

Organ donation from prison

Elizabeth Magee and Michael H Levy

TO THE EDITOR: The National Health and Medical Research Council's *National statement on ethical conduct in research involving humans*¹ recognises that prisoners can participate in research, but categorises them as "persons in dependent or unequal relationships". They have limited capacity to provide informed consent.

Responding to the high levels of transmission of bloodborne viruses in Australian prisons,² the Australian Red Cross Blood Service excludes prisoners from donating blood and ex-prisoners are excluded for 12 months after they have been released from prison.³

The New South Wales *Human Tissue Act 1983* is silent on whether prisoners can donate organs.

We report here the case of a prisoner organ donor, highlighting the administrative, legal and operational hurdles that needed to be overcome.

A 53-year-old male prisoner was a suitable living kidney donor for his first cousin. He provided consent willingly and without coercion.

At initial assessment, the prisoner's classification required that he be escorted to hospital and that constant surveillance by prison officers be maintained — at a cost of \$1000 per day, for at least 7 days. These costs would have been borne by the family. Furthermore, as Australian prisoners are ineligible for Medicare under the Australian Constitution, the donor, as an uninsured patient, and his family would have been required to pay for all pre-, peri- and post-operative care.

The donation was deferred for 14 months while these two administrative hurdles were overcome to permit the donation to proceed:

1. The Commissioner for the Department of Corrective Services gave approval for the prisoner to be reclassified to the lowest security classification, thus removing the need for surveillance while in hospital; and

2. A rarely used provision within the *NSW Crimes (Administration of Sentences) Act 1999* was applied. Section 26(1) of the Act allows the Commissioner to issue a permit

allowing an inmate to be absent from a correctional centre: (a) on such conditions and for such period as may be specified in the permit, and (b) for such

purpose as the Commissioner considers appropriate.

This allowed the prisoner to be temporarily reinstated to receive Medicare entitlements.

The nephrectomy and transplantation were successfully performed. The donor returned to prison on the seventh postoperative day. The donor organ is functioning 4 months after the operation.

Prisoners have a right to participate in organ donor programs; however, their precarious position to provide informed consent needs to be protected.

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1 National Health and Medical Research Council. National statement on ethical conduct in research involving humans. Canberra: NHMRC, 1999. <http://www.nhmrc.gov.au/publications/synopses/e35syn.htm> (accessed Nov 2006).

2 Butler T, Kariminia A, Levy M, Kaldor J. Prisoners are at risk for hepatitis C transmission. *Eur J Epidemiol* 2004; 19: 1119-1122.

3 Australian Red Cross Blood Service. Confidential donor questionnaire. <http://www.donate-blood.com.au/Donor/guide/eligible.asp> (accessed Nov 2006). □

Registering wishes about organ donation may decrease the number of donors

Mitchell Lawlor and Frank A Billson

TO THE EDITOR: An important factor in the well documented shortfall of organs and eyes for transplantation is the apparent reluctance of people to agree to donate.¹ One nearly universal strategy in attempting to raise donation rates has been to encourage individuals to register their wishes about donation. Although evidence that this strategy increases donation rates is lacking, there is some evidence that more individuals make and communicate a decision with appropriate education.²

Most families consent to donation when the deceased had indicated this was their wish, and virtually none override a stated wish not to donate.³ When wishes are unknown, half of families consent and half refuse.³ Encouraging declaration of intention aims to increase the rate of consent for families who would otherwise not know the deceased individual's wishes. For this to be successful, most individuals newly recording their wishes must indicate a desire to

donate. This assumption has underpinned Australian education campaigns, including "Talk about it", "Share your life, share your decision", and most recently the national "Sign on to save a life" campaign.⁴

A simple review of New South Wales Roads and Traffic Authority organ donation data over the period of these campaigns suggests this assumption may not hold. From 1997 to 2004, a significant proportion of drivers licence holders newly indicated a preference about donation; the proportion indicating some decision rose from 59.4% to 78.6%. Over the same period, the proportion indicating *yes* to donation of all organs rose from 35.6% to 41.9% (a 17.7% increase); however, the proportion indicating *no* to any donation rose from 19.9% to 31.4% (a 57.8% increase).⁵

These results raise the possibility that encouraging individuals to make a decision about donation may increase the number of families who refuse donation. Individuals who had previously not made a decision about donation, when encouraged to do so, displayed an unwillingness to become organ donors at twice the rate of those who indicated willingness. Although it is imperative to recognise and respect the decision of individuals to refuse organ donation, this unwillingness may reflect either formalisation of a considered desire not to donate, or a decision made without personal discussion of fears and concerns about donation. Generalised education campaigns are limited in that they encourage action without addressing fears and concerns. Further policy should recognise a possible danger in simply exhorting the public to make a decision, and research should investigate why individuals are refusing to become organ and eye donors.

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2 Sanner MA, Hedman H, Tufveson G. Evaluation of an organ-donor-card campaign in Sweden. *Clin Transplant* 1995; 9: 326-333.

3 Siminoff LA, Lawrence RH. Knowing patients' preferences about organ donation: does it make a difference? *J Trauma* 2002; 53: 754-760.

4 Medicare Australia. Australian organ donor register. http://www.medicareaustralia.gov.au/yourhealth/our_services/aaodr.htm (accessed Dec 2006).

5 New South Wales Roads and Traffic Authority. Registration and licensing statistics. http://www.rta.nsw.gov.au/publicationsstatisticsforms/downloads/statiregis_dl6.html?plid=33 (accessed Dec 2006). □