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February 15, 2023

The Uniform Law Commission
111 North Wabash Avenue, Suite 1010
Chicago, IL 60602

To: Members of the Uniform Law Commission

Re: Potential revision of the Uniform Determination of Death Act (UDDA)

For decades, the Uniform Determination of Death Act has served as the guiding clinical framework for establishing that an individual has died. In addition to the determination of death by the irreversible cessation of circulatory and respiratory functions, the statute affirms that death can be established by neurologic criteria.

Current guidelines hold that, in the face of a devastating and irreversible brain injury, death by neurologic criteria may be diagnosed when there is loss of all functions of the entire brain, including the brainstem, as manifested by irreversible coma, absent brainstem reflexes, and apnea. Since its inception more than fifty years ago, however, the UDDA has lacked the evidence-based scientific foundations that normally are requisite for clinical guidelines. The American Academy of Neurology (AAN) itself, which has published and promulgated these guidelines, acknowledges severe limitations in the current evidence base.

There is insufficient evidence to determine the minimally acceptable observation period to ensure that neurologic functions have ceased irreversibly... there is insufficient evidence to determine the comparative safety of techniques used for apnea testing. There is insufficient evidence to determine if newer ancillary tests accurately confirm the cessation of function of the entire brain.[1]

Existing guidelines do not, in fact, assay all functions of the brain, specifically omitting functions of cerebro-somatic homeostatic control. Additionally, the tests to confirm apnea are of no benefit to the patient being tested and pose a risk to the patient of actually precipitating brain death and hemodynamic instability; yet, there is no requirement for informed consent by the surrogate decision makers.[2]

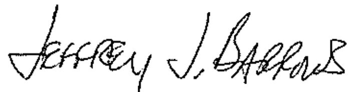
Because of the inconsistencies between the UDDA's definition of death by neurologic criteria and the medical standards available to meet the UDDA's criteria, a recommendation has been made that the UDDA be revised. The proposal that has received the most attention is that advocated by Lewis, Bonnie, and Pope. Their revisions include the acceptance of the 2010 AAN practice guidelines and the 2011 Society of Critical Care Medicine, American Academy of Pediatrics, and Child Neurology Society standards for determining brain death, that assessment of cerebro-somatic homeostatic control functions of the brain be excluded from the revised criteria, and that formal clinical testing for the presence of brain death may proceed without a requirement for informed consent.[3]

The undersigned, representing the administration of the Christian Medical & Dental Associations (CMDA), agree that the current guidelines for determining brain death are inadequate and need revision. However, we respectfully voice strong opposition to the proposed revisions articulated by Lewis, Bonnie, and Pope. Rather than codify non-evidence-based standards as a matter of expediency, we advocate instead for the safety and protection of patients who have not yet died, and for the integrity and beneficence of the medical profession in its covenantal relationship with these patients and their families.

The revised guidelines should maintain the current definition of brain death that requires the loss of all functions of the entire brain by addressing all pertinent brain functions, including the cerebro-somatic integrative functions. Because apnea testing carries significant risk and provides no benefit to the patient, such testing should require informed consent in the interests of professional transparency and respect for patient and family autonomy.

Our opposition to the proposal by Lewis, Bonnie, and Pope upholds the principles of autonomy, beneficence and non-maleficence, and sustains the covenantal relationship between physician and patient. Further, our position strengthens and safeguards our profession's attentiveness to those whose lives may depend on organ transplantation by reinforcing the integrity of that very relationship.

Signed,



Jeffrey J. Barrows, DO, MA
Senior Vice President of Bioethics and Public Policy
Christian Medical & Dental Associations

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[1] E. F. Wijdicks et al., "Evidence-Based Guideline Update: Determining Brain Death in Adults: Report of the Quality Standards Subcommittee of the American Academy of Neurology," *Neurology* 74, no. 23 (July 2010): pp. 1911-1918, https://doi.org/10.1212/wnl.0b013e3181e242a8.
[2] D Alan Shewmon, "Statement in Support of Revising the Uniform Determination of Death Act and in Opposition to a Proposed Revision," *The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine*, 2021, https://doi.org/10.1093/jmp/jhab014.
[3] Ariane Lewis, Richard J. Bonnie, and Thaddeus Pope, "It's Time to Revise the Uniform Determination of Death Act," *Annals of Internal Medicine* 172, no. 2 (2019): pp. 143-144, https://doi.org/10.7326/m19-2731.