

立法會
Legislative Council

LC Paper No. CB(2) 2610/99-00
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Administration and cleared with the
Chairman)

Ref : CB2/SS/10/98

**Minutes of the meeting of the Subcommittee to study the
Human Organ Transplant (Amendment) (No.2) Regulation 1999 and
Human Organ Transplant (Amendment) Ordinance 1999
(7 of 1999) (Commencement) Notice 1999 held on Tuesday, 21 September 1999
at 8:30 am in the Chamber of the Legislative Council Building**

Members Present : Dr Hon TANG Siu-tong, JP (Chairman)
Hon Cyd HO Sau-lan
Dr Hon LEONG Che-hung, JP

Absent with Apology : Hon Michael HO Mun-ka
Hon CHAN Yuen-han
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung

Public Officers Attending : Mr Gregory LEUNG
Deputy Secretary for Health and Welfare 1

Mr Eddie POON
Principal Assistant Secretary for Health and Welfare (Medical) 3

Mr Rick CHAN
Assistant Secretary for Health and Welfare (Medical) 6

Dr Thomas CHUNG
Principal Medical and Health Officer (3)

Mr Geoffrey FOX
Senior Assistant Law Draftsman

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Clerk in Attendance : Mr LAW Wing-lok
Chief Assistant Secretary (2) 5

Staff in Attendance : Mr LEE Yu-sang
Senior Assistant Legal Adviser

Miss Mary SO
Senior Assistant Secretary (2)8

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I. Election of Chairman

Dr TANG Siu-tong was elected Chairman of the Subcommittee.

II. Meeting with the Administration

2. At the invitation of the Chairman, Deputy Secretary for Health and Welfare (Dep SHW) said that under the Human Organ Transplant Ordinance (HOTO), a medical practitioner was not required to seek the approval of the Human Organ Transplant Board (the "Board") before carrying out an organ transplant operation if the donor and the recipient were either genetically related or married for at least 3 years. Although the HOTO empowered the Board to prescribe means to establish the genetic relationship between the donor and the recipient by making regulation, it did not empower the Board to do the same to establish the marriage relationship, and this had caused much inconvenience to the medical practitioners. Section 2(a) of the Human Organ Transplant (Amendment) Ordinance 1999 stipulated that the marriage relationship between the donor and the recipient and its subsistence should be established by such means, or in accordance with such guidelines, as might be prescribed by regulations made by the Board. The Human Organ Transplant (Amendment) (No.2) Regulation 1999 (the "Amendment Regulation") was made by the Board for such purposes on 17 June 1999. The Amendment Regulation, together with section 2(a) of the Amendment Ordinance, had come into operation on 2 July 1999.

3. Dr LEONG Che-hung enquired whether any difficulty had been encountered by the parties concerned since the guidelines to establish the marriage relationship between the donor and recipient and its subsistence were introduced on 2 July 1999. Principal Medical and Health Officer replied that no problem had been encountered by the parties concerned thus far. The Administration would continue to monitor the situation.

4. Senior Assistant Legal Adviser (SALA) reported that prior to the meeting, he had raised a technical query with the Senior Assistant Law Draftsman (SALD) on the legal effect of the amendment contained in section 1(b) of the Amendment

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Regulation. SALD had advised that where the donor or recipient was a Hong Kong resident, the genetic relationship could be established by means of documents issued under the legislation prescribed under section 2(b)(i) of the existing Human Organ Transplant Regulation (HOTR) irrespective of whether the donor or recipient resided in or outside Hong Kong. Where the donor or recipient resided outside Hong Kong and was not in possession of any such documents, the genetic relationship could be established by means of documents that were equivalent to those prescribed under section 2(b)(i) of the HOTR and were issued by the relevant authority in the country concerned. SALA said that he found the SALD's reply acceptable.

5. Dr LEONG Che-hung enquired whether the Board had laid down any guidelines for the making of statutory declaration stipulated under the new section 2A(b)(ii) of the HOTR. SALD replied that the statutory declaration would be made in accordance with the provisions under the Oaths and Declarations Ordinance (Cap. 11).

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6. SALA suggested and members agreed that for convenience of medical practitioners and persons making the required declaration, the making of statutory declaration should be in a standard format. Dep SHW undertook to ask the Board to consider the suggestion.

7. The Chairman enquired why only either of the 2 persons was required to make statutory declaration. Dep SHW replied that this was to cater for the circumstance where one party to the marriage was comatose.

8. SALA pointed out that it would be difficult for a medical practitioner to verify the marriage relationship between the donor and the recipient if the supporting documents produced were in a foreign language. Dep SHW replied that in such a case, the medical practitioner should refer the application for organ transplant to the Board for consideration as if no valid document was produced.

9. Dr LEONG Che-hung said that the responsibility of the Board should be to ascertain that the application would not involve commercial dealing. The Board would not attempt to verify the authenticity of the documents produced to establish the marriage relationship between the donor and the recipient. Dep SHW concurred with Dr LEONG. SALD added that a person who knowingly and wilfully supplied false information or forged documents would have committed an offence under the Crimes Ordinance (Cap. 200).

10. In response to Dr LEONG Che-hung's enquiry, SALD said that a medical practitioner would not be held liable if, after carrying out an organ transplant operation, the document produced to establish the marriage relationship between the donor and the recipient was found to be false.

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11. Miss Cyd HO enquired whether a DNA test would be an acceptable means to establish genetic relationship between the donor and recipient. In reply, SALD said that a DNA test could provide strong evidence to establish genetic relationship.

12. In reply to Miss Cyd HO's enquiry, SALD said that "a marriage celebrated" referred to in the new section 2A of the HOTR meant that a marriage was celebrated by public ceremony. SALD added that such a practice was adopted by some overseas societies and was recognized under Hong Kong law. SALA said that the word "celebrated" was used in some other ordinances, an example being section 7(1) of the Marriage Reform Ordinance (Cap. 178).

13. Dr LEONG Che-hung enquired whether any new regulations would be made by the Board. Dep SHW replied that no new regulations were in the pipeline. He added that the Administration would brief the relevant Panel periodically on the latest development of human organ transplant in Hong Kong.

14. Members did not raise queries on the Human Organ Transplant (Amendment) Ordinance 1999 (7 of 1999) (Commencement) Notice 1999 (the "Commencement Notice").

15. In conclusion, Members agreed that a report be submitted to the House Committee on 8 October 1999 recommending that the Amendment Regulation and the Commencement Notice be supported.

16. The meeting ended at 9:06 am.

Legislative Council Secretariat

11 October 2000