

Uniform Anatomical Gift Act

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National Conference of Commissioners on Uniform State Laws

and by it

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Prefatory Note and Comments

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Uniform Anatomical Gift Act

Prefatory Note

Tissues and organs from the dead can be used to bring health and years of life to the living. But, if utilization of bodies and parts of bodies is to be effectuated, a number of competing interests in a dead body must be harmonized, and several troublesome legal questions must be answered.

The principal competing interests are: (1) the wishes of the deceased during his lifetime concerning the disposition of his body; (2) the desires of the surviving spouse or next of kin; (3) the interest of the state in determining by autopsy, the cause of death in cases involving crime or violence; (4) the need of autopsy to determine the cause of death when private legal rights are dependent upon such cause; and (5) the need of society for bodies, tissues and organs for medical education, research, therapy and transplantation. These interests compete with one another to a greater or less extent and this fact creates problems.

The principal legal problems arising from these various interests are: (1) who may legally make an ante-mortem gift of his body or a part thereof; (2) what is the right of the next of kin, either to set

aside the decedent's expressed wishes, or themselves to make anatomical gifts from the dead body; (3) who may legally be made donees of anatomical gifts; (4) for what purposes may such gifts be made; (5) how may anatomical gifts be made, i.e. by will, by writing, by a card carried on the person, or by telegraphic or recorded telephonic communication; (6) may an ante-mortem gift be revoked by the donor during his lifetime; (7) what are the rights of survivors in the body after removal of donated parts; (8) what protection from legal liability shall be afforded to surgeons and others involved in carrying out anatomical gifts; (9) shall such protection be afforded regardless of the state in which the document of gift is executed; (10) shall laws concerning autopsies take precedence over anatomical gifts; (11) shall the time of death be defined in any way; (12) shall the interest in preserving life of the physician in charge of a decedent preclude him from participating in the transplant procedure by which donated tissues or organs are transferred to a new host. These are the principal legal questions that should be covered in an anatomical gift act. The Uniform Anatomical Gift Act covers them.

The laws now on the statute books do not, in general, deal with these legal questions in an adequate manner. The laws are a confusing mixture of old common law dating back to the 17th century and state

statutes that have been enacted from time to time. Some 39 states and the District of Columbia have statutes that deal in a variety of ways with some, but by no means all, of the above listed legal problems. Four other states have statutes providing for the gift of eyes only.

The laws differ from each other in a variety of respects, both as to content and coverage. They differ in their enumeration of permissible donees (some require specified donees, others permit gifts to any hospital or physician in charge at death); they differ as to acceptable purpose of gifts (some, for example, do not include licensed tissue banks); some differ as to the minimum age of the donor; others as to the manner of execution of gifts and the manner of revocation. Some require delivery of the instrument of gift or filing in a public office, or both, as a condition of validity. Others make no such provision. Since the statutes differ in important respects, a gift adequate in one state may or may not protect the surgeon in another state who relies upon the law in effect where the transplant takes place. In short, the present statutory picture is one of confusion, diversity and inadequacy, that tends to discourage anatomical gifts and to create difficulties for transplant surgeons.

In view of the foregoing the need of a comprehensive act and an act applicable in all states is apparent. The Uniform Anatomical Gift

Act herewith presented by the National Conference of Commissioners on Uniform State Laws takes account as well as possible of the numerous conflicting interests and legal problems. Wherever adopted it will encourage the making of anatomical gifts, thus facilitating therapy involving such procedures. It will, at the same time, serve the needs of the several conflicting interests in a manner consistent with prevailing customs and desires in this country respecting dignified disposition of dead bodies. Finally, when adopted by all of most of the states, it will provide a uniform legal environment throughout the country for this new frontier of modern medicine.

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## UNIFORM ANATOMICAL GIFT ACT

An act authorizing the gift of all or part of a human body after death for specified purposes.

1       SECTION 1. [Definitions.]

2       (a) "Bank or storage facility" means a facility licensed,  
3       accredited, or approved under the laws of any state for storage  
4       of human bodies or parts thereof.

5       (b) "Decedent" means a deceased individual and includes  
6       a stillborn infant or fetus.

7       (c) "Donor" means an individual who makes a gift of all or  
8       part of his body.

9       (d) "Hospital" means a hospital licensed, accredited, or  
10       approved under the laws of any state; includes a hospital  
11       operated by the United States government, a state, or a subdivision  
12       thereof, although not required to be licensed under state laws.

13       (e) "Part" means organs, tissues, eyes, bones, arteries, blood,  
14       other fluids and any other portions of a human body.

15       (f) "Person" means an individual, corporation, government  
16       or governmental subdivision or agency, business trust, estate, trust,  
17       partnership or association, or any other legal entity.

18 (g) "Physician" or "surgeon" means a physician or surgeon  
19 licensed or authorized to practice under the laws of any state.

20 (h) "State" includes any state, district, commonwealth, territory,  
21 insular possession, and any other area subject to the legislative  
22 authority of the United States of America.

#### Comment

Subsection (e) is in accord with the Uniform Statutory Construction Act, approved in 1965, which provides in section 3 "The singular includes the plural, and the plural includes the singular." The Uniform Act or an equivalent is almost universally included in state statute books.

Subsection (f) is taken verbatim from the Uniform Statutory Construction Act, section 26 (4). In any state that has adopted the Uniform Act or its equivalent, this subsection will be unnecessary.

Subsection (h) is taken from section 26(g) of the Uniform Statutory Construction Act.

1 SECTION 2. [Persons Who May Execute an Anatomical Gift.]

2 (a) Any individual of sound mind and 18 years of age or more may  
3 give all or any part of his body for any purpose specified in section  
4 3, the gift to take effect upon death.

5 (b) Any of the following persons, in order of priority stated,  
6 when persons in prior classes are not available at the time of death,  
7 and in the absence of actual notice of contrary indications by the  
8 decedent or actual notice of opposition by a member of the same  
9 or a prior class, may give all or any part of the decedent's body for

10 for any purpose specified in section 3:

- 11 (1) the spouse,  
12 (2) an adult son or daughter,  
13 (3) either parent,  
14 (4) an adult brother or sister,  
15 (5) a guardian of the person of the decedent at the time  
16 of his death,  
17 (6) any other person authorized or under obligation to  
18 dispose of the body.

19 (c) If the donee has actual notice of contrary indications by  
20 the decedent or that a gift by a member of a class is opposed by a  
21 member of the same or a prior class, the donee shall not accept the  
22 gift. The persons authorized by subsection (b) may make the gift after  
23 or immediately before death.

24 (d) A gift of all or part of a body authorizes any examination  
25 necessary to assure medical acceptability of the gift for the  
26 purposes intended.

27 (e) The rights of the donee created by the gift are paramount to  
28 the rights of others except as provided by Section 7 (d).

#### Comment

Existing state statutes differ in their respective standards establishing the donor's competence to execute an anatomical gift.

"Competence to execute a will" is used as the standard in ten states. "Legal age" and sound mind is required in five states.

"Twenty-one years and sound mind is the stated standard in the statutes of ten states. In four states a person who is eighteen years of age or older may make the gift, and in six states "any person" may do so. One state requires twenty-one years accompanied by a certificate of a physician that the donor is "of sound mind and not under the influence of narcotic drugs."

To minimize confusion there is merit in having a uniform provision throughout the country. Also it is desirable to enlarge the class of possible donors as much as possible. Subsection (a) of Section 2, providing that any person of sound mind and 18 years or more of age may execute a gift, will afford both nationwide uniformity and a desirable enlargement of the class of donors.

Subsection (b) spells out the right of survivors to make the gift. Taking into account the very limited time available following death for the successful removal of such critical tissues as the kidney, the liver and the heart, it seems desirable to eliminate all possible question by specifically stating the rights of and the priorities among the survivors.

Also, Section 2 (b) provides for the effect of indicated objections by the decedent, and differences of view among the survivors. Finally it authorizes the survivors to execute the necessary documents even prior to death. In view of the fact that persons under 18 years of age are excluded from subsection (a), it is especially desirable to cover with care the status of survivors, so younger decedents may be included.

Subsection (d) is added at the suggestion of members of the medical profession who regard a post mortem examination, to the extent necessary to ascertain freedom from disease that might cause injury to the new host for transplanted parts, as essential to good medical practice.

1           SECTION 3. [Persons Who May Become Donees; Purposes for Which  
2 Anatomical Gifts May be Made.] The following persons may become

3 donees of gifts of bodies or parts thereof for the purposes stated:

4           (1) any hospital, surgeon, or physician, for medical or  
5           dental education, research, advancement of medical or  
6           dental science, therapy, or transplantation; or

7           (2) any accredited medical or dental school, college or

- 8            university for education, research, advancement of  
 9            medical or dental science, or therapy; or
- 10           (3) any bank or storage facility, for medical or dental  
 11           education, research, advancement of medical or dental  
 12           science, therapy, or transplantation; or
- 13           (4) any specified individual for therapy or transplantation  
 14           needed by him.

#### Comment

Existing state statutes reveal great diversity of provisions concerning possible donees and the purposes for which anatomical gifts may be made.

As to donees, the lists include licensed hospitals, storage banks, teaching institutions, universities, colleges, medical schools, state public health and anatomy boards, and institutions approved by the state department of health. Some of the statutes are detailed and comprehensive. Others are limited, brief and general. A few, do not seek, in any way, to name or limit the donees. They confine themselves to stating the purposes for which donations are permissible. The Uniform Act attempts to achieve a maximum of clarity and precision by carefully naming the permissible donees. The statutes in three states specify that no donor shall ask compensation and no donee shall receive it. Several statutes provide that storage banks shall be non-profit organizations. On the other hand, most of the states seemingly are not concerned over the profit motive and no mention is made of it. The Uniform Act follows the latter course in this regard.

As to purposes, again there is great diversity among the statutes. The list of purposes includes teaching, research, advancement of medical science, therapy, transplantation, rehabilitation, and scientific uses. Again some of the statutes are detailed, and others are brief and general. A few statutes contain no limitation whatsoever - merely naming the donees, thus assuring reliability, and then inclusive in naming the purposes in broad terms, thus assuring flexibility. The Uniform Act follows this course.

1            SECTION 4. [Manner of Executing Anatomical Gifts.]

2            (a) A gift of all or part of the body under Section 2 (a) may

3 be made by will. The gift becomes effective upon the death of the  
4 testator without waiting for probate. If the will is not probated,  
5 or if it is declared invalid for testamentary purposes, the gift, to  
6 the extent that it has been acted upon in good faith, is nevertheless  
7 valid and effective.

8 (b) A gift of all or part of the body under Section 2 (a)  
9 may also be made by document other than a will. The gift becomes  
10 effective upon the death of the donor. The document, which may be  
11 a card designed to be carried on the person, must be signed by the  
12 donor in the presence of 2 witnesses who must sign the document  
13 in his presence. If the donor cannot sign, the document may be  
14 signed for him at his direction and in his presence in the  
15 presence of 2 witnesses who must sign the document in his presence.  
16 Delivery of the document of gift during the donor's lifetime is not  
17 necessary to make the gift valid.

18 (c) The gift may be made to a specified donee or without  
19 specifying a donee. If the latter, the gift may be accepted by  
20 the attending physician as donee upon or following death. If the  
21 gift is made to a specified donee who is not available at the time  
22 and place of death, the attending physician upon or following death,  
23 in the absence of any expressed indication that the donor desired  
24 otherwise, may accept the gift as donee. The physician who becomes

25 a donee under this subsection shall not participate in the procedures  
26 for removing or transplanting a part.

27 (d) Notwithstanding Section 7 (b), the donor may designate  
28 in his will, card, or other document of gift the surgeon or physician  
29 to carry out the appropriate procedures. In the absence of a  
30 designation or if the designee is not available, the donee or other  
31 person authorized to accept the gift may employ or authorize any  
32 surgeon or physician for the purpose.

33 (e) Any gift by a person designated in Section 2 (b) shall  
34 be made by a document signed by him or made by his telegraphic,  
35 recorded telephonic, or other recorded message.

#### Comment

Most existing state statutes authorizing anatomical gifts provide for doing so either by will or by other document in writing. The number of witnesses varies from state to state, but the majority require two witnesses. The Uniform Act requires two witnesses in case of ante-mortem gifts, but witnesses are relatively unnecessary and none are required in the case of post-mortem gifts made by survivors. To facilitate availability of evidence of the gift, a card may be carried on the person, a practice commonly and successfully followed in connection with gifts of eyes. This is an important provision, for we are a peripaletic people. Also important are the provisions of Subsection (6), that permit the attending physician upon or following death to be the donee when no donee is named or when the named donee is not available.

As the Uniform Act becomes widely accepted it will prove helpful if similar forms of gift can be utilized in each of the participating states. Such forms should be as simple and understandable as possible. The following forms are suggested for the purpose:

Ante-Mortem Anatomical Gift by a  
Living Donor

I am of sound mind and over 18 years of age.  
I hereby make this anatomical gift to take effect  
upon my death.

I give (1) \_\_\_\_\_  
to (2) \_\_\_\_\_  
for (3) \_\_\_\_\_

Dated \_\_\_\_\_ city and state \_\_\_\_\_

Signed by the donor in the  
presence of the following as \_\_\_\_\_  
witnesses who in turn have signed: Signature of Donor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address of Donor

\_\_\_\_\_  
Witness

\*\*\*\*\*

(1) Fill in as the subject of the gift "my body", or  
"any needed organs or other parts of my body," or insert  
any specified organs or tissues to be given.

(2) Fill in as the donee the name of the hospital, surgeon  
or physician, or the accredited medical or dental school,  
college or university, or the storage bank or facility, to  
which you make the gift, or insert the words "the physician  
in attendance at my death" or "the hospital in which I die,"  
or insert the name of any individual to whom you wish to make  
the gift for therapy or transplantation or "any individual in  
need" of the gift for therapy or transplantation.

(3) Fill in as the purpose of the gift any or all of the  
following: medical or dental education, research, advancement  
of medical or dental science, or therapy either in general  
or for a named individual, or for any individual in need.

Post-Mortem Anatomical Gift by Next of Kin

I am the surviving (1) \_\_\_\_\_ of \_\_\_\_\_  
 name of deceased  
 who died on \_\_\_\_\_ at the \_\_\_\_\_  
 date Name of hospital or other place  
 in \_\_\_\_\_  
 City, town and state

I hereby make this anatomical gift of or from the body of the deceased.

I give (2) \_\_\_\_\_  
 to (3) \_\_\_\_\_  
 for (4) \_\_\_\_\_

I am not aware of any objections to this gift either by the decedent or by any of the persons named in footnote (1) in the same or prior class of survivors

Dated \_\_\_\_\_ . City and State \_\_\_\_\_

\_\_\_\_\_  
 Signature of Survivor

\_\_\_\_\_  
 Address of Survivor

\*\*\*\*\*

spouse

(1) Fill in your class of relationship to the deceased, i.e., adult son or daughter, parent, adult brother or sister, guardian, or other person authorized by law to dispose of the body.

(2) Fill in as the subject of the gift "the body" or "any needed organs or parts of the body", or specify the organs or tissues given.

(3) Fill in as the donee the name of the hospital, surgeon, physician, medical or dental school, college or university or storage bank or facility to which the gift is made, or insert the name of any individual to whom you wish to make the gift for therapy or transplantation, or "any individual in need" of the gift for therapy or transplantation.

(4) Fill in as the purpose of the gift any or all of the following: medical or dental education, research, advancement of medical or dental science, or therapy either in general or for a specific individual, or for "any individual in need."

1 SECTION 5. [Delivery of Document of Gift.] If the gift is made  
2 by the donor to a specified donee, the will, card, or other document,  
3 or an executed copy thereof, may be delivered to the donee to expedite the  
4 appropriate procedures immediately after death. Delivery is not  
5 necessary to the validity of the gift. The will, card, or other  
6 document, or an executed copy thereof, may be deposited in any hospital,  
7 bank or storage facility or registry office that accepts it for safekeeping  
8 or for facilitation of procedures after death. On request of any  
9 interested party upon or after the donor's death, the person in  
10 possession shall produce the document for examination.

Comment

Some of the statutes make rather formal mandatory provisions for filing of documents of gift. Thus in two states the gift must be "filed for record in the office of the judge of probate." In another the document must be filed either before death or within 60 hours after death with the State Department of Health. In another the instrument must be filed for record "in the office of the clerk of the district court of the parish wherein the person making the gift resides." In still another the instrument must be filed in the probate court. In two states and it is provided that the instrument shall be delivered by the donor to the donee. On the other hand, in the great majority of the states, no provision is made for filing, recording or delivery to the donee. The gift is by implication effective without such formality. Section 5 of the Uniform Act follows the majority permissive practice, but includes filing provisions to expedite post-mortem procedures.

1 SECTION 6. [Amendment or Revocation of the Gift]

2 (a) If the will, card, or other document or executed copy thereof,  
3 has been delivered to a specified donee, the donor may amend or revoke the  
4 gift by:

5 (1) the execution and delivery to the donee of a signed  
6 statement, or

7           (2) an oral statement made in the presence of 2 persons  
8           and communicated to the donee, or

9           (3) a statement during a terminal illness or injury  
10           addressed to an attending physician and communicated to the  
11           donee, or

12           (4) a signed card or document found on his person or in  
13           his effects.

14           (b) Any document of gift which has not been delivered to the  
15           donee may be revoked by the donor in the manner set out in sub-  
16           section (a) or by destruction, cancellation, or mutilation of the  
17           document and all executed copies thereof.

18           (c) Any gift made by a will may also be amended or revoked in  
19           the manner provided for amendment or revocation of wills or as pro-  
20           vided in subsection (a).

#### Comment

In about one half of the states no provision is made for revocation. However, in the interest of carrying out the ultimate desires of the donor, there is good reason for facilitating revocation. Accordingly, about half of the states make affirmative provisions concerning the matter. Usually it is provided that revocation may be accomplished by executing a "like instrument" filed in the manner provided for the instrument of gift and delivered to the donee. In a few states revocation is accomplished by demanding return of the document of gift. There is merit in making revocation both simple and easy of accomplishment. Prospective donors are more likely to look with favor on making anatomical gifts if they realize that revocation is readily possible. The Uniform Act makes careful and complete provision for revocation under various contingencies.

1 SECTION 7. [Rights and Duties at Death.]

2 (a) The donee may accept or reject the gift. If the donee accepts  
3 a gift of the entire body, he may, subject to the terms of  
4 the gift, authorize embalming and the use of the body in funeral  
5 services. If the gift is of a part of the body, the donee, upon the  
6 death of the donor and prior to embalming, shall cause the part to  
7 be removed without unnecessary mutilation. After removal of the  
8 part, custody of the remainder of the body vests in the surviving  
9 spouse, next of kin, or other persons under obligation to dispose  
10 of the body.

11 (b) The time of death shall be determined by a physician  
12 who tends the donor at his death, or, if none, the physician who  
13 certifies the death. The physician shall not participate in the  
14 procedures for removing or transplanting a part.

15 (c) A person who acts in good faith in accord with the terms  
16 of this Act or with the anatomical gift laws of another state  
17 [or a foreign country] is not liable for damages in any civil  
18 action or subject to prosecution in any criminal proceeding for  
19 his act.

20 (d) The provisions of this Act are subject to the laws of  
21 this state prescribing powers and duties with respect to autopsies.

Comment

Section 7 contains several important provisions. The donee, may of course, reject the gift if he deems it best to do so. If he accepts the gift, all possible provision is made for taking account of the interests of the survivors in dignified memorial ceremonies.

Subsection (b) leaves the determination of the time of death to the attending or certifying physician. No attempt is made to define the uncertain point in time when life terminates. This point is not subject to clear cut definition and medical authorities are themselves in doubt. Modern methods of heart pacing, artificial respiration, artificial blood circulation and cardiac stimulation can continue bodily metabolism and simulation of life far beyond spontaneous limits. The real question is when have irreversible changes taken place that preclude return to normal brain activity and self sustaining bodily functions. No statutory definition is reasonably possible. The answer depends upon many variables, differing from case to case. Reliance must be placed upon the skill and judgment of the physician in attendance. The Uniform Act so provides.

However, because time is short following death for a transplant to be successful, the transplant team wishes to remove the critical organ as soon as possible. Hence there is an inevitable conflict of interest between the attending physician and the transplant team, and accordingly subsection (b) excludes the attending physician from any part in the transplant procedures. Such a provision isolates the conflict of interest and is eminently desirable.

The exculpation clauses of subsection (c) are essential if the medical profession is to be able to accept anatomical gifts freely and without fear of legal proceedings. A majority of states with gift laws on the statute books make somewhat similar provisions, although many of them fail to include criminal as well as civil proceedings. Also many fail to include specific language covering gifts made under the laws of another state or foreign country.

Subsection (d) is necessary to preclude the frustration of the important medical examiners duties in cases of death by suspected crime or violence. However, since such cases often can provide transplants of value to living persons, it may prove desirable in many if not most states to reexamine and amend, the medical examiner statutes to authorize and direct medical examiners to expedite their autopsy procedures in cases in which the public interest will not suffer. If a heart must be removed within fifteen minutes and a kidney within forty-five minutes, time is of the essence and unnecessary delays must be minimized.

The entire section 7 merits genuinely liberal interpretation to effectuate the purpose and intent of the Uniform Act, that is, to encourage and facilitate the important and currently developing therapy through transplantation from the dead to the living.

1 SECTION 8. [Uniformity of Interpretation.] This Act shall  
2 be so construed as to effectuate its general purpose to make  
3 uniform the law of those states which enact it.

1 SECTION 9. [Short Title.] This Act may be cited as the  
2 Uniform Anatomical Gift Act.

1 SECTION 10. [Repeal.] The following acts and parts of acts are  
2 repealed:

- 3 (1)
- 4 (2)
- 5 (3)

1 SECTION 11. [Time of Taking Effect.] This Act shall take  
2 effect . . . . .