

BERWITZ & DiTATA LLP

Attorneys and Counselors at Law
224 Seventh Street
Garden City, New York 11530
Telephone (516) 747-3200 • Facsimile (516) 747-3727

Lawrence N. Berwitz

Maureen Rothschild DiTata

ORGAN AND TISSUE DONATION - NEVER TOO OLD, NEVER TOO LATE

Let's face it: we are all going to die one day. At that point, our family members may be asked about donating our organs and tissue. A decision on this sensitive issue is much more difficult for our loved ones to make unless, during our lifetime, we have shared our views and expressed our intentions. For various reasons, personal, cultural or religious, and because it raises concerns which are genuine or superstitious, most people avoid talking about the end of life. But, we probably should.

Tens of thousands of Americans are on organ and tissue transplant waiting lists, hoping for that precious "Gift of Life." The national waiting list count is continuously updated throughout the day. The decision as to who should have priority to organ and/or tissue transplant is based solely on medical factors. Blood and tissue type, body size, geographic location and medical urgency determine the recipients. The transplant waiting list is blind to the age, gender, race, religion, wealth or celebrity status, and no one can advance his or her position on the waiting list based on these factors. Moreover, in the U.S., it is illegal to sell human organs and tissue. Violators are subject to imprisonment and fines. One of the reasons for this rule is the government's concern that buying and selling organs might lead to inequitable access to donor organs with the wealthy having an unfair advantage.

People of ALL ages, from newborns to the very elderly, may donate organs and tissue. Do not rule yourself out due to health concerns: people of ALL medical histories, even those with diabetes, cancer and hepatitis C are potential donors. The circumstances of death, the donor's medical condition at that time and the condition of the specific organs and tissue will determine their viability for donation. Donors are evaluated on a case-by-case basis to ensure the medical suitability of their organs and tissue.

You can donate such organs as the heart, kidney, liver, pancreas and lungs. Tissue donations include skin, bones, eyes/corneas, heart valve and cardiovascular tissue, middle ear, blood vessels, arteries, tendons and connective tissue. It costs nothing to donate, none of the costs are passed on to your family or estate. All costs related to donation are paid by the organ or tissue recipient, usually through insurance, Medicare or Medicaid.

Some people are under the impression that a doctor will stop trying to save his patient's life if he is informed that the patient wishes to be an organ donor. The medical team whose job it is to save lives is completely separate from the transplant team. The organ procurement organization ("OPO") is not notified, and organs are not removed, until all life-saving efforts have failed and death has been determined. In order to prevent conflicts of interest, the physician who

determines death is never a member of the transplant recovery team. The OPO does not notify the transplant team until the family has consented to the donation.

Often people believe that donation will result in a delay in the funeral arrangements or that they may be disfigured. The donor is treated with extreme care. The donation takes place under sterile conditions in procedures similar to surgery. The donation does not usually delay or interfere with chosen funeral arrangements, even an open casket.

If you wish to be a donor, it is important to express your wishes to your family. This will make it easier for them to consent to the donation and make sure that your instructions are honored. Hospitals are required to follow certain protocols in asking family members for permission to procure organs. If you make no provision for donation, under New York law, only certain individuals are authorized to consent on your behalf: (1) your spouse; (2) an adult child, 18 years of age and older; (3) either of your parents; (4) siblings, 18 years of age and older; and (5) a guardian appointed by court prior to your death.

If you are 18 years of age and older, there are several ways to express a wish to become a donor: by joining a donor registry, a computerized database of people who wish to be donors; by signing an organ and tissue donor card and carrying it in your wallet; by indicating the intent to donate on your driver's license; or by including donation in your health care proxy and/or living will. You may specify the desire to make a gift of only a particular organ, or to make a donation to a specified individual. You may specify if you want your organ(s) or tissue to be used for research or educational purposes or for transplantation.

The decision to be a donor is a difficult one, but one that can be truly rewarding and meaningful. Having a greater understanding enables us to make better decisions and to express them in a way that will help our loved ones, in a time of great sorrow, to carry out our wishes. If you have questions or concerns about organ and tissue donation, please do not hesitate to contact our offices. We will be happy to discuss these issues with you in further detail.