

## Organ Donation: Court Says Beneficiary Cannot Sue For Kidney Given To Another.

The widow of a patient who died from a massive intra-cranial bleed spoke with a nurse about donating her late husband's kidneys to a family friend who was in dialysis for end-stage renal disease. The widow was referred to the hospital's transplant coordinator.

### Both Kidneys Meant For A Specific Person

The widow expressly stated it was her intention that both of her late husband's kidneys were to go to one specified individual and were not to go to anyone else.

When it was time for the designated recipient to receive his transplants he was told the one kidney they had standing by was deemed unacceptable for transplant due to an internal arterial aneurysm. The other kidney, he was told, had already been transplanted into another individual. Further, he was told that that organ would not have been acceptable for him for transplant due to blood-type mismatch and other biological incompatibilities. The designated recipient sued the transplant network and the physicians.

The US District Court for the Eastern District of New York dismissed the lawsuit.

The court noted this was a case of first impression, that is, no lawsuit of this type has ever before been filed.

Based on general legal principles, the court ruled that a designated beneficiary of an organ donation has no legal property right as to the organ or organs in question, and consequently no right to sue if the organs are misdirected.

Next of kin do have the right to direct the disposition of the remains of a deceased person. The corpse is much like their property. However, according to the court, that does not allow them to create property rights in others as to the remains similar to the deceased's car, clothing or residence being given away or sold.

There was no basis for a claim that the doctors had acted fraudulently.

The Uniform Anatomical Gift Act, in force in New York and every other state, the court said, is more concerned with carrying out the wishes the deceased had expressed during life. The Act was not intended, the court ruled, to allow a beneficiary to file a civil lawsuit. **Co-lavito v. New York Organ Donor Network, Inc.**, 356 F. Supp. 2d 237 (E.D.N.Y., February 15, 2005).

## Medical Malpractice: Discovery Rule Applied Against Nurse, Understood Her Own Condition.

A licensed practical nurse with over forty years experience in health care had a cancerous tumor removed from her neck. Following that she had radiation oncology for several months in late 1997 and early 1998.

Although free from cancer, the nurse began to have cognitive difficulties which led her personal physician to refer her to a neurosurgeon.

The neurosurgeon diagnosed radiation necrosis and performed surgery to remove an abnormal area of brain tissue located above and behind her ear. Pathology confirmed the initial diagnosis of radiation necrosis.

The nurse discussed the pathology report with her neurosurgeon on May 9 but did not start her lawsuit against the oncologist until November 16, 2001.

***The discovery rule allows the injured party a certain period of time to sue after discovering grounds for a malpractice lawsuit, even if the statute of limitations has expired.***

***Being a nurse, the injured party in this case knew that radiation necrosis in her doctor's records was a side effect of radiation oncology treatment possibly linked to excessive dosages.***

COURT OF APPEALS OF MICHIGAN  
April 12, 2005

The Court of Appeals of Michigan threw out her lawsuit. Michigan's two-year statute of limitations from the end of her oncology treatments had passed. However, the discovery rule would still give her extra time (six months in Michigan) to file her lawsuit. The extra time started when she discovered the possible basis for a lawsuit.

With her nursing background, the court said, she, unlike a member of the general public, would understand the meaning of what was in her chart. That is, she should have known that the term radiation necrosis refers to death of tissue surrounding the site targeted for radiation oncology treatment, possibly caused by negligently excessive dosages of radiation. **Prins v. Ewald**, 2005 WL 839634 (Mich. App., April 12, 2005).