

Why gift law matters: the law and ethics of donor designation

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Legal Basis of Deceased Donation in the U.S.

- The Uniform Anatomical Gift Act (UAGA)
 - Primary legal authority for organ and tissue donation
 - Model legislation enacted as state law
 - First drafted in 1968, revised in 1987 and 2006

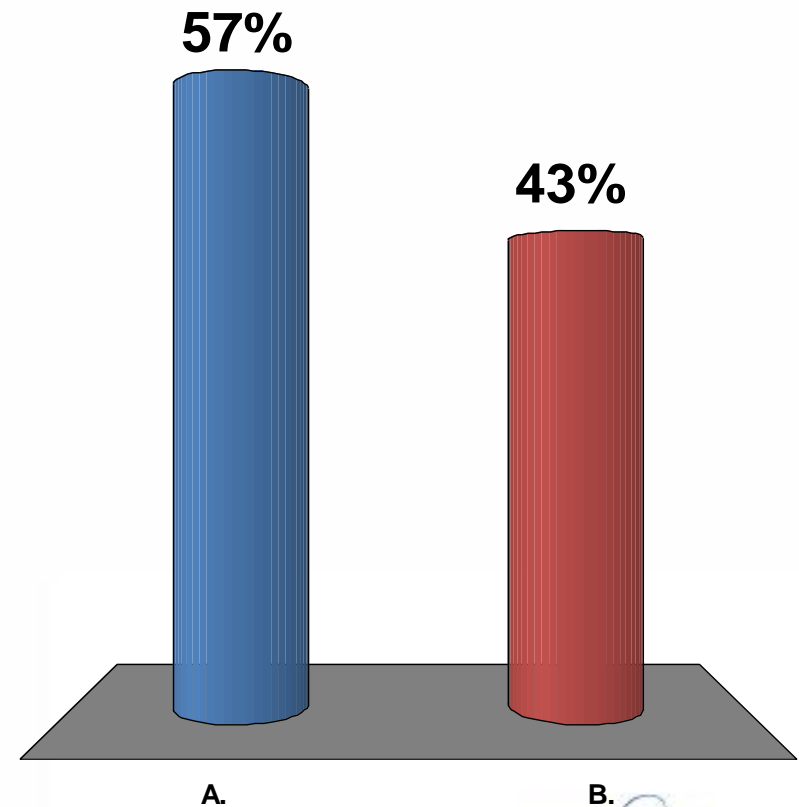
Legal Basis of Deceased Donation in the U.S.

- State law
 - Consent a reserved power of the states
 - Federal regulation of transplantation
 - Every state passed original UAGA
 - 47 states have now enacted the 2006 version

True or False ?

The law requires informed consent for deceased organ donation.

- A. True
- ✓ B. False



Legal Basis of Deceased Donation

- UAGA is not based on informed consent principles
 - authorization
 - legal permission
- Informed consent is a legal principle that applies to healthcare treatment decisions
 - risks and benefits to the patient
 - doctor patient fiduciary relationship

Legal Basis of Deceased Donation

- Other decisions do not fall under the informed consent legal principles
 - advanced directives
 - burial / cremation

Legal Principles of Gift law

Gift defined:

A gift is a voluntary and legally binding uncompensated transfer



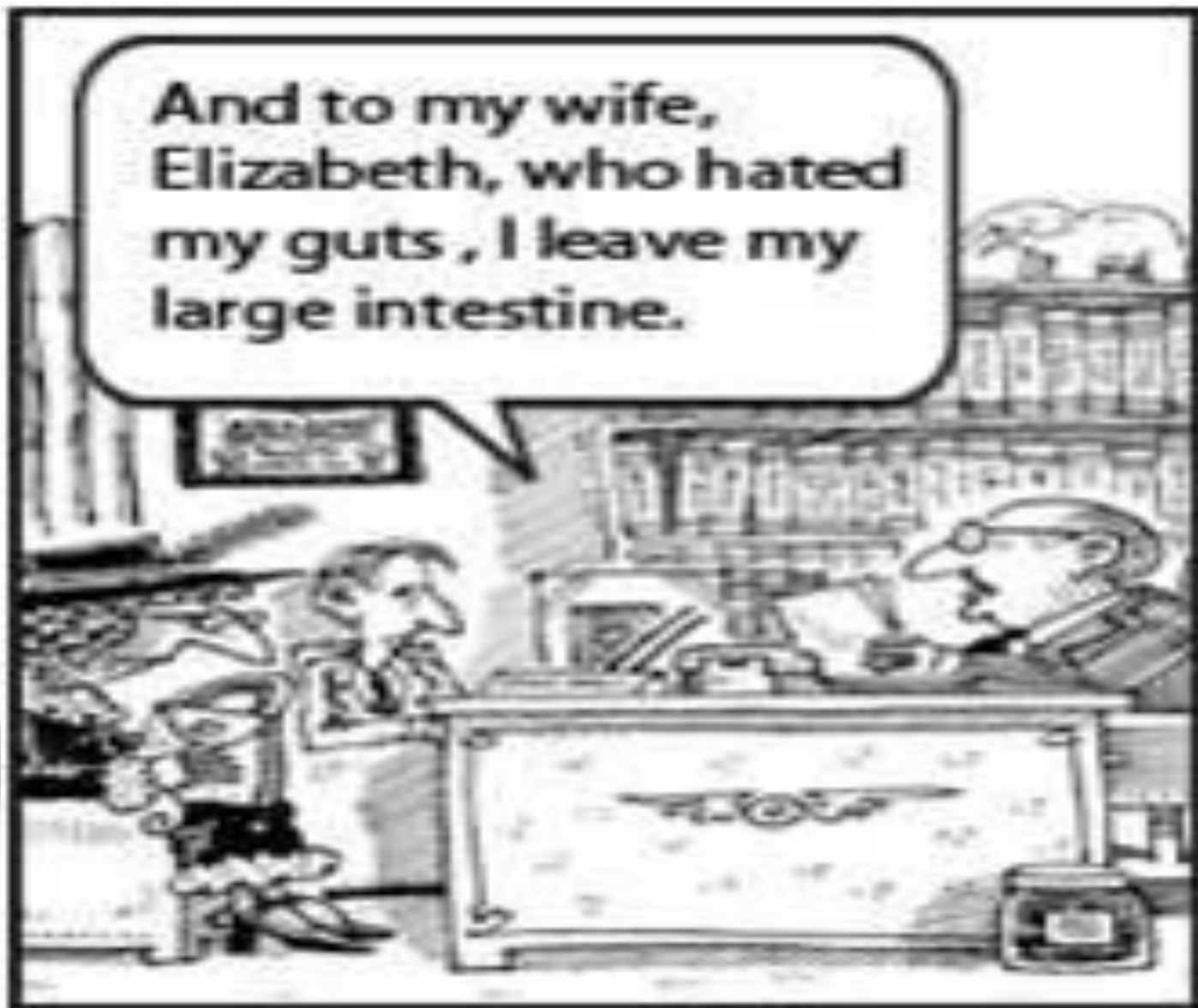
"...And seven years ago I donated one of my kidneys to him. I want it back."

Legal Basis of Deceased Donation

- Gift law as primary legal principle in UAGA
- Gift law requires 3 elements:
 - Intent
 - Transfer
 - Acceptance

Legal Basis of Deceased Donation

- The gift is conditional
 - Death
 - Clinical suitability
- The gift is limited
 - Transplant / therapy
 - Research
 - Education



First Person Authorization

Adult individuals have the right to make a legally binding anatomical gift prior to death.

Legal Basis of First Person Authorization

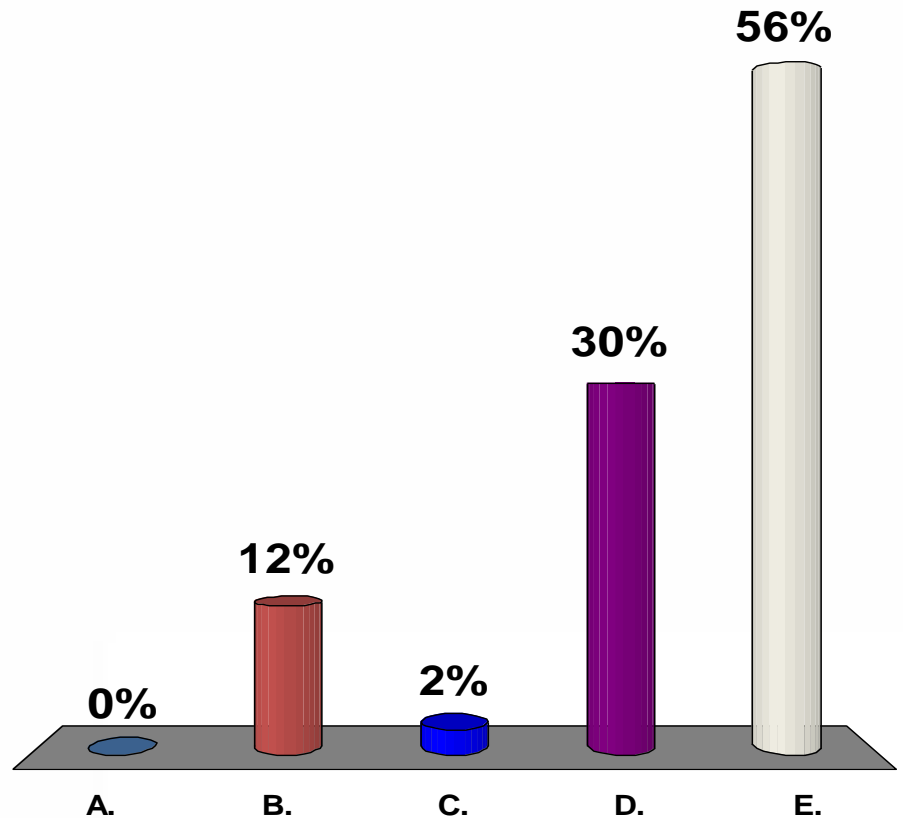
- Under the UAGA an anatomical gift can be made:
 - *By an adult prior to death*
 - By a surrogate decision-maker at death

UAGA: First Person Authorization

- Document of gift
 - Satisfies first legal element of gift law
 - Signed by adult prior to death

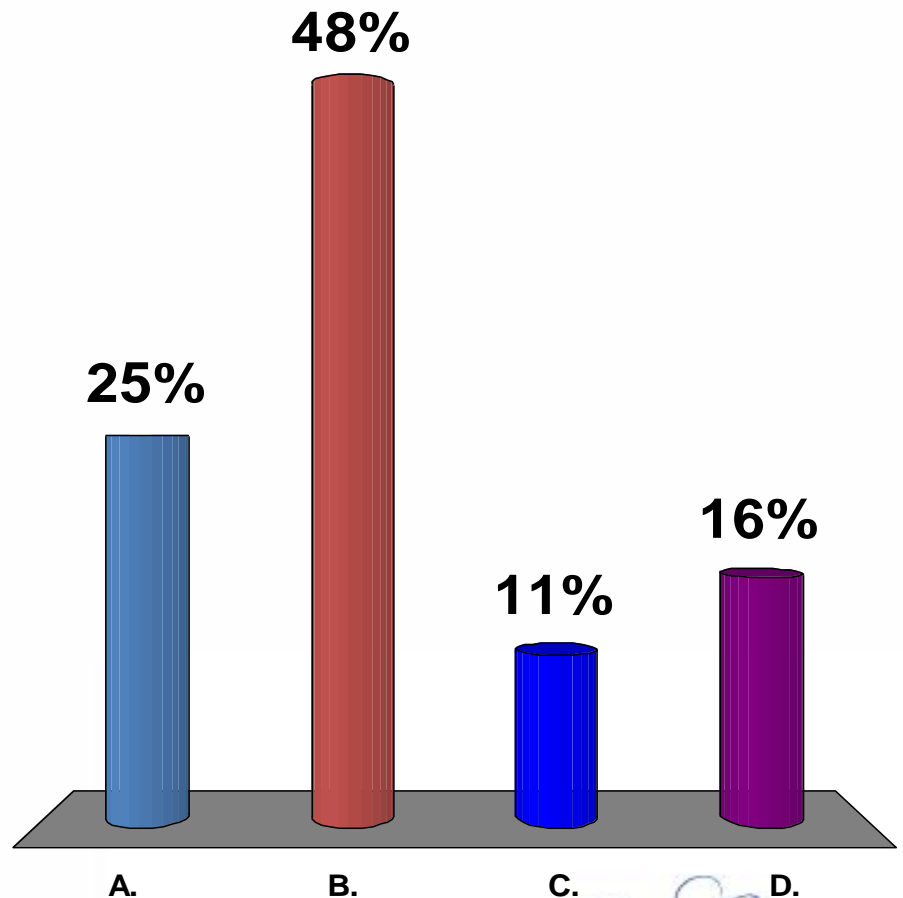
Which of the following are legally recognized ways to make an anatomical gift?

- A. Signing up for the donor registry at the DMV
- B. Written statement in a will
- C. Verbal statement
- D. All of the above
- ✓ E. A and B but not C

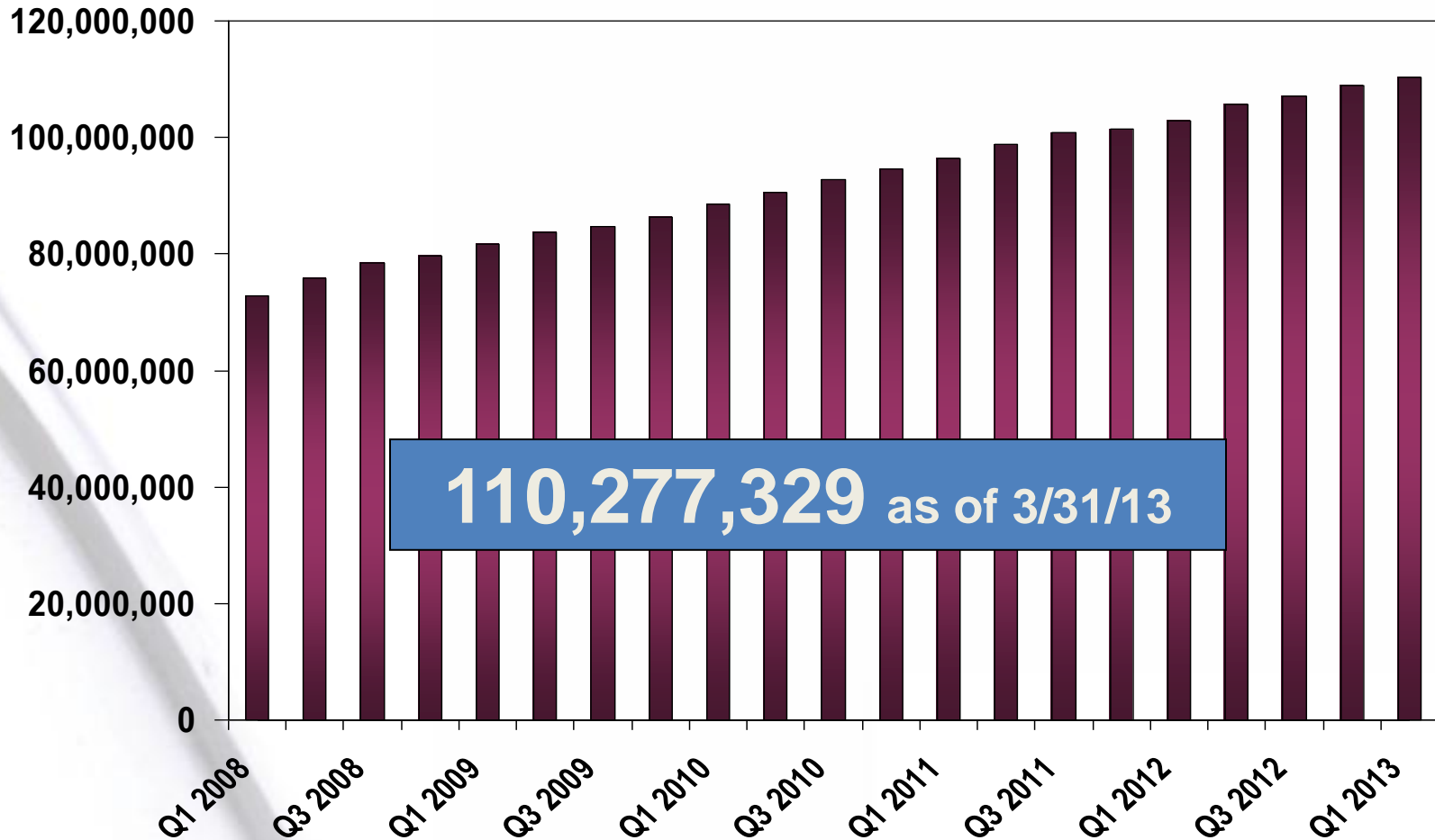


Approximately how many registered donors in the U.S.?

- A. 5 million
- B. 25 million
- C. 50 million
- ✓ D. Over 100 million

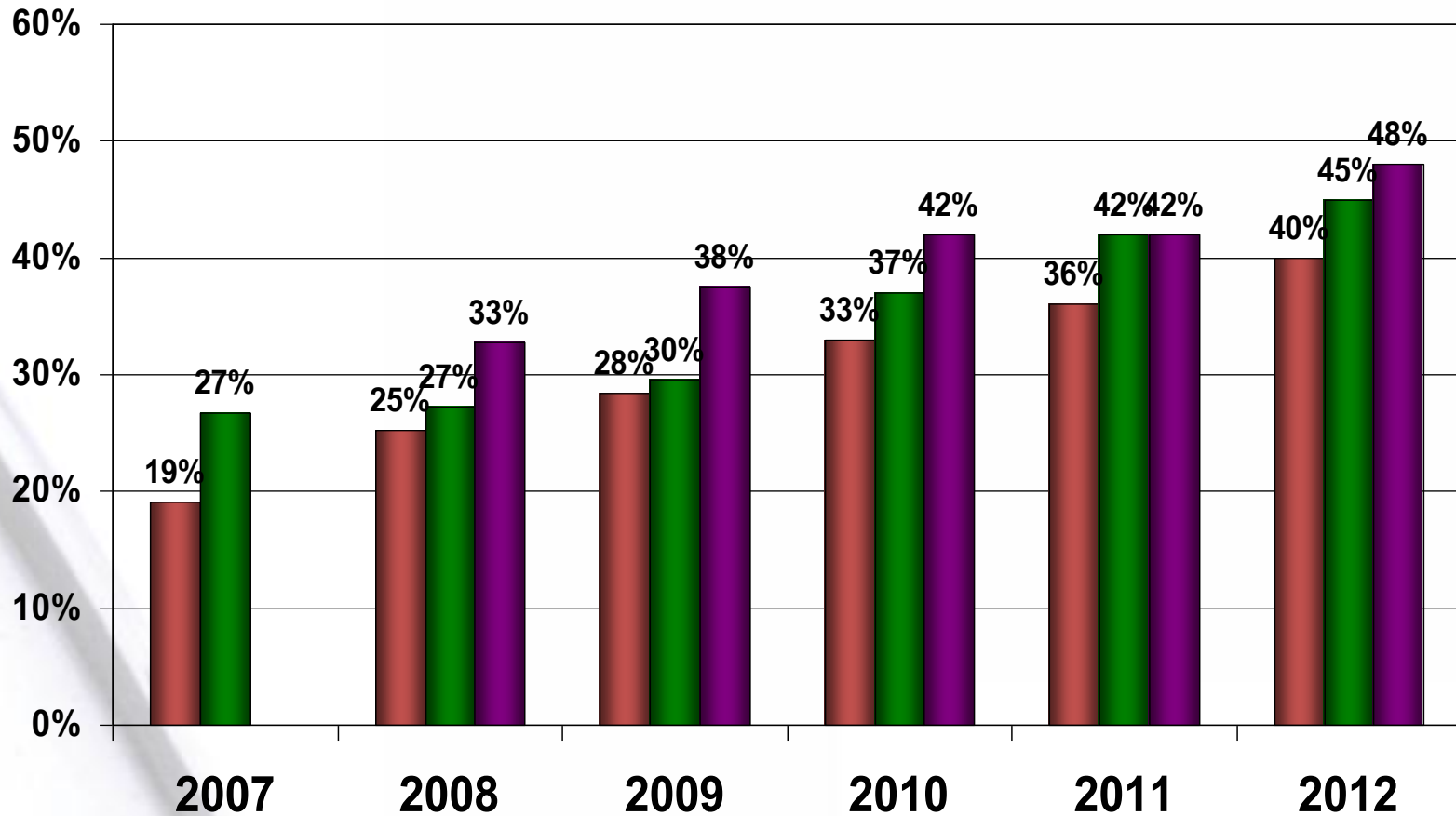


Donor Designation in the United States



Impact on Donation, 2007-2012

Designated Donors Among Recovered Donors



■ Organ Donors ■ Tissue Donors ■ Eye Donors

UAGA: First Person Authorization

- Disclosure of donor designation to family
 - Required by some state laws
 - CMS regulations
 - OPO practice
- Coordination of donation
 - Legal permission is the floor not the ceiling
 - Families are an integral part of carrying out the donor's gift

Ethical Basis of First Person Authorization

- Self-determination concept that adult individuals should be able to make their own decisions about donation of organs after their death
- Consistent with ethical principles behind other advanced directives

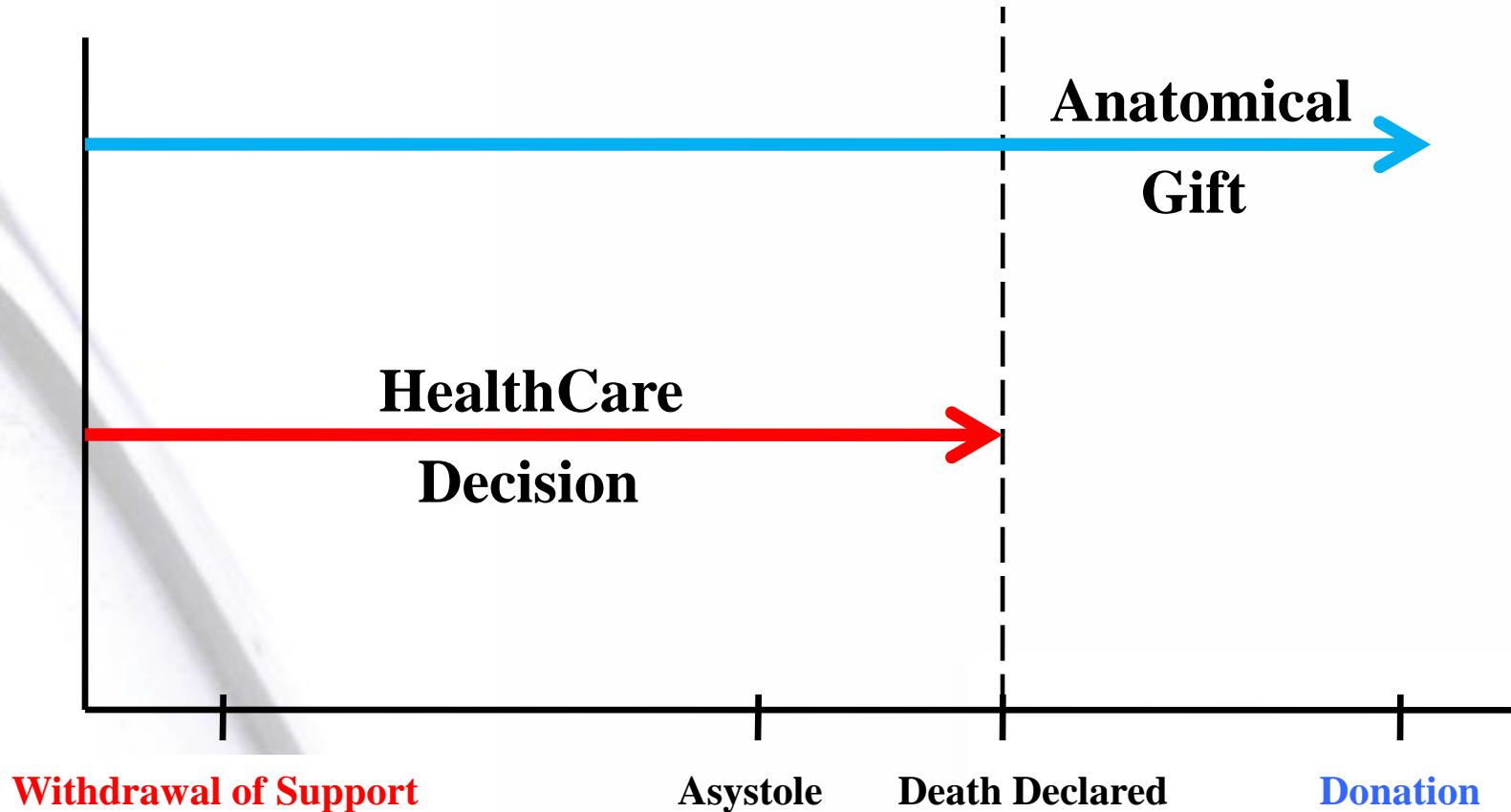
First Person Authorization and DCD

- The UAGA governs donation after death
 - Regardless of how death is declared
- Donor designation authorizes donation after death
 - Regardless of how death is declared

First Person Authorization and DCD

- Authorizing donation does NOT also authorize withdrawal of support
- Surrogate consent for withdrawal of required
- Withdrawal must be done in way that allows DCD
 - Timeframe and manner

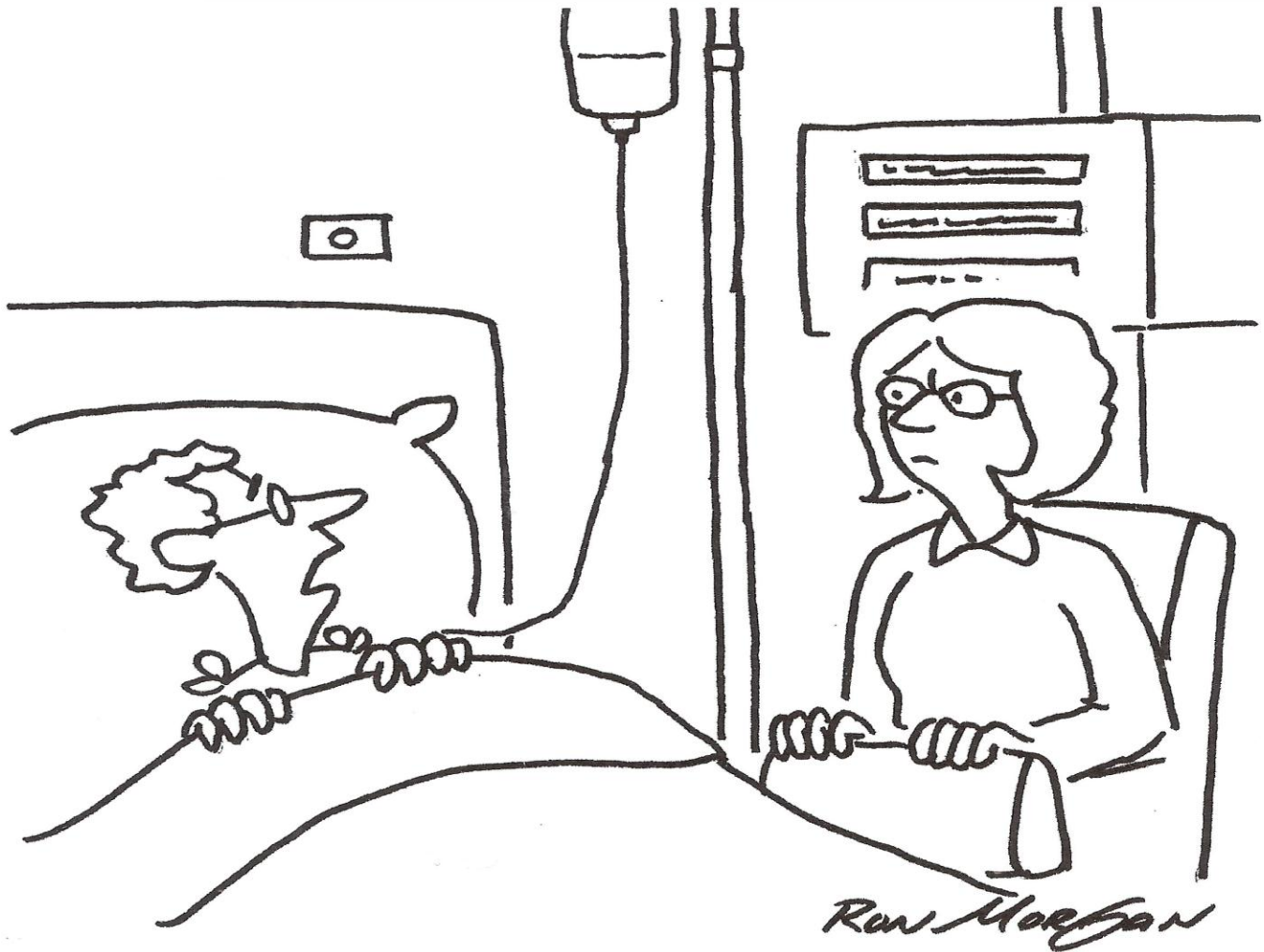
Legal Constructs in DCD



Case

A patient is referred to the OPO for potential DCD. The OPO confirms that the patient is a registered donor. After the decision to withdraw is made the family is approached about donation.

- If the family agrees to donation they should sign the authorization form
- The family should be informed that the donor has given legal permission for donation and be provided an explanation of the DCD process
- If the family agrees to donation then they should be informed that the donor gave permission for donation but since the patient has not yet died they need to sign the authorization form



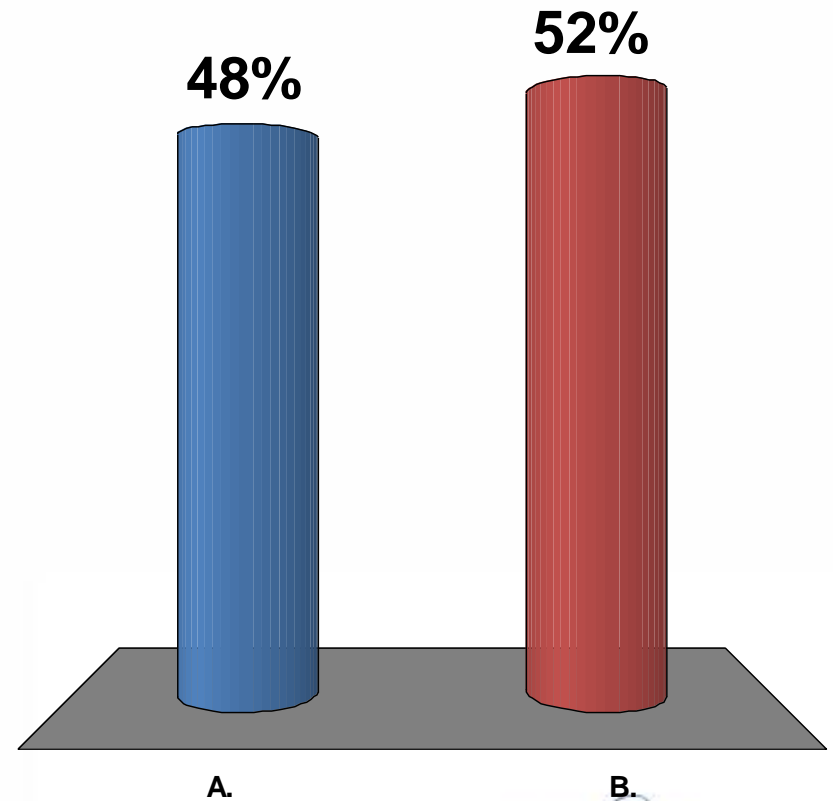
"Okay, Mom ... I'm sorry I re-gifted one of the kidneys you gave me."

True or False ?

Family can revoke donor designation at the time of a patient's death.

A. True

✓ B. False



What happens when families object?

- Law
 - First person authorization is a legally binding anatomical gift that family cannot over-ride
 - Gift can be accepted or declined
 - Legally protected and granted immunity from liability if follow UAGA in good faith.
- Ethics
 - Respect the autonomy rights of the donor
 - Maximize the potential good (lives saved)

How to move forward

- Hospital staff knowledge of the law
- Escalation protocol in place
 - Ascertain basis of family objection
 - Assess transplant potential
- Coordinated decision between OPO and Hospital

“A ship is safe in the harbor, but that's not what ships are for.”

- William Shedd

5 things to know about the legal principles of donation

- The Uniform Anatomical Gift Act is the law that governs deceased donation in the U.S.
- It is based on gift law principles not informed consent
- Adults can make their own legally binding donation decision prior to death
- The UAGA applies regardless of how death is declared
- The ethical principle of autonomy supports first person authorization