

**PHILIPPINE SOCIETY OF NEPHROLOGY STATEMENT ON DOH
ADMINISTRATIVE ORDER 2008-0004:**

**REVISED NATIONAL POLICY ON KIDNEY TRANSPLANTATION FROM LIVING
NON-RELATED ORGAN DONOR AND ITS IMPLEMENTING STRUCTURES**

The PSN objects to this AO because of the following reasons.

1. The AO is the wrong response to the problem of organ trafficking and kidney sale.

Prohibition of kidney sale is not new. Kidney sale has been prohibited since 2002 with the issuance of Administrative Order 124 from the Department of Health regulating kidney transplants from living non-related donors. The problem is that the DOH was unable to enforce it and kidney sale continued to flourish. Despite the passage of the Anti Trafficking in Persons Act in 2003 which specifically prohibits the sale or removal of organs, the Philippines has been listed as one of the top five organ trafficking hotspots in the world by the WHO since 2005.

In 2007, the DOH commissioned a program implementation review of the Philippine Organ Donation Program (PODP). The report stated that “the Bureau of Health Facilities and Services is said to be unable to enforce rules due to the lack of capacity and ability to monitor accredited facilities” and “the organ donation program of the country has also no mechanism to adequately enforce ethical guidelines on accredited facilities”. The Executive Summary of this report also stated that “Compliance to regulations is poorly documented and enforced due to inadequately designed incentive structures, capacity limitations and non-coordination of efforts”.

The recently signed AO specifically states that “foreign patients may receive organs from local donors subject to the guidelines and limitations formulated for this purposed by the Philippine Network for Organ Donation and Transplantation as approved by the Board”. This will open the floodgates for more exploitation of poor Filipino donors by foreign recipients considering that in the years 2002 to 2005, when a 10% cap for transplants to foreigners was supposed to have been enforced, more than 400 kidney transplants from local donors to foreign recipients were performed, a number is that is likely to be an underestimate because of incomplete reporting from some hospitals.

2. The AO is deceptive.

The AO purports to protect the donor. However, the report of the PODP Program Implementation Review also states that “there were no specific or concrete policies with regard to the welfare of the donors”. In 2007, the Human Organ Preservation Office reported only 53% compliance to follow-up among the donors in the program. Therefore, there has been inadequate implementation of this crucial provision and there is nothing new in this AO that would ensure improved implementation.

An issue of concern is that since kidney sale is prohibited under the AO, the kidney provider would be the guilty party. In fact, the most common scenario is that the kidney provider is an impoverished Filipino who is a victim of human trafficking under RA 9208 who needs to be helped, rather than prosecuted.

3. The AO contradicts itself.

The AO states the kidney trade is prohibited. However, there is provision for the giving of donor gratuity through DOH-designated foundation/s.

As described in the 2007 Program Implementation Review of the DOH, the existing gratuity package consisted of: reimbursement for lost income for 4 months (P100,000), livelihood assistance (P75,000), and life insurance (P100,000). In addition, the donor is also entitled to have a 10-year PhilHealth membership, free annual medical check up for 10 years and other assistance depending on qualification and need. For a poor Filipino, these amounts would surely qualify as “valuable consideration” and therefore would constitute a sale.

4. The AO is opposed by local and international health organizations.

In several letters to Sec. Duque, The Transplantation Society (an international society of health professionals involved in transplantation) and the International Society of Nephrology (an international society of kidney specialists) have made their objections to this AO sufficiently clear. They have stated that this AO is the first of its kind in the world and contrary to the World Health Assembly direction “to take measures to protect the poorest and vulnerable groups from transplant tourism and the sale of tissues and organs, including attention to the wider problem of international trafficking in human tissues and organs.”

The WHO, in a policy brief about this AO, stated that “non-directed donors, in the whole context of the AO, become synonymous to commercial donors or kidney vendors.” It also stated that the provision allowing foreign patients access to organs in the Philippines “literally allows transplant tourism, and the high potential for commercialization, as foreigners can obtain organs from non-directed living kidney donors for an amount of money”.

The CBCP has also shown its concern by issuing a statement which says, in part, “We understand the poor and they should not be blamed. There are other ways to help them but not through organ sale. They are human beings and they cannot be treated as commodities.”

The Philippine Society of Nephrology supports these views and calls for the following:

1. Revocation of DOH Administrative Order 2008-0004.
2. Total ban on kidney transplants to foreigners using Filipino kidney donors
3. Active implementation of RA 9208 to address organ trafficking
4. Vigorous development of a successful deceased donor program and a comprehensive renal disease prevention program.
5. Restriction of living kidney donation to blood-related or emotionally-related donors.
6. Compliance with the guiding principles of the World Health Organization and the World Health Assembly resolutions regarding kidney transplantation and organ trafficking.