



OFFICE OF GENERAL COUNSEL
LEGAL OPINION

TO: Sam B. Cooper, III, MSW, LMSW
Manager, Purchased Health Services Unit

FROM: Office of General Counsel

DATE: December 7, 2006

RE: Whether Texas law provides for first person consent, versus an intent registry, for organ donation

BACKGROUND

The Purchased Health Services Unit of the Specialized Health Services Section has requested clarification concerning whether recent changes in Texas law allow persons to override the decisions of deceased family members who, while living, had expressed their desire to become organ donors by executing gift cards to be maintained by an Internet-based registry.

QUESTION

Did the establishment of the Donor Education, Awareness, and Registry (DEAR) Program's Internet-based registry by HB 120, 79th Texas Legislature, in effect, mandate a "first person consent registry" or only an "intent registry"?

ANSWER

Texas has an Internet-based registry through which persons may register their decisions to become organ donors either through the Department of Public Safety, or directly through the DEAR Registry by complying with the requirements in the Anatomical Gift Act, Health and Safety Code, Chapter 692.

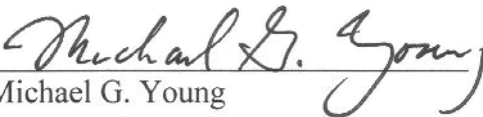
DISCUSSION

Texas law does not define the terms "first person consent". However, according to the United Network for Organ Sharing (UNOS), the term refers to "legislation that allows donor designation to be indicated on a driver's license or an official signed donor document, which gives hospitals legal authority to proceed with organ procurement without consent from the family." The mechanisms in Transportation Code, §521.401 and Health and Safety Code 692.003 are precisely those referred to in the UNOS definition of "first person consent"; i.e., either a donor's designation on a driver's license or an official signed donor document. The Texas DEAR

Program has gone a step further by including all the persons who have those designations in the Internet-based registry. However, other persons who have executed documents such as donor cards, defined at Health and Safety Code §692.002(4), before the creation of the Internet-based registry, or concurrently, will not be included in the DEAR registry unless they take the specific steps required to have their names added to the registry.


Although HB 120 did not directly support the integrity of the decisions made by organ donors by affirming the term “first person consent” in 2005, Health and Safety Code, §692.003(e) has provided since 1997 that “a gift made under this section by a person 18 years of age or older, including a gift made under Section 521.401, Transportation Code, shall be honored without obtaining the approval or consent of any other person.” (Emphasis added.) Thus, the consent of no other party is required before proceeding with organ procurement for a person who is included in the DEAR Program Registry.

PREPARED BY:



Michael G. Young
Assistant General Counsel

APPROVED BY:

for 

Cathy Campbell
General Counsel