 legally qualified person and 2 other members. The merit of this composition is to rely on the impartial and fair judgement of a group of socially respectable persons, so as to

ensure that no commercial dealings will be involved in the process of human organ removal and transplant. The demerit is that the patient's family members and friends, who care most for the patient, as well as his attending doctors are denied of any involvement in the decision-making process. The decision that affects life is placed above the consideration of the sentiments of the patient's family members and the professional ethics of the doctors. Instead, a group of people who are not related to the patient are empowered to make objective judgment which have legal implications. Therefore, even if the membership of the Board is enhanced to include more legally qualified persons, it will only intensify the limitation of the Board in the sense that it is exercising the law without paying heed to the sentiments arose.

Waning the moral responsibilities of doctors

As regards the proposal to empower the Board with discretionary powers to approve organ transplant operation on unconscious patients, there are some points for consideration. Without doubt, the Board has its objective standard to assess the appropriateness of organ transplant. However those who best understand the need and aspiration of the patient are his family members. The fact that the “personal” decision affecting the survival of a person is made by an “objective” body instead of his closest family members is an exploitation of the emotional ties among people and will intensify social segregation.

In this incident which the doctor refused to carry out liver transplant operation on an unconscious patient, the public not only criticized the limitation of the existing law, but also disapproved the professional ethics of doctors who placed the law above human lives. The noble spirit of doctors to save lives and serve in the best interests of their patients have been dashed. Some people may consider it inappropriate to impose treatment on the patient since he had not indicated his willingness to accept liver transplant. We do not think so. While doctors should respect the decisions of the patient, they should also care for their benefits and give due consideration to the right of the patient's family members to act on his behalf out of love and care. The Board attaches importance to the rational rule of the Western world and the right of choice of an individual, while factors such as the moral ethics, care and attention have not been thoroughly considered. Such being the case, family members of a patient do not have any roles to play in the decision making process that affects the live of their beloved. The whole medical system puts too much emphasis on the individuality of the patients and pushes family ties and professional ethics to an marginal position. Thus, in making a decision, freedom is more important than human lives, aspiration is higher than care

and choice is more decisive than human relationship.

A procedure with a principal and subordinate practice

To conclude, the right way of direction is to formulate a rule with due respect to “sense and sentiment” and a procedure with a “principal and subordinate” practice. It is the duty of the law enforcing departments to deter commercial dealings in organ transplant. However, in handling cases involving unconscious patient in need of organ transplant, the request of his family members and the professional judgment of the attending doctor should be the main factors for consideration. The application, lodged by family members and the attending doctor, should be approved by the Ethics Committee of the hospital with the involvement of the applicants concerned. In case of disputes, the decision of the Ethics Committee should be final. Such a practice would give due respect to the aspiration of the patient's family members and the moral responsibility and judgment of the attending doctors. Moreover, it is more effective than enlarging the composition of the Board and would not delay medical treatment to the patient. In the long run, consideration should be given to setting up a mechanism under which the patient can, upon admission to the hospital, give an advance directive to appoint a proxy. After extensive consultation, it can be stated in the law or the code or practice that for patients without giving advance directive, which one of his family members should have his opinions firstly considered by the Ethics Committee.