

Case Study: Family Opposition to Organ Donation Despite First Person Consent

By Tarris Rosell, PhD, DMin, 2011



JD is a 25-year-old patient who sustained massive head trauma and neurological injury in a motorcycle accident. He is not brain dead, but after 4 weeks in MICU and several neuro consults, the prognosis for “meaningful recovery” is said to be less than 1%. JD has not regained consciousness and is apt to remain permanently in a vegetative state.

His parents are attentive and religious. After consulting with their priest and their son’s doctors, including palliative care specialists and a hospital ethicist, they decide to withdraw ventilator support and tube feedings and “to allow whatever happens to happen.” The parents say they are “placing JD in God’s hands now.” A decision is made to withdraw life support that very evening since the priest is there with them and extended family members have gathered, also, some from long distances.

With palliative care involved and since death is anticipated soon after extubation, the MICU nurse manager already had notified the regional organ procurement organization (OPO) for assessment of donor potential. When the OPO representative arrives, she discovers that JD’s driver’s license has a little heart and “organ donor” stamped on the front. The backside is scuffed so as to make illegible any signature or date that might have been there. He had not signed up for the online state donor registry and has no healthcare directives on file. Yet on the basis of his driver’s license, it’s determined that JD had authorized donation, a “first person consent,” leaving no record of revocation or refusal of authorization.

The state’s recently revised Uniform Anatomical Gift Act states that, “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 a part if the donor made an anatomical gift . . . [194.240. 1]

Although JD is not brain dead, he might qualify to be a donor under the hospital’s “Donation after Cardiac Death” protocol. Further evaluation of the potential donor may take several hours, including tissue testing, reviewing the medical record, external communications, and the medical history interview with next of kin. It is already close to 9:00 p.m. when the OPO approaches JD’s family about the donation evaluation that has been ramped up following the parents’ decision to withdraw life support. They had intended that the ventilator be withdrawn an hour ago but were told by MICU staff that they need to wait for some other healthcare personnel to arrive. Per contractual agreement with the OPO, only their representative is allowed to discuss organ donation with families, and MICU staff have been compliant.

When the OPO representative, with a palliative care physician, ushers the parents into a small conference room, she asks if they are aware that JD's wishes had been to donate organs and tissue to help others. His parents appear startled and say, "No, we never discussed such things as a family. And we don't want to talk about it now. Please, ask us what you need to, but quickly. We need to go be with our son in his last moments on this earth. As to removing his organs, we will not permit that. He has suffered enough cuts and needle sticks and bruises. Please let us alone with him now." Soon they get up and leave the room.

The OPO representative does not follow the parents back to the bedside but goes immediately instead to the attending physician. She and the palliative care physician report what happened with JD's parents and review with staff the hospital's policies on DCD and First Person Consent Opposition. She also cites state law: "When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows a contrary intent had or has been expressed by the individual" [194.265. 3]

Meanwhile, JD's family has come looking for his doctor, wondering why it is taking so long to proceed with their decision to remove all the machines and "get out of God's way."

Question for discussion

What ought to happen next—and on what moral grounds?