

CR 92-29

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to hospital requests for anatomical gifts were duly approved and adopted by this Department on October 12, 1993.

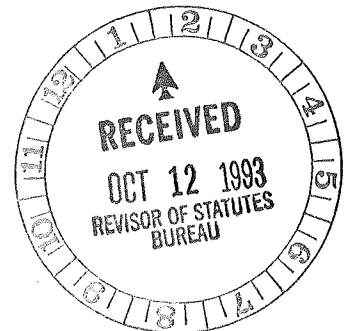
I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 12th day of October, 1993.

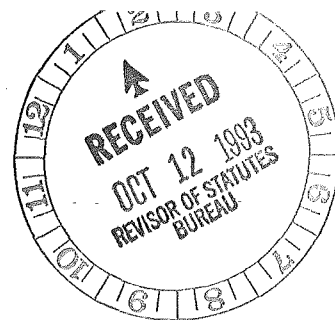
Gerald Whitburn

SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services



12-1-93



ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
AMENDING AND CREATING RULES

To amend HSS 124.14(3)(a)14 and 15 and to create HSS 124.05(3)(i) and 124.14(3)(a)16, relating to hospital requests for anatomical gifts.

Analysis Prepared by the Department of Health and Social Services

Wisconsin's 1969 version of the Uniform Anatomical Gift Act, s.157.06, Stats., called "uniform" because it was based on legislation drafted and recommended for adoption in all states by the National Conference of Commissioners on Uniform State Laws, was repealed and recreated by 1989 Wisconsin Act 298. This was done at the recommendation of and on the basis of a new model law proposed by the National Conference, with the objective being "to encourage and facilitate organ donation and thereby increase the number of organs available for transplant or therapeutic purposes," as it is put in a prefatory note to Act 298.

The bill that became 1989 Wisconsin Act 298 was developed by the Legislative Council's Special Committee on the Uniform Anatomical Gift Act. Among changes made in s.157.06, Stats., by Act 298 were addition of a requirement in sub.(5)(f)1 that the Department by rule set forth policies and procedures for hospitals to follow in discussing the anatomical gift donation process with an available member of a patient's family when at the time of the patient's death there is no medical record of the patient having authorized or having refused to authorize the donation of all or part of his or her body, following death, for transplant, therapeutic research or teaching purposes, and addition of a requirement in sub.(5)(f)2 that the Department by rule prescribe the manner in which information obtained following that discussion, including the response of the family member to a request for donation, is placed in the decedent's medical record so that it is readily accessible to hospital and other medical personnel.

This order amends the Department's rules for hospitals to repeat the statutory requirement that hospitals publicize the anatomical gift donation process, to provide guidance to hospital representatives in how to proceed in discussing the process with members of a patient's family or the patient's guardian when at the time of the patient's death there is no record that the patient made or evidence that the patient refused to make an anatomical gift, and to prescribe how hospital staff are to enter

the information obtained from that discussion in the patient's medical record.

The Department's authority to create these rules is found in s. 157.06(5)(f), Stats. The rules interpret s.157.06(5)(b) and (f), Stats.

SECTION 1. HSS 124.05(3)(i) is created to read:

HSS 124.05(3)(i) Anatomical gifts. 1. In this paragraph:

a. "Anatomical gift" means a donation of all or part of a human body to take effect upon or after the death of the donor.

b. "Appropriate individual" means the decedent's family member or guardian ranking highest on the list in subd. 5 who is available at the time of death.

c. "Decedent" means a deceased individual.

d. "Document of gift" means a card, a statement attached to or imprinted on a license under s. 343.175(2), Stats., or on an identification card under s. 343.50(3), Stats., a will or another writing used to make an anatomical gift.

e. "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.

f. "Part" means an organ, tissue, eye, bone, artery, blood, fluid or other body portion.

2. Every hospital shall have written policies established by the governing board which describe how the hospital will provide information to potential anatomical gift donors about making an anatomical gift, and shall make available informational brochures which discuss the process for making an anatomical gift and methods to document a gift.

3. Every hospital shall have written policies and procedures established by the governing board for determining, at or near the time of death of a patient, if a document of gift exists and, if it does not exist, if a gift can be obtained. These policies and procedures shall include all of the following:

a. A procedure for screening all patients at or near the time of death for the possession of a document of gift or any revocation of an existing document of gift or evidence of refusal to make an anatomical gift;

b. A procedure to acquire the original documentation of a gift or refusal for inclusion in a patient's medical record so as

to ensure that the documentation is available at or near the time of death. If a patient is transferred within a health care facility or between health care facilities, the documentation shall accompany the patient.

c. Provision for deciding whether to, when to and how to approach a patient regarding making an anatomical gift;

d. Provisions consistent with subds. 5 and 7 for deciding how to approach an appropriate individual at the time of a patient's death regarding making an anatomical gift of all or part of the decedent's body; and

e. A procedure to ensure that all requests by the administrator or his or her designee shall be made with reasonable discretion and sensitivity to the circumstances of the patient, family member or guardian.

4. Every hospital shall have written procedures to ensure that patients at or near the time of death for whom there is no evidence of refusal to make an anatomical gift are evaluated for organ and tissue donation and, if medically appropriate, the hospital shall make a referral to the organ procurement organization designated to serve the hospital's geographic area or other agency designated by the organ procurement organization and tissue banks to screen potential donors on their behalf.

5. If at the time of a patient's death there is no medical record that the patient has made an anatomical gift or any evidence that the patient has refused to make an anatomical gift, the hospital administrator or designee shall discuss with the first available individual from the list in this subdivision the option that he or she has of making or refusing to make an anatomical gift of all or part of the decedent's body and to request that the individual make that anatomical gift of all or part of the decedent's body. The order of priority for contacting individuals shall be as follows:

- a. The spouse of the decedent;
- b. An adult son or daughter of the decedent;
- c. Either parent of the decedent;
- d. An adult brother or sister of the decedent;
- e. A grandparent of the decedent; or
- f. A guardian of the person of the decedent at the time of death.

6. An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

7. The discussion and request required under subd. 5 need not be made if a medical review indicates that the whole body or body part is not suitable to be an anatomical gift, if the requester knows that the patient objected to making an anatomical gift on religious, cultural or any other grounds or if the appropriate individual, on religious, cultural or any other grounds, objects to making an anatomical gift. If the appropriate individual objects to making an anatomical gift, the hospital administrator or designee may not make the request of any other individual under subd 5.

SECTION 2. HSS 124.14(3)(a) 14 and 15 are amended to read:

HSS 124.14(3)(a)14. A discharge summary including the final diagnosis, the reason for hospitalization, the significant findings, the procedures performed, the condition of the patient on discharge and any specific instructions given the patient or family or both the patient and the family; and

15. Autopsy findings when an autopsy is performed; and

SECTION 3. HSS 124.14(3)(a)16 is created to read:

HSS 124.14(3)(a)16 Anatomical gift information obtained under s. HSS 124.05(3)(i). Documentation shall include the name and title of the person who requests the anatomical gift, the name of the appropriate individual as defined under s. HSS 124.05(3)(i)1b, that individual's relationship to the patient, the response to the request for an anatomical gift and, if a determination is made that a request should not be made, the basis for that determination. This information shall be recorded promptly in the medical record where it shall be prominently set out.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Dated: October 12, 1993

By: *Gerald Whitburn*

Gerald Whitburn
Secretary

SEAL:

