

## Surrogacy Arrangement

Childbirth by surrogacy arrangement has become a matter of public concern. As the authorities with statutory responsibility for regulating surrogacy arrangements and medical practitioners respectively, the Council on Human Reproductive Technology (“CHRT”) and the Medical Council of Hong Kong (“MCHK”) consider that it is necessary to make a joint statement on this issue.

2. Surrogacy arrangement is a type of reproductive technology procedure governed by the Human Reproductive Technology Ordinance (“the Ordinance”), Cap. 561, Laws of Hong Kong. It is unlawful for a person to carry on a reproductive technology procedure except pursuant to a license issued by CHRT. A reproductive technology procedure may only be carried on in premises properly licensed for the purpose, and under the supervision of the person responsible specified in the licence.

3. Surrogacy arrangements on a commercial basis are prohibited under the Ordinance. It is unlawful for any person to do any of the following:-

- (a) make or receive any payment (whether in Hong Kong or elsewhere) for –
  - (i) initiating or taking part in any negotiations for the making of a surrogacy arrangement; or
  - (ii) offering or agreeing to negotiate the making of a surrogacy arrangement; or
  - (iii) compiling any information for use in making, or negotiating the making of, surrogacy arrangements;
- (b) seek to find a person willing to do any act in contravention of sub-paragraph (a) above;
- (c) take part in the management or control of a body (corporate or unincorporate) whose activities consist of or include any act in contravention of sub-paragraph (a) above;
- (d) take part in any act in furtherance of any surrogacy arrangement where he knows or ought to know that the arrangement is in contravention of sub-paragraph (a) above;

- (e) cause to be published or distributed, or knowingly publish or distribute, an advertisement relating to surrogacy arrangements (whether or not the advertisement invites others to do any act in contravention of sub-paragraph (a) above).

4. It is unlawful to use in a surrogacy arrangement the gametes of persons other than the husband and wife in a marriage to whom the child carried will be handed over. The Code of Practice on Reproductive Technology and Embryo Research (“the Code”) issued by CHRT stipulates that a reproductive technology procedure may be provided pursuant to a surrogacy arrangement only if the wife is unable to carry a pregnancy to term and no other treatment option is practicable.

5. While the Ordinance allows the making of surrogacy arrangements which do not involve any commercial dealing, no surrogacy arrangement is enforceable. If any party to an arrangement refuses to act pursuant to the arrangement, the other party cannot compel the defaulting party to act in accordance with the terms of the arrangement, including handing over of the child by the surrogate mother.

6. Besides legal sanctions for contravention of the provisions of the Ordinance, a medical practitioner may also be guilty of professional misconduct and liable to be disciplined by MCHK if he/she:-

- (a) not being a person to whom a licence issued by CHRT applies, participates in a reproductive technology procedure;
- (b) being a person to whom a licence applies, provides a reproductive technology procedure in breach of the provisions of the Code;
- (c) does any of the prohibited acts set out in paragraph 3 above;
- (d) uses in a surrogacy arrangement the gametes of persons other than the husband and wife in a marriage to whom the child carried will be handed over; or

- (e) provides a reproductive technology procedure pursuant to a surrogacy arrangement where the wife is not unable to carry a pregnancy to term or where other treatment options are practicable.

7. The public and medical practitioners should take care to ensure that they will not be involved in unlawful surrogacy arrangements.

8. Medical practitioners should also ensure that when they provide reproductive technology procedures they do so in compliance with the provisions of the Ordinance and the Code. If in doubt about their legal position, they should seek legal advice before proceeding to initiate or make any arrangement appertaining to reproductive technology procedures.

Jointly issued by:-

Council on Human Reproductive Technology and Medical Council of Hong Kong

September 2011