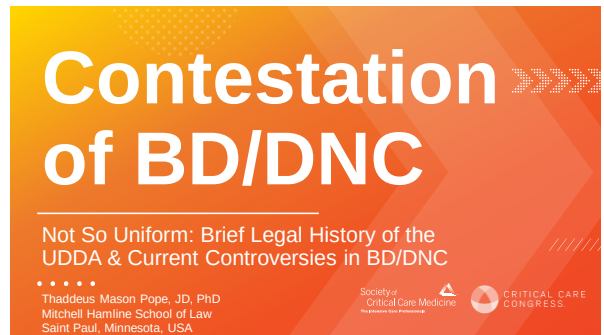




1



2

nothing
to disclose

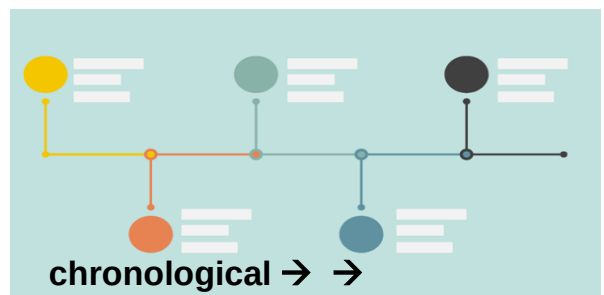
3

Legal Rights &
Responsibilities
of Critical Care
Clinicians re BD

4

7 key points
contestation

5

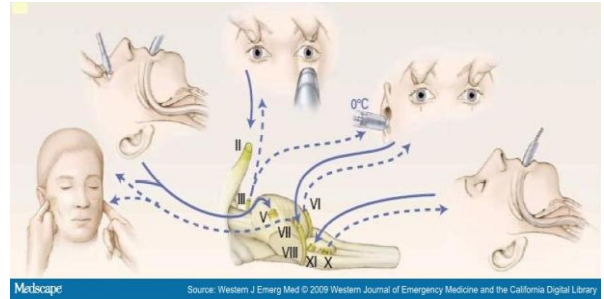


6

suspect Pt is BD/DNC

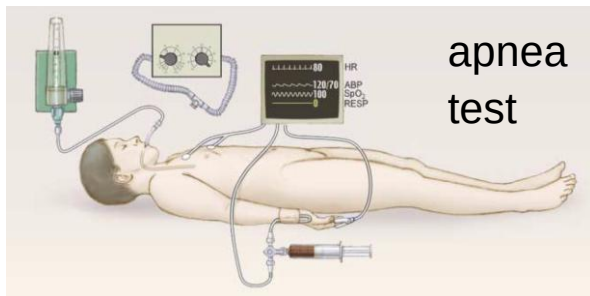
Source: Critical Care Medicine
CRITICAL CARE CONSENSUS

7



Source: Critical Care Medicine
CRITICAL CARE CONSENSUS

8



Source: Critical Care Medicine
CRITICAL CARE CONSENSUS

9

1 consent for BD testing

Source: Critical Care Medicine
CRITICAL CARE CONSENSUS

10



Source: Critical Care Medicine
CRITICAL CARE CONSENSUS

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Pediatric and Adult Brain Death/Death by Neurologic Criteria Consensus Guideline

Report of the AAN Guidelines Subcommittee, AAP, CNS, and SCCM

David M. Greer, MD, MA,* Matthew P. Kirschen, MD, PhD,* Ariane Lewis, MD,* Gary S. Gronseth, MD, Alexander Rae-Grant, MD, Stephen Ashwal, MD, Maya A. Babu, MD, MBA, David F. Bauer, MD, MPH, Lori Billingham, MD, MSc, Amanda Corey, MD, Sonia Pantap, MD, MS, Michael A. Rubin, MD, MA, Lori Shutter, MD, Courtney Takahashi, MD, Robert C. Tasker, MBBS, MD, Panayiotis Nicolaou Varelas, MD, PhD, Eelco Wijdicks, MD, PhD, Amy Bennett, JD, Scott R. Wessels, MPS, ELS, and John J. Halperin, MD

Correspondence
American Academy of
Neurology
guidelines@aan.com

Neurology® 2023;101:1-21. doi:10.1212/WNL.000000000000207740

Source: Critical Care Medicine
CRITICAL CARE CONSENSUS

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JAMA | Special Communication

Determination of Brain Death/Death by Neurologic Criteria The World Brain Death Project

David M. Greer, MD, MA; Sam D. Shemie, MD; Ariane Lewis, MD; Sylvia Torrance, BSc; Panayiotis Varelas, MD; Fernando D. Goldenberg, MD;

Society of Critical Care Medicine
CRITICAL CARE CONGRESS

13

no

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CRITICAL CARE CONGRESS

14



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CRITICAL CARE CONGRESS

15

mostly in **accord**

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CRITICAL CARE CONGRESS

16

notify family of testing

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CRITICAL CARE CONGRESS

17

but you do **not** need consent

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CRITICAL CARE CONGRESS

18



19



20



21



22



23

but

24

some states say
you need consent

no consent
→ no apnea test

25

26



27

28



29

30

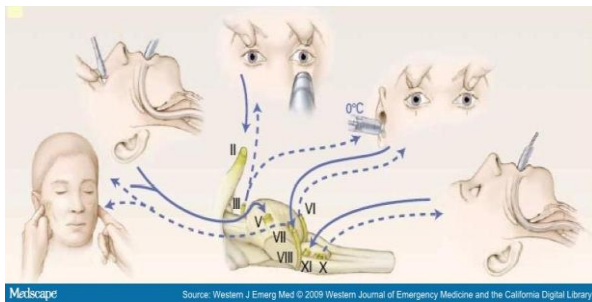




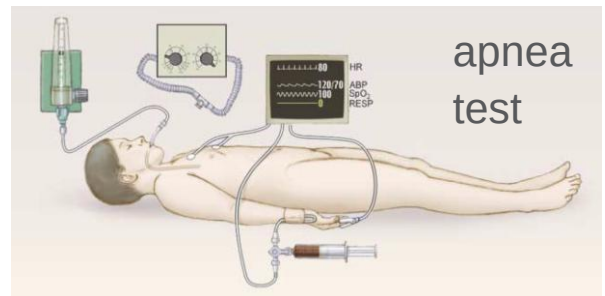
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33



34



mom
"no"

35

MONTANA NINTH JUDICIAL DISTRICT COURT, PONDERA COUNTY

IN THE MATTER OF THE
GUARDIANSHIP OF A.C.,

FILED

SEP 26 2016
BY JAMES L. HARRIS
CLERK OF DISTRICT COURT
PONDERA COUNTY, MONTANA
DEPUTY

a minor.

Cause No. DG-16-08

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

36

“no”

Society of Critical Care Medicine
CRITICAL CARE CONGRESS

37

“request ...
permitting ... testing
... **is denied**”

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CRITICAL CARE CONGRESS

38

“**mother has sole authority**
to make medical decisions
... **including** ... brain
functionality examinations”

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CRITICAL CARE CONGRESS

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SO...

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CRITICAL CARE CONGRESS

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CRITICAL CARE CONGRESS

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majority rule
consent **not** needed

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CRITICAL CARE CONGRESS

42

but

minority rule
consent **is** required

43

44

that's

1 point of
contestation

do you need
consent
for BD testing

45

46

2 **accommodation**
for BD testing



47

48

Brain death, the determination of brain and member guidance for brain death accommodation requests

AAN position statement

James A. Russell, DO, MS, Leon G. Epstein, MD, David M. Greer, MD, MA, Matthew Kirschen, MD, PhD,

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CRITICAL CARE CONGRESS

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“moral authority
... to perform ...
without informed
consent”

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CRITICAL CARE CONGRESS

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“professional
responsibility”

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CRITICAL CARE CONGRESS

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CRITICAL CARE CONGRESS

52

not so
demanding

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CRITICAL CARE CONGRESS

53

generally, **may**
delay testing

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CRITICAL CARE CONGRESS

54

but

55



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Supreme Court of the State of New York
County of Kings

Index Number 1780/2017

Part 91

In the Matter of the Application of

SARAH NAKAR,

Petitioner,
against

NEW YORK PRESBYTERIAN HOSPITAL, COLUMBIA
UNIVERSITY IRVING MEDICAL CENTER, AND MILSTEIN
PAVILION MEDICAL INTENSIVE CARE UNIT,

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers

Numbered	
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Order to Show Cause and Affidavits Annexed.....	<u> </u>
Answering Affidavits.....	<u> </u>
Replying Affidavits.....	<u> </u>
Exhibits.....	<u> </u>
Other.....	<u> </u>

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must delay
testing - sometimes

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59

no other state
addresses
accommodation
before BD/DNC

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CRITICAL CARE CONGRESS

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that's

2 point of
contestation

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CRITICAL CARE CONGRESS

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must you provide
accommodation
for BD testing

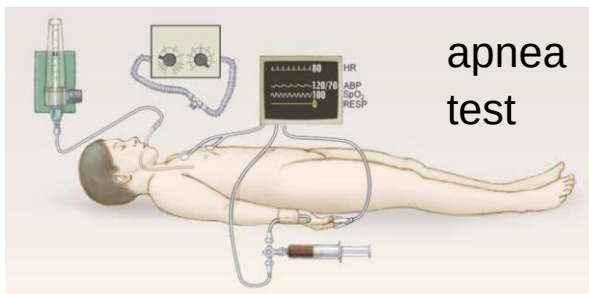
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CRITICAL CARE CONGRESS

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CRITICAL CARE CONGRESS

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CRITICAL CARE CONGRESS

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patient **is**
BD/DNC

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CRITICAL CARE CONGRESS

66

3 **withdraw** OST
after BD/DNC

yes

67

68

Annals of Internal Medicine

American College of Physicians Ethics Manual
Sixth Edition

Lois Snyder, JD, for the American College of Physicians Ethics, Professionalism, and Human Rights Committee*

“after ... brain
dead ... medical
support should
be **discontinued**”

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Guidelines for Physicians: Forgoing Life-Sustaining
Treatment for Adult Patients

Joint Committee on Biomedical Ethics
of the
Los Angeles County Medical Association
and
Los Angeles County Bar Association

Approved by the Los Angeles County Medical Association February 15, 2006
Approved by the Los Angeles County Bar Association March 22, 2006

“all medical
interventions
should be
withdrawn”

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Society of Critical Care Medicine CRITICAL CARE CONGRESS 73

73

100% in
accord

Society of Critical Care Medicine CRITICAL CARE CONGRESS 74

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consent
not required

Society of Critical Care Medicine CRITICAL CARE CONGRESS 75

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dead → not a patient

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not a patient → no Tx duty

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bright line rule



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JCEM
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79

that's

3 point of
contestation

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JCEM
80

80

may you
withdraw OST
after BD/DNC

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JCEM
81

81

yes

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JCEM
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82

parents have
limited
post-BD rights

Society of Critical Care Medicine
JCEM
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83

but

Society of Critical Care Medicine
JCEM
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84

2 exceptions

4 exempt from BD/DNC

85

86



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GENERAL STATUTES OF NEW JERSEY 1895	GENERAL STATUTES OF NEW JERSEY 1895	GENERAL STATUTES OF NEW JERSEY 1895	GENERAL STATUTES OF NEW JERSEY 1895	GENERAL STATUTES OF NEW JERSEY 1895
1	2	1	2	3
TABLE OF STATUTES from ABATEMENT IN DISTRICT COURTS PAGES 1 TO 1266	DIVORCE IN RAILROAD & CANALS PAGES 1267 TO 2719	TABLE OF STATUTES from ABATEMENT IN DISTRICT COURTS PAGES 1 TO 1266	DIVORCE IN RAILROAD & CANALS PAGES 1267 TO 2719	REFORM SCHOOLS IN WHEELS PAGES 2720 TO END INDEX

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“death ... **shall not**
be declared ...
violate ... religious
beliefs ...”

you may **not**
withdraw OST
because BD

89

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Pt may
satisfy
BD criteria

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PRACTICE GUIDELINES
91

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but

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PRACTICE GUIDELINES
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may **not**
declare /
pronounce

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PRACTICE GUIDELINES
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93

until meet
CP criteria

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PRACTICE GUIDELINES
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for **some** patients

BD **≠** death

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PRACTICE GUIDELINES
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2020s

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PRACTICE GUIDELINES
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Spotlight Critical Care Medicine CRITICAL CARE CONGRESS 97

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Tex. H.B. 4329

Spotlight Critical Care Medicine CRITICAL CARE CONGRESS 98

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**Nick
Torres**

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**Israel
Stinson**

Spotlight Critical Care Medicine CRITICAL CARE CONGRESS 100

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all alone

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no duty to
continue OST
indefinitely -
except in NJ

103

104

that's

4 point of
contestation

is Pt **exempt**
from BD/DNC

105

106

5 **accommodation**
before withdraw

accommodation
≠
exemption

107

108

in **NJ** Pts with
religious objections
are **not dead**

SO...

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CRITICAL CARE CONGRESS

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CRITICAL CARE CONGRESS

indefinite duty
continue OST
- until DCC

in **other** states,
Pts who meet
BD/DNC are **dead**

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CRITICAL CARE CONGRESS

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CRITICAL CARE CONGRESS

but

often **temporary**
duty to continue
OST **after** BD/DNC

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CRITICAL CARE CONGRESS

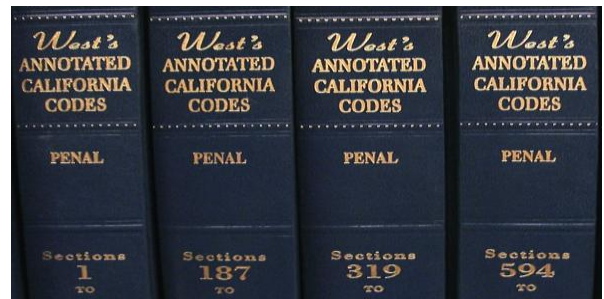
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CRITICAL CARE CONGRESS



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CRITICAL CARE CONGRESS

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CRITICAL CARE CONGRESS

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He must offer
**reasonable
accommodation**

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CRITICAL CARE CONGRESS

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what

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CRITICAL CARE CONGRESS

118

“continue **only**
previously ordered
cardiopulmonary
support”

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CRITICAL CARE CONGRESS

119

“**no** other medical
intervention is
required”

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CRITICAL CARE CONGRESS

120

how long

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CRITICAL CARE CONGRESS

121

“reasonably brief period”

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CRITICAL CARE CONGRESS

122

“amount of time
... to **gather**
family ... at the
patient's bedside”

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CRITICAL CARE CONGRESS

123

law **defers**
& delegates
to hospitals

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CRITICAL CARE CONGRESS

124

“hospital **shall adopt a policy** for providing
... with a reasonably
brief period”

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CRITICAL CARE CONGRESS

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<24h

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CRITICAL CARE CONGRESS

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128

other
states

129

no statute
or regulation

130

but

131

common custom
& practice

132

standard of care

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CRITICAL CARE CONGRESS

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CRITICAL CARE CONGRESS

134

duty to continue
OST reasonably
brief time (~24h)

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CRITICAL CARE CONGRESS

135

you **may** provide
longer period

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CRITICAL CARE CONGRESS

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that's

5 point of
contestation

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CRITICAL CARE CONGRESS

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must you offer
accommodation
after BD/DNC

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CRITICAL CARE CONGRESS

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CRITICAL CARE CONGRESS

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4 points of contestation

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CRITICAL CARE CONGRESS

141

before
BD/DNC

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CRITICAL CARE CONGRESS 142

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do you need
consent to test
must you offer
accommodation?

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CRITICAL CARE CONGRESS 143

143

after
BD/DNC

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CRITICAL CARE CONGRESS 144

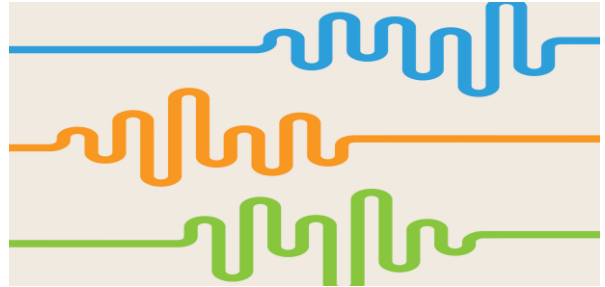
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must you honor
religious **exemption**

must you offer
accommodation

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JCEM
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JCEM
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JCEM
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JCEM
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2 **more** points
contestation

Society of Critical Care Medicine
JCEM
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6 accepted
medical
standards

Society of Critical Care Medicine
JCEM
150

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UDDA

Society of Critical Care Medicine
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law on BD in almost all U.S. jurisdictions

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CRITICAL CARE CONGRESS

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determine BD/DNC in accordance

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CRITICAL CARE CONGRESS

153

“**accepted** medical standards”

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CRITICAL CARE CONGRESS

154

but

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CRITICAL CARE CONGRESS

155

which medical standards are accepted?

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CRITICAL CARE CONGRESS

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Research

Original Investigation

Variability of Brain Death Policies in the United States

David M. Greer, MD, MA; Hilary H. Wang, BA; Jennifer D. Robinson, APRN; Panayiotis N. Varelas, MD, PhD;
Galen V. Henderson, MD; Eelco F. M. Wijdicks, MD, PhD

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Improving uniformity in brain death determination policies over time

OPEN

Hilary H. Wang, MD

ABSTRACT

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CRITICAL CARE CONGRESS

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Aden Hailu



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AAN guidelines are **not** AMS

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CRITICAL CARE CONGRESS

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CRITICAL CARE CONGRESS

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AAN
AAP

164

use **these**
standards when
determine BD



165

166



167



168

only **3** states

169

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AMS in **other**
53 jurisdictions

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?

171

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that's

6 point of
contestation

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are you using the
right standards
to determine BD

173

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7 medical
legal **gap**

174

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UDDA

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irreversible cessation
all functions
entire brain

177

but

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SPECIAL ARTICLE Level of Recommendation

Pediatric and Adult Brain Death/Death by Neurologic Criteria Consensus Guideline

Report of the AAN Guidelines Subcommittee, AAP, CNS, and SCCM

David M. Greer, MD, MA,* Matthew P. Kirschen, MD, PhD,* Ariane Lewis, MD,* Gary S. Gronseth, MD, Alexander Rae-Grant, MD, Stephen Ashwal, MD, Maya A. Babu, MD, MBA, David F. Bauer, MD, MPH, Lori Billingham, MD, MSc, Amanda Corey, MD, Sonia Partap, MD, MS, Michael A. Rubin, MD, MA, Lori Shutter, MD, Courtney Takahashi, MD, Robert C. Tasker, MBBS, MD, Panayiotis Nicolaou Varelas, MD, PhD, Eelco Wijdicks, MD, PhD, Amy Bennett, JD, Scott R. Wessels, MPS, ELS, and John J. Halperin, MD

Neurology® 2023;101:1112-1132. doi:10.1212/WNL.000000000000207740

Correspondence
 American Academy of
 Neurology
 guidelines@aan.com

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**“neuroendocrine
 function can persist
 ... not inconsistent
 with the whole brain
 standard of death”**

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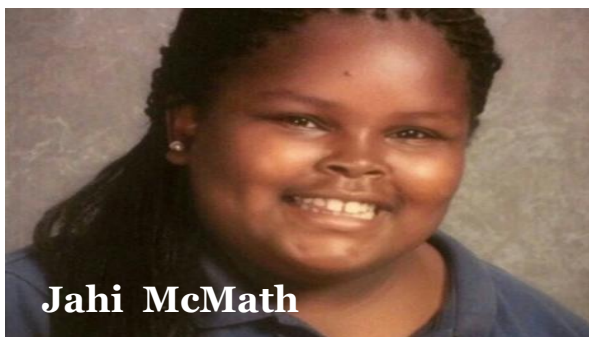
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~~irreversible cessation
all functions
entire brain~~

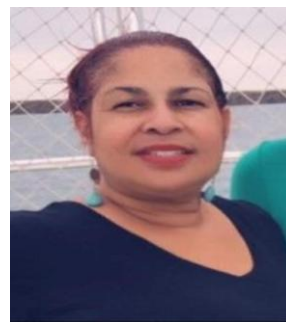
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Beverly
Whitehead

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whole brain death

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partial brain death

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that's

7

point of
contestation

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mismatch

legal standards
medical criteria

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conclusion

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CRITICAL CARE CONGRESS

192

7 points of
contestation

193

2 groups

194

group **1**

195



196

before
BD/DNC

197

omit testing
delay testing

198

after
BD/DNC

199

indefinite accom
temp accom

200

group **2**

201



202

AAN ≠ UDDA
≠ AMS

203

AAN ≠ UDDA
≠ “all” “entire”

204

in **response** to
these 7 points

205

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CRITICAL CARE CONGRESS

law offers
no answers

206

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CRITICAL CARE CONGRESS

or

207

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CRITICAL CARE CONGRESS

law offers
inconsistent
answers

208

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1979

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UDDA

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SO...

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2020 - 2023

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RUDDA

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FAIL

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218

public
mistrust



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Monday, February 24, 2025

9:00 – 9:40am

Valencia Ballroom/415A Foyer

Brain Death Conflicts: Current and Persistent
Legal and Ethical Controversies Regarding
Death by Neurologic Criteria

Society
Critical Care Medicine
Ethical Care

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Thaddeus Mason Pope, JD, PhD, HEC-C

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Critical Care Medicine
Ethical Care

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