Legal Update 2015: Top 10 Legal Developments in Bioethics

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Futility
Brain death
PtDAs
> 16% ethics consults

Feb 2015

700 acute care clinicians
Physician may stop LST **without** consent for **any reason**, if review committee agrees
<table>
<thead>
<tr>
<th>Year 1</th>
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<td>1999</td>
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<td>2003</td>
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**June 2015**
H.B. 3074

artificially administered nutrition & hydration
Geraldine Siner

86
Advanced dementia
DNR without consent
& despite family protests
Pre-suit review panel determined hospital **breached** standard of care.

**Trial court**

Summary judgment to hospital.

Family cannot prove **causation**.

**Appellate court**

There is enough evidence on causation.

Family **can proceed** to trial.
Yale removed ventilator **without** consent & over objections
Takeaway
Brain Death

2 cases
Transferred to NJ
Sustained on organ support

Mar. 2015
Med Mal lawsuit
Seeking **future** medical expenses

Re-litigate status as alive

Collateral estoppel
Oct. 2015

May allege facts to establish alive

AAN criteria DDNC

Met in Dec. 2013

Not met now

“as you can see she is still alive and just as beautiful as ever.”
FAC due Nov. 9
Aden Hailu

AAN criteria DDNC
Met in April 2015
Wrong criteria

Variability of brain death determination guidelines in leading US neurologic institutions

ABSTRACT

Purpose: In accordance with the Uniform Determination of Death Act, guidelines for brain death determination are developed at an institutional scale, potentially leading to variability of practice. To evaluate the differences in brain death guidelines in major US hospitals with a strong presence of neurology, we compared the criteria documenting whether there was evidence of brain death as published by the American Academy of Neurology (AAN). Methods: We reviewed the guidelines for determination of death by brain death from 10 neuroscience (neurology) institutions in 2006. The guidelines were published as part of the guidelines for the care of seriously injured patients with intracranial hemorrhage. This section included the subsection on brain death. Results: There were 10 guidelines, all of which were reviewed and compared. Major differences were noted among the guidelines for the diagnosis of brain death. Some guidelines included the use of fMRI, while others did not. Conclusions: These differences exist in the guidelines for brain death determination across the United States. Discrepancies in these guidelines reflect the need for uniform guidelines for the care of critically ill patients in the United States. Adherence to the American Academy of Neurology guidelines is warranted. These guidelines reflect actual practice at each institution, and an institutional difference in practice which may have implications for the determination of death and initiation of transthoracic deactivation. Neurocrit Care 2006;9:228-230.
Oral argument
Nov. 3

Takeaway
Academic debate becoming a policy debate

More distrust
More injunctions
*e.g.* Lisa Avila

PtDA
Robust evidence shows PtDAs are highly effective
BUT

Hardly any clinical usage

Use law to incent PtDA use
ACA 3506

Certifying PtDAs
Drafted criteria
Certifying 1st set

Obstetric
Joint replacement
End of life

Why certification matters
Safe harbor
legal
immunity

Required for
2 million public employees

Takeaway