

Legal Issues relating to End-of-life and Palliative Care

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Outline

- Patient's option of not dying in the Hospital
- Legal constraints for dying at home or residential care home / nursing home
 - Reporting death to the Coroner
 - Reporting death to Death Registry
 - Removal of deceased body
- Practical considerations
- Way forward

Option of not dying in the Hospital

- Dying in **Hospital** vs. Dying at **Home** or **Residential Care Home / Nursing Home**
- Patient's and family's perspective – some may prefer dying at Home, Residential Care Home, or Nursing Home
- Hospital's perspective – better use of resources
- But there may be legal and practical difficulties in these options

Option of not dying in the Hospital

- **Residential Care Homes (RCHE)** - registered under Residential Care Homes (Elderly Persons) Ordinance Cap.459 (安老院條例) – Director of Social Welfare
- Three types: (a) care and attention home; (b) aged home; (c) self-care hostel;
- **Nursing Homes (護養院)** – registered under Hospitals, Nursing Homes and Maternity Homes Registration Ordinance Cap. 165 (醫院、護養院及留產院註冊條例) – Director of Health

Option of not dying in the Hospital

- Nursing Homes – not defined in the relevant Ordinance
- Code of Practice For Private Hospitals, Nursing Homes and Maternity Homes - Under the Ordinance, “hospital” means any establishment for the care of the sick, injured or infirmed or those who require medical treatment, including a nursing home. There is no distinction of hospitals and nursing homes in terms of definition in the Ordinance. In practice, hospitals are usually taken to mean premises that provide a comprehensive range of medical services with overnight beds for the treatment of persons requiring acute or rehabilitative treatment and for persons undergoing diagnostic procedures. Nursing homes, on the other hand, are premises that provide a relatively narrow scope of services. Examples are **nursing homes for the elderly**, residential centres for the medical treatment for drug dependent persons... renal dialysis centre...

Reporting death to the Coroner

- According to Coroners Ordinance (Cap. 504) (死因裁判官條例), certain types of deaths must be reported to the Coroner (via the Police) – i.e. “reportable death” (須予報告的死亡個案)
- Reportable death implies the circumstances may demand a fuller investigation by a third party, usually the Coroner
- Coroner is given power to cause investigations into the death (e.g. autopsy) and to hold death inquests
- A list of 20 types of reportable deaths is stipulated under the Ordinance

Reporting death to the Coroner

- Type 2

“Any death of a person (excluding a person who, before his death, was diagnosed as having a terminal illness) where no registered medical practitioner has attended the person during his last illness within 14 days prior to his death.”

- In the context of end-of-life and palliative care patients, it can be said that deaths are most probably not reportable under Type 2

Reporting death to the Coroner

- Type 16

“Any death of a person where the death occurred in any premises in which the care of persons is carried on for reward or other financial consideration (other than in any premises which comprise a hospital, nursing home or maternity home registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165))”

Reporting death to the Coroner

- Deaths in registered **Nursing Homes** are exempt from reporting to the Coroner (unless deaths belong to other types of reportable deaths)
- Deaths in **Residential Care Homes** are reportable to the Coroner

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Reporting death to the Coroner

- Institutions that **comprise a registered Nursing Home** (i.e. offer both residential care homes places and nursing home places) are within the scope of exemption

	Care and Attention place	Nursing Home place	Total	Reportable to Coroner
Caritas Evergreen Home	12	108	120	No
St James Settlement True Light Home	101	22	123	No

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Reporting death to the Coroner

- All deaths must be reported to the Registrar of Births and Deaths (生死登記處登記官) under the Births and Deaths Registration Ordinance (Cap. 174) (生死登記條例)
- Regardless of whether a death is reportable under the Coroners Ordinance

Reporting death to the Coroner

	Report to Coroner	Report to Death Registry
Death at home (attended by doctor within 14 days before death)	X	√
Death at home (not attended by doctor within 14 days before death, but diagnosed with terminal illness before death)	X	√
Death at Residential Care Homes for the Elderly	√	√
Death at Nursing Homes	X	√

Reporting death to the Coroner

- Under the Coroners Ordinance, certain categories of people are required to report reportable deaths to the Coroner, usually via Police
- For examples, doctor who signed Form 18 (簽署死因證明書的註冊醫生) or who attended the deceased during his last illness (在死者死前最後患病期間診治死者的註冊醫生), hospital in charge, police officer etc.)
- Failure to report reportable deaths to Coroner is a criminal offence

Reporting for registration of death

- Births and Deaths Registration Ordinance (Cap. 174)
- Statutory requirement to report to the Registrar of Births and Deaths (生死登記處登記官) by informants
- Report must be made within 24 hours after death (exclusive of travelling time, hours of darkness and general holidays)
- Failure to report deaths is a criminal offence
- Registrar will issue a Certificate of registration of death (死亡登記證明書)

Reporting for registration of death

Who should make the report to Death Registry?

- A **relative** of the deceased present at the death, or in attendance during the last illness
- A **person present** at the death, or in attendance during the last illness
- The **occupier** (or inmate) of the house in which the death occurred
- The person causing the body of the deceased to be buried

辦理死亡登記的合資格申報人

1. 在死者死亡時在場的親屬
2. 在死者死前最後患病期間照顧死者的親屬
3. 在死者死亡時在場的人
4. 在死者死前最後患病期間照顧死者的人
5. 死者死亡時所在的房屋的佔用人
6. 死者死亡時所在的房屋的住客
7. 安排埋葬死者屍體的人

Reporting for registration of death

How to report?

- Find a doctor who has attended the patient during his last illness to personally view the body to be satisfied that death has occurred, and sign Form 18 (certificate of cause of death)
- Informant to travel to one of the Death Registry offices
- Produce Form 18 and give other information (date and place of death; full name and age of deceased; occupation and nationality etc. of deceased, if known)
- <http://www.gov.hk/en/residents/immigration/bdmreg/death/deathreg/naturalcause.htm>

Reporting for registration of death

- Download a copy of Form 18 under the Births and Deaths Registration Ordinance, which sets out all the important information
- http://www.legislation.gov.hk/blis_ind.nsf/CurAllEngDoc/452E14C5F7CAC45288256489000BA507?OpenDocument
- http://www.legislation.gov.hk/blis_ind.nsf/6033A8CC1F220686482564840019D2F2/40B85F457139AC054825745000348866?OpenDocument

Removal of deceased body

- Upon deaths, deceased bodies cannot be removed immediately to funeral homes or public mortuaries
- Must first obtain a Certificate of registration of Death (死亡登記證明書) from the Death Registry (or order to bury or cremate from Coroner; or a permit from the nearest police station) before removal of body
- Form 18 (死因證明書) is required before Certificate of registration of Death will be issued by the Death Registry
- Premature removal of body is a criminal offence

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Practical considerations

- Informants (relatives) must find the right doctor(s) who has attended the patient during his last illness to view the body and sign Form 18
- Doctor to travel to the place of death to view the body
- Time constraint – within 24 hours
- Cannot remove the body before obtaining a Certificate of registration of Death (body must be left at Home or RCHE for some time)
- May need to report to the Coroner (via Police) – interview by police and forensic pathologist etc

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Practical considerations

- People do not know what to do if deaths occur at home or RCHE even if they prefer these options
- Relevant legal requirements are complex and difficult to understand (not a criticism), breach of which may even attract criminal liability
- Without sufficient help by the healthcare system, dying at home or RCHE is virtually not an option for most people
- There are obvious advantages to the society (both patients and hospitals) if dying at home or RCHE is encouraged

Way forward

- Amend the relevant legislation to cope with the need of the society (Government)
- Establish a Task Force to study the experiences of various EOL programmes attempted in different hospitals and design successful models to improve the end-of-life and palliative care in Hong Kong (Government / HA)
- Educate the patients, families, healthcare workers and the public (All)

Way forward – a possible model?

- Patients agree to participate in EOL programme
- Patients discharged home or sent back to RCHE
- Relatives know what to do when deaths occur
- Certain documents issued by EOL team to help the relatives
- Relevant doctors clearly identified (available to sign Form 18)

Way forward – a possible model?

- Ambulance service available to transfer patients from home or RCHE to hospitals upon being notified by relatives that patients appear to have passed away
- No A&E services are necessary when bodies are brought back to hospitals by ambulance
- Form 18 will be signed by the relevant doctors after they personally view the bodies
- Body placed inside hospital pending issuance of Certificate of registration of Death by Death Registry

Way forward – a possible model?

- Body transferred to mortuary as in usual death cases
- Police and Coroner being informed of details of the EOL programme – sufficient prior liaison with them
- Investigation by Coroner may be simplified and death inquests may be extremely rare for these cases

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- Thank You