

TO: House of Representatives
Commonwealth of Pennsylvania

FROM: Michael Baker

Commissioner,
Indiana County

Former Indiana County Coroner

DATE: May 9, 2014

RE: Public Hearing HB 30 – Donate Life PA

Chairman Cutler, Chairman White and members of the committee,

Thank you for inviting me here today to speak to you about a very important subject, House Bill 30 and organ donation.

I am here today as an advocate of organ, tissue and cornea donation, as well as a former coroner who served in the Indiana County Coroner's Office for more than 30 years.

As coroner, I had the opportunity to introduce the possibility of donation to hundreds of families. Many responded affirmatively and some did not. I have received scores of communications over the years from families who have called or written to thank me for suggesting that they participate in the donation program. I have even had a handful of experiences in which a family member has told me that he or she regrets not having consented to donation when offered the opportunity.

Society has so many problems that it cannot solve, yet this is a public health crisis where, through our concerted efforts and deliberate action, we can make a clear, observable and measurable difference.

I will always be a supporter of OTC donation because it saves and changes lives.

THE EFFECT OF HB 30 ON CORONERS

Under HB 30, coroners will be required to comply with a number of mandates that they do not currently endure. Among them are mandatory reporting of deaths under their jurisdiction and the requirement of providing, in writing, those reasons for denying the recovery of viable organs and tissues for transplant.

It is of interest to note, however, that hospitals and other medical providers have been compulsory reporters for many years. If this mandate is not so burdensome for healthcare providers, it is certainly not too onerous for coroners.

The interesting element about the current arrangement of reporting lies in a short examination of the circumstances related to when and where a death might occur. For example, if a person involved in an accident survives to reach an emergency room where he subsequently succumbs to his injuries, his hospital caregivers *must* contact the OPO to report the death, even if his PA operator's license *does not indicate* that he is an organ donor. They must also contact the coroner or medical examiner. Contrarily,

if the same victim had died at the scene just five minutes earlier, the coroner is under no mandate whatsoever to contact the OPO even if his license indicates that he *desired* to be a donor. It is up to the coroner to act as gatekeeper to the procurement system in this case. HB 30 will require coroners to provide decedent information to the OPO in some instances where he/she might not currently do so. Notably, it does not require that the coroner consent to recovery, only to notification. Therefore, this poses no risk to the coroner's jurisdiction.

WHY SOME CORONERS IN PENNSYLVANIA ARE OPPOSED TO HB 30

An important distinction to note is that *some*, not *all*, coroners are against HB 30. The bill has a select group of vocal opponents.

Let me preface my remarks by saying very clearly that I do not stand in opposition to the PA State Coroners' Association in most of its areas of interest. I have belonged to the organization for many years, and I have many friends and colleagues among its membership. It is largely on the issue of OTC donation that we differ, and, although I will be very frank in my criticisms in that regard, they do not spill over into personal animosity toward any of its members.

Any legislation that appears to the leadership of the PA State Coroners' Association to regulate the way coroners conduct the affairs of their offices will continue to be met with relentless opposition, and HB 30 is no exception. It has long been the fear of PSCA that the legislature will act to regulate the way in which the affairs of the office of coroner are carried out.

The executive officers and others on the board of PSCA have made no secret of their disdain for OPOs. I have sat in meeting after meeting while discussion and debate have continued for hours on how best to defend against those who would suggest to the legislature that coroners be required to become mandated reporters of deaths under their investigation or to otherwise be required to play a positive role in facilitating donation. Such a mandate is anathema to them, and they are unyielding in their opposition. Most of those opposed to HB 30 would not admit to opposition to OTC donation itself, only to the methods and practices of OPOs and the process of donation in general. I assert that there exists little difference.

I believe their opposition to HB 30 is rooted in a number of issues, some related directly to donation itself or to strained relationships with OPOs, and others more deeply rooted in the coroners' system in general. Any regulation of coroners by the legislature brings with it not just new accountabilities, but an unwelcome or perhaps even unendurable scrutiny of the system of death investigation in the commonwealth.

First, it is useful to know that there have been a few notable instances in which coroners have had sharp disagreement with OPOs over whether a body might be suitable for donation, based on the manner of death and evidence that might be potentially compromised by the recovery process. At least one such incident occurred many years ago and resulted in litigation between the coroner and CORE. This is often cited as the watershed case that poisoned the well between coroners and OPOs in the commonwealth. In spite of the years that have passed, there has been no effort of reconciliation on the part of PSCA leaders over the issue.

I think it is also worthy of mention that, a few years ago at its annual convention, PSCA voted to exclude OPOs from attending as vendors. They have been unable to attend the convention since then, and I believe they (CORE and Gift of Life) are the only vendors to have ever been deliberately excluded by

affirmation of the membership, *if at all*. I say this only to demonstrate the level of animosity that exists, and to underscore the need for dialog, mediation or other mitigation of the relationship.

As regional VP for numerous years, I often proposed, for the good of those citizens of the commonwealth who are awaiting transplants, that PSCA make overtures to the OPOs in an effort to bridge the divide that exists between them and attempt to find some common ground on donation. Although those suggestions have resonated among some members of the organization, the idea of working toward some sort of resolution has been consistently and vigorously opposed and thwarted by the executive officers.

At one meeting of the executive board in State College, I suggested that the association pursue dialog with CORE and employ a strategy that would effectively “separate the people and personalities from the problems” between us. My own acknowledgement that the parties would likely never have collegial relationships was partnered with my concern that potential OTC recipients were being denied life saving and enhancing transplants because of the ongoing refusal of the PSCA to come to the table and engage in any sort of conversation about resolving the issues. My suggestion was effectively ‘gaveled down’ at the meeting and I was informed that the PSCA would never ‘negotiate’ with CORE or any other OPO.

When HB 30 was proposed, I was among those who examined it and who submitted comments directly to CORE about a number of problems in the bill. First, I was concerned that nothing be done that would usurp the jurisdiction of the coroner or medical examiner in the overall determination of the cause and manner of death of the decedent. Such jurisdiction is critical and must not be abridged by the OPO or any other entity. I still believe that today. However, I further believe, as I always have, that nothing in the County Code gives the coroner/ME the right to investigate any aspect of death that exceeds the very narrow mandates of cause and manner of death.

Unfortunately, many coroners are reluctant (or outright refuse) to allow recovery of organs, tissues and corneas before an autopsy even when doing so will obviously have no deleterious effect whatsoever on making those determinations, and they cite this right to “jurisdiction” as cover for their failure to facilitate the responsible recovery of transplantable tissues. To refuse such responsible recovery under the guise of jurisdiction violates the intention of the law and provides camouflage, however thin, for coroners who simply don’t want bothered with dealing with the logistics of facilitating donation, who have a personal and competing interest in the process, or who have an ongoing “bone to pick” with the OPO.

The decision over whether or not a body is suited for donation should be both a *medical and legal* one. Coroners are charged only with determining the cause and manner of death, as well as to make proper identification of the decedent and to notify the next of kin.

But what are the criteria used by Pennsylvania coroners to make decisions regarding whether or not a decedent is suitable for biological donation? Should there not be qualified criteria that are applied uniformly across the commonwealth? Why does there exist such a wide inconsistency of practice among coroners’ offices in Pennsylvania in making these determinations? Who should decide whether a family has the opportunity to consider donation at all? Should it be the option of the family, or should the coroner, regardless of his or her personal preference, be the sole gatekeeper of the system? Should not the public, particularly those awaiting transplants, be protected from the biases of the coroner simply because he or she has, at some remote point, declared to have experienced some contention

with the OPO or, worse yet, offers *no explanation at all* for failing to assist in facilitating the possible recovery of transplantable organs, tissues or corneas?

Medical decisions should be made only by qualified physicians trained and experienced in forensic procedure and practice, and legal determinations should be made only under the advisement of the district attorney or other certified legal expert. When denying donation, the coroner, or a certified medical or legal expert making such determination on his/her behalf, should be required to furnish, in writing, the precise reason for such denial. HB 30 establishes such a requirement, and some coroners are adamantly against this very reasonable attempt at transparency.

Coroners may tell you that when a death occurs under suspicious circumstances, there should be no recovery of viable organs for transplant; that autopsy must take precedence over donation in order to preserve evidence. Yet, in many instances, the determination of cause and manner of death can be easily accommodated at autopsy even after recovery of such organs for transplant.

In cases of isolated head injury, for example, where brain-death criteria have been certified to exist by a licensed physician and where there has been no involvement of the heart or kidneys, there is almost no defensible reason to deny their recovery for donation.

HB 30 goes so far as to allow the coroner to be present at the recovery of organs so that the process may be stopped in the event that an unexpected condition is discovered. It also provides for the reimbursement of the coroner or his/her designated, licensed physician to attend the recovery.

If the coroner who is amenable to recovery is permitted to attend the procedure along with his/her medical liaison and all of the costs are paid by the OPO, and if the coroner has the authority to curtail the recovery process for cause, what barriers remain? Perhaps they are only those obstructions artificially imposed by persons who are averse to any requirements for greater regulation of the operations of the coroner's office.

My only criticism of HB 30 is of the composition of the Organ and Tissue Donation Advisory Committee. I believe the committee would be better served if both a physician coroner/medical examiner and a non-physician coroner were added to the mix, as well as a representative of the district attorneys' association.

WORKING WITH OPOs

I have seen firsthand the impact that OTC donation has on the lives of recipients and their families. Many people living in Indiana County have directly benefitted from the generosity of donor families. I am personally acquainted with people from my workplaces and in my day-to-day activities who would not have survived until now without an organ transplant.

Yet, because of the selflessness of another person who agreed in advance to be an organ donor, or by the kindness of a hurting family in the midst of personal tragedy, they lead very fulfilling and rewarding lives. Some examples include a co-worker at the ARIN Intermediate Unit where I worked for a number of years, a friend's father, and a fellow coroner, all of whom had organ transplants that unquestionably saved their lives. Some years ago, a member of my family received a cornea, which has made a tremendous difference in the quality of her life.

I have always enjoyed a very cordial and collegial relationship with CORE. This has not come without considerable effort on the part of both my office and CORE. It is a relationship requiring a great deal of mutual accommodation. CORE is aware of my commitment to OTC donation, and we have not experienced problems. A number of years ago, CORE presented me with the *Donate Life Ambassador Award*. I was very honored to have been selected.

My office always followed very closely the dialog between CORE and donor families. When families would tell me that they did not want to participate in the donation program, I always notified CORE that the answer from the family was "no". I was never once approached by a family who said they were being somehow harassed by the OPO in spite of their initial denial, even when the decedent had been a designated donor prior to death (operator's license designation, etc.)

Some families told me they had been asked by CORE if they were aware that the decedent was a pre-designated donor and if knowing that might influence them to change their decision about donation, but none complained that CORE was belligerent or heavy-handed. Some families have called to tell me that CORE reached out to them later to invite them to a gathering of donor and recipient families that they found very rewarding and uplifting.

THE REAL EFFECT OF HB 30

HB 30 protects the rights of potential donor families to make an informed decision about donation that might not otherwise occur because the coroner fails to contact the OPO about the death or does not offer donation as an option. If the coroner is mandated to contact the OPO, the family will have the right to decide for themselves on a course of action. The coroner may still refuse for just cause, but HB 30 ensures the family's awareness of donation as a conduit for generosity and an outlet for dealing meaningfully with the tragedy with which it must cope.

Too many Pennsylvanians sit without an audible or discernible voice on an ever-growing transplant waiting list. Many will die while waiting. We must come to the realization that these represent more than a mere list of names in a computer database. Your name or mine, or that of someone very close to us, might be or could someday be on that list.

Medicine must determine, through its various criteria of blood type and other biological data, the best match and potential outcomes for those awaiting transplant. However, the rest of us bear the responsibility for ensuring that viable organs, tissues and corneas remain available so that the opportunities for any person on that list to receive them might be improved. This is a shortage that can be overcome and a problem that may be rectified if everyone pulls together. HB 30 helps mitigate the unwarranted loss of life caused by a very fixable issue.

Those who would be the gatekeepers of the OTC donation process must be accountable to the people of the Commonwealth for their decisions. The public deserves the protection of the law on this issue regardless of who may oppose its mandates. HB 30 advocates for the public interest, and its passage is a referendum on our desire to act on behalf of those whom we do not even know, just as we might for someone in our own family.