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The Nation

Close call in death ruling of potential organ donor

April 12, 2007 | Charles Ornstein and Tracy Weber | Times Staff Writers

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A man whose family agreed to donate his organs for transplant upon his death was wrongly declared brain-dead by two doctors at a Fresno hospital, records and interviews show.

Only after the man's 26-year-old daughter and a nurse became suspicious was a third doctor, a neurosurgeon, brought in. He determined that John Foster, 47, was not brain-dead, a condition that would have cleared the way for his organs to be removed, records of the Feb. 21 incident show.

"It kind of blew my mind," said the daughter, Melanie Sanchez, "like they were waiting like vultures, waiting for someone to die so they could scoop them up."

Foster, who had suffered a brain hemorrhage, died 11 days later at Community Regional Medical Center in Fresno. By then, Sanchez said, his organs were not viable for donation.

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The apparent close call is the second in recent months to raise questions about whether, amid a national organ shortage, doctors might be compromising the care of prospective donors. Law enforcement authorities in San Luis Obispo County are investigating whether a transplant surgeon tried to hasten the death of a 26-year-old patient last year by ordering high volumes of pain medication.

Contacted Wednesday, Community Medical Center's spokesman John Zelezny characterized Foster's case as "unusual" and said it "wouldn't surprise me" if the medical staff launched an internal review.

"This hasn't fully played out yet," he said. National experts said they believe that it is uncommon for a patient to be declared brain-dead incorrectly. But the ramifications are great, they said, both for the potential donors and for the integrity of the organ donation process.

"It is one of those things that is pretty spooky when it happens," said Dr. Michael A. Williams, chairman of the ethics committee of the American Academy of Neurology. "It's a rare, but high-stakes, error."

Said Dr. David J. Powner, a professor of neurosurgery and internal medicine at the University of Texas Health Science Center at Houston: "It only takes one or two of those situations to really sour the public and sour those upon whom we depend so much for donation."

Brain death means that a person has suffered a total and irreversible loss of brain function. The patient is comatose, cannot breathe without support and lacks reflexes. It often is determined by a mixture of physical examination and clinical tests, and meets the legal standard for death.

There are no national criteria for declaring brain death, but California law requires that two physicians independently verify the condition and that those physicians not have any role in procuring the patient's organs. Organs cannot be retrieved until a patient is declared legally dead.

Foster, an auto mechanic, collapsed Feb. 18 and was diagnosed with an inoperable Pontine bleed, a catastrophic hemorrhage in his brain stem with almost no hope of recovery.

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Hours later, hospital personnel alerted the California Transplant Donor Network -- the organ procurement group for much of Central and Northern California -- that he was a potential candidate for organ donation. Such notification is routine.

After Sanchez agreed to donate, she said, she got calls "at least twice a day" from the organ group, saying: "We have to get the body parts in a certain time. Your dad can be a life-saver to someone else. How is he doing today? Did he go up or down?"

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In the afternoon of Feb. 21, it seemed the end had arrived for Foster. First, one doctor declared him brain-dead, according to confidential internal records kept by the organ group and reviewed by The Times.

Then, a couple hours later, a second doctor, an emergency physician, shined a light on his pupils and agreed. With two such declarations, Foster was legally dead under California law.

Sanchez said she was concerned because the second doctor seemed in a rush.

3rd opinion sought

After the exam, Sanchez recalled, "he just came in and threw the paper on my dad's legs and said, 'We got two signatures. We're pulling the plug.' He said, 'That's hospital policy.' "

She said she demanded a third opinion.

About the same time, a nursing supervisor asked the family to leave the room and did her own examination, the organ group's records show. Foster displayed a strong gag and cough reflex and slightly moved his head, all inconsistent with brain death. She shared her concerns with physicians.

The third doctor, neurosurgeon Mukesh Misra, determined that Foster was not brain-dead and supported Sanchez's decision not to remove her father from life support, records show.

Misra declined to comment on his colleagues' actions, but said, "I know what I did was right."

Dr. Robert Grazier, the second physician who declared Foster brain-dead, acknowledged that he performed a brief examination. "I examined the patient and I confirmed the first doctor's findings that were recorded. That was about it," Grazier said.

"My involvement in it was pretty minimal," he said.

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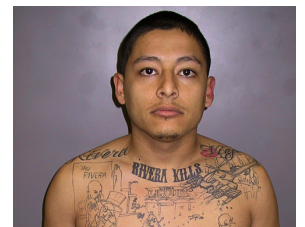
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