

TAKE MY HEART, PLEASE

By Attorney Michael H. Wald

Along with the right to die, another medical topic is being discussed regularly in the news -- donating organs. From all the reports about new medical breakthroughs with heart/lung transplants to the much publicized pleas for kidneys, it is hard to avoid hearing about this most precious gift from those who don't need their organs anymore.

Any attorney, when preparing a client's estate, should make sure to go over anatomical gifts with the client, whether the client thinks he would want to donate organs or not. There is the slight chance that organs may be removed after death even without consent of the donor or his family.

Most people do want their bodies used for science, education, or for saving others' lives. It can offer the donor a great deal of contentment, knowing that he, in death, may make the world a better place through the use of his "useless" body.

In Texas, anyone can donate his body, or specific organs, if he or she is 18 years old, has been married, or is a member of the armed forces of the U.S., or any of its auxiliaries.

Also, if the potential donor hasn't declared his intentions for his body at death, the spouse, adult son or daughter, parent, adult brother or sister, guardian, or other person authorized to dispose of the body can give permission for the body to be used by a proper donee.

But before the gift is carried out, it must be determined that nobody on the list "above" them -- brother above guardian, spouse above daughter, etc., is available for comment or has ever indicated against the gift, or that the donor has ever indicated his wishes against the gift. In fact, people of the same "class" -- brothers, parents, guardians -- can cancel out the gift if another person of the same

class has approved it.

Those who do not ever want to have their bodies given away or used after death are advised to let as many family members, doctors, and lawyers know their desires very clearly!

Bodies, and parts, can be donated to the following: doctors and hospitals, accredited schools, storage facilities, specified individuals, eye banks, and the Anatomical Board of Texas, among others. Of course, any individual or facility must be approved according to law.

If the selected donee is unavailable at the time and place of death, the attending doctor may accept the gift, but he cannot take part in the removal and transplantation procedures.

If the donor has not named a specific donee, the attending doctor can again claim the gift, unless the donor has made it known that he does not want to give away his body. The unnamed donee is usually the case, since a donor is usually aware that if his body is to be used for transplants, time is the major factor, and tracking down the specified donee may waste valuable time.

To make the gift of the body legal, you can use a will, anatomical gift form, or by using a card or other document.

Texas driver's licenses have a line on the back to sign if you want to donate your body. Or, you can just sign a document expressing your wishes, and have two witnesses sign it. You must do all this together.

If you do want to make a gift of your body or organs, make a point to tell the specific donee if you choose one. Carry a donor card in your wallet, and sign your driver's license. You may even want to go ahead and wear a bracelet or necklace to identify yourself as a donor. Make a note of your intentions in your will or other legal document gifting your body or organs.

And remember, you can change your mind at any time, by communicating your new decision to

the donee yourself, or through two witnesses or your doctor. A signed and dated card (an anti-anatomical gift card) found in your possessions or wallet can also accomplish this, if it is found in time.

At the time of death, the donee may refuse the gift. The specified donee, as a matter of fact, has rights over the spouses and children and next of kin. The donee's rights are only inferior to a medical examiner requesting an autopsy.

If a donee has been named, though, the spouse and family does have the right to have the body on hand for funeral services. If organs have to be removed before the services, it must be done in a way to protect the visual integrity of the body. After all specified parts are removed, the spouse and family have custody of the rest of the body.

Again, the doctor who attends the donor at death, or who certifies death, cannot participate in transplant or removing parts of the body, unless the donor named that person to do it previously.

The justice of the peace or the medical examiner can permit an anatomical gift to a requesting Texas nonprofit medical facility if there are no objections from the family; the donor dies under circumstances requiring an inquest by the justice of the peace or medical examiner; and the removal of the body part will not alter a subsequent autopsy.

Postscript: Here is another good reason to make an anatomical gift! Whether it's fact or fairy tale, more than one story has it that a body of a person long declared "dead" was kept alive long enough to salvage a much needed transplant organ. But lo and behold, the "dead" man recovered signs of life, miraculously, despite medically having been considered dead.

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