

# UAGA

Date: 10/11/2005  
To: Drafting Committee for UAGA  
From: Sheldon Kurtz  
RE: UAGA draft for November, 2005

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The following memo should serve as the committee's agenda for working through each section of the [act]. The following comments **supplement** comments reflected in the balloons on the draft.

## **Section 1. Short Title**

Initially the [act] had been entitled Uniform Anatomical Gift Act. Then, someone (but I cannot remember who) told me it should be Revised Uniform Anatomical Gift Act. Then someone told me it should be Uniform Anatomical Gift Act (2000\_). Now style tells me it should be Revised Anatomical Gift Act. So until I hear further, that is what it is.

## **Section 2. Definitions**

As the chair's memo notes, we will take these up as we encounter them in the substantive text of the statute where you will see the context in which the words are used. There are some specific comments (see the draft) relating to: "agent," "anatomical gift," "document of gift," "donor," "hospital," and "state."

## **Section 3. Applicability**

This section previously was near the end of the draft. It was moved to Section 3 by style.

## **Section 4. Who May Make an Anatomical Gift before Decedent's Death**

In the annual meeting draft, the subjects treated in Section 4 and Section 5 of this draft were treated in one section. In this draft there are separate sections on who may make a gift (Section 4) and the manner of making a gift (Section 5). Also, sections 4 through 6 make clear that they apply to acts before a decedent's death.

Section 4(a)(2) reflects a significant change from the prior draft that in one case takes into account suggestions from the floor and in the other a variant on the same theme. Floor comments raised in a more general way the relationship between the requirement of being 18 to make an anatomical gift and the fact that individuals younger than 18 can apply for a license or permit. These comments also made me think about the fact that persons under the age of 18 often are empowered to make "health-care" decisions although when they may be so can vary with state law. With these thoughts in mind I created new section 4(a)(2).

Section 4(a)(2) which appears in this draft in brackets would permit minors to make an anatomical gift when they apply for a license or permit. I understand that in some states this might include minors age 14, and perhaps younger. It also permits minors who under state law can make a health-care decision to make an anatomical gift. This [act] does not attempt to define who such persons would be, leaving that to other law.

The committee needs to decide whether it wishes to incorporate either or both of these ideas into the draft.

Section 4(d) permits the “guardian” to make an anatomical gift. Do we need to define “guardian?” We certainly mean to include a court-appointed guardian. But what about others? For example, suppose a minor has foster parents and the minor’s biological parents are unknown. Are the foster parents “natural guardians” and included here? What should the policy position be?

### **Section 5. Manner of Making Anatomical Gift Before Decedent’s Death**

This section has been reconfigured to separately treat each device that can be used to make an anatomical gift. Thus, donor registries and driver’s licenses are separately treated.

More significantly, I have added a new concept in subsection (b) permitting gifts by statements or symbols in the donor’s medical records. I assume there are both reasons for and reasons against this and the committee needs to give this its full consideration. In subsection (b) the question has been raised whether the meaning of “authorizing” must be spelled out. The section is drafted the way it is because of my assumption that patients do not have the right to write in their medical records. Thus, whoever would record a donative decision (some health care provider—doctor, nurse, etc., would have to be acting at the direction of someone authorized to make the gift under Section 3.

Subsection (c) provides for the making of a gift by a statement or symbol on a driver’s license. Should license be defined in Section 2 to include a permit, or should permit be added here and hereafter, (see section 4(a)(2) mentioning “permit”), or should it just be a comment that a license includes a permit.

Section 5(e) addresses the making of an anatomical gift by will. Wills are specially treated because although a record there are special laws that affect wills that require that wills be specially treated. They were specially treated under prior law.

The comments to this section include some illustrations of a possible donor card. This was taken from the prior act. It also includes an illustration of what a registry form might look like. I used as a model (no doubt due to pride in my locale) the form used on the website of the Iowa Donor Registry. Below is another form of card that breaks out more specifically donations for transplant, therapy, research, or therapy.

#### **ANATOMICAL GIFT DONOR CARD**

Pursuant to the Anatomical Gift Act, upon my death, I hereby give (check all boxes applicable):

1.  Any needed parts (organs, tissues, or eyes);
  - (a)  Transplant
  - (b)  Therapy
  - (c)  Research
  - (d)  Education
  - (e)  Transplant, therapy, research and education
2.  Only the following parts (organs, tissues, or eyes):  
\_\_\_\_\_;

(a)  Transplant

- (b)  Therapy
  - (c)  Research
  - (d)  Education
  - (e)  Transplant, therapy, research and education
3.  My body for research and education;
  4.  My body for the following purposes:
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#### **Section 6. Amending or Revoking Anatomical Gift before the Decedent's Death**

Section 6(b) is new to this draft and is analogous to the law relating to the revocation of wills.

Section 6(c) permits an oral revocation to at least 2 individuals by a terminally ill or injured patient. Prior law permitted oral revocations only to a doctor. The draft does not require that the witnesses be "disinterested." Should we be more restrictive?

#### **Section 7. Refusal to Make Anatomical Gift**

Section 7 (a)(4) permits an oral refusal under circumstances similar to a Section 6 revocation. Should we be more restrictive here as well? Cf. Section 6 comments immediately above.

#### **Section 8. Effect of Gift, Amendment, Revocation or Refusal**

No additional comments

#### **Section 9. Who May Make An Anatomical Gift After the Decedent's Death**

Former section 7 has been bifurcated into new section 9 relating to who can make an anatomical gift after decedent's death and section 10 relating to the manner of making an anatomical gift.

The word "children" is undefined. A floor comments asked whether "step-children" are included. My understanding is that they are not. Should they be?

Subsection (10) would allow a coroner to make an anatomical gift absent all other persons if under state law the coroner would have power to dispose to the decedent's body. That does not seem objectionable from a policy perspective. What do others think? If you agree, should this be brought out further in the comments?

Commissioners are encouraged to read the comments regarding religious views towards donation. I would appreciate comments whether that subject is properly treated, or even improperly treated, in the comments.

#### **Section 10. Manner of Making or Revoking Anatomical Gift after Decedent's Death**

I am still unhappy with the language in subsection (a). My concern runs to whether the phrase "recorded telephonic or other recorded messages captures the field.

Please review my comments to subsection (e) to see if they are adequate to the concern expressed on the floor.

#### **Section 11. Cooperation between [Coroner] [Medical Examiner] and Procurement Organizations and Donees**

No additional comments.

## **Section 12. Search and Notification**

I revised this section to limit searches to an individual's personal affects thinking this responsive to floor concerns. Prior law has no such limitation. It provides: "The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:"

While I am no authority on the US Constitution I've talked to my "search and seizure colleagues" who express the view that the constitution only prohibits unreasonable searches. The prior UAGA permits only reasonable searches. Thus, they wondered whether there was really a problem. My concern here is that as redrafted the section may be too limited. On the other hand, by adding new subsection (b) and (c) we may have effectively addressed the issue since I believe the overwhelming number of donors will have their intent on a motor vehicle registry or donor registry.

This point, however, raises the following question. Are procurement organizations allowed access to motor vehicle records to ascertain donation status? New Mexico permits this. Should we have a similar provision? New Mexico Statute § 66-5-10:

B. The department shall mark the donor status on each person's driver's license record and shall retain each application form or its image of a person who wishes to be a donor. The department shall create and maintain a statewide donor registry and shall provide on-line computer terminal access to the donor registry to organ procurement agencies and procurement organizations, as defined in the Uniform Anatomical Gift Act. Authorized hospital or organ and tissue donor program personnel, immediately prior to or after a donor's death, may request verification of the donor's status from the department and may obtain a copy of the application from the department.

## **Section 13 Person Who May Become Donees**

I am anticipating some spirited discussion on this question. As drafted, I've retained the OPOs as the donees of organs. Given the Section 2 definition of OPO, I ask whether there would remain any reason to have the OPTN designated as the donee.

## **Section 14 Delivery of Document of Gift**

No additional comments.

## **Section 15 Rights and Duties of Procurement Organizations and Donees**

No additional comments. We definitely need to discuss the comment (I believe from Commissioner Carroll) relating to the tension between wanting to be an organ donor, or having families consider organ donation, and the dictates of a "living will" expressing a desire not to be maintained on a life support system. At some level there is a tension here.

## **Section 16. Coordination of Procurement and Use.**

## **Section 17. Sale or Purchase of Parts Prohibited.**

We definitely can anticipate more discussion here.

## **Section 18. Nonliability**

No additional comments.

**Section 19. Choice of Law as to Execution of Document of Gift**

No additional comments.