THE NATIONAL CATHOLIC BIOETHICS CENTER

600 REED ROAD, SUITE 102, BROOMALL, PA 19008 (215) 877-2660 (215) 877-2688 FAX NCBCENTER.ORG

Unacceptable Revisions to the
Uniform Determination of Death Act

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The Uniform Law Commission is currently considering recommending a revision of the Uniform Determination of Death Act (UDDA) that would allow physicians to declare those who are in a persistent coma legally dead. This would be a travesty of law and common sense because, by definition, a coma indicates that one has brain activity and is still a living person. The current legal UDDA neurological definition of death is the "irreversible cessation of all functions of the entire brain, including the brain stem." The Commission has members who want to change it to "permanent coma, permanent cessation of spontaneous respiratory functions, and permanent loss of brainstem reflexes."

In recent years there has been a lively debate among Catholic philosophers and ethicists as to the adequacy of neurological criteria, or "brain death," as a proper definition of death. A big part of this contention revolves around a few notorious cases of patients who were declared dead using neurological criteria and nevertheless recovered or showed clear signs of still being alive. Some were simply misdiagnosed, but others fell victim to the fact that the standard neurological brain death tests performed at the bedside do not measure the functioning of the hypothalamus, a part of the brain that regulates hormones and other vital functions. If one's hypothalamus is still active, then the entire brain has not ceased working. Saint John Paul II stated that irreversible whole brain death, as determined by rigorous testing, was the minimum standard for an acceptable definition of death for Catholics.

What is proposed by some within the Uniform Law Commission is to abandon the concept of whole brain death in favor of a partially brain dead standard, thus codifying in law the current deficiency within the criteria. As the NCBC's Fr. Tad Pacholczyk pointed out in one of his Making Sense of Bioethics columns, "Even to be 'slightly alive' is still to be alive. If the language of the UDDA ends up being changed to allow for a declaration of brain death, even with hypothalamic functioning, individuals who are not-quite-dead will be treated as if they were already dead."

The most tragic consequence of relaxing the neurological criteria for brain death would be the surgical removal of vital organs from people who are clearly not dead before transplantation. The act of procuring the hearts, lungs, etc., would become the actual cause of death because the individuals had been falsely declared dead. One of the gravest ethical responsibilities of medical professionals is to provide an accurate and reliable determination of death. Making the decision to donate organs or tissues after death requires a great deal of trust that the beautiful act of giving one's organs to save the lives of others will be done ethically.

It is our Catholic belief that the moment of death occurs when the soul departs from the body. Since the soul is a spiritual reality, its separation from the body cannot be measured scientifically. What can be measured is physical evidence that the deceased person's body is no longer animated. A corpse cannot perform its own vital functions. Modern technological breakthroughs allow health care professionals to keep oxygenated blood flowing through a deceased body's circulatory system, maintain electrolytes at the proper levels, etc., but the disintegration caused by whole brain death means that none of this is happening through the person's own power. Someone in a persistent coma, in contrast, carries out at least some of these functions himself.

Medical doctor and ethicist Daniel Sulmasy, and pediatric neurologist Christopher DeCock point out that patients who suffer "chronic brain death," that is, those who can be kept artificially functioning for months or even years despite a determination of brain death, should be categorized as severely brain injured rather than truly dead. In view of this troubling situation, neurological testing protocols should be strengthened, especially regarding detecting hypothalamic activity, to provide a more accurate declaration of death. Instead, what is being proposed is simply abandoning the standard of irreversible and complete destruction of the brain's activity. A very practical reason for this change would be to increase the number of organs available for transplantation, but this would be done in an ethically unacceptable way. We do not believe that a good end can justify the use of morally bad means.

For the act to be ethical, one needs moral certitude that life-sustaining organs are being taken from a corpse and not a living human being. This is known as the dead donor rule and is a bright ethical line that cannot be crossed. It is a common deception to change the definition of a thing and then argue that the redefinition modifies reality. Objective scientific facts and morality do not cooperate with these kinds of word games. Examples of this abound, like saying pregnancy begins at implantation in the uterus and not at fertilization, or that certain mutilating operations are "gender affirming surgeries." The idea that a person in a persistently comatose state is already dead is absurd. One may be close to death, but just as a mother cannot be only slightly pregnant, a person is either completely dead or completely alive. There is a world of difference between a dying person and a deceased one. Intentionally ignoring scientific facts and blurring the lines of reality, or even abandoning basic ethical principles, are the actions of the spiritually moribund.

The NCBC will be doing everything in our power to prevent any watering down of neurological criteria for determining death. We shall be submitting official comments to the Uniform Law Commission and working with allies to help sanity and ethics prevail. Our ethicist Dr. Joe Zalot did a podcast on this topic with Dr. DeCock that you may be interested in hearing. Please keep our efforts in your prayer intentions.

Joseph Meaney, PhD, KM
President
The National Catholic Bioethics Center