

ANATOMICAL GIFTS

What is an “anatomical gift”?

An “anatomical gift” means 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.¹

Who may make an anatomical gift during the life of the donor?

Anyone over the age of 18 may make an anatomical gift, limit an anatomical gift, or refuse to make an anatomical gift.²

A minor who is authorized to apply for a driver's license because he/she is at least age 15 and half years old may make an anatomical gift.³ However, until the minor is 18 years of age or emancipated, the parent or guardian of the minor has the right to revoke the minors consent at the time of donation.⁴ Also, a minor who is emancipated may also make an anatomical gift.⁵

If a person has not documented a preference with respect to donation of organs or body parts, who may make an anatomical gift after the donor's death?

The following people, in order of priority⁶, have authority to make an anatomical gift of all or part of a decedent's body (absent contrary instructions or an unrevoked refusal to make that anatomical gift from the decedent):

- An agent of the decedent at the time of death who could have made an anatomical gift during the life of the donor immediately before the decedent's death;
- An individual to whom the decedent gave a durable power of attorney encompassing the power to make health care decisions. **See GUARDIANS AND ATTORNEYS IN FACT.**
- The spouse or registered domestic partner of the decedent.
- A child of the decedent who is over age 18.
- Either parent of the decedent.
- A sibling of the decedent who is at least age 18.
- A grandparent of the decedent.

¹ RCW 68.64.010.

² RCW 68.64.030(1).

³ RCW 68.64.030(1)(b).

⁴ RCW 68.64.030(3)

⁵ RCW 68.64.030(1)(a).

⁶ RCW 68.64.080.

- The appointed guardian at the time of the decedent's death. See **GUARDIANS AND ATTORNEYS IN FACT**.

An anatomical gift may not, however, be made by one of the above persons for a decedent, if:

- A person of a higher priority is available at the time of death to make an anatomical gift.
- The person proposing to make the anatomical gift knows of an objection by a person of the same or higher priority.
- The person proposing to make the anatomical gift knows of a refusal or contrary indication by the decedent.

How is an anatomical gift made?

There are several ways an anatomical gift may be made:⁷

- By authorizing a statement or symbol imprinted on the donor's driver's license or identification card indicating that the donor has made an anatomical gift.
- In a will.
- By any form of communication during a terminal illness or injury of the donor which is addressed to at least two adults, at least one of which must be a disinterested witness.
- By a donor card or other record signed by the donor, or other person authorized to make the gift, or by authorizing that a statement indicating the donor has made an anatomical gift be included in the donor registry. If the donor is unable to sign, the document of gift must be signed by another individual and by two witnesses, all of whom must sign and state that they signed the document at the request of the donor or other person authorized to make the anatomical donation.

After a donor's death, a person authorized to make an anatomical gift (see above) may make an anatomical gift by a document of gift signed by that individual, communicated orally by the individual and contemporaneously made into a record and signed by the individual receiving the oral communication.⁸

Note that when English is not the first language of the person making, amending, revoking or refusing anatomical gifts, organ procurement organizations (see below) are responsible for

⁷ RCW 68.64.040(1).

⁸ RCW 68.64.090(1).

providing, at no cost, appropriate interpreter/translation services for the purpose of making decisions around anatomical gifts.⁹

Must the physician make the arrangements for donation personally?

No. State law requires hospitals to develop procedures for identifying potential anatomical parts donors and, after consulting with other hospitals and organ procurement associations, to establish agreements or affiliations for coordination of procurement and use of human bodies and body parts. Specifically, each hospital in this state must enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.¹⁰

Representatives of the organ procurement organization for Washington State are available to discuss the details of organ donation with the families of the potential donor and to take care of the required paperwork and consent. The organ procurement organization for Washington State is:

LifeCenter Northwest
1407 116th Ave. NE Suite 210
Bellevue, WA 98004
(425) 201-6563 (phone)
Toll-free 1-877-275-5269
(425) 688-7641 (fax)
info@lcnw.org
<http://www.lcnw.org>

How is an anatomical gift amended or revoked?

A donor or other person authorized to make an anatomical gift may amend or revoke an anatomical gift by a record signed by¹¹

- The donor.
- The other person authorized to make the anatomical gift.
- Another individual acting at the directions of the donor or authorized individual if the donor or other individual is unable to sign

The record made to amend or revoke an anatomical gift must be witnessed by two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or other authorized individual, and must state that the record has been signed and witnessed as described above.¹²

⁹ RCW 68.64.130.

¹⁰ RCW 68.64.140.

¹¹ RCW 68.64.050(1).

¹² RCW 68.64.050(2).

If the donor made the anatomical gift by will, the donor may amend or revoke the gift in the same manner by which a will may be amended or revoked as described above.¹³

A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury which is addressed to two adults, at least one of which is disinterested.¹⁴

An anatomical gift that is not revoked by the donor before death is irrevocable and does not require anyone else's consent or concurrence after the donor's death.¹⁵

An anatomical gift made by an authorized person for a decedent may be revoked by a person of the same or a higher priority as the person authorizing the gift, only if the procurement organization, transplant hospital, the physician, or technician knows of the revocation.¹⁶ If more than one member of the priority class is reasonably available, the anatomical gift may be amended only if a majority of the reasonably available members agree to amending the gift, or be revoked only if a majority of the reasonably available members agrees to the revocation, or if they are equally divided as to whether to amend the gift.¹⁷

Can a revocation be made after an incision has been made to remove the organ or body part?

Generally, no.¹⁸ A revocation is only effective if the procurement organization, transplant hospital, physician, or technician knows of the revocation *before* an incision is made to remove the donated body part or before the transplant procedures have begun on the recipient. Once these procedures have begun, any revocation is moot.

Who may receive an anatomical gift, and for what purpose?

An anatomical gift may be made to the following persons or entities named in the document of gift:¹⁹

- A hospital, accredited medical school, dental school, college, or university, or an organ procurement organization for research or education.
- An individual designated by the person making the anatomical gift. If the anatomical gift cannot be transplanted into the designated individual, the gift will pass to the appropriate eye or tissue bank, and/or organ procurement organization so long as there is not an expressed, contrary indication by the individual making the gift.

¹³ RCW 68.64.050(5).

¹⁴ RCW 68.64.050(4).

¹⁵ RCW 68.64.070(1).

¹⁶ RCW 68.64.090(2), (3).

¹⁷ RCW 68.64.090(2).

¹⁸ RCW § 68.64.090(3).

¹⁹ RCW § 68.64.100.

- An eye or tissue bank.
- An organ procurement organization.

If an anatomical gift of one or more specific parts does not name a person to donate but identifies the purpose for which an anatomical gift may be used, the following rules apply:²⁰

- If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.
- If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.
- If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.
- If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

If the donee knows of the decedent's refusal or contrary indication to make an anatomical gift, or that an anatomical gift made by an authorized person for the decedent is opposed by a person of the same or a higher priority, the donee may not accept the anatomical gift.²¹

When is a physician prohibited from removing or transplanting an anatomical gift?

A physician may not participate in removing or transplanting a part if:²²

- The physician attended the donor at death.
- The physician determined the time of death.

A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.²³

How does a person refuse to make an anatomical gift?

A person may refuse to make an anatomical gift of any part of his or her body by:²⁴

- A writing signed in the same manner as a document of gift by the individual or another individual acting at the direction of the refusing individual if that individual is physically unable to sign.

²⁰ RCW 68.64.100(3).

²¹ RCW 68.64.100(1).

²² RCW § 68.64.120(9).

²³ RCW 68.64.120(10).

²⁴ RCW 68.64.060(1).

- A statement attached to or imprinted on the person's driver's license.
- The individual's will.
- During terminal illness or injury, an oral statement or any other form of communication addressed to two individuals, at least one of whom must be a disinterested witness.

In the absence of contrary indications by a donor, an anatomical gift of one part is not a refusal to give other parts and is not a limitation on an anatomical gift.²⁵ In the absence of contrary indications by a donor, a revocation of an anatomical gift is not a refusal to make another anatomical gift.²⁶

An individual's unrevoked refusal to donate bars any donation by any other persons.²⁷

Note that the revised law makes it clear that absent *express* action by the donor, organ donation should be encouraged and facilitated.²⁸ Thus, under this part of the code, revocation by a donor of an anatomical gift is *not* a refusal and does *not* bar an authorized person from making an anatomical gift.²⁹

What if there is a conflict between an advance directive and the anatomical gift?

If there is a conflict between an advance directive and the measures necessary to ensure suitability to donate under the terms of an anatomical gift donation, measures must be taken to ensure the medical suitability of the prospective donor while the conflict is resolved.³⁰ Measures may only be withheld if they are contraindicated by appropriate end-of-life care.³¹

May HIV or STD testing done on a donor be disclosed?

Under limited circumstances, yes.³² HIV or STD testing of a donor may be disclosed to a health facility or health care provider that processes, procures, distributes or uses human body parts, tissues, or blood from a deceased person. See AIDS/HIV/STD.

May a physician be held civilly or criminally liable in connection with organ donation procedures?

²⁵ RCW 68.64.070(6).

²⁶ RCW 68.64.070(2).

²⁷ RCW 68.64.060(4).

²⁸ The UAGA was revised in 2008 to generally comply with the federal revised Uniform Anatomical Gift Act. Uniformity among state laws was sought in order to facilitate speed and efficiency in donations and transplantations across state boundaries.

²⁹ RCW 68.64.070(2).

³⁰ RCW 68.64.180(2).

³¹ *Id.*

³² RCW 70.24.105(d).

No, as long as the physician acts, or attempts in good faith to act, in accordance with the provisions of Washington's Uniform Anatomical Gift Act or the applicable anatomical gift law of another state or foreign country.³³

³³ RCW 68.64.170.