

Understanding the UDDA: A Review of the Legal Standard of Death Determination

TODAY'S PANELISTS



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Deanna Fenton

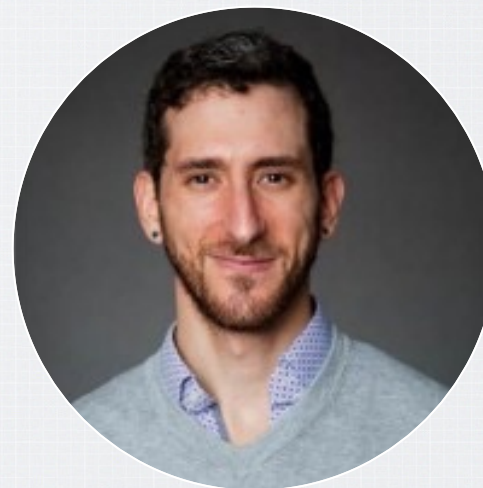
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Meet Our Moderator



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Meet Our Presenter



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Understanding the UDDA-

REVIEW OF THE LEGAL STANDARD OF DEATH DETERMINATION

Objectives

- **WHAT** IS THE ISSUE? Summarize the underlying viewpoints and issues surrounding the concept of neurologic death and the practical diagnosis of brain death.
- **WHO** ARE THE STAKEHOLDERS IN LAW AND POLICY MAKING ? Describe the medical, legal and legislative context in which these changes have arisen and are being discussed
- **HOW** MIGHT CHANGE IMPACT DONATION AND TRANSPLANT ? Describe the potential impact of various proposed changes on the donation and transplant process, as well as end-of-life decision-making in general.
- **WHERE** WOULD IMPACT BE FELT? explain the impact that a potential revision to the UDDA may have on donation overall, specifically as it relates to methods and technologies used to procure organs.

History of Determination of Death by Neurologic Criteria

1981 the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research recommended the drafting of the UDDA

1981 The Uniform Determination of Death Act (UDDA) was jointly promulgated by the Uniform Law Commission, the American Bar Association, and the American Medical Association. Adopted in whole or in part in more than 40 states.

What is the Uniform Law Commission

The ULC has promulgated more than 300 uniform and model acts on numerous subjects :

Examples of the ULC's most widely adopted acts include:

the Uniform Commercial Code, which has standardized and simplified the law of commerce in the United States;

the Uniform Anatomical Gift Act, which has enabled organ and tissue transplants since 1968;

the Uniform Trade Secrets Act, which ensures that business secrets are protected; and the

Uniform Electronic Transactions Act, which validates electronic records and electronic signatures. All of these are the law in almost every State.

Genesis of Project



Study Need and Feasibility



Committee members appointed in August 2020



Reporter named in September 2020



Observers added throughout. Included original drafters of UDDA from 1980's.

Format of Study Committee

The Study Committee met eight times, by Zoom, with meetings lasting about two hours each. The Committee's work included significant educational and historical perspective review. Invited presenters included :

- 1) Alexander Capron (the history of the UDDA);
- 2) James Bernat (two independent criteria rather than single criterion for brain death with two sets of tests, irreversible vs. permanent, and "whole brain" criterion);
- 3) Ariane Lewis (neurological criteria for brain death and religious perspectives);
- 4) David Greer (medical history of brain death and death by neurological criteria, with a conceptual overview of the guidelines and clinical interpretation of "all functions of the entire brain" and variability in institutional practices)
- 5) Matthew Kirschen (brain death in pediatric populations, including discussing the need for consent); and
- 6) Christof Koch (research on the neural correlates of consciousness).

Existing language and problem areas

▶ ...

- ▶ ...An individual who has sustained **either** (1) irreversible cessation of circulatory and respiratory functions, or (2) **irreversible** cessation **of all functions of the entire brain, including the brain stem,** is dead. A determination of death must be made in accordance with accepted medical standards...

Findings of Study Committee

Portions of the UDDA do not align with current medical practice.

General consensus that clinical practice for diagnosing brain death did not always directly square with the “entire brain, including the brain stem” as used in the UDDA.

Similar concerns were expressed that the “irreversible cessation of circulatory and respiratory functions” criteria may not reflect current medical practice.

The clinical process of diagnosing death is established and undertaken by the medical profession. The declaration of death, by contrast, is a legal process defined by the law. These two processes should align.

Study Committee Recommends
the Next Steps:

Appointment of Drafting
Committee

Production of Discussion Draft

Where We Are Today

- ▶ Significant Concerns from the Committee Observers on Draft
 - ▶ Definition of Death
 - ▶ Notice
 - ▶ Consent
 - ▶ Religious/Moral Accommodations
 - ▶ What Happens Post-Declaration

Findings: continued

- ▶ Enactability is a key component of any drafting effort.
- ▶ Other issues to be considered from existing state laws and guidance:
 - ▶ Notice/Consent
 - ▶ Who Can Declare
 - ▶ How Many
 - ▶ Religious or Other Accommodations
 - ▶ External Standards

AOPO Input

AOPO advised the Commissioners to:

- ▶ 1. remove the newly proposed sections of the Uniform Declaration of Death Act (“UDDA”) mandating notice of the examination;
- ▶ 2. strengthen and maintain the UDDA’s position that consent is not required for the examination; and
- ▶ 3. ensure the statute does not provide the ability to block the death determination exam or death declaration.

Current State Laws surrounding Standards and Process:

- ▶ New Jersey
- ▶ New York
- ▶ California
- ▶ Illinois
- ▶ Nevada

Compare BOPP DRAFT

- The Bopp Draft

- “An individual who has sustained the permanent and irreversible cessation of circulatory, respiratory and neurological functions ...is dead”

“AND” - The Bopp Draft

- Bopp draft requires cessation of respiration AND neurologic function.

Because circulation is always sustained in organ donation cases there will be no cessation.

Thus, death determined by neurologic criteria ceases to be.

“Irreversible”: - The Bopp Draft, Part 2

Even after circulatory death, circulatory and respiratory functions may be re-established, in order to render the organ transplantable. Language states that functional cessation must **not only be permanent, but irreversible.**

- Donation after circulatory death is thereby negated, as well .

Impact on Health Care

- Bopp draft effectively negates determination of death by neurologic criteria
- Bopp draft negates donation after circulatory death
 - The transplant cure only happens for those who receive organs from living donors, i.e. no hearts, no pancreas, few livers, no lungs

Bopp Draft Voted Down, and Promptly Followed By Rodenbeicker Draft

- ▶ REVISED UNIFORM DETERMINATION OF DEATH ACT

- ▶ Section 1. [Determination of Death]. An individual who has sustained **either (a) permanent cessation of**
- ▶ **circulatory and respiratory functions**, or (b) permanent cessation of all functions of the entire brain,
- ▶ **including the brain stem and hypothalamus, is dead.** A determination of death must be made in
- ▶ accordance with accepted medical standards.

- ▶ Section 2. [Religious or Philosophical Objection]. The death of an individual may not be declared upon
- ▶ the basis of neurological criteria under section 1.b of this act when the licensed physician authorized to
- ▶ declare death has reason to believe, on the basis of information in the individual's available medical
- ▶ records, or information provided by a member of the individual's family or any other person
- ▶ knowledgeable **about the individual's personal religious or deeply held moral or philosophical beliefs,**
- ▶ **that such a declaration would violate the personal beliefs of the individual. In such cases, death shall be**
- ▶ **declared, and the time of death fixed, solely on the basis of cardio-respiratory criteria ..**

Result: Punt or Hail Mary

- ▶ Having considered the wealth of information shared, and in light of our conversations, we have asked for and received permission from Uniform Law Commission leadership to **extend the timeline for our Drafting Committee efforts**. More specifically, Uniform Law Commission leadership is allowing us an **additional year** to discuss ...whether mid-level principles and consensus can be achieved in trying to draft a revised UDDA.
- ▶ ... The wealth of information recently received, from various sources and in various forms, reinforced the need for more time ...and defer ... consideration by the Committee of the Whole at the Annual Meeting until we have more time to work together to see if those goals are achievable. Among many other things, this conclusion was influenced by (1) the incredible feedback and suggested alternatives proposed, particularly recently; (2) the desire expressed by many Commissioners to explore those alternatives in what we all hope will be an in-person meeting; (3) efforts underway in the medical community, which were just recently brought to our attention, by both adult and pediatric groups to identify consensus practice recommendations for pediatric and adult brain death/death by neurologic criteria, which are tersely summarized at <https://www.aan.com/practice/guidelines-under-development>; and (4) **allowing additional time to continue our efforts to build toward a consensus approach**.

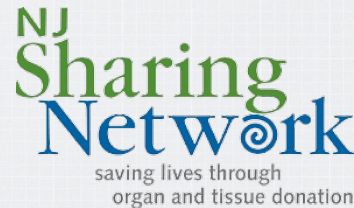
A Special Thanks to Our Presenter



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Q&A

QUESTIONS & ANSWERS