

ORGAN DONATION: IS A CHANGE TO LEGISLATION THE ANSWER?

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Abstract: In 2000 the number of organ transplants performed fell by 3% while the waiting list numbers rose by 2%. The human consequence of these statistics is that because of the shortage of organs more people who are in need of a transplant are dying. There is no one single reason to why this is happening with the result that the solution may be complex. One initiative to improve the current situation with regards organ donation is a change to legislation, to move from the current system where-by the views of the next of kin are sought prior to donation, to one where consent will be presumed unless the deceased has registered an objection during their lifetime.

Key Words: Legislation, opt-in, opt-out, organ donation, organ supply, transplantation

Introduction

The development of transplantation over the past 40 years has meant that it is now recognised as the treatment of choice for most instances of major organ failure. Patients with end stage kidney disease through transplantation are given a chance at a longer and an improved quality of life. While heart, lung and liver transplants offer the only chance for hundreds of people waiting in the United Kingdom. Transplanted in smaller numbers, but nonetheless vital to those on the waiting lists, are pancreas and small bowel. The success of transplantation has resulted in an increased demand for suitable organs. This coupled with the decline in the number of cadaveric donors has led to the widening gulf between supply and demand for suitable organs for transplantation.

The Current Situation

Most people in the United Kingdom have favourable attitudes to organ donation with approximately 90% of people willing to accept a transplant if they needed one. However this positive attitude is not fully reflected when the question of organ donation is broached. Around 70% of people would agree to donate their organs after death and only 60% agreeing to the donation of a relatives organs if their wishes were not previously known. (King's Fund Institute 1995) However currently only 14% of the population have registered to donate their organs.

The legal framework that governs organ donation in the United Kingdom requires that even if the wishes of the deceased were known the next of kin must confirm that they have no objection to donation proceeding. Of the families approached around 30% will refuse permission for donation. In light of this the most important thing that someone can do is to let their family know what their wishes are in relation to organ donation.

There are currently around 5,500 people in the United Kingdom waiting for solid organ transplants. There has been a steady increase in waiting list numbers over the past number of year. In total there were 2338 transplants performed in 2000. This was a decrease of 3% on the previous year's figures. The largest group of patients are those waiting for a kidney transplant. A report published by the British Transplantation Society in 1995 (Working Party 1995) stated in order to meet the demand for kidneys a 90% increase in donor numbers would be required. As already mentioned this rising total of patients waiting is running concurrently with falling donor numbers.

Reasons for the Decline

Currently in Scotland the main source of organs for transplantation is from persons who have died as the result of catastrophic brain damage resulting in brain stem death. This diagnosis is made when two senior doctors, working independently, carry out a series of

strict tests. The most common causes of brain stem death are trauma and brain haemorrhage.

The decline in donor numbers can, in part, be attributed to reasons that in themselves should be welcomed. These are the falling numbers of deaths resulting from road traffic accidents (RTA's) and brain haemorrhage. In the UK between 1981 and 1985 the average number of fatal RTA's per year was 5794 by 1996 this number had fallen to 3740. A fall of 35%. This improvement is the result of the implementation of seat belt legislation along with speed controls such as cameras and traffic calming initiatives. The decline in the number of deaths from brain haemorrhages has also been significant with a fall of 57% in the 15 to 64 age groups in England and Wales between 1976 and 1996. Earlier detection and improved treatment of high blood pressure has had a huge impact on these statistics along with advances in neurosurgical techniques. However the consequence of this situation is that more people are dying on waiting lists.

Initiatives to Improve the Supply of Organs

During the past ten years numerous reports have been published by organisations such as the King's Fund Institute and the British Transplantation Society addressing the organ donor shortage. Despite the observations and recommendations contained in these reports very little has changed and as already mentioned the gulf between supply and demand continues to widen.

One of the topics currently being considered is a change to legislation. At present the United Kingdom favours the "opt-in" system - where-by an individual chooses while they are alive to register their wish to become a donor. As already mentioned this is a register that is currently under utilised. The change being proposed is to move towards a system of "opting out" or "presumed consent" where-by it is assumed that the individual is in favour of donation unless they have registered an objection.

Many countries including Austria, Singapore and Belgium have introduced presumed consent legislation. However each of the countries mentioned have applied the law differently. Austria enforces the purest form of the law. If the deceased has not expressed an objection during their lifetime the organs can be removed without consulting the next of kin.

In Belgium, where the law came into force in 1987, a slightly weaker version of the law is used where the relatives may object, however the medical staff are under no obligation to actively seek their views. Following the enactment of presumed consent Belgium did increase the number of organs for transplantation by 37% on the previous year's figures. There is a still weaker scheme whereby consent can be assumed if the deceased has not registered on the "opt-out" register. However if the individual has not expressed any views about donation and to proceed would cause distress to the relatives or long term partner the donation should not proceed. It is this system that is proposed and supported by the British Medical Association (BMA 2000). Attempts have been made in the past to enact such legislation at Westminster without success. However in Scotland this change in practice is currently being supported by Dr Richard Simpson, Member of the Scottish Parliament for Ochil. He plans to introduce the first draft of a Committee Bill to Parliament later this year. This may lead to a change in Scottish legislation within the next two years.

Those who advocate presumed consent do so under the assumption that it is reasonable to believe most people would wish to donate their organs after death. This would apparently be a safe assumption to make given the previous statistics that 70% of people would be willing to donate their organs after death. However while recognising the wishes of the majority the rights of those who would wish to "opt out" must be safeguarded. This means that any change must only take place following informed public debate and a countrywide publicity campaign informing everyone of the changes and the mechanisms by which they can "opt out" if they wish to do so. The rights of those who are unable to make the decision for themselves such as adults lacking the capacity to make such a decision and children must also be protected. The proposal put forward by the British Medical Association has made suitable provision for these groups. None of the major religions in the United Kingdom are opposed to organ donation although some communities are. With regard to presumed consent specifically the opinion is less clear. Under Islamic Law it is the practice for bodies to be buried as quickly as possible after death. This has meant that request for organ donation is often refused. However in 1995 the Muslim Law (Shariah) Council UK issued a directive supporting organ donation thus removing the general accep-

tance of Muslims as "presumed objectors". Within the Christian faith in the United Kingdom there is no defined policy.

Conclusion

The growing gap between the number of people waiting for a transplant and the number of organs available must be an indication that the current framework for organ donation is inadequate. While we recognise that the reasons for this are not singular but multifactorial, a change to legislation may go some way to improving the current situation. Before any move towards such a system there must be the overall support of the general public and healthcare professionals, for without this there would be no transplant programmes. A survey carried out in 2000 for the Glasgow Herald (The Herald 2000) would indicate that there is support for change. Of those surveyed 50.4% were in favour, 36% against, 10% neither actively supporting or opposing change and 4% did not know. These findings are encouraging, however as the debate continues we have to ask our-

selves if we do nothing and allow the current situation to continue how many more people will die unnecessarily?

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