

When Is the Patient Dead?

Growing Challenges to the Status of Brain Death and Strategies for Clinical Ethics Consultants

Medical death
≠
legal death

U.S. law allows BD determination **ONLY** upon “irreversible cessation of all functions of the entire brain” (UDDA).

But dominant medical criteria require **LESS** (AAN, SCCM/AAP).

No BD
testing

More U.S. states prohibit clinicians from administering BD tests without **CONSENT**.

Clinicians may declare these patients dead **ONLY** on CP criteria.

No BD
declaration

In New Jersey, patients with religious objections may be declared dead **ONLY** on CP criteria.

Families in PA, CA, ONT, and more now claim a similar right to “opt-out” of BD.

Strategies

Use IPDAS compliant patient decision aids.

Do not seek consent for BD testing.

Allow family to observe BD testing.

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