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A PHYSICIAN'S GUIDE TO ADVANCE
DIRECTIVES:

ORGAN DONATION

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*Information and guidance for physicians
Provided by the Illinois State Medical Society*

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ILLINOIS UNIFORM ANATOMICAL GIFT ACT

Introduction

The Illinois Uniform Anatomical Gift Act, passed by the Illinois General Assembly in 1969 (755 ILCS 50) established legal procedures for donating all or part of a human body after death to be used for specific purposes. The law allows individuals to execute anatomical gifts using a specified document. Others who have the legal authority can also make such gifts on another person's behalf. Continuing advances in medical procedures and technology mean that more patients are becoming medically eligible to receive organ donations. A single donor can save or help many people in need. Unfortunately, the available supply of donated organs and tissues falls far short of the demand. Physicians have a unique opportunity to help by educating and counseling their patients about anatomical gifts for medical purposes.

ISMS publishes a brochure for consumers called *A Personal Decision*. In easy to understand language, it provides practical information about organ donation. An excellent resource to help physicians discuss organ donation with their patients, it also provides an organ donor card.

Recognizing that many physicians need more detailed information about organ donation, ISMS has produced this series of booklets, *A Physician's Guide to Advance Directives*. The booklet you are reading will help prepare you to advise your patients about organ donation. While its content is educational and informational in nature, it is not intended to serve as legal advice.

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Questions and Answers About the Illinois Uniform Anatomical Gift Act

Who can execute an anatomical gift?

Any individual who is of sound mind and has reached the age of 18 may give all or any part of his or her body as an anatomical gift. Such a gift, of course, would take effect only upon the individual's death. Making such a gift in advance eliminates the need to obtain consent from anyone else.

If an individual has not provided for an anatomical gift before death, another person, as listed in the priority below, may make an anatomical gift on behalf of the decedent (regardless of age), after or immediately before death:

1. The decedent's spouse.
2. The decedent's adult sons or daughters.
3. Either of the decedent's parents.
4. Any of the decedent's adult brothers or sisters.
5. The guardian of the decedent at the time of his/her death.
6. Any person authorized or under obligation to dispose of the body.

An anatomical gift authorized by another person may take place only if the decedent expressed no actual intentions to the contrary and no member of the same priority group as the decision maker opposes the gift. Making an anatomical gift authorizes any examinations necessary to make sure that the gift is medically acceptable for the intended purposes. State and federal law and rules control the process of requesting organ donation. If an anatomical gift is not legally authorized, no part of the body may be used for any purpose except as specified under Illinois statutes in the Organ Donation Request Act (755 ILCS 60) or the Corneal Transplant Act. (755 ILCS 55).

How can an individual make an anatomical gift?

Several alternatives are available to those who wish to make anatomical gifts.

1. A gift may be made by executing a document that may be a valid driver's license, an

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organ donor card, or a Durable Power of Attorney for Health Care (DPA) specifying the gifts. To be valid, the document must be signed by the donor and the donor's signature must be witnessed. Donors are encouraged to engage family members as witnesses and discuss their wishes with family members most likely to be reached and/or present at the time of a donor's death.

2. A gift may also be specified in a will. Such a gift becomes effective upon the death of the donor. Waiting for the will to be probated is not required. Even if the will is not probated, or if it is declared invalid, an anatomical gift that has been acted upon in good faith is valid and effective.

May a donor specify who is to receive an anatomical gift?

When making an anatomical gift, a donor may either name a specific physician, provider, procurer or individual to be the recipient of the gift, or make the gift without specifying any particular recipient. This specified recipient would take the steps necessary to act on the gift upon the donor's death. If the specified recipient is unavailable upon the donor's death, the attending physician may accept the gift as long as the donor has not expressly indicated otherwise. The physician who receives the gift cannot physically or financially participate in the procedures for removing or transplanting a part.

What should be done with the document that authorizes an anatomical gift?

If the donor specifies a specific physician, provider, procurer or individual to be recipient of the gift, the gift document (driver's license, donor card, or other document or a copy) may be given to this person in order to expedite procedures immediately upon the donor's death. However, it is not necessary to provide the document during the donor's lifetime in order to make the gift valid. The gift document (or a copy) may be kept in any hospital, bank, storage facility, or registry office that accepts it for safekeeping. Upon or after the donor's death, any interested party can require the person in possession of the document to produce it for examination.

Can a donor amend or revoke an anatomical gift?

The easiest way to revoke an anatomical gift is to mark an "X" or "Void" over a driver's license or destroy an organ donor card by tearing, burning or obliterating the document. A donor may also revoke or amend an anatomical gift by signing a card or document stating such any time after the date of the original gift. That signature must be witnessed and certified. Such a document may be found on the person or in their effects.

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An anatomical gift specified in a will may also be amended or revoked in the appropriate manner as provided by law.

What immunities exist for physicians?

A physician who acts in good faith according to the law, the usual and customary standards of medical practice, and other applicable state laws, such as the AIDS Confidentiality Act, is not liable for civil or criminal damages. Specifically, this applies to the removal or transplantation of any part of a decedent's body according to a legally executed anatomical gift.

What if there is reason to believe that the patient was infected with the HIV virus or died of AIDS?

If the physician (or other specified procurer) who receives the gift knows or finds evidence through independent examination, that the anatomical gift was exposed to the human immunodeficiency virus (HIV) or any other identified cause of acquired immunodeficiency syndrome (AIDS), he or she must reject the gift. Furthermore, the receiver of the gift must treat such information and examination results as confidential in the medical record, disclosing the results that confirm HIV exposure only to the attending physician of the deceased donor. The attending physician determines whether the person who executed the gift should be notified of the confirmed positive test results.

Can payment be made for a gift?

Anyone who knowingly pays or offers to pay a donor or anyone acting on behalf of a donor for an anatomical gift can be found guilty of a misdemeanor for the first conviction and a felony for a subsequent conviction. The law, however, does not prohibit paying reasonable costs associated with removing, storing, or transporting a legally executed anatomical gift.

How is death defined?

A. *Illinois Uniform Anatomical Gift Act* - In 1969, the Illinois General Assembly defined death as it applies to situations falling under the Uniform Anatomical Gift Act: "Death" means the irreversible cessation of total brain function, according to usual and customary standards of medical practice."

B. *Illinois Case Law* - In 1983, an Illinois Appellate Court defined what constitutes death in the State of Illinois as follows. "Death is deemed to occur when a person has sustained either:

1) irreversible cessation of total brain function, according to usual and customary standards of

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medical practice; or 2) irreversible cessation of circulatory and respiratory functions, according to usual and customary standards of medical practice." (*In re Baymer*, 115 Ill. App. 3d 349, 450 N.E. 2d 940 (1983))

C. ISMS Policy - The following excerpt from ISMS's policy entitled *Death, Legal Definition* defines death as the: 1) Irreversible cessation of circulatory and respiratory functions, or 2) Irreversible cessation of all functions of the entire brain, including the brain stem.

D. *Illinois Health Care Surrogate Act* - In 1991, the Illinois General Assembly defined death as it applies to situations falling under the Health Care Surrogate Act: "Death" means when, according to accepted medical standards, there is: 1) an irreversible cessation of circulatory and respiratory functions, or 2) an irreversible cessation of all functions of the entire brain, including the brain stem.

Final Comment

Physicians should be prepared to respond to questions about organ donation, so they may do their part in contributing to the medical welfare of patients in need. Moreover, physicians must be prepared to identify medically suitable donors to the appropriate hospital or facility personnel. To that end, the Illinois State Medical Society has developed a helpful brochure, *A Personal Decision*, for patients to use in executing anatomical gifts. Limited free copies are available to ISMS members and to the general public upon request.

No booklet can attempt to answer all the possible questions about organ donation or identify all possible problems. The information herein is provided to educate physicians about their basic responsibilities while acknowledging the challenges that lie ahead. Faced with such serious legal, ethical and moral issues, physicians must do their best to help their patients while abiding by the law and adhering to community standards of medical practice.