AMERICAN MEDICAL ASSOCIATION ORGANIZED MEDICAL STAFF SECTION

Resolution: 2
(A-25)

Introduced by: Matthew D. Gold, MD

Subject: Standardizing Brain Death Policies

Referred to: OMSS Reference Committee
(xxxx, MD, Chair)

Whereas, the core purpose of the AMA is to “promote the science and art of medicine and the betterment of public health." AMA policy provides the conceptual foundation and organizational framework for the activities that the Association undertakes to achieve its core purpose; and

Whereas, end-of-life issues are integral to the spectrum of healthcare delivery; and

Whereas, our American Medical Association currently has no established policy on standardized death determination; and

Whereas, before 1980, “the disparity between the common law determination of death and accepted medical practice pointed to the need for a uniform law. One goal of the Uniform Determination of Death Act was to close this disparity. The Uniform Law Commission (ULC) joined forces with the American Bar Association (ABA), the American Medical Association (AMA), and a Presidential Commission to provide a consistent basis for determining death. The President’s Commission was the Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. The ABA and the AMA approved the UDDA shortly after publication. Health care is generally a matter of state law. The Act intended to provide a standard for states to emulate”[1]; and

Whereas, the Uniform Determination of Death Act (UDDA) states that:

> “1. [Determination of Death]. An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.
> 2. [Uniformity of Construction and Application]. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.”[2]

; and

Whereas, the current status of determination of brain death/death by neurologic criteria (BD/DNC), by the Uniform Determination of Death Act is that such determination must be made in accordance with accepted medical standards, but the UDDA does not delineate those standards[3]; and

Whereas, today, there is variability in hospital policies about, and the practice of, BD/DNC determination within the United States which is in part due to the fact that there is no consensus amongst states as to a uniform standard[4]; and

Whereas, the accepted medical standards for BD/DNC determination "are only identified statutorily in Nevada and New Jersey and on a state health organization website in New York. Lack of guidance about the accepted medical standards for BD/DNC determination contributes to variability across hospital BD/DNC determination policies, leading to medical, ethical and legal challenges"[5]; and

Whereas, as an example of states' handling of this issue, Massachusetts law states, "In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply: (1) Death occurs when an individual has sustained either (i) irreversible cessation of circulatory and respiratory functions or (ii) irreversible cessation of all functions of the entire brain, including the brain stem. A determination of death shall be made in accordance with accepted medical standards" but does not define what those medical standards are[6]; and

Whereas, the *New England Journal of Medicine* published an article on the history of BD/DNC without any more guidance or information[7]; and

Whereas, the Joint Commission indicated this is not within their purview, and deferred to the Centers for Medicare and Medicaid Services, who met to learn about this issue, but have taken no further action[8]; and

Whereas, the American Academy of Neurology (AAN), American Academy of Pediatrics (AAP), Child Neurology Society (CNS), and Society of Critical Care Medicine (SCCM) are the only national or international medical societies who have taken responsibility for writing guidelines on the determination of death by neurologic criteria in the United States since the 1980s[3, 9-12]; and

Whereas, a recent published update of BD/DNC consensus guidelines, "Pediatric and Adult Brain Death / Death by Neurologic Criteria Consensus Guideline; Report of the AAN Guidelines Subcommittee" has been a major step in codifying the contemporary state of determination in the United States, though additional information and changes in technology could invite future refinement of guidelines[13]; and

Whereas, the UDDA "was originally written in collaboration with the American Medical Association but they were not involved with the drafting committee; as the principal federal and state advocate on key health issues that impact physicians, patients, and healthcare institutions, they would be an ideal champion for revisions"[14]; and

Whereas, the American Medical Association is the best single organization to bring about a national consensus inclusive of medical and legal stakeholders of death determination; therefore be it

RESOLVED, that our American Medical Association lead an effort in collaboration with appropriate stakeholders including medical, legal, and patient representations to identify 'accepted medical standards,' as required by the Uniform Determination of Death Act (UDDA) to determine brain death/death by neurologic criteria (BD/DNC), that can be followed throughout the United States (Directive to Take Action); and be it further

RESOLVED, that our AMA advocate to the Centers for Medicare and Medicaid Services (CMS) and other relevant federal agencies to designate the most recent brain death/death by neurologic criteria (BD/DNC) consensus practice guidelines published in 2023 by the American Academy of Neurology, American Academy of Pediatrics, Child Neurology Society, and Society of Critical Care Medicine and its successor consensus guidelines as the accepted medical

standard for the determination of death by neurologic criteria and thereby establish a national standard (Directive to Take Action); and be it further

RESOLVED, that our AMA acknowledges the most recent brain death/death by neurologic criteria (BD/DNC) consensus practice guidelines published in 2023 by the American Academy of Neurology, American Academy of Pediatrics, Child Neurology Society, and Society of Critical Care Medicine and its successor consensus guidelines as the accepted medical standard for the determination of death by neurologic criteria (New HOD Policy).

Fiscal Note: (Assigned by HOD)

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REFERENCES

1. McCall, M. (2023, June 7). *What is the Uniform Determination of Death Act (UDDA)?* FindLaw. https://www.findlaw.com/healthcare/patient-rights/what-is-the-uniform-declaration-of-death-act-or-udda.html
2. Uniform Law Commission. (2021, November 17). *Determination of Death Act*. Uniform Law Commission. https://www.uniformlaws.org/viewdocument/final-act-49?CommunityKey=155faf5d-03c2-4027-99ba-ee4c99019d6c&tab=librarydocuments
3. Greer, D.M et al. (2023). Pediatric and adult brain death/death by neurologic criteria consensus guideline: Report of the AAN Guidelines Subcommittee, AAP, CNS, and SCCM. *Neurology*. 101 (24). 1112-1132.
4. Landau, D., Kirschen, M.P., Greer, D. et al. (2025). States do not delineate the “accepted medical standards” for brain death/death by neurologic criteria determination. *Neurocritical Care*. https://link.springer.com/article/10.1007/s12028-024-02209-6
5. *Ibid*
6. Evidence of Death or Status, 190B § 1-107, https://malegislature.gov/Laws/GeneralLaws/PartII/TitleII/Chapter190B/ArticleI/Section1-107
7. Wijdicks, E.F.M. (2001). The diagnosis of brain death. *The New England Journal of Medicine*. 344 (16): 1215-1221.
8. Landau, D., Kirschen, M.P., Greer, D. et al. (2025). States do not delineate the "accepted medical standards" for brain death/death by neurologic criteria determination. Neurocritical Care. https://link.springer.com/article/10.1007/s12028-024-02209-6
9. Merkin Academy of Pediatrics Task Force on Brain Death in Children. (1987). Guidelines for the determination of brain death in children. *Pediatrics*. 80 (2): 298-300.
10. Wijdicks, E.F.M. (1995). Determining brain death in adults. *Neurology*. 45: 1003-1011.
11. Wijdicks, E.F.M. et al. (2010). Evidence-based guideline update: Determining brain death in adults. *Neurology*. 74: 1911-1918.
12. Nakagawa, T.A. et al. (2012). Guidelines for the determination of brain death in infants and children: An update of the 1987 task for recommendations-executive summary. *Annals of Neurology*. 71 (4): 573-85.
13. Greer, D.M et al. (2023). Pediatric and adult brain death/death by neurologic criteria consensus guideline: Report of the AAN Guidelines Subcommittee, AAP, CNS, and SCCM. Neurology. 101 (24). 1112-1132.
14. Landau, D., Kirschen, M.P., Greer, D. et al. (2025). States do not delineate the "accepted medical standards" for brain death/death by neurologic criteria determination. Neurocritical Care. https://link.springer.com/article/10.1007/s12028-024-02209-6

RELEVANT AMA POLICY

6.1.6 Anencephalic Newborns as Organ Donors

Permitting parents of an anencephalic newborn to donate their child's organs has been proposed as a way to increase the organ supply for pediatric transplantation.
However, organ donation in these circumstances also raises concerns, particularly about the accuracy of diagnosis and the potential implications for other vulnerable individuals who lack decision-making capacity and are not able to participate in decisions to donate their organs,
although anencephalic newborns are thought to be unique among other brain- damaged beings because they lack past consciousness and have no potential for future consciousness.
In the context of prospective organ donation from an anencephalic newborn, physicians may ethically:
(a) Provide ventilator assistance and other medical therapies that are necessary to
sustain organ perfusion and viability until such time as a determination of death can be made in accordance with accepted medical standards.
(b) Retrieve and transplant the organs of an anencephalic newborn only after such determination of death, and in accordance with ethics guidance for transplantation and for medical decisions for minors.
AMA Principles of Medical Ethics: I,III,V
The Opinions in this chapter are offered as ethics guidance for physicians and are not intended to establish standards of clinical practice or rules of law.

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