

Anatomical Gifts: Court Faults Nurses' Explanation To Family Of What Will Be Taken.

Three nurses at the hospital apparently gave the adult children inaccurate and conflicting explanations of what would happen if they signed a consent form for anatomical donations from their father who had just died of a heart attack.

The one nurse who could be identified from his signature as a witness on the organ-donation papers became a defendant in the lawsuit, along with the hospital and the local organ transplant association.

Eyes, Leg Bones To Be Harvested

The nurses somehow gave the family the impression that the eyes would be slit to remove the corneas but the eyes would not be removed from the body. They also got the impression just two to four inches of shin bone would be taken.

In fact, the eyes were removed. One whole tibia and the associated fascia lata were also taken. The transplant association's standard form allowed all of both leg bones and fascia lata to be taken from the iliac crest to the distal tibia.

The family checked the box on the form "NO" to indicate no organs or other tissues could be taken, and none were.

Nurse, Hospital Required To Prove Absence of Negligence / Good Faith

The Uniform Anatomical Gift Act is in effect in all fifty states and the District of Columbia. The Missouri Court of Appeals ruled the transplant association fulfilled its legal duties under the Act by adhering to its standard practices after being given its standard consent form signed by eligible surviving family members and dismissed the case against the association.

The identified nurse and the nurses' employer, however, were kept on as defendants in the case. They would have to convince the jury they were not negligent for what the family was told and convince the jury not to believe the family would not have consented to the donations if they knew what was actually going to happen. **Schmre v. Mid-American Transplant Association**, __ S.W. 3d __, 2003 WL 21692986 (Mo. App., July 22, 2003).

The traditional rule of the common law was that the corpse is strictly the property of the surviving family. Any unauthorized invasion of the sanctity of the remains by medical personnel was grounds for the family to file a civil lawsuit.

The Uniform Anatomical Gift Act (UAGA), originally drafted in 1968, was meant to facilitate donation of much-needed anatomical materials after death.

However, the UAGA still requires that the donor, during his or her lifetime, or the family, post mortem, give informed consent for harvesting of eyes, bone, organs and other tissues.

Without consent that is truly informed consent the donation is invalid and the family can still sue for common-law damages.

Nurses and other personnel who obtain informed consent from the family must be able to prove they acted without negligence and in good faith.

Three different nurses apparently gave the family conflicting versions of just what the harvesting process entailed.

MISSOURI COURT OF APPEALS
July 22, 2003

Arbitration: Court Nixes Out-Of-State Forum For Hearing Of Nursing Home Abuse Case.

The District Court of Appeal of Florida acknowledged there is a strong public policy behind enforcing arbitration clauses in nursing home admission contracts.

When there is an arbitration clause, a civil claim against a nursing home seeking damages for alleged abuse of a resident must be decided by an arbitrator rather than a jury, as a general rule.

It is proper for the court to put further court proceedings on hold and order both sides to submit to binding arbitration.

That being said, however, the court ruled that an arbitration clause calling for arbitration to take place in another state is illegal and unenforceable in a nursing home admissions contract. It is normally allowed in common, garden-variety commercial contracts. **Northport Health Services v. Estate of Radoja**, __ So. 2d __, 2003 WL 21713988 (Fla. App., July 25, 2003).

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