

MIDWEST MEDICAL ETHICS

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Medical Ethics Center Opens

Should abortion be legal? Should newborns ever be allowed to die? What is happening to the physician-patient relationship?

If you're interested in those questions, join us. We are the Midwest Bioethics Center, and we're interested in them too. This quarterly newsletter is one of the benefits of being a member of the Center (see p. 5 for other benefits).

The Center, which recently opened in Kansas City, is a not-for-profit organization. Besides the newsletter, we sponsor conferences on medical ethics issues. We are available for consultation and education for hospitals, nursing homes, and churches, in addition to providing research in the area of ethics.

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The Law

ORGAN DONATION AND BRAIN DEATH

by J. McFadden

When a dead body becomes the source of organs for transplantation, two legal considerations are involved in removing organs for transplant. First, consent for removal and use of the organ must be obtained. Second, the best point in time to remove the organ must be established.

CONSENT

Prior to 1968, the laws regarding consent to the removal of organs for transplantation were inconsistent from state to state, and this inconsistency and the attendant confusion discouraged organ donation. In response, the Uniform Anatomical Gift Act was drafted and approved by the National Conference of Commissioners on Uniform State Laws in 1968. It received almost immediate acceptance. In fact, five years after its creation the Act had been adopted by all fifty states and by the District of Columbia. While the Anatomical Gift Act certainly does not resolve all issues surrounding organ donation, it clarifies the law and enables most individuals to plan for disposition of their bodies.

Simply stated, the Act allows any person of sound mind who is eighteen years of age or older to give all or any part of the body for medical education, advancement of medical science, research, therapy, or transplantation. If the gift is made by will, it becomes effective on the death of the donor without waiting for the will to be probated. A donor may also make such a gift by a document other than a will, including the now-familiar Uniform

Donor Card on the back of many drivers' licenses.

The usual practice is for a physician or hospital administration to obtain consent of the family to the donation, even if there is a valid donor card or will. This dilutes the effectiveness of the law. Family consent is not required by law, and, in addition, the family under the act may consent to organ donation even in the absence of a gift by the deceased. The unintended result is that the family can override the wishes of the deceased. This has frustrated the purpose of the Act, which was to create a simple method of making an organ donation.

BRAIN DEATH

Under the traditional determination of death, defined as when the heart stops beating, it was essential to retrieve organs as quickly as possible because the cells of the organs die soon after circulation stops. The best candidates for organ donation, however, are those individuals who do not satisfy this

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traditional criterion for a diagnosis of death. These are the brain-dead patients whose bodies are being sustained by artificial means. Consequently, pressure was brought to bear by the transplant people and others to redefine the legal definition of "death" to allow its pronouncement in the case of a patient who lacked brain function. Kansas, interestingly, became the first jurisdiction on earth to pass such a "brain-death" statute. It is also one of the first to amend and simplify that earlier effort.

The revised legislation enacts the Uniform Determination of Death Act and states "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." Several other states, including Missouri, subsequently passed a version of this act.

Particularly significant in the language of the act is the requirement that cessation of brain function include the brain stem. Patients who have lost all cognitive function but who demonstrate some minimal

brain stem activity would, therefore, not satisfy this legal definition of death. For example, persons in persistent vegetative states, apparently lacking all cerebral function, are nonetheless not considered to be dead, if evidence of brain stem activity is present. Removal of ventilator support from such individuals may be appropriate, however, either to allow death to occur or to determine if the patient is capable of maintaining spontaneous respiration. If death can then be pronounced, the wishes of the patient or the family to donate organs may be followed. The cerebrally dead patient who maintains spontaneous respiration and circulation, however, cannot be regarded as "dead" and a variety of medical and ethical problems are thereby presented. But that, as they say, is another story.

For further reading, see "Guidelines for the Determination of Death", *JAMA* 1981; 246:2184-7.

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COMING EVENTS

October 7, 1985

"Transplantation: Those Who Give and Those Who Receive", Lunch and Learn, Village Presbyterian Church. 12:00 noon, lunch is \$2.50. Call for reservations, (913) 262-4200.

October 22-23, 1985

25th Annual Medicine and Religion symposium, University of Kansas Medical Center, Call (913) 588-4492 for information.

March 7, 1986

"... a time to die: from Curing to Caring" Cosponsored by the Midwest Bioethics Center, KU Medical Center, Southwest Clinical Society and the Academy of Health Professions. For information, call (816) 942-1992