





Overcoming the **Legal Barriers** to Dying at Home in Hong Kong

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- ▶ This 20-min presentation is intended for general information and should not be considered or construed as legal advice to any member of the audience or any reader of the powerpoint regarding his/her particular circumstances.

Horror stories



Dying at home conjures up images of police searching the house and interrogating family members of the deceased, as if it were a homicide case.

The Coroners Ordinance (Cap 504)

A coroner may

- ▶ investigate a reportable death s.4;
- ▶ issue a warrant authorizing police office to enter and search premises s.10
- ▶ order an autopsy s.6; and/or
- ▶ order an inquest s.14

The Coroners Ordinance (Cap 504)

Dying at home may fall into no. 2 on the List of **Reportable Deaths** Pt 1 of Sch 1

“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”.

The Coroners Ordinance (Cap 504)

Whether or not the death of the person is a **reportable** death, where a person dies **suddenly** and the body is found in Hong Kong, a coroner may, if he considers that an inquest is necessary, hold an inquest into the death. s.14

The Coroners Ordinance (Cap 504)

How to overcome legal barriers

To establish

NOT a reportable death

NOT a sudden death

The Coroners Ordinance (Cap 504)



How to overcome legal barriers

by arranging with the patient's doctor (who can sign medical certificate of the cause of death)

to issue terminal illness diagnosis (if the patient has definite terminal illness, eg terminal cancer); or

to see the patient during his last illness within 14 days prior to his death

Public Health and Municipal Services Ordinance (Cap. 132)

- ▶ MUST NOT keep a dead body at home for more than 48 hours. s.112(1)

COMMON SENSE !

Public Health and Municipal Services Ordinance (Cap. 132)

How to overcome legal barriers

Moving a dead body from home to a mortuary requires an official “going-out pass” **CERTIFICATE OF REGISTRATION**

If a person dies at a hospital , the need for a going-out pass will not be so urgent, as the dead body will automatically be moved to a mortuary inside the hospital.

The Births and Deaths Registration Ordinance (Cap. 174)

- ▶ **Must register death** with the Registrar of Births and Deaths **within 24 hours** (excluding travel time, nighttime and holiday)^{s.14}

The Births and Deaths Registration Ordinance (Cap. 174)

- ▶ **Must deliver Medical Certificate** of the Cause of Death [Form 18] for registration s. 20

The Births and Deaths Registration Ordinance (Cap. 174)

- ▶ **Must obtain Certificate of Registration of Death** [Form 12 (commonly known as “**going-out pass**”)] or the Coroner’s Order [Form 11] for unnatural death, or police permit for urgent religious burial [Form 8] **to move the dead body from home** s.16-17
- ▶ If burial, extra requirement for burial permit [Form 10] s.10



The Births and Deaths Registration Ordinance (Cap. 174)

Failure to comply = criminal offence s.28

- ▶ **Must register death** with the Registrar of Births and Deaths **within 24 hours** (excluding travel time, nighttime and holiday) s.14
- ▶ **Must deliver Medical Certificate** of the Cause of Death [Form 18] **for registration** s. 20
- ▶ **Must obtain Certificate of Registration** of Death [Form 12 (commonly known as “**going-out pass**”)] or the Coroner’s Order [Form 11] for unnatural death, or police permit for urgent religious burial [Form 8] **to move dead body from home** s.16-17
- ▶ If burial, extra requirement for burial permit [Form 10] s.10

Who is qualified to register death?

(“the informant”) s.14, 2nd Schedule Part II

And receive the Medical Certificate of the Cause of Death

- ▶ 1. A RELATIVE of the deceased present at the death.
- ▶ 2. A RELATIVE of the deceased in attendance during the last illness.
- ▶ 3. A person present at the death.
- ▶ 4. A person in attendance during the last illness.
- ▶ 5. The occupier of the house in which the death occurred.
- ▶ 6. An inmate of the house in which the death occurred.
- ▶ 7. The person causing the body of the deceased to be buried.

Who is qualified to register death? (“the informant”)s.14, 2nd Schedule Part II

The informant must be prepared to **state accurately** to the Registrar

- ▶ (1) the date and place of death;
- ▶ (2) the surname and full name of deceased;
- ▶ (3) the correct age of deceased; and
- ▶ (4) the rank, profession, or occupation of deceased and nationality so far as is known.

Who is qualified to issue the Medical Certificate of the Cause of Death [Form 18] to the informant? s. 20

A **doctor** who

- ▶ **attended** the person in his/her **last illness**;
- ▶ has **personally viewed** the body of the person and is satisfied that death has occurred

(if in hospital, the attending doctor can rely on the notice of another doctor who personally viewed the body and is satisfied that death has occurred); and

- ▶ has a **book of printed Form 18s** issued by the Registrar and **can describe** the cause of death in strict accordance with the **prescribed classification**.

Cremation and Gardens of Remembrance Regulation (Cap. 132M)

- ▶ Application for cremation also requires Medical Certificate (Cremation) [Form 2 under Cap. 132M]

How to overcome legal barriers

1. To identify and arrange with attending doctor

- ▶ to issue terminal illness diagnosis; or to see the patient during his last illness within 14 days prior to his death
- ▶ to personally view the patient's body at death and to issue the Medical Certificate of the Cause of Death [Form 18] (also Medical Certificate (Cremation) [Form 2] if applicable)

How to overcome legal barriers

2. To identify and prepare informant

- ▶ to notify the attending doctor to view the patient's body at death;
- ▶ to notify the funeral planner/agent at death for prompt transfer of dead body;
- ▶ to register death within 24 hours with required documents; and
- ▶ to obtain the going-out pass [Form 12] (also the burial pass [Form 10] if applicable)

How to overcome legal barriers

3. To identify and arrange with funeral planner/agent

- ▶ to transport the deceased's body from home asap (within 48 hours) to a mortuary
- ▶ to guide the informant throughout the registration process and cremation/burial application process



How to overcome legal barriers

▶ 1. To identify and arrange with attending doctor

- to issue terminal illness diagnosis; or to visit every 14 days
- to personally view the patient's body at death and to issue the Medical Certificate of the Cause of Death [Form 18] (also Medical Certificate (Cremation) [Form 2] if applicable)

▶ 2. To identify and prepare informant

- to notify the attending doctor to view the patient's body at death
- to notify the funeral planner/agent at death for prompt transfer of dead body
- to register death within 24 hours with required documents; and to obtain the going-out pass [Form 12] (also the burial pass [Form 10] if applicable)

▶ 3. To identify and arrange with funeral planner/agent

- to transport the deceased's body asap (within 48 hours) to a mortuary
- to guide the informant throughout the registration process and cremation/burial application process

What IF for some reason

At the time of death of the patient

- ▶ The attending doctor does not show up; or
- ▶ The informant is not available; or
- ▶ The informant panicks; or
- ▶ ...
- ▶ ...

the preparation does not work?

If the preparation does not work, Call 999 ambulance

- ▶ Admission to HA hospitals A & E dept
- ▶ The usual practice now:

When a patient is dead on arrival at A & E,
the case will be reported to the coroner; and
the deceased's body will be sent to a PUBLIC mortuary

unless the HA healthcare team looking after the patient regularly (e.g. the palliative team in the hospital) has made prior arrangement with A&E that, when the patient is dead on arrival, the palliative care team will sign Form 18 and the dead body will be sent to the hospital mortuary.

If the preparation does not work, Call 999 ambulance

- ▶ May trigger the coroner's mechanism and police investigation
- ▶ With recent and relevant medical records of the deceased and clear police report, the coroner may exercise his/her discretion not to order investigation/autopsy/inquest, and issue the Coroner's Order [Form 11] authorizing burial/cremation
- ▶ When the Coroner has determined the cause of death, the Registrar of Births and Deaths will register the death.

The Coroners Ordinance (Cap 504)

At the Coroner's discretion

A coroner may

- ▶ investigate a reportable death s.4;
- ▶ issue a warrant authorizing police office to enter and search premises s.10
- ▶ order an autopsy s.6; and/or
- ▶ order an inquest s.14

Whether or not the death of the person is a reportable death, where a person dies suddenly and the body is found in Hong Kong, a coroner may, if he considers that an inquest is necessary, hold an inquest into the death. s.14

Call 999 ambulance

- ▶ An additional set of legal barriers under the **Fire Services Ordinance** and the **Mental Health Ordinance**

The Fire Services Ordinance (Cap. 95)

An 999 ambulance officer has the duty to assist any person who appears to need prompt or immediate medical attention by

- ▶ (i) securing his safety;
- ▶ (ii) resuscitating or sustaining his life;
- ▶ (iii) reducing his suffering or distress” s. 7(d)

DESPITE the wish and need of a dying-at-home person

The Mental Health Ordinance (Cap. 136)

- ▶ Is a not-fully-conscious terminally-ill person a **mentally incapacitated person (MIP)** according to the definition of MIP under this Ordinance?

The Mental Health Ordinance (Cap. 136)

- ▶ If he is, he may be subject to **treatment** (e.g. cardiopulmonary resuscitation, artificial ventilation, dialysis, tube-feeding) **without his consent** as long as the doctor considers that it is in the MIP's **best interests** (meaning life-saving) to do so [s.59ZA](#); [s.59ZF](#)

DESPITE a terminally-ill patient's wish to avoid any "over-treatment" in a hospital by dying at home

The Mental Health Ordinance (Cap. 136)

- ▶ If he has a Guardian under a Guardianship order, his Guardian has power to consent to treatment s.59R(3)(d)
- ▶ This power is often narrowly construed by the Guardian to the extent that the Guardian dares not refuse any life-sustaining treatment

DESPITE a terminally-ill patient's wish to avoid any "over-treatment" in a hospital by dying at home

How to overcome legal barriers in **Fire Services Ordinance** and **Mental Health Ordinance**

**Advance Care Planning (ACP) and
Advance Directives in relation to Medical Treatment(AD)**
respecting the autonomy of the patient
in a dying-at-home context

**Even with ACP and AD fully in place in Hong Kong, the legal barriers
in the Fire Services Ordinance and the Mental Health Ordinance
would still have to be removed by amendment to the Ordinances.**

**The development of AD, ACP and DNACPR in Hong Kong in relation to
dying at home is covered by Dr Tse Chun Yan's presentation**

The Continuing Powers of Attorney Bill

(consultation from 28 December 2017 to 28 April 2018)

<http://www.info.gov.hk/gia/general/201802/21/P2018022100358.htm>

- ▶ A mentally capable person appoints an attorney who will take care of his finance and personal care (including healthcare) when he becomes mentally incapable.
- ▶ A personal care attorney = a healthcare proxy
- ▶ However, according to the Bill dated 28 December 2017, a personal care attorney may NOT make a decision to give, refuse or withdraw any life-sustaining treatment for the MIP s. 5(1)(d)

The Continuing Powers of Attorney **Bill**

(consultation from 28 December 2017 to 28 April 2018)

<http://www.info.gov.hk/gia/general/201802/21/P2018022100358.htm>

- ▶ Enough feedback in the consultation to remove the restriction?
- ▶ Hope the new Ordinance will allow the attorney to make decisions on life-sustaining treatment to facilitate dying at home.

The Chief Executive's 2017 Policy Address

- ▶ 163. In addition, the HA has formulated a strategic service framework on palliative care to set out specific guidelines on its service model and system infrastructure. Measures will be introduced to provide palliative care and end-of-life care services for an increased number of terminally ill patients within hospital settings and in the community. Such measures include **home palliative care**, increasing the frequency of home visits by nurses each year and training for the staff of residential care homes for the elderly. Meanwhile, **the Government will consider amending the relevant legislation to give patients the choice of “dying in place”**.

Overcoming the ultimate barrier

FEAR of death and RELUCTANCE to go from cure to care

- ▶ Jesus said, “I am the resurrection and the life. The one who believes in me will live, even though they die; and whoever lives and believes in me will never die. Do you believe this?” (John 11:25-26)