

**Legal Update 2020**  
**Top 10 Bioethics**  
**Legal Developments**

Thaddeus Mason Pope, JD, PhD, HEC-C  
ASBH 2020 (October 15, 2020)

1

**4** updates

2

Medical Futility  
Brain Death  
Advance Directives  
CBO

3

**Medical**  
**Futility**

4

Trend **limiting**  
clinician authority

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**1**

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TADA  
(1999)

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1. Clinicians may withdraw LST **without** consent
2. For **any** reason
3. If hospital committee **agrees**

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2 new cases

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1

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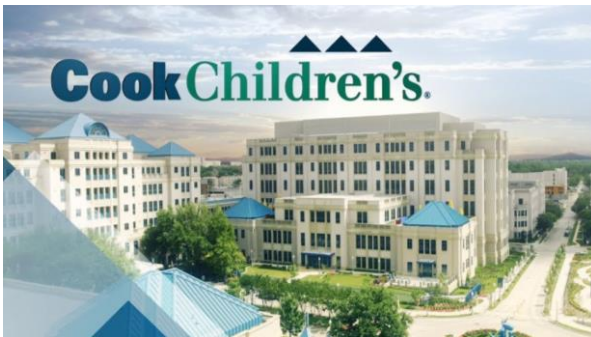
14

Did **not** use TADA  
No review committee  
No 10-day transfer

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2

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“treatment keeping her  
alive causes her **pain** ...  
simply **cruel** ... serves no  
medical purpose”

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Plan to withdraw  
over mom’s  
objections

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October  
2019

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23

**un**constitutional

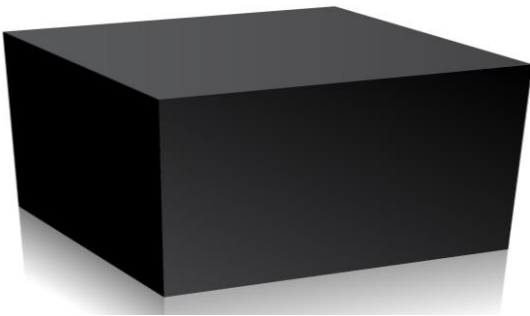
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Procedural  
due process

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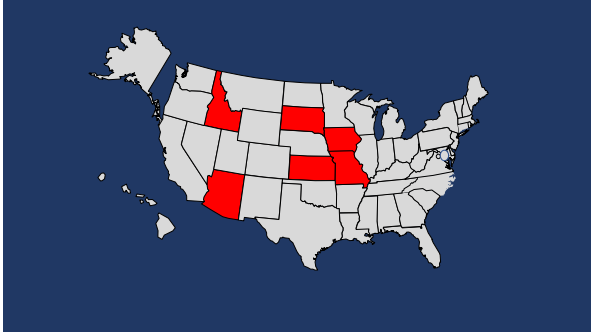
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**narrowing**  
clinician  
authority

29

Simon's  
Laws

30



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**Inform** parents of plan to write DNR order  
*or*  
**Prohibit** write DNR order over parental objection

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June 2020

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"A court ... **shall not have the authority** to require ... withdrawal of life-sustaining procedures from a minor ... over ... objection ... parent."

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**Not**  
in Iowa

39

One last  
example legal  
**limits** on futility

40



41



42



62187

Federal Register  
Vol. 85, No. 192  
Friday, October 2, 2020

### Presidential Documents

Title 3— Executive Order 13952 of September 25, 2020  
The President Protecting Vulnerable Newborn and Infant Children

43

Extremely **premature** infants

Infants born with **disabilities**

44

Directs DHHS to enforce  
**EMTALA**  
Disability laws

45

**Baby K**  
still good law

46

**Brain  
Death**

47

**UDDA**

48



# All 56 US jurisdictions

49

individual ... **dead** ... **either**

(1) irreversible cessation of circulatory and respiratory functions, **or**

(2) irreversible cessation of all functions of the entire brain

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# BUT

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# No change in the law

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4 questions

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Do clinicians need **consent** to do brain death tests?

56

What are “accepted medical **standards**” for determining BD?

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What duties when **religious** objections?

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Do prevailing guidelines measure what UDDA requires

59

So...

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Uniform Law Commission

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**R**UDDA

62

# Step 1

Study  
committee

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July 2021

64

# Step 2

Drafting  
committee

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July 2022

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# Step 3

State legislatures

67

That's issue 2  
brain death

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# Advance directives

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EVERY CLOUD HAS A SILVER LINING

ProverbQuotes.com

71



**cake**  
end-of-life planning

72



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Research Letter | Geriatrics

### Completion of Advance Directives and Documented Care Preferences During the Coronavirus Disease 2019 (COVID-19) Pandemic

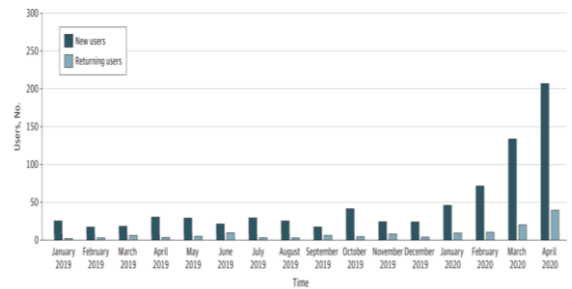
Catherine L. Auriemma, MD; Scott D. Halpern, MD, PhD; Jeremy M. Asch, BA; Matthew Van Der Tuyn, MA; David A. Asch, MD, MBA

74



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Figure. Advance Directive Completion by Month Among New and Returning Users of the Online Platform



76



J Med Internet Res. 2020 Aug; 22(8): e21385.  
Published online 2020 Aug 11. doi: 10.2196/21385; 10.2196/21385

PMCID: PMC7423389  
PMID: 32716900

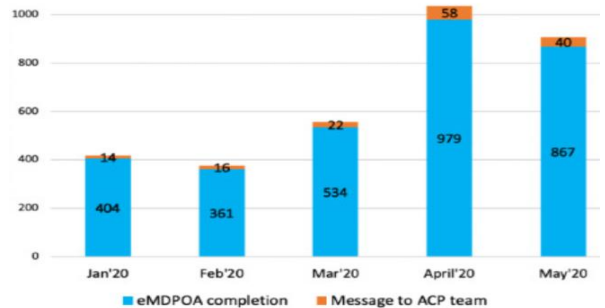
### Advance Care Planning Among Users of a Patient Portal During the COVID-19 Pandemic: Retrospective Observational Study

Monitoring Editor: Gunther Eysenbach

Reviewed by Emmanuelle Belanger and Prasad Padala

Jennifer D Portz, PhD,<sup>1†</sup> Adreanne Brungardt, MM, MT-BC,<sup>2</sup> Prajakta Shanbhag, MPH,<sup>2</sup> Elizabeth W Staton, MSTC,<sup>3</sup> Seuil Rose-Brill, MD,<sup>4</sup>

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# Law

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AUTHENTICATED  
BY GOVERNMENT  
MANAGEMENT  
CFO  
31690 Federal Register / Vol. 85, No. 102 / Wednesday, May 27, 2020 /

**DEPARTMENT OF VETERANS  
AFFAIRS**  
**38 CFR Part 17**  
**RIN 2900-AQ97**  
**Informed Consent and Advance  
Directives**

82

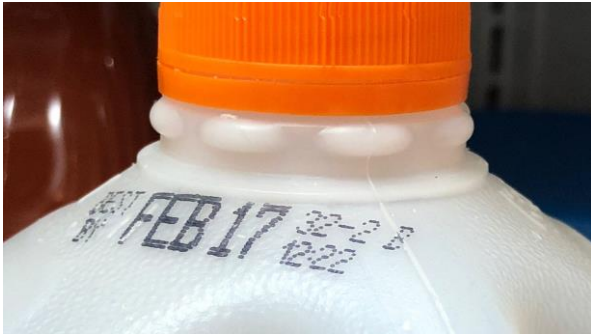
# BUT

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Permit clinicians to **refuse** what they otherwise must do

89

**Entities**

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# MAID

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Table. Hospital Participation in the EOLOA

JAMA Internal Medicine July 2019 Volume 179 Number 7 985

Characteristic	Permits EOLOA, No. (%) (n = 106)	Does Not Permit EOLOA, No. (%) (n = 164)
Religious affiliation	2 (2)	70 (43)
Teaching hospital	22 (21)	6 (4)

92

## What about individual physicians?

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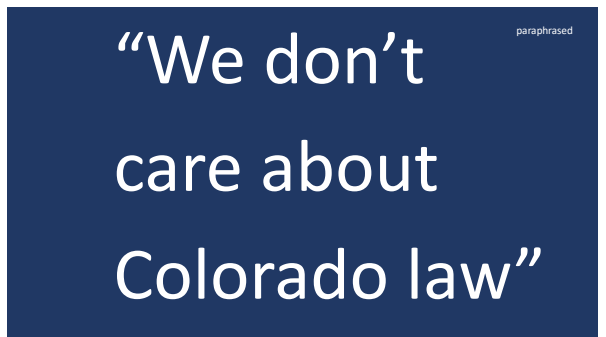
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101



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# First Amendment

Religious autonomy  
 Free exercise  
 Expressive association

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DATE FILED: September 30, 2020-12 CASE NUMBER: 2019CV31980	
DISTRICT COURT, ARAPAHOE COUNTY, COLORADO	
Court Address: 7325 South Potomac Street Centennial, Colorado 80112	
Plaintiff: <b>BARBARA MORRIS, M.D.</b>	Case Numbers:
vs.	2019 CV 31980
Defendants: <b>CENTURA HEALTH CORPORATION; and                  CATHOLIC HEALTH INITIATIVES COLORADO</b>	Div.: 21

ORDER – RE: Defendants' Motion for Judgment on the Pleadings

104

First Amendment cannot be used as a basis for an exception to a **general law**, no matter how great the burden on religion

105



106

**In the Supreme Court of the United States**

SHARONELL FULTON, ET AL.,  
*Petitioners,*

*v.*

CITY OF PHILADELPHIA, ET AL.,  
*Respondents.*

**Nov. 4, 2020**

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Medical Futility  
 Brain Death  
 Advance Directives  
 CBO

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