

“Brain Death” Is a Mendacity

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ABSTRACT: Patients who are declared “brain dead” still have a beating heart with circulation and respiration. There is an interdependence of cells, tissues, and organs that maintain the soul/body unity. Death is separation of this unity. It leaves on earth the remains called a cadaver, a corpse. This essay argues that the term “brain death” is a mendacity that was invented to get organs for transplantation. No one ought to be declared dead unless there is no respiration, no heart beat, and no circulation. The cessation of these functions must be irremediable and determined in accord with generally accepted standards.

TWO CASES. At the age of thirteen Jahi McMath had tonsil surgery in Oakland California. Post-op, extensive hemorrhage was followed by cardiac arrest. Jahi was first resuscitated but then said to be “brain dead.” Organ donation was denied by Jahi’s mother. The doctors and the hospital responded by saying that life support would be discontinued. Jahi’s mother pleaded on television for help. I went to California to participate in caring for Jahi.

A death certificate was issued on 12 December 2013. Jahi was then transferred to New Jersey, where there is a conscience-clause statute that requires cessation of circulation and respiration before anyone can be declared dead when relatives reject the notion of brain-related criteria for death.

Shortly after arrival at the New Jersey hospital, tracheostomy and gastrostomy were done. Jahi was hospitalized for nine months and then transferred home to New Jersey. While in the New Jersey hospital, follow-up routine testing, which would commonly include MRI, CT, and EEG to evaluate

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brain structure and function, were not done. Jahi's family could not take her back to California because the death certificate in California resulted in no further payment for healthcare.

Jahi was thirteen when that surgery was done. Since then, Jahi has had her fourteenth, fifteenth, and sixteenth birthdays. She continues to live at home and responds to requests from her mother. For example, her mother will say "Jahi raise your left leg" and then Jahi does so, or "Jahi, give me a thumbs-up," and she does it. Jahi continues to live, and legal proceedings continue.

There is a bracelet on Jahi's wrist and a similar one on mine. Printed on one side of the bracelet is "Jahi is alive" and on the other side "prayer works." Jahi's mother gives these out. She told me that this is what I said when I first came to see Jahi in the hospital in Oakland, California.

Joseph was born very prematurely in 1975. He was on the ventilator for several weeks and at this time he did not respond or move. An EEG taken at that time was interpreted as "consistent with cerebral death." Two days later the EEG was unchanged. Nevertheless, we continued to treat him. At the age of seven he could ride his bicycle. He now has a wife and three children. It was because of Joseph that I began my investigation of "brain death."

What We Learn from These Cases

Jahi and Joseph are living persons. We know that the person is living through common sense, medical science, and biology. The person is alive on earth from true conception until true death. Every cell, tissue, and organ of the human organism participates in the interdependence of organs and systems to preserve the soul-body unity of the living person. No one organ controls all other organs.

Life on earth is a continuum from true conception until true death. At conception, the created person begins to exist. To live on earth blood and circulation are needed. The beating of the heart is intrinsic to living for a human being. It has its own nervous and endocrine systems. The brain is not necessary for functioning of the heart, as is evidenced by operations of a heart in the recipient of a heart transplant.

Breathing is needed for the preservation of the life of a person on earth. Oxygen goes in and carbon dioxide goes out. Water and food are necessary. Without oxygen, death occurs within minutes; without water, death occurs in one to two weeks; without food, death occurs in one to two months. Proper temperature of the body and the environment as well as exits for urine and stool

are necessary for preservation of life on earth.

The interdependence of organs and systems maintains the unity of the body in you, me, and those declared “brain-dead.” In all of us the heart, lungs, liver, kidneys, thyroid, adrenals, intestines, bone, and skin function. The interdependence of the heart, vascular system, and kidneys is needed to maintain and control blood pressure. As a result there is energy balance and maintenance of the body temperature. Those declared “brain-dead” heal incisions, lacerations, and respond to infections with fever-elevated heart rate and blood pressure. A mother declared “brain-dead” can continue to gestate her baby.

By contrast, death is the absence of life. After death, what is left on earth is the remains. Not only is there is absence of functioning but destruction, disintegration, dissolution, corruption, putrefaction, decay, and rigor mortis. These begin at the microscopic level but are eventually overt. They can be slowed by cooling, embalming, mummification, and so on. After true death (*mors vera*), what remains on earth is a dead body, a corpse, a cadaver. A cadaver is empty – without life/soul. It is not just *mors apparens*; it is *mors vera*. As Pope Benedict stated, “individual vital organs may not be extracted except *ex cadavere*.”¹ Clinically, however, from a truly dead body (*ex cadavere*), vital unpaired organs, i.e., organs that occur singly in the body,² are not suitable for transplantation.

Are brain-related criteria scientifically valid for determining true death? The first article in American literature on “brain death” appeared in 1968 under the title “A Definition of Irreversible Coma.”³ It was published without the benefit of basic science as the result of studies on rats, dogs, or other animals. No patient studies were referenced or reported. The next article came out in 1971 and concerned the Minnesota Criteria. They reported on twenty-five patients, but they had done EEG recordings on only nine of those patients. Two of the nine still had electrical activity. With only this small number of patients and the obvious presence of electrical brain function in two of the nine, they

¹ Pope Benedict XVI, Address to Participants at an International Congress Organized by the Pontifical Academy For Life (7 November 2008).

² Pope John Paul II, Address to the 18th International Congress of the Transplantation Society (29 August 2000).

³ “A Definition of Irreversible Coma, Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death,” *Journal of the American Medical Association* 205/6 (1968): 337-40.

nevertheless concluded that it was no longer necessary to evaluate EEG activity before a declaration of “brain death.”⁴

The British Criteria also fail to include EEG evaluation.⁵ In the Collaborative Study that was the basis for this set of criteria, one of every twelve patients studied had brain wave activity. When an EEG is not done, as Dr. A. E. Walker pointed out, there would be no way to know which one of those twelve patients would have brain wave activity.⁶ Between 1968 and 1978 there were thirty more disparate sets of criteria published.⁷ A person could be declared dead by one set but would not necessarily be regarded as dead by any of the others.

The largest of these was the Collaborative Study, done on 844 patients. The actual report was on 503 patients, without explanation for deletion of 341 patients. Of those 503, 44 did not die. The brains of 226 were examined at autopsy. Ten percent had no evidence of pathology. Fifteen percent had no evidence of pathology in the brainstem.⁸ The National Institutes of Health (NIH) criteria were compiled from the findings of the Collaborative Study. These criteria were recommended for a larger clinical trial in 1977.⁹ This has still not been done forty years later. Will it ever be done? More recently, in *Neurology*, the journal of the American Academy of Neurology, it is reported that of the many disparate sets of criteria, there is no consensus as to which one is best to be followed.¹⁰ Further, the criteria are not evidenced-based.¹¹

⁴ A. Mohandas, S.N. Chou, “Brain Death: A Clinical and Pathologic Study,” *Journal of Neurosurgery* 35 (1971): 211-18.

⁵ E.J. Moore, “British Criteria for Brain Death: Views of Career Grade Doctors in Scotland,” *British Medical Journal* (Clinical Resource Edition), 288/6416 (1984): 565-66, PMID: PMC1444603.

⁶ A.E. Walker, *Cerebral Death* (Baltimore MD: Urban & Schwarzenberg, 1981).

⁷ Peter M. Black, “Brain Death,” *New England Journal of Medicine* 299 (1978): 393-401 (August 24, 1978), DOI: 10.1056/NEJM197808242990805.

⁸ NINCDS Collaborative Study of Brain Death, NIH Publication No. 81-2286.

⁹ “An Appraisal of the Criteria of Cerebral Death: A Summary Statement, A Collaborative Study,” *Journal of the American Medical Association* March 7, 1977; 237/10 (1977): 982-86.

¹⁰ D.M. Greer, P.N. Varelas, S. Haque, and E.F.M. Wijdicks, “Variability of Brain Death Determination Guidelines in Leading US Neurologic Institutions,” *Neurology* 70 (2008): 284-89, originally published online Dec 12, 2007; DOI: 10.1212/01.wnl.0000296278.59487.c2, *Neurology* 2008; 70:284-289.

¹¹ E.F.M. Wijdicks, “The Case against Confirmatory Tests for Determining Brain Death in Adults,” *Neurology* 75 (2010): 77-83.

The neurological criteria that have been proposed for the determination of “brain death” revolve around the following: (1) the patient does not demonstrate consciousness and is in a coma of a presumed known cause and is presumed to be irreversible; (2) absence of some brainstem reflexes; and (3) the patient is on a ventilator and does not demonstrate taking in a breath when taken off the ventilator for ten minutes (apnea test procedure). This procedure does not benefit the patient and can only do harm; in fact, the procedure itself can cause the death of the patient.¹² If an EEG is done, brain wave activity must not be present.

Even if a brain scan is done and circulation to the brain is not observed, an observation of no circulation is not necessarily evidence of no circulation. It is the taking of the organs or stopping the ventilator that results in true death of these patients. When life support is continued, sometimes life continues. For example, it has been more than three years since Jahi McMath was “declared” to be “brain dead.” Alan Shewmon, M.D., reports that TK, a patient in whose treatment and care I also participated, lived twenty years after the declaration of “brain death.” Most of that time TK was at home with his family.

The *Atlas of Organ Transplantation* includes a video of the beginning of taking of organs from a “deceased” donor.¹³ The patient shown on this video has been declared “deceased,” using “brain death” criteria. In fact, life has not departed, as is manifest from the beating heart, circulation, and respiration. When the chest is opened, it is obvious that the tissues are pink and the blood red, i.e., well-oxygenated. The pericardium, the covering around the heart, is divided. The beating heart can be seen. After the heart is dissected away from the tissues and blood vessels, the surgeon stops the beating heart and removes it from the chest for transplantation.

Most organs that get transplanted are taken from patients after a declaration of “brain death.” These are known as DBD (donation after “brain death”) or HBD (heart-beating donors). Other organs are called DCD (donation after cardiac death). DCD patients have evidence of a functioning brain. A do-not-resuscitate order is obtained. Then life support is stopped until the contraction

¹² J. Tibballs and A.R. Joffe, “The Diagnosis of Brain Death: Apneic-Oxygenation as a Self-Fulfilling Diagnostic Test” in *Considering Consciousness Clinically*, ed. G. Leisman and J. Merrick (Hauppauge NY: Nova Biomedical Books, 2016), pp. 47-56.

¹³ Matis A. Humar and W.D. Payne, *Atlas of Organ Transplantation* (London UK: Springer-Verlag, Limited, 2006).

of the heart is not strong enough to allow one to observe a pulse. The patient can still have a beating heart but be without a pulse for (depending on the institution) five minutes. Sometimes the signal to cut out the heart is taken after just two minutes, or (as in two babies in Colorado) just 75 seconds without a pulse.¹⁴

The procedure to obtain organs (including heart, lungs, kidneys, liver, pancreas, intestines, etc.) is initiated while the heart is beating with circulation and respiration. A continual supply of oxygen is needed for these organs. Absence of oxygen causes damage within minutes, making them not suitable for transplantation. Skin, bones, corneas, veins, and heart valves are tissues. Unlike organs, they can be without oxygen for a longer period of time before they are so damaged that they are not suitable for transplantation.

The laws regarding transplantation include the Uniform Anatomical Gift Act (UAGA), which has been passed in 47 states. This statute presumes that everyone intends to be an organ donor and presumes that everyone has consented to undergo every test needed to determine whether the organs are good for someone else and to receive every treatment needed to keep the organs in good shape until they can find someone to receive the organs.

The Uniform Determination of Death Act (UDDA) is the law in all fifty states. The determination of “brain death” must be “in accordance with accepted medical standards.” A recent statute in Nevada makes the only standard be the Guidelines of the American Neurological Association. The Health Insurance Portability and Accountability Act, the “HIPAA Law,” makes it imperative that the organ procurement organization be notified whenever death is imminent.¹⁵ There is a Medical Opt-Out Card available at www.lifeguardianfoundation.org. It states: “I direct all medical treatments and care, including nutrition and hydration however administered, be given to protect and preserve my life. Do not hasten death. Do not do an apnea test. Do not take any organ for transplantation or any other purpose.”¹⁶ This card should be carried with you at all times. Also, the booklet that we give out has a page

¹⁴ M.M. Boucek, C. Mashburn, S. Dunn, R. Frizell, L. Edwards, B. Pietra, and D. Campbell, for the Denver Children's Pediatric Heart Transplant Team, “Pediatric Heart Transplantation after Declaration of Cardiocirculatory Death,” *New England Journal of Medicine* 359 (2008): 709-14 (August 14, 2008), DOI: 10.1056/NEJMoa0800660.

¹⁵ See <https://optn.transplant.hrsa.gov/resources/glossary#H> (accessed 7-28-17).

¹⁶ See <http://www.lifeguardianfoundation.org/pdfs/Medical%20Card%20to%20protect%20and%20preserve%20life%204-1-16.pdf> (accessed 7-28-17).

similar to the opt-out card, but it can be notarized.¹⁷

In my judgment, our policy should be as follows: No one shall be declared dead unless there is no respiration, no heartbeat, and no circulation, and these must be irremediable. This is to be determined in accord with universally or generally accepted standards. This is solidly based medically, ethically and religiously, and unexceptionable. On the basis of my research, I think that we should conclude:

(1) Brain-related criteria for death (“brain death”) are not equivalent to the time-tested cessation of heart beat, circulation, and respiration.

(2) Brain-related criteria are not based on scientific studies sufficient to provide a basis for therapeutic application for patient treatment.

(3) The procedure used to declare death ought not injure or harm the patient or cause the death of the patient. One should not do an apnea test.

(4) Vital organ transplantation ought not be done prior to true death.

¹⁷ See <http://www.lifeguardianfoundation.org> (accessed 7-28-27).