Legal Update 2015: Top 10 Legal Developments in Bioethics

ASBH Annual Meeting, Houston, TX
October 22, 2015

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Hamline University Health Law Institute

Futility

Brain death

PtDAs

2

Futility

> 16%

ethics consults

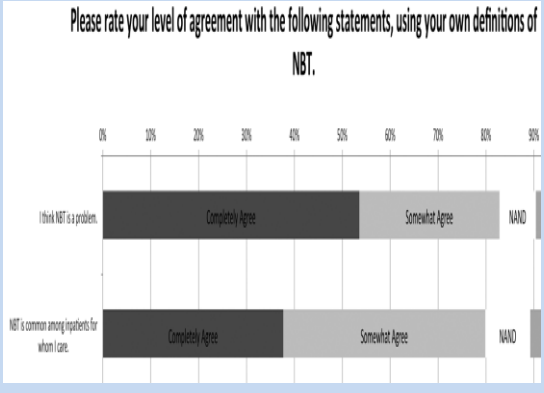
HEC Forum
DOI 10.1007/s10730-015-9293-5

What Ethical Issues Really Arise in Practice at an Academic Medical Center? A Quantitative and Qualitative Analysis of Clinical Ethics Consultations from 2008 to 2013

Katherine Wasson[1,3] · Emily Anderson[1] ·

Feb 2015

700 acute care clinicians



Proposed Solution	Effective (% "Somewhat" or "Completely" Agree)
Creating and implementing committees (with medical and nonmedical representatives) who could be consulted to resolve cases that are felt to be NBT. These committees would issue binding decisions about the care to be provided	61

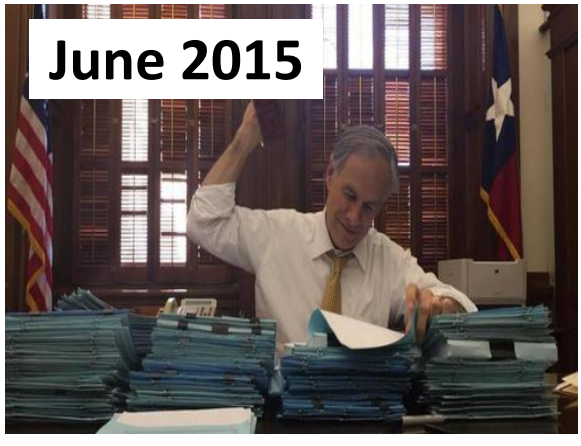
DOI: 10.1097/CCM.0000000000000704

Physician may stop LST **without** consent for **any reason**, if review committee agrees

2003 2009

2005 2011

2007 2013



H.B. 3074

13

artificially administered nutrition & hydration

86

Advanced dementia

DNR **without** consent & despite family protests

Pre-suit review panel determined hospital **breached** standard of care

Trial court

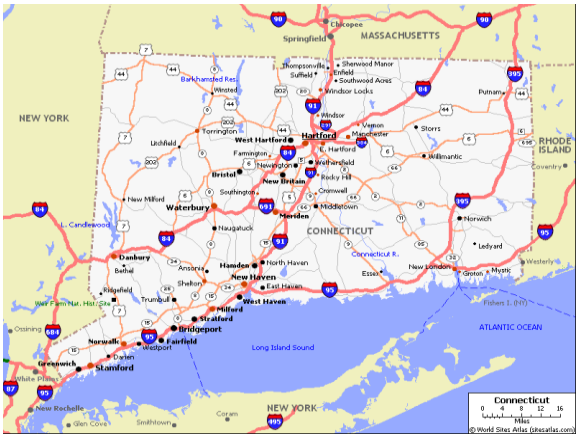
Summary judgment to hospital.

Family cannot prove **causation**.

Appellate court

There is enough evidence on causation.

Family **can proceed** to trial.



Yale removed ventilator **without** consent & over objections

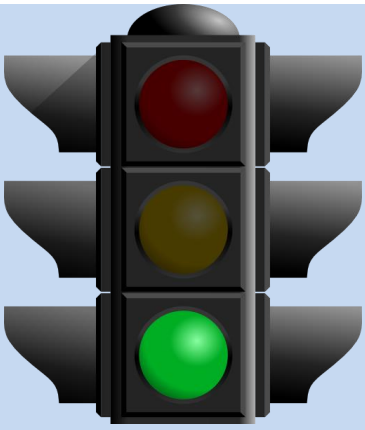
23

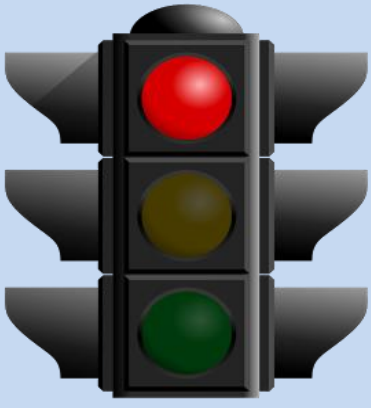
IIED

24

Takeaway

25





Brain Death

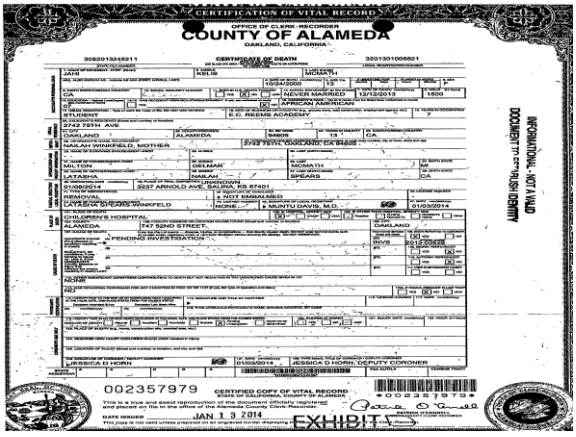
29

2 cases

30

Dec. 2013

Treatment conflict


CERTIFICATION OF VITAL RECORD

COUNTY OF ALAMEDA

OFFICE OF CLERK-RECORDER

OAKLAND, CALIFORNIA

CERTIFICATE OF DEATH

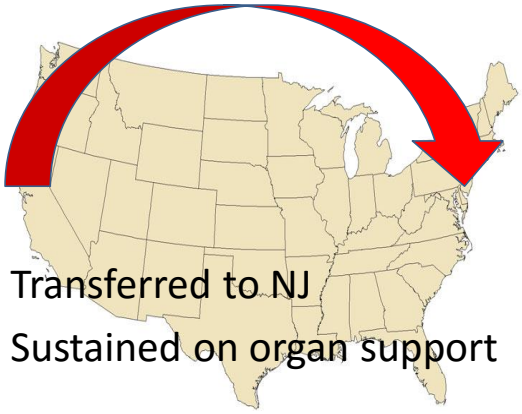
002357979

CERTIFIED COPY OF VITAL RECORD

JAN 13 2014

EXHIBIT

DOCUMENT NOT VALID



Transferred to NJ

Sustained on organ support

Mar. 2015

Med Mal lawsuit

Seeking **future** medical expenses

37

Re-litigate status as alive

38

Collateral estoppel

Oct. 2015

May allege facts to establish alive

40

AAN criteria DDNC

Met in Dec. 2013

Not met now

41

FAC due Nov. 9

43

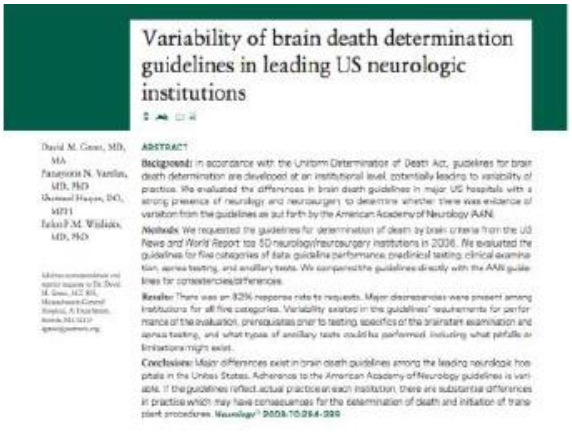
44

AAN criteria DDNC

Met in April 2015

Wrong criteria

47



Variability of brain death determination guidelines in leading US neurologic institutions

David M. Greer, MD, MA
Fanasiotis N. Varelas, MD, PhD
Mehmet Haque, DO, MPH
Fabio P.M. Wijdicks, MD, PhD

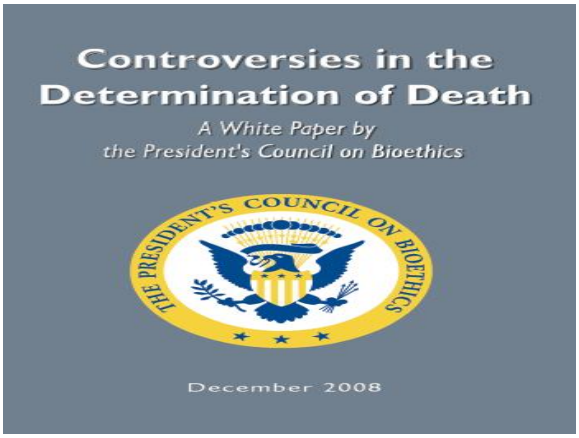
ABSTRACT

Background: In accordance with the Uniform Determination of Death Act, guidelines for brain death determination are developed at an institutional level, potentially leading to variability of practice. We evaluated the differences in brain death guidelines in major US hospitals with a strong presence of neurologic and neurosurgery to determine whether there was evidence of variation from the guidelines as put forth by the American Academy of Neurology (AAN).

Methods: We requested the guidelines for determination of death by brain criteria from the US *News and World Report* top 50 neurology/neurosurgery institutions in 2008. We evaluated the guidelines for five categories of data: guideline performance, preclinical testing, clinical examination, apnea testing, and ancillary tests. We compared the guidelines directly with the AAN guidelines for consistencies/differences.

Results: There was an 82% response rate to requests. Major discrepancies were present among institutions for all five categories. Variability existed in the guidelines' requirements for performance of the evaluation, prerequisites prior to testing, specifics of the brainstem examination and apnea testing, and what types of ancillary tests could be performed, including what pitfalls or limitations might exist.

Conclusions: Major differences exist in brain death guidelines among the leading neurologic hospitals in the United States. Adherence to the American Academy of Neurology guidelines is variable. If the guidelines reflect actual practice at each institution, there are substantial differences in practice which may have consequences for the determination of death and initiation of transplant procedures. *Neurology*® 2008;70:284–289



Oral argument Nov. 3

50

Takeaway

51

Academic debate becoming a **policy** debate

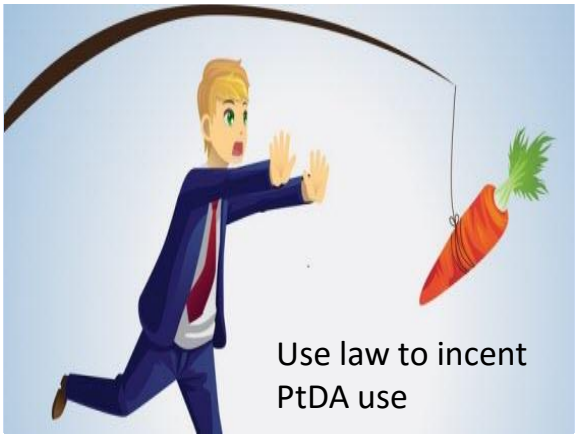
PtDA

Robust evidence shows PtDAs are highly effective

THE COCHRANE COLLABORATION®

BUT

Hardly any clinical usage



ACA 3506

Certifying PtDAs

Drafted criteria

Certifying 1st set

Obstetric

Joint replacement

End of life

Why certification matters

Safe harbor legal immunity

Required for 2 million public employees

Takeaway

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

No PtDA → No pay

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