IOWA DONOR NETWORK

Honoring the Decision to Save & Heal Lives

Iowa Donor Network is committed to honoring the decision of every registered donor to provide life-saving gifts to those in need at the time of their death. We do so while supporting the family through their grief with kindness and compassion. The Uniform Anatomical Gift Act (UAGA) allows individuals to make an autonomous decision to help others through organ, eye, and tissue donation after their death. When an individual registers as an organ, eye, and tissue donor it is considered a binding, legal document of gift under the UAGA. As Iowa's federally designated organ procurement organization, it is the lawful duty of Iowa Donor Network to honor and carry out a registered donor's decision to save lives after their death.

110,000
Waiting for a Life-Saving Transplant in the U.S

20
People Die Each Day Waiting for a Transplant

1.5 Million
Iowans Registered as Organ & Tissue Donors

75
Average Number of Lives Saved & Healed by one donor

"We were completely blindsided when our vibrant, funny and unselfishly giving 16-year-old took her own life. When our daughter obtained her license she indicated organ donor. We were proud of her for making this decision, but didn't realize we would be honoring her decision so soon. As a donor family we find comfort thinking about the lives she has helped after her death."

-Alma & Brian Brunson, Donor Family

"My life was torn beyond repair. Then my Donor Hero came along and because he and his family said YES to donation, I'm here today, happy and living life to the fullest."

-Terrell Jordan, Heart Recipient

Working Together to Transform Lives Through the GIft of Organ and Tissue Donation

IowaDonorNetwork.org

IOWA DONOR NETWORK

Revised Uniform Anatomical Gift Act Executive Summary

Executive Summary:

Iowa enacted the Revised Uniform Anatomical Gift Act (RUAGA) in 2007. The major revision is the strengthening of a donor's decision to donate organs or tissues after death. Prior to enactment of the revision, it was customary for hospital and organ procurement organization personnel to confer with a potential donor's family and seek permission to proceed with donation. The RUAGA clearly reinforces a person's autonomy to make their own decisions about donation without further permission from anyone. Since the passage of RUAGA in Iowa, Iowa Donor Network (IDN) has accepted any form of donor decision including an indication on a driver's license, entry into any form of electronic registry (DMV or otherwise) or any sort of written, advanced directive as legally binding. We have changed our procedures to ensure that family members are aware that donation decisions have already been made and that we are proceeding with a medical evaluation to determine what form of donation is possible. We have also adopted this rationale in all situations when interacting with hospital staff. In most cases, family members are relieved that the decisions have already been made and hospital staff do not hesitate to accept patient/donor autonomy. The revision clearly refutes the earlier practice of seeking assent from next-of-kin prior to proceeding with organ donation after death. In recognition of this legal change, Iowa Donor Network adopted a set of practices whereby, family members and hospital staff are informed of a decedent's wishes and a timeline for organ recovery after death is established.

First Person Authorization Opposition:

In the rare instances where next-of-kin objects to donation decisions, IDN works with family and hospital staff to probe concerns and objections. In many cases, simply giving family members more time to consider their loved one's personality and life has allowed them to see that the donation is consistent with how the deceased lived their life and the family comes to accept the decision. In rare cases, when objections are escalated, IDN works with hospital administration and legal counsel to determine the best path forward in honoring the patient's donation decision.

Does it Matter in the view of the RUAGA if Brain Death or Cardiac Death has occurred?

No, when a person registers as a donor they declare their decision to donate organs and/or tissues regardless of the circumstances surrounding their death. In the event a potential donor is not declared brain dead RUAGA allows IDN to conduct any reasonable examination necessary to ensure medical suitability for donation at or near the person's death. This includes testing blood samples and performing non-invasive procedures.

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ORGAN DONATION: CMS ESSENTIALS
WHAT YOU NEED TO KNOW

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There are numerous federal regulations impacting hospital deaths and how hospitals must work with organ procurement organizations (OPOs). Most of these regulations exist within the "Conditions of Participation for Hospitals Regarding Organ, Tissue and Eye Donation." First published in 1998, current regulations make hospitals accountable to CMS for their donation programs in an effort to increase the number of organs and tissue available for transplantation. To meet regulatory compliance, the hospital must have a written agreement with their designated OPO. This agreement is typically called a Memorandum of Agreement (MOA) and must address the following:

1. Policy
Hospitals must have and implement written policies and procedures to address its donation responsibilities.

2. Referral Criteria
Hospitals must refer every death and every imminent death.

3. Imminent Death
"Imminent Death" refers to all patients with a severe, acute brain injury who:
- Require ventilator support,
- Are in an ICU or ED,
  - ***AND*** have a Glasgow Coma Score (GCS) of 5 or less,
  - ***OR*** are being evaluated for brain death,
  - ***OR*** a MD or DO has ordered life-sustaining therapies be withdrawn.

4. Timely Notification
Hospitals must contact their designated OPO as soon as possible (ideally within one hour) after a patient has died, has been placed on a ventilator due to a severe brain injury as outlined in Imminent Death, or has been declared brain dead, ***AND*** prior to the withdrawal of any life sustaining therapies (medical or pharmacological).

5. Medical Suitability
The OPO has the responsibility to determine medical suitability for organ donation. In the absence of a separate tissue or eye bank agreement with the hospital, the OPO may also determine suitability of tissue and eye donors.

6. Death Records
Hospitals must develop policies that allow the OPO, tissue bank and eye bank to have timely access to death records to ensure all deaths are being referred, and to improve identification of potential donors.

7. Credentialing
Hospitals are not required to perform credentialing reviews of organ recovery teams, as long as the OPO sends only "qualified, trained individuals" to perform recoveries.

8. Maintaining Donors
Hospitals must have policies to maintain potential donors in a manner that preserves organ viability, and donors are identified and declared dead by an appropriate practitioner.

9. Donation Requests
Hospitals and OPOs work collaboratively to decide who will initiate the request for donation. Any person who makes requests for organ, tissue and eye donation must be a designated requestor or formally trained in the donation request process.

References:
§482.45 Condition of Participation: Organ, Tissue and Eye Procurement

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Visit organdonationalliance.org/csuite to hear from a fellow hospital and health system executive on the importance of hospital-OPO partnership.

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UNIFORM ANATOMICAL GIFT ACT (UAGA)
WHAT YOU NEED TO KNOW

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Diligent Search and Hospital Administration Authorization

When family members of a critically ill patient cannot be located, or if patient's identity is unknown and the patient dies, the responsibility of the disposition of the body falls upon the coroner, medical examiner and/or hospital administrator. Some of these fatally ill patients could potentially be an organ donor post-mortem, and donation status is undetermined, hence the provision in the UAGA for conducting a diligent search and a priority of legal decision makers having the ability to authorize donation.

The UAGA is the legal foundation for Organ and Tissue Donation

If the patient is unidentified, or next of kin is "reasonably unavailable", The Uniform Anatomical Gift Act (UAGA) stipulates that a well-documented reasonable effort, or diligent search is conducted to ascertain patient's identity or authorizing party for at least 12 hours that includes checking personal belongings, local police missing persons reports, finger printing of decedent, if appropriate foreign consulates, questioning of persons visiting the decedent before or after death, and social media, etc. More information may be found in your state's UAGA, visit the Alliance Organ Donation Toolbox – Legal & Regulatory section.

Hospital Administrators are included in the hierchy of who can authorize an anatomical gift

Persons authorized to make an anatomical gift on behalf of a decedent are in the following order of priority for those persons reasonably available:

Order of Decision-Makers

1. Agent of the decedent
2. Spouse or domestic partner
3. Adult children
4. Parents
5. Adult siblings
6. Adult grandchildren
7. Grandparents
8. An adult who exhibited special care and concern for the decedent
9. Guardian or Conservator
10. Coroner / medical examiner or HOSPITAL ADMINISTRATOR

Administrative authorization supports hospital adminstration as a donation decision-maker

Hospital administrators are legally protected and granted immunity from liability in the event that no one is reasonably available to decide on behalf of the potential donor. Hospital policies should incorporate a comprehensive diligent search and an administrative authorization process where the hospital may be in a position to step in and potentially permit the gift of life. A person or entity shall be immune from liability for actions taken in accordance with, or in a good faith attempt to act in accordance with, the provisions under this act or the applicable anatomical gift law of another state. (UAGA C.26:6-91)

Known objections by persons not reasonably available do not bar persons who are reasonably available from making an anatomical gift

If family is not "reasonably available", that is to say, able to be contacted by an organ procurement organization (OPO) without undue effort and willing and capable to act in a timely manner consistent with existing medical criteria necessary for making an anatomical gift, and there is no documented evidence of the decedent's choice not to donate; the administrator of the hospital "shall make an anatomical gift of the decedent's body or part" (UAGA C.26:6-85).

For additional info on this topic, visit:
ORGANDONATIONALLIANCE.ORG/CSUITE

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LEGAL ASPECTS OF A REGISTERED DONOR: WHAT YOU NEED TO KNOW

The Organ Donation and Transplantation Alliance connects organ procurement organizations, transplant centers and hospitals to education and best practice resources nationwide.

Nearly every hour, another person dies waiting for an organ transplant. Despite significant technological improvements and numerous public service campaigns, the substantial shortage continues for organs, tissues and eyes for life-saving or life-improving transplants. This need led the way for legislation to provide national uniformity for organ, eye and tissue donation. This issue will focus on the UAGA's position regarding First Person Authorization for donation (i.e. when a person legally registers to be an organ, eye and tissue donor).

1. The UAGA is the Legal Foundation for Organ and Tissue Donation

The Uniform Anatomical Gift Act (UAGA) is the law that governs deceased donation. The UAGA was first drafted in 1968 and revised in 1987 and 2006. The UAGA was used as a model legislation for state law, and every state passed the original version. Today, 47 states have enacted the 2006 version which increased the focus on personal autonomy in the donation process. To find your state's UAGA, visit our Organ Donation Toolbox and select the Legal & Regulatory Section.

2. Gift Law Governs Anatomical Donations

The legal basis upon which human organs and tissues can be donated for transplantation is based on gift law principles, not informed consent. Informed consent is a legal principle that applies to healthcare treatment decisions. Gift law requires three elements: intent, transfer and acceptance. As such, the donation gift is a voluntary, legally binding, uncompensated transfer from one individual to another.

3. First Person Authorization Means a Donor's Autonomous Decision is Final

Individuals have the right to make a legally-binding anatomical gift prior to gift. No permission from the donor's family is warranted. The law firmly states that a donor's autonomous decision to make an anatomical gift is not subject to change by others.

4. Even if Families Object, the Donor's Decision Must be Honored

Although the UAGA definitively authorizes an individual to "gift" organs and tissues without family approval, fear of litigation and negative media have driven the practice of obtaining family consent. However, there have been no reported cases of a family successfully suing healthcare or donation professionals when an individual has made a valid donation designation.

5. Our Obligation is to Respect and Honor the Autonomy Rights of the Donor

The UAGA upholds the rights of the individual to make an anatomical gift. Therefore, a donor's autonomous decision to donate must be honored. The OPO may conduct any blood or tissue test or minimally invasive exam reasonably necessary to evaluate the suitability of the gift, pre-consent, pre-declaration. *The hospital shall not withdraw measures necessary to maintain the suitability of a gift until the OPO has had the chance to advise the hierarchy of the donation option*. (UAGA C.26:6-89)

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Visit organdonationalliance.org/csuite to hear from a fellow hospital and health system executives on the importance of executive advocacy for registered donors.

FIRST PERSON AUTHORIZATION

(Individuals have the right to make legally binding anatomical gift prior to death)

FPA must be honored and decision is final *(UAGA Section 8)*	Permission from family is not warranted	Law states: donor's decision is not subject to change by others	Family does not have power, right or authority to consent to, amend or revoke decision	Hospital team's obligation: to respect and honor autonomy rights of the donor *(UAGA C.26:6-89)*

For additional info on this topic, visit: ORGANDONATIONALLIANCE.ORG/CSUITE

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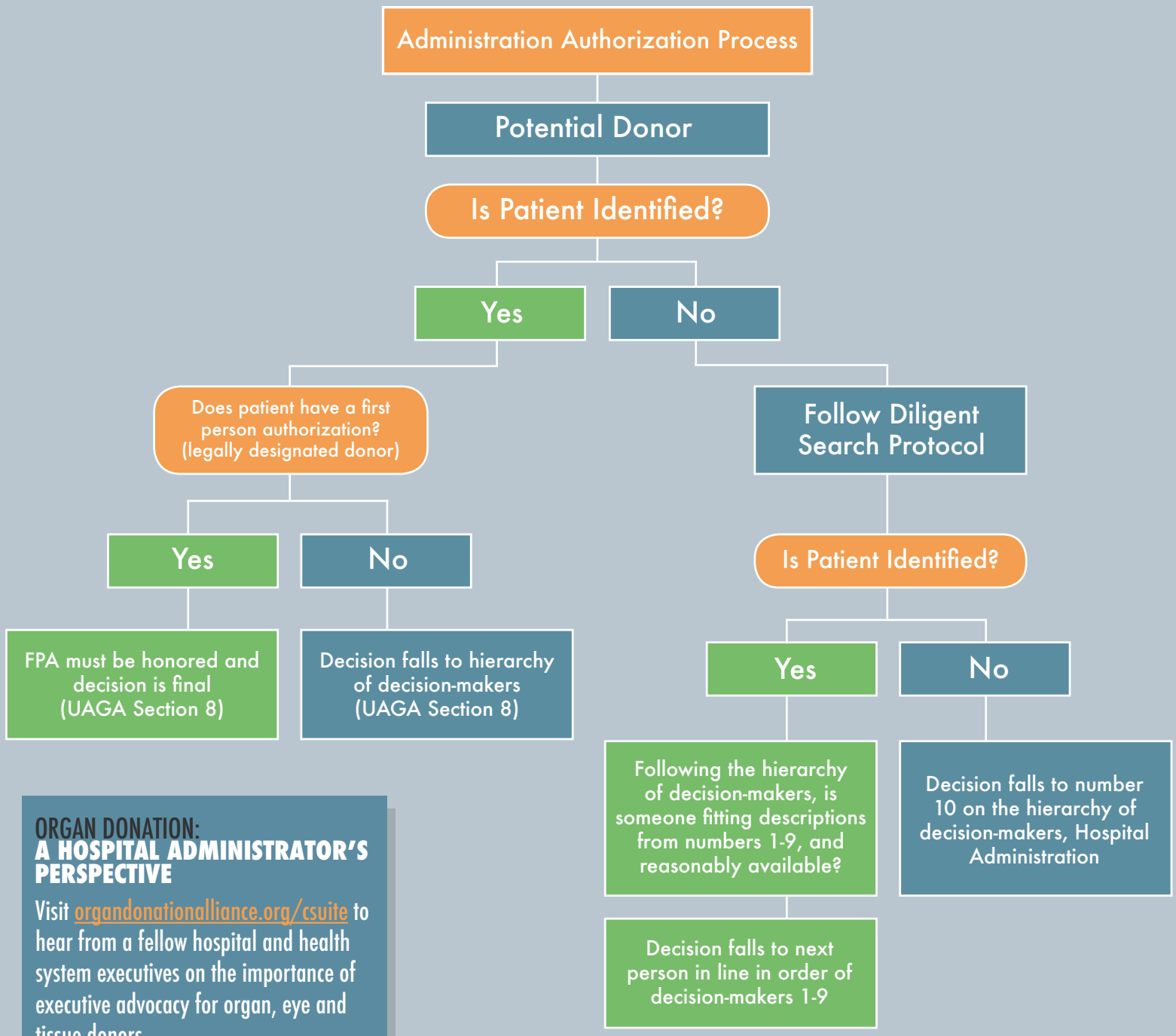

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SPOTLIGHT SERIES
ILLUMINATING EMERGING TOPICS IN ORGAN DONATION AND TRANSPLANTATION
VOLUME VII, ISSUE 3

DONATION AFTER CIRCULATORY DEATH:
Honoring First Person Authorization
Part I: The Legalities

Most organ donation cases occur following determination of death based on neurological criteria, or "brain death"; however, donation can also occur following determination of death based on circulatory criteria (Donation after Circulatory Death or "DCD"). In these cases, patients have no chance of meaningful recovery, are dependent on a ventilator, and require a decision to be made by the legal next of kin to terminate life-sustaining measures. If circulation ceases within a short time frame, organ donation can be successfully coordinated after the patient is declared dead. DCD cases currently account for about 20-30% of all deceased organ donors in the U.S.

Governing Law of First-Person Authorization

The rights of an individual to make an anatomical gift (e.g., organs, eyes, and tissues) after death that could not be revoked by others was legally established through the Uniform Anatomical Gift Act (UAGA) in 1968. In 2006, a revision of the UAGA was issued by the National Conference of Commissioners on Uniform State Laws (NCCUSL), strengthening the legal requirement that an individual's decision to donate, be protected, honored, and respected. Donor registration is recognized under the UAGA as a legally valid gift that cannot be revoked by family or others after an individual's death. It's important to note that most of the 50 states chose to adopt the 2006 Revised UAGA (RUAGA) .

In 2010, the National Association of Attorneys General adopted a resolution "in support of respecting and upholding the decisions made by persons who elect to be organ, eye, and tissue donors." They affirmed that:

1. State laws recognize "the individual's right to make an anatomical gift, cannot be amended or revoked by any other person, except with the donor's consent."
2. "it is the obligation of all participants in the donation process - hospitals, doctors, procurement organizations, and family members - to comply with the law and to honor, and implement the decision of the donor."

Anatomic Gifts follow a different legal principle than informed consent because donation occurs after death.
The legal rights of a patient to 'informed consent', is familiar to healthcare staff and has been applied in practice for decades. Any healthcare treatment or procedure must be agreed to by the patient through an informed consent process, which requires a facilitated discussion with the patient of the risks and benefits.

Registering to be an organ, eye, and tissue donor follows a different legal principle than informed consent because there are no risks and benefits of organ, eye, or tissue donation to a deceased person. Through their registration to be a donor, an individual affirms their legally binding decision to make anatomical gifts upon their death. Therefore, this decision falls under the principles of Gift Law. A gift is recognized under the law as a voluntary, uncompensated transfer to a willing recipient that accepts the gift . Organ, eye, and tissue donors, and their families, do not receive any compensation for the anatomical gift and the potential recipients (and their surgeons) have a choice in whether to accept the gift for its intended purpose, transplant.

To reduce the confusion of these two legal premises, informed consent being prior to death for treatment decisions and gift law applying after death for donation of anatomical gifts, organ procurement organizations utilize the term 'authorization' when referring to permission for deceased organ donation.

How Do These Laws Apply to DCD?

It is worth highlighting a couple of important points on how DCD is treated under the UAGA:

1. According to the UAGA, an anatomical gift "takes effect on the donor's death." Note that the UAGA does not specify how death is declared. A legally valid gift of donation is binding under the UAGA after death regardless of how death is declared. This means that donor registration is applicable in both brain death and DCD circumstances.
2. The 'effect' means that the gift becomes legally binding at the moment the donor dies and cannot be revoked by others: "In the absence of express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part…" (Refer to your state's UAGA)
3. To facilitate DCD cases, there are actions that need to be taken prior to the patient's death that allow the gift of donation to be preserved. Some of these activities include the administration of medications and possible line-insertions. Given that these interventions occur prior to death, informed consent must be obtained from the patient's family or legal decision makers; however, additional authorization for donation after circulatory death is not necessary if the patient is a registered donor because a legally valid gift has been made by the patient.

To find your state's UAGA, please navigate to the Interactive Map featured on The Alliance website.

For more detailed insights, view the recent Alliance webinar on "The ABC's of DCDD: The Legal Aspects of Pursuing an Authorized Donor in DCDD Cases" presented by Alexandra Glazier, JD, MPH and Brandan Parent, JD.

For additional references & resources; or to learn more, please visit:
www.organdonationalliance.org/insights/alliance-spotlight-series/

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Revised Uniform Anatomical Gift Act: First Person Authorization

Summary: The Revised Uniform Anatomical Gift Act (Act) governs anatomical gifts in Iowa. One purpose of the Act is to respect the primacy of the organ donor's decision to make a gift over sometimes conflicting wishes of the donor's family.

Effect of a Donor's Gift

The Act provides that unless the donor indicates to the contrary, "a person other than the donor" is "prohibited" from "amending" or "revoking" the donor's anatomical gift before or after the donor's death. Iowa Code § 142C.3(5)(a). This provision supports the donor's autonomy by preventing family members from contravening the act of the donor.

The gift's recipient has superior rights to other persons: Once a gift becomes final upon the donor's death, the person or entity that the gift passes to typically has rights to the gift that are "superior to the rights of all other persons," including family members. Iowa Code § 142C.8(8). An anatomical gift made by the donor takes effect at the moment of the donor's death.

Medical Support While Determining Suitability of a Gift

When a hospital refers a potential donor to a procurement organization at or near the individual's death, that organization has the right to "conduct any reasonable examination necessary to ensure the medical suitability" of the gift. Iowa Code § 142C.8(3). Hospitals are prohibited from withdrawing medical support necessary to ensure the gift's suitability, unless it is known that the potential donor intended otherwise.

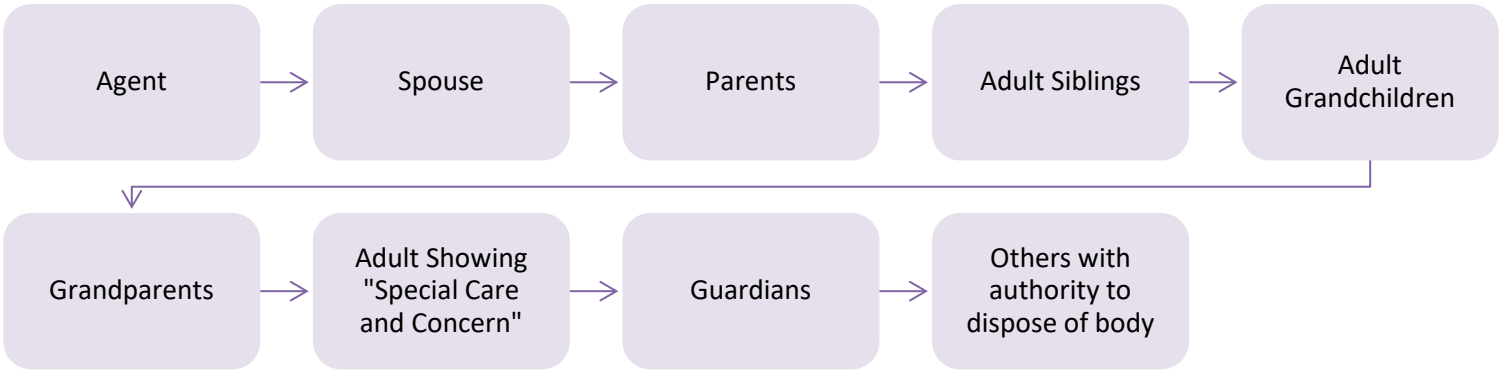
Revised Uniform Anatomical Gift Act:
Hierarchy of Decision-makers When No First Person Authorization

Summary: The Revised Uniform Anatomical Gift Act (Act) governs anatomical gifts in Iowa. The Act provides that when a potential donor or decedent has not made an anatomical gift during life, a hierarchy of decision-makers may make the donation decision for the decedent. The hierarchy is generally comprised of family members of the decedent who are *reasonably available to participate in the decision*. This is typically the only circumstance in which these individuals have the authority to make an anatomical gift.

When the Hierarchy Matters

No gift and no refusal: If the potential donor has either authorized a gift or affirmatively refused to make a gift, generally no other person may alter the donor's decision. The hierarchy of decision-makers below matters only when the potential donor has *not* made a gift or has refused to make a gift. Members at the top of the hierarchy (agents of the decedent with proper authority) have priority over lower members.

The Hierarchy



Need for Reasonable Availability

Only reasonably available members count: The organ procurement organization must make a reasonable search for individuals with priority in the hierarchy when receiving a referral for a potential organ donor who is at or near death, provided that only individuals who are *reasonably available*—meaning they are able to be contacted without undue effort and are willing and able to make a timely donation decision—are entitled to participate in the decision. Even known objections from a person who is not reasonably available do not stop individuals who are reasonably available from making an anatomical gift.

Donor and Family Consent for Anatomical Gift Donation under Iowa Law
Simmons Perrine Moyer Bergman PLC
March 31, 2021

This provides a summary explanation of the provisions in the Iowa Revised Anatomical Gift Act (the "*Act*") effectuating a donor's intent to make an anatomical gift, as well as the sections that permit other individuals to make an anatomical gift on the donor's behalf where the donor has not made or refused to make a gift. This summary also addresses the immunity protections under the Act for persons who act or attempt to act in good faith compliance with the requirements of the Act. The analysis below is a general summary, and is not meant to be or substitute for legal advice for specific fact patterns that may arise.

1. Background on the RUAGA

The Revised Uniform Anatomical Gif Act ("*RUAGA*") was promulgated by the National Conference of Commissioners on Uniform State Laws in mid-2006, quickly adopted by Iowa in 2007,[1] and is now in force in forty-six states.[2] Like anatomical gift acts before it, the RUAGA was drafted to advance three main policy goals: encouraging anatomical gifts, honoring and respecting individuals' autonomy, and maintaining an altruistic, instead of market-based, system of organ transference.[3]

The first two purposes—promoting donation and respecting autonomy—are furthered by provisions new to the RUAGA that bear on the issues in this summary. With regard to respecting autonomy, the drafting commission noted how the "common practice for procurement organizations to seek affirmation of the gift from the donor's family . . . could result in . . . a reversal of a donor's donation decision."[4] To better secure the donor's autonomous choice, the RUAGA enacted provisions to obviate any legal "reason to seek consent from the donor's family" if the donor made, or refused to make, an anatomical gift during the donor's lifetime. These provisions regulate presence of choice cases. Where a decedent has not done so, the RUAGA furthers the purpose of promoting organ donation by establishing an expanded hierarchy of persons who can decide to make a gift on the decedent's behalf. These provisions apply to absence of choice cases, addressed in Section 3.

2. Presence of Choice Cases

The RUAGA recognizes several means through which an individual can express an intent to become an organ donor. Conversely, the RUAGA enables an individual to declare not to make an anatomical gift, by amending or revoking a prior gift or refusing to make a gift altogether. The RUAGA

[1] For purposes of this summary, "RUAGA" will refer to both the model act and Iowa's Revised Uniform Anatomical Gift Act, codified at Iowa Code § 142C.1 *et seq.* Citations to the model RUAGA are primarily to the accompanying explanatory comments. Because Iowa's RUAGA is patterned after the model RUAGA, these comments are likely persuasive in interpreting Iowa's RUAGA. *See Greenwood v. Mitchell*, 621 N.W.2d 200, 205 (Iowa 2001) (explaining that the official comments to a different uniform act influence the interpretation of Iowa's counterpart to that act).

[2] *See* 2006 Anatomical Gift Act Legislation Tracker, Uniform Law Commission, https://www.uniformlaws.org/committees/community-home?CommunityKey=015e18ad-4806-4dff-b011-8e1ebc0d1d0f.

[3] *See* RUAGA, prefatory note.

[4] *See* RUAGA, prefatory note.

does not require a person relying on an authorized form of consent from a donor under the RUAGA to look beyond the consent to assess the legal capacity of the donor.[5]

a. Who Can Donate—Generally

The RUAGA allows a prospective adult donor to make an anatomical gift of the donor's own organs and tissues. The person's guardian and agent (such as an individual with a durable power of attorney) can as well, unless the agent is prohibited from doing so. For instance, the durable power of attorney for health care may expressly permit, limit, or withdraw the holder's authority to make a gift. Certain minors are allowed to make anatomical gifts also, as long as a parent authorizes the gift in writing.

b. Ways of Electing to Donate

There are five ways an individual can demonstrate an intent to make an anatomical gift: 1) by a statement or symbol on a driver's license or identification card; 2) by a similar mark on a hunting, fishing, or fur harvesting license; 3) by a donor card or statement or symbol on the donor registry; 4) by oral communication during a terminal condition; and 5) by will.

Perhaps the easiest means is a mark on the person's driver's license, or, less commonly, hunting, fishing, or fur harvesting license. Minors at least fourteen years old can make an anatomical gift through their driver's, or other, license. To be valid, the gift for minors requires the signed approval of a parent or guardian at the time it was made. For both adults and minors, the statement or symbol on a license or identification card is sufficient standing alone to create a valid gift, even if the license is revoked, suspended, expired, or cancelled.

A donor card or mark on the donor registry also provides a relatively clear and accessible manner of making an anatomical gift. A gift by donor card must be signed by the donor or by a person who can make a gift on the donor's behalf, such as a person with a durable power of attorney for health care. To make a gift by notation on the donor registry, the donor or a person who can act for the donor simply needs to authorize the inclusion of the relevant symbol or statement on the donor registry.

In addition to a donor card, the RUAGA provides that any written record stating the donor's intent and containing the donor's signature (or a signature of a gift-maker who is authorized to make a gift for the donor) can constitute a means of making an anatomical gift.

The RUAGA is more protective of a prospective donor, or gift-maker on behalf of the donor, who wishes to make a gift in this manner but is unable to physically sign the record. In this case, the donor or gift-maker can instruct another person to sign the record for the donor so long as three conditions are met:

1) The signing must be witnessed by two adults, at least one of whom is "disinterested." To be disinterested the witness cannot be a spouse, child, parent, sibling, grandchild, grandparent, or guardian of the donor or gift-maker, and also cannot be a person who "exhibited special care and concern" for the donor or gift-maker, such as a close friend.

2) The witnesses must sign the document at the request of the donor or gift-maker.

[5] *See Siegel v. LifeCenter Organ Donor Network*, 2011-Ohio-6031, ¶ 22, 969 N.E.2d 1271, 1279 (person received "facially valid consent form" and there was no evidence the person had "reason to doubt the legitimacy of" it, and was therefore protected from liability).

3) The record must state that it has been signed and witnessed in accordance with (1) and (2).

The RUAGA does not mandate that an anatomical gift always take written form. Under the RUAGA, if the donor is suffering a terminal illness or injury, the donor can make an anatomical gift by "any form of communication," including speech, as long as the donor communicates an intent to make the gift to two witnesses. Similar to the last paragraph, at least one witness must be disinterested. "For example, a terminally ill individual could make an anatomical gift by an oral communication to two unrelated neighbors or to one unrelated neighbor and one of the individual's adult children, but not to the individual's two adult children."[6]

Finally, a person's will can establish an anatomical gift. A gift by will is effective when the decedent dies regardless of whether the will is entered into probate or whether it is subsequently invalidated. The RUAGA's drafters explain that an anatomical gift for transplantation or therapy is not usually made by will, and caution prospective donors that their intent expressed in a will may not be revealed in time for a successful gift. It is more common, the drafters suggest, that an anatomical gift in a will is directed to medical science.

c. Amending and Revoking a Gift

Beyond positively making a gift, a person can convey their intent by amending or revoking an anatomical gift. Amending and revoking a prior gift are treated identically by the RUAGA. There are five ways of doing so: 1) by a signed record; 2) by a later-executed document; 3) by destruction or cancellation of a document of gift; 4) by communication during a terminal illness or injury where the gift was not made by will; and 5) by signed record or revocation or amendment of a gift made by will.

The formalities for making an amendment or revocation by a signed record are the same as for a record that creates a gift. The donor or the donor's authorized person must sign the document of gift. If the donor or authorized person cannot physically sign the revocation or amendment, the donor or authorized person can direct another individual to do so in the same manner as making a gift by record, with the same witness and signature requirements. If a revocation or amendment is made by signed record, it is effective to revoke or amend a donation made in a prospective donor's will.

As long as the formalities are complied with, a donor or authorized person can amend or revoke a prior gift by executing a document that expressly revokes or amends the prior gift by, for example, stating that all prior gifts are revoked. A later-executed gift can also revoke or amend an earlier gift if the later gift is inconsistent with the earlier gift. For instance, if a person donates all their organs for therapy or transplantation and then executes a record that donates their kidneys for educational purposes, the original gift would be revoked or amended to the extent of the differing instruction, but only to that extent. The remainder of the organs would pass to organizations that advance the donor's first purpose.

A gift can also be revoked or amended by the donor, or a person authorized to make a gift for the donor, destroying or cancelling a document constituting a gift with the intent to revoke or amend the gift. Losing, misplacing, or accidentally disposing a donor card does not revoke or amend the gift because none of these acts are done with the intent to revoke or amend the donation.

Lastly, where the anatomical gift was not made by will, the donor can amend or revoke the gift by any communication addressed to two witnesses, at least one of whom must be disinterested, during a terminal illness or injury. This is the same method as affirmatively making a gift during a terminal illness

[6] RUAGA § 5, comment.

or injury, but applied to revoking and amending. The meaning of "disinterested witness" is the same as in § 2(b).

d. Refusing to Make a Gift

An individual can also refuse to make a gift. The difference between refusal and amendment or revocation is that refusal is a positive statement of intent not to donate, whereas amendment or revocation only removes or modifies a prior expression of intent to donate. So, if a person revokes a prior gift, it is as if the person did not make that gift at all—the person is silent with respect to that gift. If an individual refuses to make a gift, on the other hand, the individual affirmatively states the individual's intent not to make a gift. Because a refusal requires a positive statement of intent, a donor who makes a gift of only part of the donor's organs and tissues is normally not deemed to have refused to make a gift of the rest of the donor's organs or tissues.

There are three ways to refuse to make a gift: 1) by signed record, 2) by will, and 3) by any communication during a terminal illness or injury. These mechanisms are the same as the analogous mechanisms for making, amending, and revoking a gift and will not be elaborated here. Of course, the signed record, will, or communication must embody an intent of refusal.

Like a gift, a refusal is a statement of intent and can be revoked or amended in the same five ways a gift can. For example, if a person executes a record refusing to make any anatomical gifts and then agrees to be an organ donor when receiving a driver's license, the refusal is revoked to the extent of the gift made by notation on the driver's license because of the inconsistency of the latter with the former.

e. Effect of Making a Gift or Refusing to Make a Gift

The RUAGA's drafters made it abundantly clear that the RUAGA "strengthens the respect due a decision to make an anatomical gift."[7] Hoping to prevent interference from a donor's loved ones, the RUAGA "intentionally disempowers families from making or revoking anatomical gifts in contravention of a donor's wishes."[8] Once a donor's intent has been shown, the family's consent to or disapproval of the gift is typically irrelevant.

The RUAGA formalizes this policy with this provision:

> [I]n the absence of a contrary indication by the donor, a person other than the donor is prohibited from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part . . . or an amendment to an anatomical gift of the donor's body or part . . . .[9]

The preclusive effect of making a gift also applies to gifts made by a person who has the donor's authorization to make gifts for the donor, such as a person with a health care power of attorney.

One small exception to this section is for deceased unemancipated minors, parents of whom retain the authority to revoke or amend a gift or a refusal made by their child. This is consistent with the RUAGA's requirement that any donation made by a minor be authorized by their parent or guardian. Posthumous revocation or amendment is simply a carryover of the need for the parent's or guardian's lifetime permission.

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[7] RUAGA, prefatory note.
[8] *Id.*
[9] Iowa Code § 142C.3(5)(a).

The RUAGA also clarifies that if a donor makes an anatomical gift for one purpose, such as medical science, an appropriate family member (as identified by the hierarchy explained in § 3(a), below) can expand the list to include other purposes, such as transplantation—at least where the donor's gift for medical science fails. For example, under the RUAGA donations made by driver's license are statutorily limited to therapy and transplantation. A proper family member could enlarge this gift to include other purposes if the decedent's body or parts are not medically suitable for therapy or transplantation. The simple rationale is that the donor would have wanted the donated organs and tissues put to some beneficial purpose even if they could not be used for the specific purpose intended. Of course, the family member cannot modify the gift to incorporate a contrasting purpose where the donor indicated that the family member does not have this power, such as where the donor states in the record of gift that the donation is "only" for transplantation or therapy.

3. Absence of Choice

The discussion up until now has focused on cases in which a donor's intent is known. There are many cases, however, in which a decedent had not made their intent to donate their organs and tissues known. The RUAGA anticipated these cases and created a hierarchy of individuals who are permitted to make an anatomical gift of the decedent's body or part. This hierarchy becomes relevant only where the donor's intent with respect to making or refusing to make a potential anatomical gift is unknown or unexpressed.

a. Hierarchy of Individuals with Authority to Make Choice

Where the decedent did not make a lifetime choice, persons at the top of the hierarchy receive absolute priority over those below them to make a gift on the decedent's behalf. Except in special cases, discussed below, the wishes of lower-ranking persons have no legal import. In other words, generally, only the highest ranking person's or persons' choice creates an anatomical gift on behalf of a decedent.

The hierarchy consists of ten classes of individuals. The first person in the hierarchy is the donor's agent who could have made a gift on the donor's behalf immediately before death. After that, the hierarchy is ranked by proximity of relationship to the decedent: spouse, adult children, parents, adult siblings, adult grandchildren, grandparents, any adult who exhibited special care and concern for the decedent, any guardians, and any other person having authority to dispose of the decedent's body. Other than for statements that a person is a decedent's agent (such persons should be able to easily prove their status as agent with written documentation or the agent's status will be reflected in medical records), a hospital or procurement organization is entitled to rely on a person's representation that they are related to the decedent unless the hospital or procurement organization knows the representation is false.

According to the hierarchy, then, where the decedent has not expressed an intent to make an anatomical gift, the decedent's agent is first to stand in the decedent's place and make, or refuse to make, a gift for the decedent. If there was not an agent authorized to make a gift for the decedent immediately before death, the decedent's spouse then gets to decide. If the decedent does not have a spouse, the adult children get to choose, and so on for each successive individual on the list.

Where there is more than one person in a category (*e.g.,* if decedent has more than one adult child), the decision can be made by any one person in the class unless that person or the person receiving the donation knows of an objection from someone else in the class. In that case, the gift or refusal is made by majority decision of the class members. For instance, if the decedent has three adult children and no spouse or authorized agent, any of the children can make a gift of their parent's body. However, if the

child attempting to authorize the gift knows that one of the siblings objects to the gift, that child cannot make the gift, and two of the three children must approve the gift before it can be lawfully executed.

b. Only Class-Members Reasonably Available Can Choose

The RUAGA's drafters understood that some class members, may, as a practical matter, be difficult for a procurement organization to contact in the limited time in which a donation decision must be made. In light of this, the RUAGA generally only requires that a procurement organization consider the desires of those class-members who are "reasonably available" at the time of the decedent's death.[10] To be reasonably available is to be "able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift." [11] Put differently, the RUAGA does not compel a procurement organization to expend extraordinary resources tracking down class members who are known to exist but cannot be reached. Continuing the example from the last paragraph, if one of the decedent's three children is on an extended backpacking trip through a remote mountain range and cannot be reached because of poor cell service, that child is not reasonably available and the donation decision can be made without regard for that sibling's wishes: it is as if that child is no longer in existence when they are not reasonably available. Significantly, this remains true even where the available child electing to make an anatomical gift knows the absent sibling objects to the gift.

Moreover, the RUAGA treats unwillingness to make a decision as not being reasonably available. So, if a decedent's spouse is unwilling to decide to make or not make an anatomical gift for the deceased spouse, the surviving spouse is not reasonably available and the children, as the next class in the hierarchy, become entitled to choose to make the gift or not. Thus, in some instances, lack of reasonable availability can, in effect, knock a person out of a class, as with the backpacking adult child, and can also effectively eliminate a class, as where the spouse refuses to make a donation decision.

c. Effectuating an Anatomical Gift

Once a procurement organization makes a reasonable search for members in the ten-class hierarchy and identifies the individual(s) with greatest priority, an anatomical gift can be effectuated by the highest priority class-member, or by the majority of members of the same class if an objection is known within the class, signing a record documenting the gift or by oral communication. If by oral communication, the communication must be electronically recorded or "contemporaneously reduced to a record signed by the recipient of the oral communication."[12] For instance, a procurement organization employee could call the decedent's spouse and get verbal authorization for a donation and then effectuate the gift by the employee putting the gift in writing and then signing it.

The RUAGA permits an appropriate class member to authorize a gift both near the decedent's death and after death. The reason is "to allow procurement organizations and the person having the priority to make an anatomical gift under [the RUAGA] some latitude as to when to sign a document of gift."[13]

[10] Iowa Code § 142C.2(29).
[11] Iowa Code § 142C.2(29).
[12] Iowa Code § 142C.4(3).
[13] RUAGA § 10, comment.

d. Amendment and Revocation

Principles of amendment and revocation apply in modified form to absence of choice cases because gifts by members of lower-ranking classes can be revoked or amended orally or via signed record by members of a higher-ranking category. To reiterate from above, a gift from a person lower on the hierarchy, such as an adult child, is forbidden where a person given priority, such as the decedent's spouse, is reasonably available. But, if the spouse is not reasonably available when the child makes the gift and later becomes reasonably available, the spouse can revoke or amend the child's gift. Where the higher-priority class that becomes reasonably available has multiple members in it, its decision to revoke or amend the gift by a lower-priority group must be made by a majority, and in the case of revocation, a tie is broken in favor of revocation. No matter who is revoking the gift, though, the revocation is not effective unless the procurement organization, transplant hospital, physician, or technician knows of the revocation "before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the [gift's] recipient."[14] An amendment, however, can be effective after incision for removal or initiation of invasive procedures because amendments usually only broaden the purposes for which a donation is made.[15]

4. Immunity

The RUAGA may grant immunity from civil, criminal, and administrative liability to a person who complies or attempts to comply with the RUAGA, or with another state's anatomical gift act, in good faith. The drafters explain that this immunity provision furthers the goal of facilitating organ donations, because if "parties were held to an overly strict adherence to [the RUAGA] when transplants must be made shortly after the decedent's death, it might well have a chilling effect on the making of anatomical gifts for the purpose of transplantation or therapy."[16] Accordingly, in general, where a person "substantively and generally" complies with the RUAGA in good faith, that person is protected from liability. "*Person*" includes corporations, associations, and "any other legal entity."[17] By contrast, if a person acts in bad faith, the RUAGA's shield from liability is lifted.

Good faith under the RUAGA is determined subjectively, meaning that it depends on the "intent or state of mind of the person concerned," and consists of "honesty of intent."[18] While Iowa courts have not had occasion to affirm this definition under Iowa's RUAGA, it is likely they would do so should the opportunity arise.[19] Thus, where a person complies or attempts to comply with the RUAGA in good faith, understood as "an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage," that person could be immune from liability, even if that person acted negligently.[20] However, determining whether a person has acted in good faith is highly fact-specific, and it is hard to draw general principles from the cases.

Still, case law provides some insight into immunity under the RUAGA. For example, in one case the family of a decedent sued the United States Veteran's Administration Medical Center ("*VA*") and an

[14] Iowa Code § 142C.4(5).
[15] RUAGA § 10, comment.
[16] RUAGA § 18, comment.
[17] Iowa Code § 142C.2(25) (defining person pursuant to Iowa Code § 4.1(20)).
[18] RUAGA § 18, comment.
[19] *See Garvis v. Scholten*, 492 N.W.2d 402, 404 (Iowa 1992) (holding that "good faith" receives a subjective interpretation where the legislature intends to grant immunity for negligent acts); *see also Siegel v. LifeCenter Organ Donor Network*, 2011-Ohio-6031, ¶ 10, 969 N.E.2d 1271, 1277 (Ohio Ct. App. 2011) (adopting subjective standard of good faith and noting several other states who have done the same in the interest of inter-state uniformity).
[20] *Id.* (quoting *Good faith*, BLACK'S LAW DICTIONARY (5th Ed.1979) 623).

eye bank for wrongfully removing the decedent's eyes for donation.[21] There, after the decedent passed away at the VA, a new doctor met with the family to obtain authorization to conduct an autopsy to determine what illness caused the decedent's death. Being unacquainted with the forms used, and without knowing he did so, the new doctor accidentally had the family sign a form stamped "eye donor" while it was filling out paperwork for the autopsy. Despite the signed form, however, the family did not want to donate the eyes, as they had a strong and sincere religious motivation for their refusal. Nevertheless, the form was signed. Complying with procedure, the VA then contacted the eye bank, whose enucleator traveled to the VA and removed the decedent's eyes after the VA presented the signed donor form to him. Only after the eyes were removed, however, did the enucleator become aware of the family's objection. Once the objection became known, he notified the eye bank, which instructed him to preserve the eyes so that they could be dispensed with as the family desired. The eye bank then discussed the matter with the family. In the end, the eyes were transported to the mortuary and reset before burial.

Ruling on the case, the court found that the eye bank and the VA were both covered by the RUAGA's immunity provision. For the eye bank, the resolution was crystalline: It "acted upon a routine notice from the VA that eyes had been donated[,]" the "enucleator was shown a facially valid donation form[,]" and it was only after the procedure was completed that it discovered the complication. After this discovery, it behaved appropriately as well by resolving the issue with the family, sensitively storing the organs, and returning them as requested. Thus, the eye bank acted in good faith.

For the VA, the court found that the determinative fact was whether "everyone who relied on the form signed [by the family] believed it to be valid" or "whether the hospital arranged for the enucleation despite the fact that someone in authority knew that [the decedent] and his family did not consent to the eye donation."[22] With respect to the doctor who inadvertently requested that the family sign the eye donor form, the court explained that there was "no question of [his] good faith" since he "thought he was complying with a bureaucratic formality." Moreover, all the other VA employees also acted in good faith. They did not know the family's hidden intent and followed normal procedures by relying on the signed donor form. Once the confusion was revealed, the "VA attempted to clarify it as best it could" and "took steps to rectify the situation." Again, under the facts of this case, the court found good faith.

Summarizing its reasoning, the court stated that the "good faith exception to civil and criminal liability is designed for situations such as the one before the court, where because of confusion, an organ is removed without genuine consent." Even where the confusion is negligently caused by a hospital, good faith could immunize the hospital from liability. As the case demonstrates, the good faith shield may protect a broad range of behavior depending on the circumstances.

But not all behavior is protected, and whether any given action is, or is not, deserving of immunity varies greatly with the facts. Generally, however, where conduct is "more than a mere mistake, bad judgment, or understandable confusion" and veers into "conscious or intentional wrongdoing carried out for a dishonest purpose or furtive design," there is no immunity under the RUAGA because there is no good faith.[23] In one case, for instance, a family initially refused to donate the decedent's eye-tissue and bone marrow because they did not want to disfigure the decedent's body. A nurse then spoke with the family and falsely stated that the removal procedures would not result in significant visible change to the donor's body. Based on the false information, the family withdrew their refusal and consented to the donation. On the issue of immunity, the court found there was an open question as to whether the nurse's actions were in good faith. There was evidence that the nurse was so familiar with the procedures that her inaccurate description was reckless, not just negligent, or, what's worse, she may have intentionally

[21] *Lyon v. United States*, 843 F. Supp. 531, 532 (D. Minn. 1994).
[22] *Id.* at 534.
[23] *Perry v. Saint Francis Hosp. & Med. Ctr., Inc.*, 886 F. Supp. 1551, 1559 (D. Kan. 1995).

misled the family to induce them to overcome their misgivings. In either instance, there would be no good faith. The import of this case is that it tends to illustrate how severe wrongful actions typically must be to meet the bad faith standard.

5. Conclusion

The RUAGA was enacted to honor a donor's autonomous choice and to promote anatomical gift-giving. Where a donor makes a gift or refuses to make a gift in the donor's lifetime, the RUAGA stringently protects that choice from any objections from the donor's family members at the time of death. To further the goal of increasing the number of anatomical gifts, the RUAGA also permits select classes of individuals to make a gift on a decedent's behalf where the donor has not made a lifetime choice to donate or refuse to donate. In carrying out a decedent's or family member's anatomical gift, hospitals, hospital employees, procurement organizations, and others are generally shielded from liability under the RUAGA where they comply or attempt to comply with the Act in good faith. This also promotes organ and tissue donation—and enables the RUAGA's altruistic framework to function well.