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Honorable William W. Monning
Room 6005, State Capitol

ORGAN DONATION - #1218880

Dear Mr. Monning:

QUESTION NO. 1

May an anatomical gift made by an individual who is an adult or an emancipated minor pursuant to the Uniform Anatomical Gift Act (Ch. 3.5 (commencing with Sec. 7150), Pt. 1, Div. 7, H.& S.C.) be amended or revoked by any other person, either before or after the death of the individual?

OPINION NO. 1

An anatomical gift made by an individual who is an adult or an emancipated minor pursuant to the Uniform Anatomical Gift Act (Ch. 3.5 (commencing with Sec. 7150), Pt. 1, Div. 7, H.& S.C.) may not be amended or revoked by any other person, either before or after the death of the individual.

ANALYSIS NO. 1

The Uniform Anatomical Gift Act (Ch. 3.5 (commencing with Sec. 7150), Pt. 1, Div. 7, H.& S.C.;¹ hereafter the act) governs procedures relating to organ donation. The act defines an anatomical gift as "a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education" (para. (3), subd. (a), Sec. 7150.10).

¹ All further section references are to the Health and Safety Code, unless otherwise specified.

Section 7150.15 authorizes a person to make an anatomical gift, as follows:

"7150.15. Subject to Section 7150.35, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 7150.20 by any of the following individuals:

"(a) The donor, if the donor is an adult or if the donor is a minor and is either of the following:

"(1) An emancipated minor.

"(2) Between 15 and 18 years of age, only upon the written consent of a parent or guardian.

"(b) An agent of the donor, provided that the power of attorney for health care or other record expressly permits the agent to make an anatomical gift." (Emphasis added.)

Thus, subdivision (a) of Section 7150.15 specifically authorizes an adult or an emancipated minor to make an anatomical gift.

A donor may make an anatomical gift in various ways, including through a statement or symbol on his or her driver's license, directly through certain Internet Web sites, or in a will (subd. (a), Sec. 7150.20). During a terminal illness or injury, a donor may make an anatomical gift by any form of communication that clearly expresses the donor's wish, provided this is witnessed in accordance with specified provisions (para. (4), subd. (a), Sec. 7150.20). A donor may also make an anatomical gift by a donor card or other record that meets specified requirements (subd. (b), Sec. 7150.20). Section 7150.20 provides that an anatomical gift made by will takes effect upon the donor's death and that invalidation of the will after the donor's death does not invalidate the gift (subd. (d), Sec. 7150.20). This section also provides that revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift (subd. (c), Sec. 7150.20).

Section 7150.25 generally authorizes a donor or authorized agent of a donor to amend or revoke an anatomical gift by signing and recording a specified record in a donor registry database, by executing a document of gift subsequent to the original document of gift that amends or revokes the previous gift, by destroying or canceling the originally enacted document of gift, or by communicating to at least two adults the revocation of the gift during a terminal illness or injury (subds. (a) to (e), incl., Sec. 7150.25).

Section 7150.35 generally prohibits a person other than the donor from amending or revoking an anatomical gift, and reads, in pertinent part, as follows:

"7150.35. (a) Except as otherwise provided in subdivision (g) and subject to subdivision (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 7150.20 or an

amendment to an anatomical gift of the donor's body or part under Section 7150.25."

Therefore, in the absence of an express, contrary indication by the donor to amend or revoke his or her anatomical gift, Section 7150.35 prohibits a person other than the donor from amending or revoking the gift. For purposes of this question, we assume that the donor has not evinced an express, contrary intent to amend or revoke his or her gift. We also note that the exceptions and qualifications referenced in subdivision (a) of Section 7150.35, which include subdivisions (f) and (g) of that section, are not at issue for purposes of this question.

To ascertain the meaning of a statute, we begin with the language in which the statute is framed (*Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438). If the language is clear and unambiguous, there is no need for construction (*Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 547), there is no need for interpretation, and the statute's plain meaning should be followed (*Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 38 (hereafter *Droeger*)). In our view, a court would conclude that the language here is clear and its plain meaning should be followed. In the absence of an express, contrary indication by the donor, an anatomical gift made pursuant to the act by an individual who is an adult or an emancipated minor may not be amended or revoked by any other person. This language is not qualified with respect to whether the donor is alive, and we do not think a court would imply such a qualification, so this rule would apply regardless of whether the donor is living.

Case law supports this conclusion. In *Regents of University of California v. Superior Court* (2010) 183 Cal.App.4th 755, the children of a donor sued the Regents of the University of California for negligence because of alleged wrongdoing and mishandling of donated bodies by the UCLA Willed Body Program (*Id.*, at p. 757). In describing the transfer of ownership that occurs with respect to the decedent's remains, the court stated:

"Under *Conroy v. Regents of University of Cal.* (2009) 45 Cal.4th 1244], execution of a document of gift causes the statutory right to control disposition of a donor's remains to pass to the donee ... upon the donor's death... . In addition, under the Uniform Anatomical Gift Act ..., the donee's rights created by an anatomical gift are superior to the rights of others, and family members ... do not have the right to alter terms of the written donation agreement executed by the donor" (*Id.*, at p. 758).

In this case, the court concluded that because the decedent's donation was irrevocable upon her death, the adult children of the decedent had no statutory control over the remains of the decedent, and, thus, the Regents of the University of California owed no duty to them (*Ibid.*). This conclusion is consistent with our interpretation of the plain meaning of the language in the act.

The act also governs procedures in which a donor has secured an agent to make health care decisions on his or her behalf. Section 7150.15 authorizes an agent of the donor to make an anatomical gift, provided that the power of attorney for health care or other record expressly permits the agent to make an anatomical gift. In this case, it is our view that if an agent of the donor validly made an anatomical gift, the agent would later have the right

to amend or revoke the gift pursuant to the authority to amend or revoke anatomical gifts granted by Section 7150.25. However, in any decisions regarding the making, amending, or revoking of an anatomical gift, the agent would be required to act in accordance with the wishes of the donor, because the agency relationship is created generally to effectuate the purposes of the principal, who in this case would be the donor (see *L. Byron Culver & Associates v. Jaoudi Industrial & Trading Corp.* (1991) 1 Cal.App.4th 300, 304). Moreover, an essential component of the agency relationship is that the agent act on the principal's behalf and subject to his or her control (see *Van't Rood v. County of Santa Clara* (2003) 113 Cal.App.4th 549, 572).

Accordingly, we conclude that an anatomical gift made by an individual who is an adult or an emancipated minor pursuant to the Uniform Anatomical Gift Act (Ch. 3.5 (commencing with Sec. 7150), Pt. 1, Div. 7, H.& S.C.) may not be amended or revoked by any other person, either before or after the death of the individual.

QUESTION NO. 2

Is a person who recovers organs and tissues in accordance with the Uniform Anatomical Gift Act, and who acts in good faith based upon the decedent's document of gift, immune from civil liability from the family of the decedent for violation of the act?

OPINION NO. 2

A person who recovers organs and tissues in accordance with the Uniform Anatomical Gift act, and who acts in good faith based upon the decedent's document of gift, is immune from civil liability from the family of the decedent for violation of the act.

ANALYSIS NO. 2

Section 7150.80 provides certain immunity with respect to actions taken under the Act, as follows:

"7150.80. (a) A person that acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action or criminal prosecution.

"(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

"(c) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in paragraphs (2) to (8), inclusive, of subdivision (a) of Section 7150.40 relating to the individual's relationship to the donor or prospective donor, unless the person knows that the representation is untrue." (Emphasis added.)

Pursuant to the aforementioned rule of statutory construction, courts will interpret unambiguous statutes according to their plain meaning. Therefore, provided that a person acts in accordance with the act or with the applicable anatomical gift law of another state, or attempts in good faith to do so, he or she will not be liable in a civil action or criminal prosecution. The act does not limit this immunity with respect to the person bringing the claim. Therefore, it would equally apply to a donor's family member or to a person unrelated to the donor.

The act does not define the conduct that constitutes a "good faith" effort to comply with its terms and California courts have not confronted this issue with respect to the act. Other jurisdictions have adopted the Black's Law Dictionary definition of good faith with respect to similar organ donation laws. In *Lyon v. U.S.* (D.Minn. 1994) 843 F.Supp. 531 (hereafter *Lyon*), the court states that "[g]ood faith is the 'honest belief, the absence of malice and the absence of design to defraud or to seek unconscionable advantage.' [citation] (citing Black's Law Dictionary (5th ed. 1979))" (*Id.*, at p. 533). The court in *Lyon* further describes the purpose for the good faith exception as follows:

- "The good faith exception to civil and criminal liability is designed for situations ... where because of confusion, an organ is removed without genuine consent. [Absent] knowledge that the facially valid [document of gift] did not represent the wishes of [the donor] and his family[, the good faith standard of the Act is satisfied and immunity is proper]" (*Id.*, at p. 536).

We think a California court would reach a similar conclusion with regard to the act. Thus, the good faith exception will apply to a defendant who recovers organs or tissues from an individual in accordance with the act, absent knowledge that a facially valid document of gift does not represent the wishes of the donor and his or her family.

Accordingly, a person who recovers organs and tissues in accordance with the Uniform Anatomical Gift Act, and who acts in good faith based upon the decedent's document of gift, is immune from civil liability from the family of the decedent for a violation of the act.

QUESTION NO. 3

May a document of gift under the Uniform Anatomical Gift Act that is lawfully executed by an individual while an unemancipated minor be revoked by any other person if the donor dies after reaching the age of majority without having revoked the document of gift?

OPINION NO. 3

A document of gift under the Uniform Anatomical Gift Act that is lawfully executed by an individual while an unemancipated minor may not be revoked by any other person if the donor dies after reaching the age of majority without having revoked the document of gift.

ANALYSIS NO. 3

The act allows an unemancipated minor who is between 15 and 18 years of age to make an anatomical gift, with his or her parent's or guardian's written consent (para. (2), subd. (a), Sec. 7150.15). Upon the death of an unemancipated minor, a parent has the right to amend or revoke the gift. Subdivision (g) of Section 7150.35 reads as follows:

“(g) Notwithstanding subdivision (a), an individual who is between 15 and 18 years of age may make an anatomical gift for any purpose authorized in this chapter, may limit an anatomical gift to one or more of those purposes, may refuse to make an anatomical gift, or may amend or revoke an anatomical gift, only upon the written consent of the parent or guardian. If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.” (Emphasis added.)

Thus, an unemancipated minor who is between 15 and 18 years of age is permitted to make an anatomical gift if his or her parent or guardian gives written consent prior to the minor making the gift. Furthermore, if a donor who is an unemancipated minor dies, a parent of the donor may revoke or amend the anatomical gift. Reading subdivision (g) of Section 7150.35 according to its plain meaning, the authority of the parent to revoke or amend an anatomical gift is conditioned upon the donor dying while unemancipated. We think a court would follow the plain meaning and not imply a further authorization not supported by the language of the statute (see *Droeger, supra*). Therefore, if the minor reaches 18 years of age and dies, no one, including a parent, may amend or revoke the gift. To interpret this statute otherwise would lead to the unreasonable result in which a person could make an anatomical gift while a minor, reach an age well-above the age of majority, and still be subject to his or her parent's authority to preclude the gift.

Additionally, it is a well-established rule of statutory construction that the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388). Generally, the act expresses and implies the intent of the Legislature that the wishes of a qualified donor, expressed during the donor's lifetime, in relation to an anatomical gift, be honored over the wishes of any other person involved in the process (see subd. (a), Sec. 7150.35). The act provides significant protection for donors, in that a donor can be assured that his or her gift will be protected after his or her death, and that it will not be revoked by other people, except at his or her direction (see Secs. 7150.25 and 7150.35). The act has been amended over time to encourage organ donation and to strengthen the rights of donors.²

² See, for example, Chapter 629 of the Statutes of 2007, which, among other things, allows the donor's document of gift to designate a specific physician to perform the recovery

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Although the act does not provide a procedure governing the transition from a person who is donating as a "minor" to donating as a "donor," the design of the act suggests that if a person makes a valid document of gift when he or she is a minor, once he or she reaches the age of majority, the document of gift remains valid, as he or she has become a "donor," with all the attendant rights bestowed upon a donor. Under the act, a donor is an adult, an unemancipated minor, or a minor between 15 and 18 years of age (Sec. 7150.15). While the minor between 15 and 18 years of age requires parental consent to make an anatomical gift, the document of gift is no less valid and the act does not create a special category of document of gift made by these minors. Though the document of gift of an unemancipated minor may be revoked in limited circumstances, to read the act to permit a parent to revoke a gift after the minor has reached the age of majority would create a new category of document of gift that may be revoked when an unemancipated minor dies after reaching the age of majority where the act does not so provide. This interpretation would require a court to rewrite the language of the act and to do so in a way that contravenes the spirit of the act, which is to encourage donations and protect the wishes of donors. We do not think a court would be inclined to do so.

Accordingly, a document of gift under the Uniform Anatomical Gift Act that is lawfully executed by an individual while a minor may not be revoked by any other person if the donor dies after reaching the age of majority without having revoked the document of gift.

Very truly yours,

Diane F. Boyer-Vine
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procedure, and allows donors to make a gift through the Donate Life California Organ and Tissue Donor Registry Internet Web site.