

June 5, 2023

To: The Honorable Samuel Thumma; Members of the Determination of Death Act
Committees & Style/Drafting Committees
Uniform Law Commission; 111 N. Wabash Avenue, Suite 1010; Chicago, IL
60602

Regarding potential revisions of the Uniform Determination of Death Act (UDDA), I strongly encourage the ULC to *repeal* and *replace* the current UDDA.

The new Act must protect life until certain death, i.e., no evidence of biological life. Death is the indisputable cessation of the person's life. The precise moment when death occurs is impossible to determine with any medical criteria, and thus, the arbitrary "determination" that death has occurred is a subjective action by the clinician. Hence, death is only certain to have occurred with a retrospective and more objective assessment.

There is no ground for legal presumption or less secure criteria. The right to live is the most basic right. The State is obligated to protect the person's right to live until death. The public is not being informed that a person declared dead by neurological criteria (DNC) has a beating heart, circulation, and respiration albeit with a ventilator. Urine production, digestion, waste excretion, wound healing, temperature maintenance, and homeostasis of interdependently functioning organs and systems are present. There is the ability to carry and nourish the baby in the womb if pregnant. The "brain dead" patient is not a corpse nor is the patient suitable for burial, cremation, or vital organ removal.

DNC criteria are based on bedside observation of lack of *functions*, presumed to be "irreversible" or "permanent," neither of which can be tested empirically. They do not require *necrosis* or *destruction*. Of further concern, the apnea test is often considered as part of DNC testing. During the apnea test procedure, the life-supporting ventilator is disconnected for up to 10 minutes, which can produce brain injury or death. There are no benefits to the patient, only risks of harm.

The UDDA statute ought to protect the person from being declared dead when still alive. Full and complete information about the apnea test and any other tests used to declare DNC must be provided freely at any time. In addition, patients, patients' families, surrogates, physicians, and other health care providers, should be free to decline or cease the apnea test, exams, and protocols, for the determination and declaration of DNC.

Treatment options ought to be made available that protect and preserve the life of the patient, even if disability is a potential outcome. Treatments should not be denied based on subjective "quality-of-life" judgments by caregivers.

The model statute below sets minimum criteria before death is declared. This determination objectively and fully recognizes a change in state of the three vital systems to protect living patients from being treated as dead.

"No one shall be declared dead unless respiratory and circulatory systems and the entire brain have been destroyed. Such destruction shall be in accord with universally accepted medical standards."

The only necessary revision to the current UDDA relates to the recognition that current medical methods and standards can not establish what "brain death" is or when it occurs. Until that fact is recognized and established as policy, lives will continue to end unnecessarily and public trust in medicine will continue to erode. I have worked in medicine for forty-five years. Accurate and honest changes in the UDDA are long overdue.

Respectfully,



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