



**NATCO, THE ORGANIZATION FOR TRANSPLANT PROFESSIONALS
POSITION STATEMENT**

ADHERENCE TO FIRST PERSON CONSENT

STATEMENT OF THE PROBLEM:

There has long been fears by clinicians and Organ Procurement Organizations (OPO) that litigation by next of kin will ensue if organ or tissue donation proceeds against family wishes, even when the deceased had formally declared their desire to be a donor.⁽¹⁾ In many cases, this has resulted in registered donors not being allowed to donate when these clinicians or OPOs were faced with families who refused to give their permission for the donation to occur. The downstream effect is that these donor gifts never get transmitted to their intended recipients, the patients in need.

From a legal perspective, not accepting the donation from a clinically suitable donor is a violation of the Revised Uniform Anatomical Gift Act (UAGA, Section 8) because “an anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor’s death,”⁽²⁾ From an ethical perspective, not accepting the donor’s gift is a violation of their autonomy and a disregard for their wishes to help those in need.

Fears about litigation should be mitigated by the fact that Section 11 of the Revised UAGA details an immunity clause that protects procurement personnel from liability in civil actions, criminal prosecutions, or administrative proceedings when they act in good faith when proceeding with organ and tissue donations in the face of family objection.

POLICY:

- NATCO recognizes and supports the right of adults and emancipated minors with decision-making capacity to make personal choices, including the decision to donate their organs and tissue after death, and to record that decision through the signing of a donor card or similar legal instrument. We affirm the decision of these individuals for/against organ donation to be paramount. In the case of minors, we support the Revised UAGA position that a parent who does not wish his/her minor child to make an anatomical gift should communicate such to the child.
- NATCO supports the legal concept of “first person consent” and advocates that OPOs proceed with the organ and tissue donation process when the wish of the decedent to be an organ and/or tissue donor (as described in the Revised UAGA) is known and legally documented.

- Donor families should always be given compassionate care and empathic support to help them understand their loved one's decision.
- NATCO encourages individuals to discuss their values and decisions regarding organ and tissue donation with family members prior to their death.
- NATCO recognizes that some families expressing objection to their loved one's wish to be an organ donor may refuse to participate in the donation process, including providing information about the donor's medical and social history. In the event the organ procurement organization is unable to obtain a medical and social history from the family of a self-designated donor, donation should proceed with this information accurately presented to accepting transplant centers. During the informed consent process, intended transplant recipients should receive full disclosure of the risks associated with an incomplete donor medical and social history, and these organs and tissues should be considered "nonstandard".⁽³⁾
- In the event that the decedents wish for or against organ donation is not known, the decision becomes the responsibility of his/her legal next of kin.

REFERENCES:

1. Cook K. Familial consent for registered organ donors: a legally rejected concept. Health Matrix Clevel. 2007 Winter;17(1):117-45.
2. Revised Uniform Anatomical Gift Act (UAGA), 2006. Available on-line at http://www.anatomicalgiftact.org/DesktopDefault.aspx?tabindex=1&tabid=63#_Toc148498112.
3. Halpern SD, Shaked A, Hasz RD, Caplan AL. Informing candidates for solid-organ transplantation about donor risk factors. N Engl J Med. 2008 Jun 26;358(26):2832-7.

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