

Determination of Death Act Summary

In an era of rapid technological change, it is not unusual for technology to overcome medical, social and legal commonplaces. One instance of this is the legal standard for determining biological death. Advances in medical techniques and equipment have made it necessary to re-evaluate traditional legal standards for declaring a human being dead.

Such standards are necessary not because of death itself, but because of the effect in the law of the biological fact of death. Criminal law outlaws murder for the protection of life. Yet ironically, criminal law requires a legal determination of death upon which murder sanctions can be anchored. Determinations of death are also important in establishing the property relationships that arise through inheritance and devise. They are important in tort law to actions in wrongful death and survivor's action. The standards for determining death are not much of a problem for the deceased, but they are important to the living, who may be favored or disfavored in the law because of the biological fact.

The Uniform Law Commissioners (ULC) created the Uniform Brain Death Act in 1978 in an effort to clear up the legal ambiguity that had arisen over the question of determining death. It was plain that legal recognition only of traditional criteria—which rely on measuring cessation of respiration and circulation—would no longer suffice.

Clearly the brain, as the center of the human body, is its most important organ. Its irreversible functioning should be accepted as death. Nonetheless, cessation of respiration and circulation are easily detectable and have been the only means available to determine death until very recently. Direct detection of loss of brain function is a product of very modern technology.

Technology has made it necessary to find criteria other than respiration / circulation criteria. Those biological functions can now be maintained by "extraordinary means of life support" beyond the time the brain can be maintained. Therefore, a broader standard than the traditional one for determining death has become essential.

The Uniform Brain Death Act simply established that the "irreversible cessation of all functioning of the brain, including the brain stem" is death. It then prescribed that determination of death be made in accordance with "reasonable medical standards." The ULC assumed that the traditional criteria would stand automatically alongside the brain-death standard described in the uniform act, and so did not mention those criteria in the act itself. But this omission proved confusing for states trying to adopt comprehensive legislation on the subject.

The ULC corrected the situation in 1980 by replacing the act with the **Uniform Determination of Death Act (UDDA)**. The UDDA essentially leaves the old act's language intact, but adds "irreversible cessation of circulatory and respiratory functions" as an alternative standard for determining death. The term "reasonable medical standards" has also been changed to "acceptable medical standards."

The UDDA is intentionally not entitled the Definition of Death Act. This is because it does not contain an exclusive definition of death. It is concerned only with medical determination of biological death, and as such, complements existing and accepted definitions.

The act does not specify an exact means of diagnosis. To do so would guarantee its obsolescence as technology advances. Specifying criteria would inhibit advancement in technology, and also would inhibit the courts in determining the facts in each individual case and in recognizing acceptable standards as a dynamic, rather than static, concept.

The purpose of the UDDA is a minimum one. It recognizes cardiorespiratory and brain death in

accordance with the criteria the medical profession universally accepts. The act does not authorize euthanasia or "death with dignity," and does not enact any sort of living will. The current state of medical decision-making as it relates to death, termination of life, or other related issues remains unchanged. These issues are left to other law. The UDDA simply attempts to relieve one relatively small problem in law and medicine, before it becomes a larger one.

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Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

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Legislative Fact Sheet - Determination of Death Act

Act Determination of Death Act

Origin Completed by the Uniform Law Commissioners in 1980, in cooperation with the American Medical Association, the American Bar Association and the President's Commission on Medical Ethics.

Description UDDA provides a comprehensive basis for determining death in all situations. This is a technical act which merely defines death clinically, and does not deal with suicide, assisted suicide, and right to die.

Endorsements National Kidney Foundation, North American Transplant Coordinators Association, American Nephrology Nurses' Association

Enactments Alabama, Alaska, Arkansas, California, Colorado, Delaware, District of Columbia, Georgia, Idaho, Indiana, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, U.S. Virgin Islands, Utah, Vermont, West Virginia, Wisconsin, Wyoming

2014 Introductions

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UNIFORM DETERMINATION OF DEATH ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

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IN ALL THE STATES

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With Prefatory Note

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UNIFORM DETERMINATION OF DEATH ACT

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UNIFORM DETERMINATION OF DEATH ACT

PREFATORY NOTE

This Act provides comprehensive bases for determining death in all situations. It is based on a ten-year evolution of statutory language on this subject. The first statute passed in Kansas in 1970. In 1972, Professor Alexander Capron and Dr. Leon Kass refined the concept further in “A Statutory Definition of the Standards for Determining Human Death: An Appraisal and a Proposal,” 121 Pa. L. Rev. 87. In 1975, the Law and Medicine Committee for the American Bar Association (ABA) drafted a Model Definition of Death Act. In 1978, the National Conference of Commissioners on Uniform State Laws (NCCUSL) completed the Uniform Brain Death Act. It was based on the prior work of the ABA. In 1979, the American Medical Association (AMA) created its own Model Determination of Death statute. In the meantime, some twenty-five state legislatures adopted statutes based on one or another of the existing models.

The interest in these statutes arises from modern advances in life-saving technology. A person may be artificially supported for respiration and circulation after all brain functions cease irreversibly. The medical profession, also, has developed techniques for determining loss of brain functions while cardiorespiratory support is administered. At the same time, the common law definition of death cannot assure recognition of these techniques. The common law standard for determining death is the cessation of all vital functions, traditionally demonstrated by an “absence of spontaneous respiratory and cardiac functions.” There is, then, a potential disparity between current and accepted biomedical practice and the common law.

The proliferation of model acts and uniform acts, while indicating a legislative need, also may be confusing. All existing acts have the same principal goal – extension of the common law to include the new techniques for determination of death. With no essential disagreement on policy, the associations which have drafted statutes met to find common language. This Act contains that common language, and is the result of agreement between the ABA, AMA, and NCCUSL.

Part (1) codifies the existing common law basis for determining death – total failure of the cardiorespiratory system. Part (2) extends the common law to include the new procedures for determination of death based upon irreversible loss of all brain functions. The overwhelming majority of cases will continue to be determined according to Part (1). When artificial means of support preclude a determination under part (1), the Act recognizes that death can be determined by the alternative procedures.

Under part (2), the entire brain must cease to function, irreversibly. The “entire brain” includes the brain stem, as well as the neocortex. The concept of “entire brain” distinguishes determination of death under the Act from “neocortical death” or “persistent vegetative state.” These are not deemed valid medical or legal bases for determining death.

This Act also does not concern itself with living wills, death with dignity, euthanasia, rules on death certificates, maintaining life support beyond brain death in cases of pregnant women or of organ donors, and protection for the dead body. These subjects are left to other law.

This Act is silent on acceptable diagnostic tests and medical procedures. It sets the general legal standard for determining death, but not the medical criteria for doing so. The medical profession remains free to formulate acceptable medical practices and to utilize new biomedical knowledge, diagnostic tests, and equipment.

It is unnecessary for the Act to address specifically the liability of persons who make determinations. No person authorized by law to determine death, who makes such a determination in accordance with the Act, should, or will be, liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts or the acts of others based on that determination. No person who acts in good faith, in reliance on a determination of death, should, or will be, liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts. There is no need to deal with these issues in the text of this Act.

Time of death, also, is not specifically addressed. In those instances in which time of death affects legal rights, this Act states the bases for determining death. Time of death is a fact to be determined with all others in each individual case, and may be resolved, when in doubt, upon expert testimony before the appropriate court.

Finally, since this Act should apply to all situations, it should not be joined with the Uniform Anatomical Gift Act so that its application is limited to cases of organ donation.

UNIFORM DETERMINATION OF DEATH ACT

§ 1. [Determination of Death]. 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.

§ 2. [Uniformity of Construction and Application]. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

§ 3. [Short Title]. This Act may be cited as the Uniform Determination of Death Act.

Why States Should Adopt UDDA

Is it possible to be dead in one state, and not in another? Common sense says no. So does the medical profession. But legally, the answer is less clear. All states do not recognize the same legal standards for medical determinations of death. It is possible that an individual could be declared dead in one state and not in another even though, by medical standards, he or she is just as dead in both places.

This situation is more than paradoxical. Serious problems arise for hospitals, families, policymakers and the courts, as a too-typical incident in one state illustrates:

A child was brought into a hospital emergency room in a coma with severe head injuries. A respirator was attached to the child in an effort to sustain his life. But the child didn't recover, and the attending physician, applying highly exacting criteria, determined that the child's entire brain had stopped functioning and would never function again.

By universally accepted medical standards, the child was dead. But the doctor did not make a death determination and remove the respirator that artificially supported the child's heart and lungs. Why?

Under the common law, death is a matter of heart and lung function. Before respirators and reliable techniques for determining brain death, the rule was simple: a person whose heart and lungs stopped was dead. Dead in New York, in California, in Florida everywhere.

Today the heart and lungs can be maintained artificially, even when the brain has been proven completely and unequivocally dead. Accordingly, a growing number of states make "brain death" a valid standard for determining death. Without a clear statutory authorization to declare brain death, an attending physician often waits until a patient's heart fails to declare death even though death has, in fact, already occurred. That is exactly what happened in this case, with possibly unjust results:

Authorities and hospital medical personnel suspected child abuse. The persons responsible for the child's injuries faced a possible murder charge. An immediate autopsy was essential to establish death by criminal means. But the doctor suspended the death determination until, a few weeks later, the child's heart failed completely. By that time, because of the normal process of decay, essential physical evidence of criminal injury had disappeared. No prosecution for any crime was possible.

Clearly, such a case poses legal and medical dilemmas. But they are not insurmountable. The solution is the **Uniform Determination of Death (UDDA)**. The **UDDA** recognizes both the common law standard for determining death and accepted medical criteria for determining brain death. According to the act, a person who loses the total function of either the cardiorespiratory (basically, heart and lung) system, or of the entire brain, is legally dead.

ADVANTAGES OF THE UDDA

LESS CONFUSION: The UDDA gives physicians and hospitals the legal basis they need for making brain death determinations when a patient's heart and lungs are functioning under the artificial stimulus of a respirator. It eliminates unnecessary delays in declaring death, reducing needless confusion and expense for the patient's family.

UNIFORM STANDARDS: More than half of the states have enacted the UDDA, and uniform adoption elsewhere is essential. People don't necessarily decide where they will die. Their status as "alive" or "dead" should not depend on the capricious question of immediate locale.

ORGAN TRANSPLANTS: A state's adoption of the UDDA aids the medical profession in saving lives. Brain death determinations are important for organ transplantation, because once death occurs, viable organs begin to deteriorate. Brain death determinations make fresh organs more available to those who need them.

ACCURATE TIME-OF-DEATH DETERMINATIONS: An attending physician is required to establish the time of a patient's death. Time of death can have important legal consequences, and the UDDA will ensure that there is no uncertainty.

AVAILABILITY OF LIFE-SUPPORT APPARATUS: The UDDA will help assure the public that emergency equipment, such as respirators, will be available in crisis situations for patients whose lives can be saved.

FEWER COURT BATTLES: The UDDA discourages litigation over death determination questions. Litigation often follows confusion or disagreement over the standards to be used in a particular case. The UDDA makes the legal standards clear.

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