



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

February 19, 2025

The Honorable Josh Harkins
Mississippi State Senate
Post Office Box 320374
Flowood, Mississippi 39232

Re: Mississippi Revised Uniform Anatomical Gift Act

Dear Senator Harkins:

The Office of the Attorney General has received your request for an official opinion.

Questions Presented

You have asked a number of questions about Mississippi's Revised Uniform Anatomical Gift Act, located in Sections 41-39-101 *et seq.* of the Mississippi Code ("MS UAGA"). We understand your questions to be as follows:

1. If an individual has registered as an organ donor, does anyone else, including a family member or a hospital healthcare provider, have the right to override that decision or otherwise prevent the donation process from moving forward?
2. Must a hospital cooperate with an organ procurement organization ("OPO") to facilitate the donation process?
3. Under the MS UAGA, who is responsible for determining whether an individual at or near death is an authorized organ donor, including whether they have indicated a refusal to donate or have amended or revoked a previous authorization to donate?
4. Does the MS UAGA protect a hospital from liability when it cooperates with an OPO to facilitate the donation process?

Brief Response

1. If an individual has registered as an organ donor or otherwise authorized donation consistent with the MS UAGA, no one else, including a family member or a hospital health care provider, has the right to revoke the designation as an organ donor in order to

prevent the donation process from moving forward —without legal or clinical justification.

2. Under the MS UAGA, a hospital must cooperate with an OPO to facilitate the donation process.
3. It is the responsibility of the OPO to determine whether a patient at or near death has authorized, amended, or revoked an anatomical donation. Miss. Code Ann. § 41-39-139(c). If the patient has not authorized donation, then it is the OPO's responsibility to search for the individuals listed in Section 41-39-117 who may authorize donation on the patient's behalf. Miss. Code Ann. § 41-39-127(g).
4. The MS UAGA protects a hospital from liability so long as it acts in good faith in compliance with the MS UAGA to support the donation process and to work with the OPO to carry out the wishes of the donor. However, this protection would not extend to a hospital that knowingly fails to carry out the wishes of the donor without legal or clinical justification. *See* Miss. Code Ann. § 41-39-135(a).

Applicable Law and Discussion

Your first question asks whether anyone other than the individual who has registered as an organ donor or has otherwise authorized donation, including a family member or a health care provider, has a right to override that decision or otherwise prevent the donation process from moving forward. Section 41-39-115(a) of the MS UAGA provides that, once a person indicates their decision to be a donor, “*a person other than the donor* is barred from making, amending, or revoking” that decision. (emphasis added). The term “First Person Authorization,” or “FPA,” is often used to describe an individual’s legal determination and expression to donate their organs, tissues, and other body parts, which, according to gift law, takes effect upon the individual’s death and becomes a legally binding decision. That said, the plain language of this section is clear: an individual’s own decision to be a donor, whether by registering as an organ donor or otherwise authorizing donation, cannot be revoked by any other person, including a family member or a hospital health care provider —without legal and clinical justification.

Your second question asks whether a hospital must cooperate with an organ procurement organization (“OPO”) to facilitate the donation process. The MS UAGA requires every hospital in the state to have an agreement or affiliation with an OPO “for coordination of procurement and use of anatomical gifts.” Miss. Code Ann. § 41-39-129. Moreover, when an individual in a hospital is “at or near death,” the OPO’s determination whether that individual is a registered donor, as well as the OPO’s examination to assess medical suitability for donation, is triggered “when [the] hospital refers” the individual to the OPO. Miss. Code Ann. § 41-39-127.

Accordingly, Section 41-39-127 of the MS UAGA starts with the assumption that a hospital has an agreement or affiliation with an OPO to refer individuals at or near death to the OPO and then sets forth additional obligations that are triggered when that referral occurs. When a hospital makes the required referral, the following must occur: 1) the OPO must search the donor registry to determine if the individual is a registered donor; 2) the hospital must permit the OPO to conduct

“any reasonable examination necessary” to ensure the medical suitability of the organs that are or could be the subject of donation, including permitting access to the donor/potential donor’s medical records; and 3) during the examination period, the hospital may not withdraw life-sustaining measures from the donor/potential donor unless that individual expressed a contrary intent. Miss. Code Ann. § 41-39-127(a), (c), (e).

Therefore, under the MS UAGA, a hospital must have an agreement or affiliation with an OPO to facilitate the donation process. Moreover, a hospital that undertakes any actions or omissions that impede the donation process, without legal or clinical justification, may violate the agreement and/or the MS UAGA not only to the extent such actions fail to comply with the explicit duties outlined above, but also by ignoring the explicit prohibition against amending and revoking an anatomical gift of a donor’s body or part by any person other than the donor as stated in Section 41-39-115.

Next, you ask who, under the MS UAGA, is responsible for determining whether an individual at or near death is an organ donor, including whether they have indicated a refusal to donate or have amended or revoked a previous authorization to donate. The MS UAGA recognizes that an OPO is responsible for ascertaining whether an individual at or near death is a donor. Section 41-39-127(a) requires an OPO, upon receiving a hospital’s referral of a patient at or near death, to “make a reasonable search of the records of the Mississippi Department of Public Safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.” Toward that end, Section 41-39-139(c) requires a donor registry to “[a]llow a donor . . . to include on the donor registry a statement or symbol that the donor has *made, amended, or revoked* an anatomical gift” and to “[b]e accessible to a procurement organization to allow it to obtain relevant information . . . to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has *made, amended, or revoked* an anatomical gift.” (emphasis added). If the OPO’s search of the relevant donor registry reveals that the individual is not a donor, then Section 41-39-127(g) requires an OPO to “make a reasonable search for any person listed in Section 41-39-117 having priority to make an anatomical gift on behalf of a prospective donor.”

Accordingly, under the plain language of the MS UAGA, it is the responsibility of the OPO to determine whether a patient at or near death has authorized, amended, or revoked an anatomical donation. Where the OPO’s search reveals that the patient has not authorized donation, then it is the OPO’s responsibility to search for the individuals listed in Section 41-39-117 who may authorize donation on the patient’s behalf.

Your fourth and final question asks whether the MS UAGA protects a hospital from liability when the hospital cooperates with an OPO to facilitate the donation process. The MS UAGA contains a broad immunity clause that protects parties involved in the donation process from liability when they act in good faith reliance on the MS UAGA. Section 41-39-135(a) provides:

[a]ny person who, in good faith and acting in reliance upon and authorization made under the provisions of Sections 41-39-101 through 41-39-149 and without notice of revocation thereof, takes possession of, performs surgical operations upon,

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removes tissue, substances or parts from the human body, or refuses such a gift, and any person who *unknowingly fails to carry out the wishes of the donor* according to the provisions of Sections 41-39-101 through 41-39-149 shall not be liable for damages in a civil action brought against him for that act.

(emphasis added).

The MS UAGA's immunity provision would not, however, extend to parties who act in bad faith or in a way they know violates the UAGA. Similarly, a party who *knowingly* "fails to carry out the wishes of the donor" without legal or clinical justification may not qualify for immunity under this provision because it extends protection only to parties who *unknowingly* fail to carry out the donor's wishes. *See* Miss. Code Ann. § 41-39-135(a).

Accordingly, the MS UAGA protects a hospital from liability so long as it acts in good faith reliance on the MS UAGA and carries out the wishes of the donor, but it does not protect a hospital that *knowingly* fails to carry out the wishes of the donor.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Abigail C. Overby

Abigail C. Overby
Special Assistant Attorney General

OFFICIAL OPINION