For discussion
on 8 December 2008

LEGISLATIVE COUNCIL PANEL ON HEALTH SERVICES
Advance Directives in relation to Medical Treatment

Purpose

This paper briefs Members on the concept of advance directives, the recommendations made by the Law Reform Commission (LRC) on advance directives in its report entitled *Substitute Decision-making and Advanced Directives in Relation to Medical Treatment* (the *Report*) published in August 2006, and the Administration's initial views on LRC's recommendations.

The concept of advance directives

2. When a patient is terminally ill, in a state of irreversible coma or in a persistent vegetative state, and by medical judgment, all treatment will be futile in improving the condition, the healthcare professionals and family members caring for the patient often encounter the problem of providing the patient with suitable forms of health care or medical treatment.

3. Under the existing common law, an individual may, while mentally competent, give directions as to the future medical treatment that he wishes to receive when he is no longer mentally competent to make such decisions. If a person unfortunately finds himself in any of the three conditions described in paragraph 2 above, the healthcare professionals and his family will be able to know more clearly what medical treatment he wishes to receive through the advance directives that he made.

4. An advance directive for health care is a statement, usually in writing, in which a person indicates when mentally competent the form of health care he would like to have in a future time when he is no longer competent. The concept of advance directives is largely derived from the principle of informed consent and the belief in a person's autonomy in health care decisions.

5. An advance directive will only be activated at the point where the patient is terminally ill, in a state of irreversible coma or in a persistent vegetative state. In making the directive, the patient can specify that, when he is in any of the conditions described above, he can choose not to receive any life-sustaining treatment or any other treatment he has specified save for basic and palliative care so as to minimise distress or indignity that he may suffer and to spare the healthcare professionals or relatives or both from the burden of making difficult decisions on his behalf.

6. It should be noted that advance directives are totally unrelated to euthanasia. According to the existing *Professional Code and Conduct for the Guidance of Registered Medical Practitioners* (the *Professional Code and Conduct*) of the Medical Council of Hong Kong, euthanasia is defined as "direct intentional killing of a person as part of the medical care being offered". Euthanasia is illegal in Hong Kong, and therefore no one in Hong Kong can indicate a wish for performing euthanasia in his advance directive. Even if a person expressly requests for such an illegal behaviour to be conducted, healthcare professionals should in no way act as instructed.

7. At present, the concept of advance directives in respect of elderly people or the mentally incapacitated has been introduced to the public in Australia, Canada, United Kingdom, Singapore, the United States etc, and legislation on advance directives has been enacted in Singapore and the provinces of Alberta and Manitoba of Canada.

Care for the terminally ill

8. The *Professional Code and Conduct* provides guidelines on care for the terminally ill[1]. The Hospital Authority (HA), in accordance with the *Professional Code and Conduct*, has also issued the *Guidelines on Life-sustaining Treatment in the Terminally Ill* (the *Guidelines*), with a view to assisting frontline doctors, nurses and other healthcare professionals caring for the terminally ill in making decisions with respect to life-sustaining treatment for the terminally ill. According to the model form of advance directive proposed in the *Report*, a patient can make an advance directive to choose not to receive any life-sustaining treatment[2] save for basic and palliative care when he is terminally ill, or in a persistent vegetative state, or in a state of irreversible coma.

9. At present, both professionally and legally, the treatment of patients is ultimately subject to the clinical decisions made by the healthcare professionals, especially doctors, with reference to the relevant professional codes of conduct. According to the *Professional Code and Conduct* and the *Guidelines*, where death is imminent, it is the doctor's responsibility to take care that a patient dies with dignity and with as little suffering as possible. Withholding/withdrawing life-sustaining

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[1] In the medical field, "terminally ill" generally refers to patients who suffer from advanced, progressive, and irreversible disease, and who fail to respond to curative therapy, having a short life expectancy in terms of days, weeks or a few months.

[2] The *Report* recommends that, "life-sustaining treatment" means any of the treatments which have the potential to postpone the patient's death and includes, for example, cardiopulmonary resuscitation, artificial ventilation, blood products, pacemakers, vasopressors, specialised treatments for particular conditions such as chemotherapy or dialysis, antibiotics when given for a potentially life-threatening infection, and artificial nutrition and hydration. (Artificial nutrition and hydration means the feeding of food and water to a person through a tube.)

treatment taking into account the patient's benefits, wish of the patient and family, when based upon the principle of the futility of treatment for a terminal patient, is legally acceptable and appropriate. It is important that the right of the terminally ill patient be respected. The view of his relatives should be solicited where it is impossible to ascertain the views of the patient. The decision of withholding or withdrawing life support should have sufficient participation of the patient himself, if possible, and his immediate family, who should be provided with full information relating to the circumstances and the doctor's recommendation. In case of conflict, a patient's right of self-determination should prevail over the wishes of his relatives. A doctor's decision should always be guided by the best interest of the patient. Hence, based on this principle, a valid advance directive made by a patient refusing life-sustaining treatment should be respected. An advance directive serves as important reference when a doctor has to decide on the treatment for a terminally ill and the directive can often alleviate the plight of the family in face of the patient's death.

LRC's recommendations on advance directives

10. In August 2006, LRC released the *Report* after consulting the public. The *Report* reviews the legal framework of advanced directives and introduces the concept of advance directives as "a statement, usually in writing, in which a person indicates when mentally competent the form of health care he would like to have in a future time when he is no longer competent." The *Report*'s recommendations on advance directives are at **Annex**.

11. The *Report* has also put forward recommendations on substitute decision-making in relation to medical treatment for the mentally incapacitated persons (for example, those who are in dementia, coma and vegetative state). We are now examining the recommendations in conjunction with the Labour and Welfare Bureau.

The Administration's initial views on LRC's recommendations

12. In general, we share LRC's view that the Hong Kong people are not yet familiar with the concept of advance directives. As such, it is not the appropriate time to implement advance directives at this stage through any form of legislation. In fact, while there is currently no legislation governing advance directives in Hong Kong, a person is already free to make such directives if he so wishes. Healthcare professionals will make reference to the *Professional Code and Conduct* and the *Guideline* to provide medical treatment to patients. As set out in paragraphs 8 to 9 above, healthcare professionals, especially doctors, advance directives serve as important reference when a doctor has to decide on the treatment for a terminally ill.

13. As the making of an advance directive is entirely a personal decision, to respect individuals' freedom of making decisions, the Administration has no

intention to actively advocate or encourage the public to make advance directives. However, having considered LRC's recommendations, in order to enhance the public's understanding of advance directives, provide information for those who wish to make such directives and enhance doctor-patient relationship, the Administration plans to work with HA to consult the healthcare sector (including the Medical Council of Hong Kong), legal profession, patient groups, and non-governmental organisations providing healthcare-related services for patients. Information materials on advance directives will be prepared and distributed to the public through these bodies and organisations. Relevant information will also be made also available to the public at hospitals, healthcare institutions, etc. The Administration also welcomes any comments on advance directives and/or hospice care.

14. In addition, we propose consulting the healthcare sector, legal profession and other relevant bodies or groups on the need to issue guidelines on the making and handling of advance directives to hospitals, healthcare practitioners and other professionals concerned.

15. The Administration's initial views on various recommendations of the *Report* with respect to advance directives are at **Annex**.

Proposed consultations on advance directives by the Administration

16. In the first quarter of 2009, we plan to consult hospitals, healthcare sector (including the Medical Council of Hong Kong), legal profession, patient groups and non-government organisations providing healthcare-related services to patients on the contents of information on advance directives, the forms and methods of making and withdrawing them, the guidelines for healthcare practitioners and other professionals, as well as other relevant matters, with a view to producing information materials on advance directives for the public.

Advice sought

17. Members are requested to note the contents of this paper and express views on the LRC's recommendations on advance directives, as well as the Administration's initial views on the recommendations.

Food and Health Bureau
December 2008

Annex

The Recommendations in Law Reform Commission's Report entitled "*Substitute Decision-making and Advance Directives in Relation to Medical Treatment*" concerning Advance Directives

	LRC's recommendations	The Administration's initial views
1	• The concept of advance directives should be promoted initially by non-legislative means. • The Government should review the position in due course once the community has become more widely familiar with the concept and should consider the appropriateness of legislation at that stage, taking into consideration three factors, namely, how widely the use of advance directives had been taken up; how many disputes had arisen; and the extent to which people had accepted the model form of advance directive.	• We agree with LRC that the concept of advance directives is not one with which the community is generally familiar. It would be premature to attempt to formulate a statutory framework and to embark on any legislative process for advance directives. • We do not plan to actively advocate or encourage the use of advance directives. We will disseminate information about advance directives to relevant professions and organizations and through them to the public.
2	• The publication and wide dissemination of the model form of advance directive LRC proposes (see **Enclosure**). • The use of the model form should be encouraged.	• We note the model form and will make reference to it when preparing information on advance directives.

	LRC's recommendations	The Administration's initial views
3	• Appropriate publicity should be given to encourage individuals to consider and complete advance directives in advance of any life-threatening illness.	• The making of advance directives remains a voluntary choice by an individual. We do not plan to actively advocate or encourage the use of advance directives. • We recognize that the Hong Kong people are not yet familiar with the concept. We will disseminate information about advance directives to the relevant professions and organizations and through them to the public, with a view to enabling an informed choice by an individual who wishes to make an advance directive, having regard to advice by relevant professionals and organizations as he/she deems necessary.
4	• The Government should launch publicity programmes to promote public awareness and understanding of the concept of advance directives. • Department of Health and all District Offices should have available for public reference material which provides general guidance to the public on the making and consequences of an advance directive and should provide copies of the model form of advance directive for public use.	• Same as above.
5	• The Government should endeavour to enlist support of the Hong Kong Medical Council (HKMC), medical associations, the Bar Association, the Law Society, the Hospital Authority,	• We will consult and solicit the inputs of the relevant professions (including the healthcare and legal professions) and organisations on the

	LRC's recommendations	The Administration's initial views
	all hospitals and medical clinics, non-governmental organisations involved in care for the elderly, and religious and community groups in this information campaign about the use and effect of advance directives	information about advance directives to be provided to the public, and any necessary guidelines that may need to be provided to the relevant professionals in this regard.
6	• For the purpose of making an advance directive, the terms "terminally ill" and "life-sustaining treatment" should be defined as follows: (a) the "terminally ill" are patients who suffer from advanced, progressive and irreversible disease, and who fail to respond to curative therapy, having a short life expectancy in terms of days, weeks or a few months. (b) "life-sustaining treatment" means any of the treatment which have the potential to postpone the patient's death and includes, for example, cardiopulmonary resuscitation, artifical ventilation, blood products, pace makers, vasoppressors, specialized treatments for particular conditions, such as chemotherapy or dialysis, antibiotics when given for a potentially life-threatening infection, and artificial nutrition and hydration.	• We note the two definitions of "terminally ill" and "life-sustaining treatment" made by LRC.
7	• The model form of advance directives requires that it be witnessed by 2 witnesses, one of whom must be a medical practitioner, neither witness having an interest in the estate of the person making the advance directive.	• We note the suggested implementation arrangement of advance directives.

	LRC's recommendations	The Administration's initial views
	• The Government should encourage bodies such as the Hospital Authority, the HKMC, the Hong Kong Medical Association and other relevant professional bodies to consider issuing guidelines for doctors witnessing the making of advance directives to ensure consistency of medical practice in this area. The guidelines should also provide guideline for the medical profession as to the effect of advance directives and in assessing the validity of an advance directive. • Where an individual is not able to make a written advance directive, an oral advance directive should be made before a doctor, lawyer or other independent person who should not have an interest in the estate of the person making the advance directive.	• We will consult and solicit the inputs of the relevant professions (including the healthcare and legal professions) and organizations on the information about advance directives to be provided to the public, and any necessary guidelines that may need to be provided to the relevant professionals in this regard.
8	• For the sake of certainty and avoidance of doubt, those wishing to revoke an advance directive should be encouraged to do so in writing. • If an advance directive is revoked in writing, it should be witnessed by an independent witness who should not have an interest in the estate of the person making the revocation. • If an advance directive is revoked orally, the revocation should be made before a doctor, lawyer or other independent person who should not have an interest in the estate of the person making the revocation, and where practicable that witness should make a written record of the oral revocation; and • If medical staff learn that an individual has revoked his	• Same as above.

	LRC's recommendations	The Administration's initial views
	advance directive, that information should be properly documented in the individual's medical records.	
9	• The Government should, as part of its public awareness campaign about advance directives, encourage those who wish to make an advance directive to seek legal advice and to discuss the matter first with their family members. Family members should also be encouraged to accompany the individual when he makes the advance directives.	• In providing information about advance directives to the public, we will encourage those who wish to make advance directives to seek legal advice and to discuss the matter first with their family members, and will encourage family members to accompany the individual when he makes the advance directives.
10	• The Government should encourage the HKMC or other relevant professional body to issue guidelines or a code of conduct to enhance consistency of medical practice in relation to: (a) the assessment of a person's ability to communicate; (b) the treatment of persons in a vegetative or comatose state; (c) the criteria for basic care; (d) the assessment of the validity of an advance directive; and (e) the implementation of advance directives.	• As part of our consultation with the professions, we will invite HKMC to consider this recommendation.

Health Branch

Food and Health Bureau

December 2008

Enclosure

LRC's proposed model form of advance directive

ADVANCE DIRECTIVE

Section I : Personal details of the maker of this advance directive

Name : *(Note: Please use capital letters)*

Identity document No.:

Sex : Male / Female

Date of birth :_____ / _____ / _____
(Day) (Month) (Year)

Home Address :

Home Telephone No. :

Office Telephone No. :

Mobile Telephone No. :

Section II : Background

1. I understand that the object of this directive is to minimise distress or indignity which I may suffer or create when I am terminally ill or in a persistent vegetative state or a state of irreversible coma, and to spare my medical advisers or relatives, or both, the burden of making difficult decisions on my behalf.

2. I understand that euthanasia will not be performed, nor will any unlawful instructions as to my medical treatment be followed in any circumstances, even if expressly requested.

3. I, _____ *(please print name)* being over the age of 18 years, revoke all previous advance directives made by me relating to my medical care and treatment (if any), and make the following advance directive of my own free will.

4. If I become terminally ill or if I am in a state of irreversible coma or in a persistent vegetative state as diagnosed by my attending doctor and at least one other doctor, so that I am unable to take part in decisions about my medical care and treatment, my wishes in relation to my medical care and treatment are as follows :

(Note: Complete the following by ticking the appropriate box(es) and writing your initials against that/those box(es), and drawing a line across any part you do not want to apply to you.)

(A) ***<u>Case 1 – Terminally ill</u>***

(Note: In this instruction -

"terminally ill" means suffering from advanced, progressive, and irreversible disease, and failing to respond to curative therapy, having a short life expectancy in terms of days, weeks or a few months; and the application of life-sustaining treatment would only serve to postpone the moment of death, and

"life-sustaining treatment" means any of the treatments which have the potential to postpone the patient's death and includes, for example, cardiopulmonary resuscitation, artificial ventilation, blood products, pacemakers, vasopressors, specialised treatments for particular conditions such as chemotherapy or dialysis, antibiotics when given for a potentially life-threatening infection, and artificial nutrition and hydration. (Artificial nutrition and hydration means the feeding of food and water to a person through a tube.))

☐ **Save for basic and palliative care, I do not consent to receive any life-sustaining treatment. Non-artificial nutrition and hydration shall, for the purposes of this form, form part of basic care.**

I do not want to be given the following treatment:

☐

☐

(B) ***<u>Case 2 – Persistent vegetative state or a state of irreversible coma</u>***

(Note: In this instruction -

"life-sustaining treatment" means any of the treatments which have the potential to postpone the patient's death and includes, for example, cardiopulmonary resuscitation, artificial ventilation, blood products, pacemakers, vasopressors, specialised treatments for particular conditions such as chemotherapy or dialysis, antibiotics when given for a potentially life-threatening infection, and artificial nutrition and hydration. (Artificial nutrition and hydration means the feeding of food and water to a person through a tube.))

☐ **Save for basic and palliative care, I do not consent to receive any life-sustaining treatment. Non-artificial nutrition and hydration shall, for the purposes of this form, form part of basic care.**

I do not want to be given the following treatment:

☐

☐

5. I make this directive in the presence of the two witnesses named in Section III of this advance directive, who are not beneficiaries under :

(i) my will; or
(ii) any policy of insurance held by me; or
(iii) any other instrument made by me or on my behalf.

_____ _____

Signature of the maker of this advance directive **Date**

Section III : Witnesses

Notes for witness :

A witness must be a person who is not a beneficiary under –

(i) the will of the maker of this advance directive; or
(ii) any policy of insurance held by the maker of this advance directive; or
(iii) any other instrument made by or on behalf of the maker of this advance directive.

Statement of Witnesses

First Witness

(Note: This witness must be a registered medical practitioner, who, at the option of the maker of this directive, could be a doctor other than one who is treating or has treated the maker of this directive.)

(1) I, _____ *(please print name)* sign below as witness.
(a) as far as I know, the maker of this directive has made the directive voluntarily; and

(b) I have explained to the maker of this directive the nature and implications of making this directive.

(2) I declare that this directive is made and signed in my presence together with the second witness named below.

_____ _____

(Signature of 1st witness) **(Date)**

Name :
Identity document No. / Medical Council Registration No.
Office address :

Office Tel. No. :

<u>Second witness</u>

(Note: This witness must be at least 18 years of age)

(1) I, _____ *(please print name)* sign below as a witness.

(2) I declare that this directive is made and signed in my presence together with the first witness named above, and that the first witness has, in my presence, explained to the maker of this directive the nature and implications of making this directive.

_____ _____

(Signature of 2nd witness) **(Date)**

Name :
Identity document No. :
Home address / Contact address :

Home Tel. No. / Contact No. :