

My name is Paul A. Byrne, MD. I am a board-certified pediatrician and neonatologist from Ohio and the founder and president of Life Guardian Foundation, an organization that protects life from its beginning to death. I have studied “brain death” and related issues for decades and have peer-reviewed articles published in the Journal of the American Medical Association (JAMA), Gonzaga Law Review, numerous other publications and have done many speaking engagements. Currently, I am an observer to the Uniform Law Commission (ULC) as they are reviewing proposed legislation to revise the Uniform Determination of Death Act (UDDA).

The American Academy of Neurology (AAN) has proposed that the UDDA be changed. Currently, the law states that death by neurological criteria aka “brain death” (DNC/BD) must consist of the “irreversible cessation of all functions of the entire brain, including the brainstem.” However, in actual clinical practice all functions of the entire brain are not and cannot be tested. Of the 14 brainstem reflexes only 5 or 6 are tested.

Patients have been declared “brain dead” even though they have brain waves on EEG, and/or still have a functioning hypothalamus (part of the brain). This has led to lawsuits (Jahi McMath, Aden Hailu, Jacobs) which have pointed out that the entire/whole brain standard is not being followed. Thus, the AAN is asking that the standards for a declaration of death by neurological criteria be changed. At the most recent meeting of the Uniform Law Commission (ULC) in February, this was the language on the screen at the close of their session:

Section § 1. [Determination of Death]

An individual who has sustained either (a) permanent cessation of circulatory and respiratory functions, or; (b) permanent coma, permanent cessation of spontaneous respiratory functions, and permanent loss of brainstem reflexes, is dead. A determination of death must be made in accordance with accepted medical standards.

The entire/whole brain standard is being replaced by coma, apnea, and loss of brainstem reflexes which is a major change from entire/whole brain standard.

As you can see, the new neurologic criteria under (b) no longer use the term “irreversible” and no longer mandate that “all functions of the entire brain” be tested. Destruction, while implied by the name “brain” “death,” is not part of the criteria or testing. Brain postmortem studies have not verified an association with destruction of the brain for the AAN Guidelines or any other set of criteria, prior to cessation of circulation.

The term “permanent” is being defined to mean that physicians do not intend to act to reverse the patient’s condition. Thus, a person who is not dead, but comatose, and whose death seems near will be declared legally dead under this new standard while they still have much biological evidence of life, indicating that there is still a soul/body unity present.¹ The Catholic Medical Association and the Christian Medical and Dental Association have each written a letter to the ULC protesting these changes.

¹ Signs of life in a person labelled “brain dead”: heartbeat, circulation, respiration in lungs and tissues, i.e., gas exchange with oxygen in and carbon dioxide out; urine output, digestion of food, healing of wounds, temperature maintenance, blood pressure, and if a pregnant woman, gestation of the child in the womb.

Both “irreversible” and “permanent” are not empirical, i.e., not testable. Death is what makes for irreversibility, but the observation of non-function does not mean destruction of the brain, much less death of the person. The UDDA, as it is does not protect the life of an unresponsive patient on a ventilator and proposed revisions without opt out-exemptions for patients and providers, even less.

The UDDA should be repealed and replaced with: No one shall be declared dead unless respiratory and circulatory systems and entire brain have been destroyed. This should be option (c) for determination of death.

In addition, the AAN is proposing that there be no requirement for *informed consent* prior to initiating “brain death” testing. As you may know, one of the tests for “brain death” is the procedure of the apnea test, which involves:

- Patient is disconnected from the ventilator for up to 10 minutes and may be repeated.
- Arterial blood sampling is done.
- This test has absolutely no benefit for the patient and can only cause harm, as rising levels of pCO₂ (carbon dioxide) may lead to an increase in intracranial pressure, which is extremely detrimental for a brain-injured patient.
- Oxygen may be provided down the breathing tube, giving the appearance of safety but does not prevent the adverse effects of high pCO₂ (carbon dioxide).

The idea that there will be no requirement for informed consent for a test that can result only in harm to the patient and benefit only transplant stakeholders is repugnant.

During the February meeting, there was also some discussion about adding a religious exemption/“opt out” to the determination of death by neurological criteria. On the chat, people were surprised by this, with observers noting that adding a religious exemption to the UDDA would turn the entire country into New Jersey (which is currently the only state with a religious exemption to a diagnosis of death by neurologic criteria). There should be exemptions for any reason, along with religious, and not restricted to refusal being expressed prior to initiation of a DNC/BD exam protocol.

One of the big problems with this proposed legislation is that it is being written without any input from the public. I think that if a person were aware of the facts, he/she would object to being declared **legally** dead while still comatose and before their soul has departed. Sadly, the public is being kept in the dark about what is involved in a declaration of death by neurologic criteria. Respect for Life and Life Guardian Foundation have wealth of resources explaining these facts. www.respectforhumanlife.com and www.lifeguardianfoundation.org

The ULC is currently still accepting expert opinions and suggestions on the proposed changes to the UDDA. Certainly, declaring a brain-injured patient (who is still a body/soul unity) to be legally dead is a first amendment and religious liberty concern. The public deserves a voice at the table before a law is passed that takes away their right to life. Also, *if* these changes are made, it is crucial that people of faith be given a religious exemption. I am writing to ask that you protect people’s first amendment rights. This is also a medical/moral issue that applies to persons who do not consider themselves religious and they also have a right to exemption from DNC/BD testing, determinations/declarations.

In summary, the changes being proposed to the UDDA will only benefit transplant stakeholders at the expense of the rights of patients and families. Below are links to more articles on the proposed changes to the UDDA. The proposed changes to the UDDA will affect the first amendment rights of the people of Ohio and every American.

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<https://jpands.org/vol27no3/nguyen.pdf>

<https://www.respectforhumanlife.com/post/revisions-to-the-udda-considered-by-the-uniform-law-commission-ulc>

<https://heartlanddailynews.com/2023/02/redefining-definition-of-clinical-death-under-consideration/>

<https://www.respectforhumanlife.com/post/the-ethics-of-organ-harvesting-and-transplant>

https://www.americanthinker.com/articles/2022/10/we_need_an_ethical_definition_of_death.html