

STATE OF INDIANA) IN THE ALLEN SUPERIOR COURT
) SS:
 COUNTY OF ALLEN) CAUSE NO.

INDIANA DONOR NETWORK,)
)
) Plaintiff,
)
) vs.
)
)
 ALLEN COUNTY CORONER'S OFFICE,)
 ALLEN COUNTY PROSECUTOR'S OFFICE,)
 DR. CRAIG NELSON, in his official capacity)
 as Allen County Coroner, and KAREN)
 RICHARDS, in her official capacity as Allen)
 County Prosecutor,)
)
) Defendants.
)

**VERIFIED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff, Indiana Donor Network ("IDN"), by counsel, for its Verified Complaint and Request for Injunctive Relief against the Defendants, Allen County Coroner's Office, Allen County Prosecutor's Office, Dr. Craig Nelson, DDS, in his official capacity as Allen County Coroner, and Karen Richards, in her official capacity as Allen County Prosecutor (collectively, the "Defendants"), states and alleges the following:

OPENING STATEMENT

This verified complaint for declaratory and injunctive relief is necessitated by the emergent need for judicial intervention to assure that the organs of a thirty-one year old male on life support (referred to in this pleading as "Mr. Doe") are preserved for procurement by IDN and that such procurement is not unreasonably denied. Mr. Doe is a voluntary designated donor and has consented to the procurement of his organs following his death. Additionally, Mr. Doe's family is supportive of his decision to allow his organs to be donated, and Parkview Regional

Medical Center is working alongside IDN to allow such recovery. However, judicial intervention is necessary because the Defendants have indicated that they will not allow the procurement of Mr. Doe's organs following his death. Defendants' refusal is unreasonable and contrary to Indiana law. Accordingly, IDN respectfully requests the intervention of this Court to assure that Mr. Doe's organs are preserved in accordance with his wishes and to prohibit the Defendants' unreasonable denial of the procurement of such organs.

THE PARTIES

1. IDN is one of 58 designated organ recovery non-profit organizations in the United States and is a vital link between people waiting for life-saving organ transplants and donors. IDN works closely with Indiana hospitals, donor families and the United Network for Organ Sharing ("UNOS") to oversee and coordinate organ donation across Indiana.

2. IDN, which is headquartered at 3760 Guion Road, Indianapolis, IN 46222, is a federally designated organ procurement organization certified by the Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS"), serving 85 of Indiana's 92 counties. IDN is regulated by the Public Health and Welfare Act, 42 U.S.C. § 274.

3. The Allen County Coroner's Office is located at 1 East Main Street, Suite 555, Fort Wayne, Indiana 46802.

4. The Allen County Prosecutor's Office is located at 602 South Calhoun Street, Fort Wayne, Indiana 46802.

5. Dr. Craig Nelson, DDS, is the coroner for Allen County.

6. Karen Richards is the Allen County Prosecutor.

FACTUAL BACKGROUND

7. On October 26, 2017 at 11:30 a.m., police and medics responded to an emergency

call where they found Mr. Doe inside a vehicle, suffering from a gunshot wound to the back of his head. The medics took him to Parkview Regional Medical Center in extremely critical condition. The injury to Mr. Doe is limited to his head, and there are no signs of thoracic injury or abdominal injury.

8. Mr. Doe is currently on life support and it is expected that he will be declared brain dead. Such declaration is impending, necessitating the immediate review of this Court.

9. During his life, Mr. Doe voluntarily listed himself as a designated donor, indicating that in the event of his death, it was his will that his organs be donated for transplantation to patients waiting for organ transplants.

10. Mr. Doe's mother and father are at Mr. Doe's bedside and are both in agreement to honor Mr. Doe's decision.

11. The National Organ Transplantation Waiting List is administered by UNOS.

12. There are more than 120,000 people on the National Organ Transplantation Waiting List, including nearly 1,500 Indiana residents. Each day, twenty-two people (on average) in the nation die while waiting for a life-saving transplant.

13. A healthy organ donor can provide up to eight life-saving organs to persons awaiting a donation on the National Organ Transplantation Waiting List.

14. An organ donor can potentially provide a heart, two kidneys, two lungs, a liver, a pancreas, and intestines. Corneas, skin, heart valves, bone, veins, cartilage, tendons and ligaments can also be recovered from an organ donor.

15. The timing of an organ procurement is vitally important to insuring the viability of organs available for potential transplant.

16. The Defendants are investigating the death of Mr. Doe as a homicide, and news

reports today indicate that the culprit of Mr. Doe's shooting has confessed to police and has already asked to plead guilty.

17. On October 26, 2017, at 4:05 p.m., this Court in the matter of *In Re Investigation of 17F131221*, entered a search warrant authorizing and ordering the Fort Wayne Police Department, the Allen County Coroner's Office and Parkview Regional Medical Center to release Mr. Doe's body to the Allen County Coroner's Office immediately upon Mr. Doe's death for the purposes of conducting an autopsy in a homicide investigation to determine the cause and manner of his death and to obtain projectile and projectile fragments from his body. A true and accurate copy of the search warrant affidavit and the Court's order are attached as Exhibit A and Exhibit B.

18. IDN has been in contact with the Allen County Prosecutor's Office and Karen Richards to effectuate Mr. Doe's stated desire that his organs be procured for donation following his impending death. Ms. Richards has refused these requests, and has expressed an unwillingness to allow the organ procurement to occur.

19. In this instance, IDN seeks to procure organs other than those in Mr. Doe's head. Allowing procurement of these organs to proceed should not interfere with medical examination of the cause of the Mr. Doe's impending death or interfere with the preservation or collection of evidence.

20. Pursuant to Indiana Code § 36-2-14-22.6, the Allen County Coroner, Dr. Nelson, is required to consult with a pathologist and IDN to determine how organ procurement may proceed, in order to facilitate procurement of an organ or organs while preserving evidence necessary for the postmortem examination of the cause of death of Mr. Doe.

21. Donation of organs in Mr. Doe's body other than his head for purposes of

transplantation may occur, without interfering with the Allen County Coroner's Office's continuing examination or the Allen County Prosecutor's Office's investigation.

22. Upon information and belief, Defendants have not provided a statement in the medical record of Mr. Doe specifying any medical or clinical reasons why an organ procurement should not go forward.

23. The Defendants have not supplied IDN with a statement specifying any medical or clinical reasons why organ procurement should not go forward.

DECLARATORY JUDGMENT & INJUNCTIVE RELIEF

24. IDN incorporates by reference the allegations contained in paragraphs 1 through 24 as though set forth verbatim herein.

25. A controversy exists between IDN and the Defendants regarding the Defendants' noncompliance with the Indiana Code, which mandates that "a coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, education, or training." Ind. Code § 29-2-16.1-21(a).

26. This Court has the authority to "declare rights, status, and other legal relations" as to the named parties under Indiana's Declaratory Judgment Act. *See* I.C. § 34-14-1-1.

27. Additionally, "when it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief of any part of the relief consists in restraining the commissions or continuance of some act, the commission or continuance of which, during the litigation, would produce great injury to the plaintiff [a]n injunction may be granted to restrain an act or proceeding" Ind. Code § 34-26-1-5.

28. In this instance, Indiana Code § 36-2-14-22.6 governs the relationship between

IDN as a procurement organization and the Defendants regarding the appropriate procedures for recovery of organs. It states in pertinent part:

(d) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the coroner and a postmortem examination is not required, or the coroner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

(e) If an anatomical gift of a part from the decedent under the jurisdiction of the coroner has been or might be made, but the coroner, in consultation with a pathologist, initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death or interfere with the preservation or collection of evidence, the coroner and pathologist shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the coroner may allow the recovery, delay the recovery, or deny the recovery.

(f) Before the removal procedure, the coroner or designee may allow recovery by the procurement organization to proceed, or, if the coroner or designee reasonably believes that the part may be involved in determining the decedent's cause or manner of death or, in tissue procurement cases, if the coroner or designee determines that, for evidentiary purposes, the body must remain undisturbed prior to autopsy, deny recovery by the procurement organization. The coroner or designee must be present at the scene before denying the recovery of a part. When practicable, the coroner and pathologist shall work with the procurement organization to facilitate removal of a part following any postmortem examination of the decedent.

(g) If the coroner or designee denies recovery under subsection (e) or (f), the coroner or designee shall:

- (1) explain in a record the specific reasons for not allowing recovery of the part;
- (2) include the specific reasons in the records of the coroner and forensic pathologist; and
- (3) provide a record with the specific reasons to the procurement organization and the state department of health.

Ind. Code § 36-2-14-22.6 (emphasis supplied).

29. The Defendants have not supplied IDN with a statement specifying any medical or clinical reasons why organ procurement should not go forward.

30. There is no reasonable basis for the Defendants to believe that the parts sought to be procured by IDN may be involved in determining the cause or manner of Mr. Doe's death.

31. The Defendants refusal to cooperate in the impending timely procurement of Mr. Doe's organs violates Ind. Code § 36-2-14-22.6.

32. Under the circumstances and for the aforementioned reasons, IDN is entitled to declaratory relief requiring the Defendants to comply with Ind. Code § 36-2-14-22.6 and instructing Defendants not to unreasonably fail to cooperate in the timely procurement of organs.

WHEREFORE, Plaintiff, the Indiana Donor Network, by counsel, respectfully request that this Court: (1) enter a judgment in favor of the IDN and against the Defendants declaring that (a) the Defendants shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, education, or training; (b) Defendants and their pathologist shall consult with IDN or a physician or technician designated by IDN about the proposed recovery; and (c) Defendants shall not deny the requested procurement unless it establishes that it is reasonably necessary for evidentiary purposes that the body must remain undisturbed prior to autopsy; (2) enter an order enjoining Defendants, including all representatives, officials, and agents of the Defendants, in whatever capacity, and any of Defendants' agencies, offices, or departments, from taking any action in contravention of the statutory requirements set by Ind. Code § 36-2-14-22.6; and (3) provide all other appropriate relief.

VERIFICATION

I affirm under the penalties of perjury that the foregoing representations are true to the best of my information, knowledge, and belief.

/s/ Kellie K. Hanner
Kellie K. Hanner, President/CEO
Indiana Donor Network

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. H. Babb", written over a horizontal line.

Bryan H. Babb, Atty. No. 31525-49
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