

New Pennsylvania Organ Donation Law

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For many years, Pennsylvania's Anatomical Gift Act has dictated the rules and procedures for donating organs and tissues such as liver, lung, kidney, heart and eye. Last month the Pennsylvania legislature passed a new law that establishes rules and procedures for donating different types of organs and tissues that are now possible due to recent scientific advances. These new types of organ donations include the transplantation of facial tissue, hands, limbs and other special tissues, all of which are referred to as vascularized composite allografts. Vascularized Composite Allografts, frequently referred to as "VCAs," involve the transplantation of multiple body parts that can include skin, bones, muscles, blood vessels, nerves and connective tissue. This new law took effect on October 23, 2018.

The Commonwealth of Pennsylvania has historically encouraged all types of organ and tissue donation. In an effort to help individuals who have suffered devastating injuries restore function, the Anatomical Gift Act has now been expanded to specifically address the donation of VCAs. Because of the amount and type of tissue that is transplanted with VCAs, the new rules require explicit and specific consent to the transplantation of VCAs that is separate from the consent for traditional organ and tissue donation.

Any Pennsylvania resident who is at least eighteen years of age and of sound mind may consent to the donation of facial tissue, hands, limbs or other VCAs in a Last Will and Testament, a Living Will, a Power of Attorney or other document. This direction must be in writing and signed by the individual as well as two witnesses. The individual may alternatively direct limitations for the amount or type of tissues to be transplanted using VCAs or withhold consent to transplantation of VCAs altogether. Health care providers must honor these limitations. Any eligible Pennsylvania resident may also give an Agent under a Power of Attorney specific authority to consent to the transplantation of VCAs. An individual can revoke donation of VCAs at any time by changing the individual's Last Will and Testament, Living Will or other writing or by an oral statement made in the presence of two persons or a physician.

Under the new law, certain persons other than the donor may authorize the donation of facial tissue, hands, limbs or other VCAs of a donor who is at least eighteen years of age and whose death is imminent or who has died in a hospital. However if the person authorizing the donation knows that the donor would not consent to VCAs transplantation, the donation cannot be made. The persons authorized to make such a donation decision are, in order of priority, the individual's spouse, adult child, parent, sibling, grandchild, grandparent, any other relative, and

guardian. The new law also permits a parent or guardian to give consent to the donation of VCAs of a minor child whose death is imminent or who died in a hospital so long as the parent or guardian does not know that the child or the other parent would not consent to VCAs donation.

The new law requires that health care providers give the prospective donor or the donor's family extensive information about the donation process and consequences to the donor's body. For example, the donor must be informed that if the appearance of the body will be significantly altered due to the VCAs donation, a surgical team can be requested to perform reconstructive surgery to restore the body before burial at no cost to the donor or the donor's family. The donor must also be informed that the transplantation of VCAs may impact the ability to have an open casket. Finally, the donor must be informed that with VCAs donation, personal identity may not be protected due to the existence of birthmarks or fingerprints.

The new organ donation law gives Pennsylvania residents the authority to direct which of their organs and tissues, if any, are available for donation. It is important for each individual to let family and health care providers know what the individual's wishes are regarding donation of organs. The general language about the donation of traditional organs such as liver, kidney, lung, heart and eyes does not apply to the donation of facial tissue, hands, limbs or other VCAs. Therefore, each individual must separately specify in a Last Will and Testament, Living Will or Power of Attorney what the person's wishes are concerning donation of VCAs. Your elder law attorney can help you by discussing the issues associated with organ donation with you and revising your estate planning documents so that your wishes regarding organ donation are known and honored.

More information about the transplantation of facial tissue, hands, limbs and other VCAs will soon be available on the Pennsylvania Department of Transportation website (www.penndot.gov) where other organ donation information can be found. In the interim, if you have any questions about the new organ donation law, please call our office.