

## **Organ donation and time of death**

Motivated by love for neighbor, many Christians have designated themselves to be organ donors at the time of death. In 1981, the Lutheran Church-Missouri Synod (LCMS) in convention adopted a Resolution encouraging organ donation as an act of Christian love, though not binding consciences over a yes or no decision.<sup>1</sup> This Resolution remains the official LCMS position. At first glance, the concept of, “time of death” seems very straightforward. Yet, it is more complicated than most realize. To help you in your end of life decision-making, we offer this brief discussion to unpack the issue and bring clarity to it.

### *What we know from Scripture*

Scripture teaches that the time of death occurs when a person stops breathing (see for example Genesis 25:8, 35:29; Mark 15:37; Luke 23:46 and others). Essentially, this means when the heart and lungs stop. Furthermore, Scripture is clear that God is the One who determines the time of death (Genesis 6:3; Job 1:21, 14:5, 34:14-15, Psalm 104:29, 116:15, 139:16; Ecclesiastes 3:2; James 4:13-15 and others). By His grace, there is now medical technology available to sustain individuals who previously would have died, bringing some back to physical health. Yet even with all of this, when God, in His perfect will (Deuteronomy 32:4; Psalm 92:15; Romans 8:28), decides that one’s time has come, no medical intervention will prevent the heart and lungs from stopping (Matthew 6:27). Of course, it is important to remember that death is but a temporary sleep (Matthew 9:24 and parallels; John 11:11-13; Acts 7:60, 13:36). Just as Jesus was raised from the dead, and just as many of the saints who had fallen asleep were raised when He was crucified (Matthew 27:52), we have the certain hope that we too will be raised in Him, in glorified, incorruptible and imperishable bodies (1 Corinthians 15; 1 Thessalonians 4:13-16; Revelation 7:9-17, 19:6-9, 21, 22).

### *“Brain death” and organ donation*

Throughout human history, the standard for the determination of death remained the stopping of the heart and lungs. With the advent of organ transplantation in the 1960s, it became evident that vital organs removed while the heart is still beating performed better than did those removed after the heart had stopped, since the latter had suffered damage due to lack of oxygen. (The term, “vital organs” refers to organs without which one cannot live, such as the heart.) Thus, to increase the supply of viable organs, transplant workers sought to develop a framework by which this could be done without risking a charge of murder. Their solution was to develop a policy declaring the donor dead, yet artificially sustained and only superficially appearing to be alive. Out of this, several groups advanced the concept of, “brain death,” namely individuals in a coma, showing no activity of the central nervous system (and very unlikely to improve), being considered dead, even with a still beating heart. At the time that the concept of, “brain death” was advanced, the “Dead Donor Rule” (DDR) was developed, which articulated that, “patients must not be killed by organ retrieval.” The individual who first used the term characterized it as, “a centerpiece of the social order’s commitment to respect for persons and human life. It is also the ethical lynchpin of a voluntary system of organ donation,

and helps maintain public trust in the organ procurement system.” Yet, in the end, as will be shown below, while superficially appearing meet and right, the DDR merely acts as a cover.<sup>2</sup>

Of note, the concept of, “brain death” was endorsed by the 1981 President’s Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavior Research, and the 2008 President’s Council on Bioethics.<sup>3</sup> The 1981 Commission drafted the Uniform Declaration of Death Act, which added, “irreversible cessation of all functions of the brain, including the brain stem,” AKA “brain death,” as a criterion for declaration of death. The Act has been enacted in 39 states and jurisdictions, but notably not in Arizona, where the law merely states, “A determination of death must be made in accordance with accepted medical standards.”<sup>4</sup> In practice though, this means that the law in Arizona is the same as that in the states and jurisdictions that have enacted the Uniform Declaration of Death Act.

*Is, “brain death” really death?*

In recent years, the concept of, “brain death” has come under criticism from both Christian and secular physicians and bioethicists. The issues are several-fold:

1. Individuals meeting the criteria for, “brain death” often do have residual brain function.
2. Individuals meeting the criteria for, “brain death” often survive (often with support but occasionally without) long after the determination has been made (note that in this brief article, we are not addressing the transitioning from aggressive management to palliative care, but simply the determination that death has occurred).
3. On a related note, the function of other organs and tissues in the body is not dependent on normal functioning of the brain (two examples: wound healing continues even in those declared, “brain dead,” and babies in the womb at the time of, “brain death” in the mother may still be carried to term) and is not dependent on the actions of a mechanical ventilator.
4. Underlying the concept of, “brain death” is the non-Scriptural philosophical idea that seemingly permanent, “loss of consciousness” is sufficient to declare an individual dead, even if biologically still alive.

These and other issues call into question the notion that individuals with severe brain damage in irreversible coma are, in fact, biologically dead.<sup>5</sup> Of note, the guidance on determination of, “brain death” is based on opinion and not evidence, requires the exclusion of conditions that can mimic irreversible coma, a normal body temperature and blood pressure, and meeting certain criteria based on bedside testing and occasionally other ancillary tests.<sup>6</sup> Furthermore, not all medical centers apply these criteria in the same manner.<sup>7</sup> Thus, the whole concept rests not on God’s determination of death, but on a bed of sand (Matthew 7:24-27). Application of the DDR using, “brain death” criteria is, in fact, a cover for the removal of vital organs from an individual who is still alive.

Secular bioethicists who are critical of the concept of, “brain death,” have not recommended abandoning the removal of organs from living individuals with brain failure. Rather, they have suggested developing alternative ethical frameworks within which to operate.<sup>8</sup> Sadly, one such emerging trend in a number of countries is the coupling of organ donation with voluntary

euthanasia.<sup>9</sup> From a Christian perspective, the concept of, “brain death” as a criterion for removal of vital organs is deeply troubling, as it too amounts to *de facto* euthanasia. There is an option available to donate vital organs following stoppage of the heart, in conjunction with withdrawal of care that, at least on paper, is independent of the organ donation process and carried out in the context of comfort care which does not specifically intend to hasten death.<sup>10</sup> While preferable to the use of the, “brain death” criterion, it is important to note the potential for abuse. Also, due to time constraints inherent in the procurement of the organs, the process of dying becomes highly medicalized, impacting the end of life Pastoral care for the dying and his/her family (and quite often, the health care team!). And, in the experience of several on the CLC Life Team who have worked in health care, workers from organ donation agencies are very aggressive!

### *Christian response*

As you complete your Durable Power of Attorney for Health Care (copies available in the CLC Narthex), we urge you, especially if you wish to donate organs, to consider specifying in writing how you want the medical team to determine that your earthly life has ended. Insisting on Scripture-based criteria will be a powerful witness to all to the sanctity of life and who you are and continue to be, in Jesus, obedient to His will. As you think through this and pray about this, if any questions or concerns arise, we urge you to make an appointment with Pastor to talk them through. Finally, if you have allowed a loved one to be declared dead on the basis of the, “brain death” criterion, or have otherwise participated in the process, and sincerely regret having done so, know that there is forgiveness to be had through Jesus’ blood shed at Calvary, and you may see Pastor for individual Confession and Absolution. God’s richest blessings on you as you contemplate your falling asleep in His Faith, secure in the certain hope that you will be raised on the Last Day to a glorious eternity in the New Jerusalem, where there will be no more death, mourning, crying or pain (Revelation 21:1-22:5).

### Notes:

1. See the full LCMS position and Resolution 8-05 (1981) at <https://www.lcms.org/about/beliefs/faqs/lcms-views#organ-donation> (accessed 2 February, AD 2021)
2. For more detail, and the source of the quotes, see David Rodriguez-Arias, “The Dead Donor Rule as Policy Indoctrination,” in *The Hastings Center Report* (2018) Volume 48, Issue S4, pp. S39-S42, accessible at <https://onlinelibrary.wiley.com/doi/full/10.1002/hast.952> (accessed 2 February, AD 2021)
3. President’s Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavior Research, *Defining Death, A Report on Medical, Legal, and Ethical Issues in the Determination of Death, July 1981* (Washington: US Government Printing Office, 1981), accessible at [https://repository.library.georgetown.edu/bitstream/handle/10822/559345/defining\\_death.pdf](https://repository.library.georgetown.edu/bitstream/handle/10822/559345/defining_death.pdf) (accessed 4 February, AD 2021). Also, The President’s Council on Bioethics, *Controversies in the Determination of Death, A White Paper by the President’s Council on*

*Bioethics*, December 2008, accessible at <https://bioethicsarchive.georgetown.edu/pcbe/reports/death/> (accessed 4 February, AD 2021)

4. Arizona Revised Statutes, §14-1107, accessible at <https://codes.findlaw.com/az/title-14-trusts-estates-and-protective-proceedings/az-rev-st-sect-14-1107.html> (accessed 4 February, AD 2021)
5. For an excellent secular review, see Michael Nair-Collins and Franklin G Miller, “Do the ‘brain dead’ merely appear to be alive?” *Journal of Medical Ethics* (2017) Volume 43, Issue 11, pp. 747-753, accessible at <https://jme.bmj.com/content/43/11/747> (accessed 4 February, AD 2021)
6. Eelco F. M. Wijdicks, Panayiotis N. Varelas, Gary S. Gronseth and David M. Greer, “Evidence-based guideline update: Determining brain death in adults, Report of the Quality Standards Subcommittee of the American Academy of Neurology.” *Neurology* (2010) Volume 74, Issue 23, pp. 1911-1918, accessible at <https://n.neurology.org/content/74/23/1911.long> (accessed 4 February, AD 2021)
7. Sarah Wahlster, Eelco F. M. Wijdicks, Pratik V. Patel, David M. Greer, J. Claude Hemphill III, Marco Carone and Farrah J. Mateen, “Brain death declaration, Practices and perceptions worldwide.” *Neurology* (2015) Volume 84, Issue 18, pp. 1870-1879, accessible at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4433464/pdf/NEUROLOGY2014618553.pdf> (accessed 4 February, AD 2021)
8. See for example the papers by Rodriguez-Arias and Nair-Collins/Miller referenced above. Also, Robert D. Truog and Franklin G. Miller, “Changing the Conversation About Brain Death” *The American Journal of Bioethics* (2014), Volume 14, Issue 8, pp. 9-14, accessible at <https://med.stanford.edu/content/dam/sm/bioethics/documents/May-17-Changing-the-Conversation-About-Brain-Death.pdf> (accessed 5 February, AD 2021)
9. Claudia Wallis, “The Morally Complex Mix of Euthanasia and Organ Donation” *Scientific American* (2020) Volume 322, Issue 5, p. 23, accessible at <https://www.scientificamerican.com/article/the-morally-complex-mix-of-euthanasia-and-organ-donation/> (accessed 5 February, AD 2021)
10. See for example, American Society of Anesthesiologists, *Statement on Controlled Organ Donation After Circulatory Death*, accessible at <https://www.asahq.org/standards-and-guidelines/statement-on-controlled-organ-donation-after-circulatory-death> (accessed 5 February, AD 2021)