

ADVANCE DIRECTIVE NEWS

Health Care Proxies Can Save Other People's Lives

By Ellen G. Makofsky

Seventeen people die each day for lack of available transplant organs and tissue. In the United States the list of people waiting for an organ or tissue transplant numbers 87,000. Eight thousand New Yorkers are on that list. These are staggering numbers. Sadly, according to the *New England Journal of Medicine*, organs are harvested from only 42 percent of potential donors. Physicians now have the knowledge to save and improve so many lives but lack a sufficient number of organs and tissue to help all who could be helped. As elder law attorneys, we are in a position to improve these numbers and encourage organ donation.



In 2000 the Health Care Proxy Law was amended to provide New Yorkers the opportunity to designate their wish to be an organ and/or tissue donor.¹ I have incorporated the organ and tissue donor wording into the health care proxy I prepare for clients.² My clients are often uncertain whether they can be organ donors, and in discussing the health care proxy prior to execution of the document, I have engaged in much dialogue about organ donation and who is a suitable donor.

The heart, kidneys, pancreas, lungs, liver and intestines of failing patients can be replaced with transplant surgery. Tissue from the eye, skin, bone, heart valves and tendons can also be used for transplantation. Cadaver skin plays a critical role in caring for a badly burned individual when dead skin tissue is used to reduce infection in the burn patient.

In general, donors must be between 16 and 75 years of age. Liver donors may be of any age, as a liver is able to regenerate itself. There are no limits on the age of skin donors for burn victims. The donor must die of a known cause. Those who have HIV, hepatitis and cancer or suffer from an organic brain disease such as Alzheimer's are ineligible to be donors. Also potential donors with sepsis or MS or those with slow-growing viruses such as polio and rabies are unsuitable donors. Diabetes or the need for dialysis is not an automatic bar for the donation of certain organs and tissue.

Those considering donating their eyes should know that the requirement for donors is only that they have an intact cornea. If a person requires eye-glasses or has undergone previous eye surgery this is not a bar to donation, as even a legally blind person can donate his eyes and restore someone else's sight.

In order to make a decision in regard to organ donation, clients need information. We can be part of the process in providing that information. Try and elicit your client's concerns regarding organ donation and supply answers to the questions asked.³ As you would direct your client to discuss their wishes in regard to medical care with the appointed health care agent, make sure each potential donor discusses donation with his or her family; without family agreement and consent no donation is likely. "Every brain-dead body—with the potential to provide one heart, one liver, two lungs, two kidneys, one pancreas and intestines—can offer as many as eight patients a chance to survive."⁴ Even though we are all far from god-like, we as elder law attorneys can offer our clients the opportunity of possibly choosing life after death. Make a commitment to discuss organ transplantation each time a health care proxy is executed in your office.

Endnotes

1. On Oct. 4, 2000, Governor Pataki signed into law a bill amending the New York Health Care Proxy Law. The amendment, which adds subdivision (f) to section 2981, states that a health care proxy may include the principal's wishes or instructions regarding organ and tissue donation. The amendment further provides that the failure to state wishes or instructions shall not be construed to imply a wish not to donate.
2. I think incorporation of donor language is important because communication with family members is the single most important thing to be done to implement the potential donor's wishes. Hospitals are reluctant to contradict the wishes of living family members even though the law allows the harvest of organs or tissue to occur if the donor has indicated such wishes. Inclusion of an individual's wishes in regard to organ donation in a health care proxy will go a long way to encourage the necessary dialogue.
3. These Web sites can provide additional useful information: <http://www.shareyourlife.org>, maintained by The Coalition on Donation; <http://www.organdonor.gov>, maintained by the Department of Health and Human Services; <http://www.transweb.org>, which provides a directory of donation-related information; and <http://www.UNOS.org>, maintained by The United Network for Organ Sharing.
4. N.Y. Times, Aug. 19, 2003, at F5, col. 4.