

Can Death Determined by Neurologic Criteria Be Salvaged?

Alternatives & Implications

1



@ThaddeusPope

Thaddeus Mason Pope, JD, PhD, HEC-C
ASBH Annual Meeting
Portland, Oregon
October 28, 2022

2

nothing
to disclose

3



4



5



6



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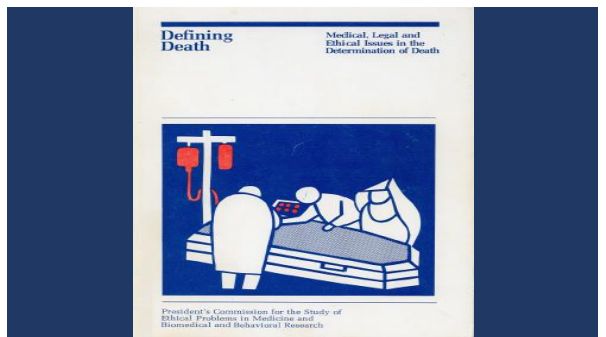
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UDDA

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law on death
in all U.S.
jurisdictions

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Bert Lance

Director, Office of
Management & Budget

16



17



18

popularizing

proverb

19

if it ain't broke,
don't fix it

20

apt

21

brain death
is **broken**

22

SO...

23

we're
fixing it

24

Roadmap

25

2 parts

26

what's
broken

27

how are
we fixing

28

what's
broken

29

6 problems

30

problem **1**

31

growing
confusion

32

AUGUST 2022							SEPTEMBER 2022						
SUN	MON	TUE	WED	THU	FRI	SAT	SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3	4	5	6					1	2	3
7	8	9	10	11	12	13	4	5	6	7	8	9	10
14	15	16	17	18	19	20	11	12	13	14	15	16	17
21	22	23	24	25	26	27	18	19	20	21	22	23	24
28	29	30	31				25	26	27	28	29	30	

33



34



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When did Anne Heche die? Media are split in the definition of 'dead'

Why the media declared Anne Heche dead twice

36

The Washington Post

The Washington Post

37

“newspaper **doesn't recognize** brain death ... as a clear marker of death”

38

“if you're on life support, you're **still alive**”

39

Problem 1
confusion

40

problem **2**

41

growing
mistrust

42



43



44


clinicians	BD
court	BD
appellate	not BD

45



46

4-month-old
Baby A



Neutral Citation Number: [2022] EWCA Civ 1221

Case No: CA-2022-001707

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION**
The Hon Mr Justice Hayden
FD22F00036

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 September 2022

Before :

47

June 19 BD

multiple clinicians, including
some from another hospital

48

July 3 breathing on own retract BD

49



50

“raises real and important questions as to the confidence that can be placed in diagnosis ... death”

51



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The Charlotte Observer

Doctors pronounced NC dad brain dead. Then his family saw him moving, wife says

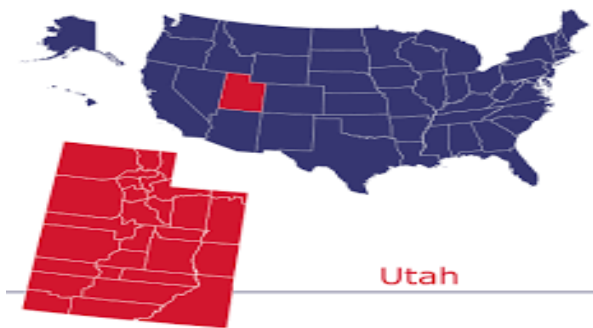
55

NORTH CAROLINA PASTOR WHO WAS DECLARED DEAD COMES BACK TO LIFE

“God can do miracles.”

written by Rhoda Gayle | September 7, 2022

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NEWS

August 11, 2022

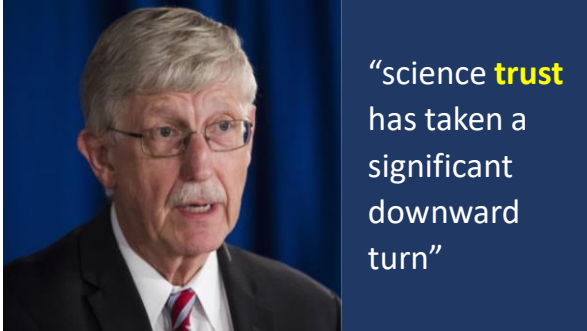
U.S. NEWS

Her daughter was declared dead. Despite hospital objections, she believes she was alive.

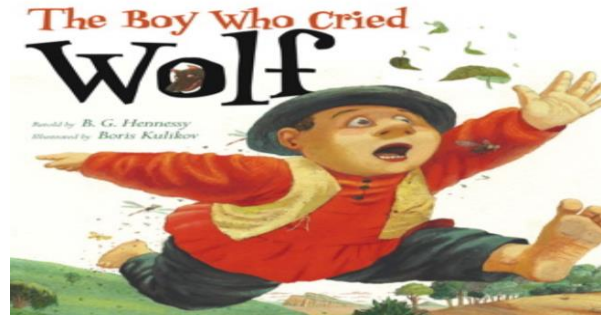
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beyond
brain death

60



61



62

There was a boy tending the sheep. He would continually go up to the embankment and shout, **"Help, there's a wolf!"**

63

The farmers all came running - only to find that what the boy said was **not true.**

64

Then one day, there **really was** a wolf.

But, when the boy shouted, they **didn't believe** him - and no one came.

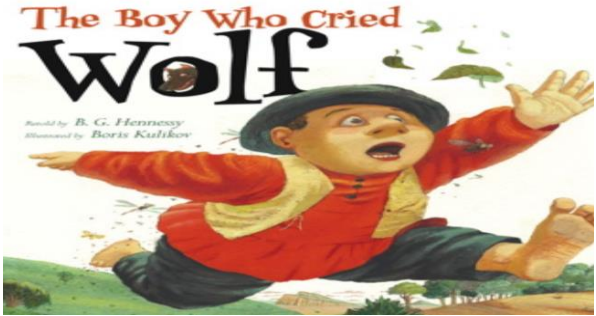
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next time that
you tell a parent
their child is dead

67



68

Problem 2
mistrust

69

problem **3**

70



71

law | **medicine**

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clinicians do **not**
assess what
UDDA requires

73

UDDA

74

irreversible cessation
all functions
entire brain

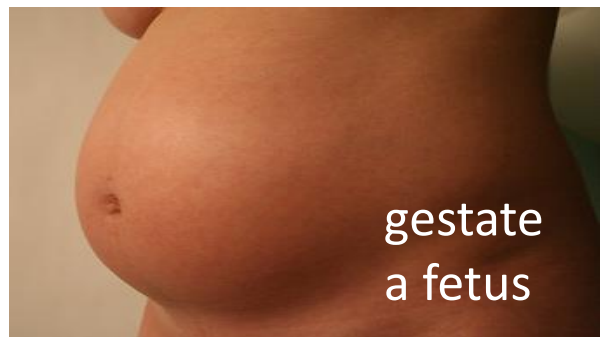
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but

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brain dead
people
do stuff

77



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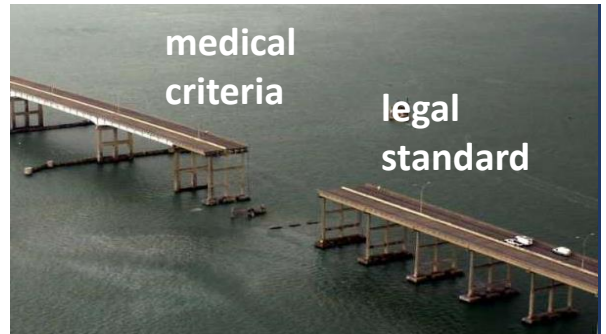
clinicians only assess
cessation

some functions
part of brain

80

UDDA requires
all functions
entire brain

81



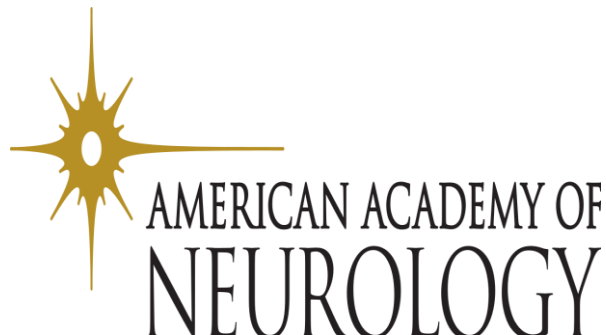
82

medically dead

≠

legally dead

83



84

SPECIAL ARTICLE

Brain death, the determination of brain death, and member guidance for brain death accommodation requests

AAN position statement

James A. Russell, DO, MS, Leon G. Epstein, MD, David M. Greer, MD, MA, Matthew Kirschen, MD, PhD, Michael A. Rubin, MD, MA, and Ariane Lewis, MD, on behalf of the Brain Death Working Group

Neurology® 2019;92:1-5. doi:10.1212/WNL.0000000000006750

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james.a.russell@lahey.org

85

patient can
satisfy BD
guidelines

86

dead

87

yet...

88

“neuro-endocrine
function **may be
present**”

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may determine BD
despite function
 hypothalamus

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“**not inconsistent**
 with the whole brain
 standard of death”

92

WRONG

93

UDDA

requires

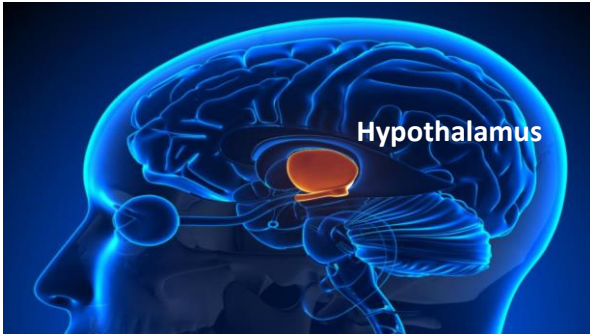
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irreversible
 cessation of

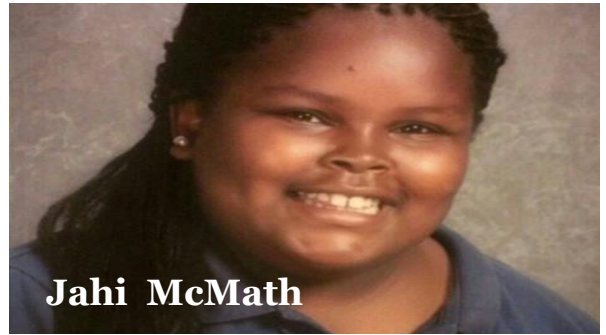
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all functions
of the
entire brain

96



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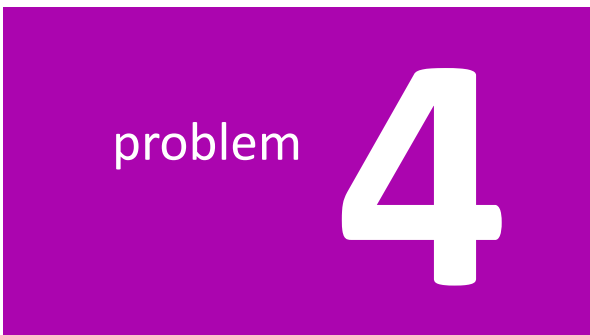
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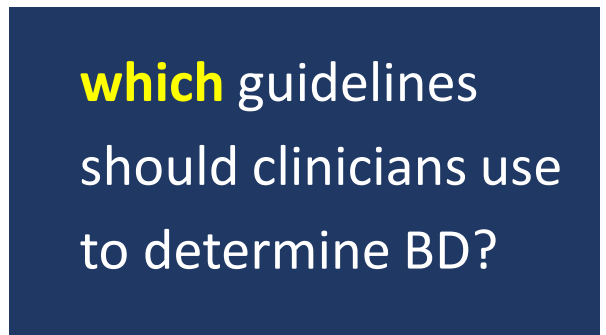
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100



101



102

UDDA

103

when making
determinations of
irreversible cessation

104

“accordance with
**accepted medical
standards**”

105

but

106

which medical
standards are
accepted ?

107



108

variability

109



Research

Original Investigation

Variability of Brain Death Policies in the United States

David M. Greer, MD, MA; Hilary H. Wang, BA; Jennifer D. Robinson, APRN; Panayiotis N. Varelas, MD, PhD; Galen V. Henderson, MD; Eelco F. M. Wijdicks, MD, PhD

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Improving uniformity in brain death determination policies over time

[OPEN](#)

Hilary H. Wang, MD **ABSTRACT**

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Variability of brain death determination guidelines in leading US neurologic institutions

David M. Greer, MD, MA; Panayiotis N. Varelas, 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

112

Neurology®

February 26, 2019; 92 (9) **ARTICLE**

Variability in reported physician practices for brain death determination

Sherri A. Braksick, Christopher P. Robinson, Gary S. Gronseth, Sara Hocker, Eelco F.M. Wijdicks, Alejandro A. Rabinstein

113

variability problem
here in Pacific NW

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Neurology Clinical Practice

A peer-reviewed clinical neurology journal for the practicing neurologist
An Official Journal of the American Academy of Neurology




Neurology: Clinical Practice Publish Ahead of Print
DOI: 10.1212/CPJ.000000000200077

A Review of Practices Around Determination of Death by Neurologic Criteria by an Organ Procurement Organization in the WAMI Region

Author(s): Abhijit Vijay Lele, MBBS, MD, MSCR, FNCIS^{1,2,3}; Sarah Wahlester, MD⁴; Ian Bost⁵; Dominic Adorno, MS⁶; Candy


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**LifeCenter
Northwest**

deviations in **20%**
referred cases

116



**LifeCenter
Northwest**

rejected referrals
b/c not dead

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AAN guidelines **not**
“accepted medical
standards”

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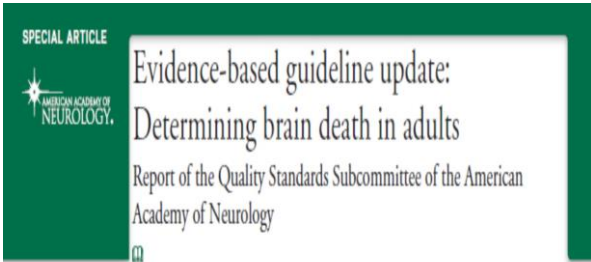
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amended
NUDDA
A.B. 424 (2017)

123

determination of BD
“must be made in
accordance **with ...**”

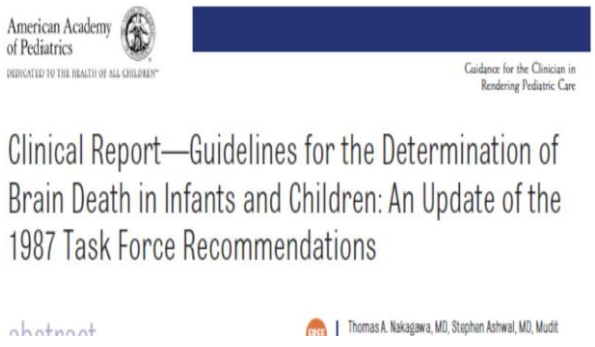
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Eelco F.M. Wijdicks,
MD, PhD

ABSTRACT
Objective: To provide an update of the 1995 American Academy of Neurology guideline with regard

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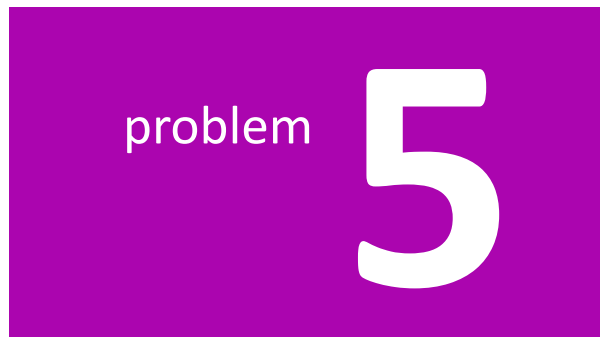
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132

want
religious
exemption

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“if **heart** beats,
they are alive”

134



135

rejected
elsewhere

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138



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Problem 5
offer religious opt out

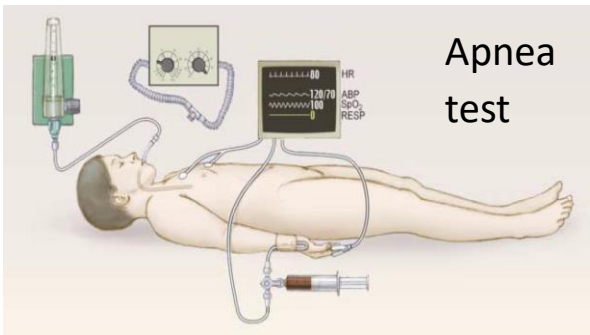
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problem **6**

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must clinicians
get **consent**
for BD tests?

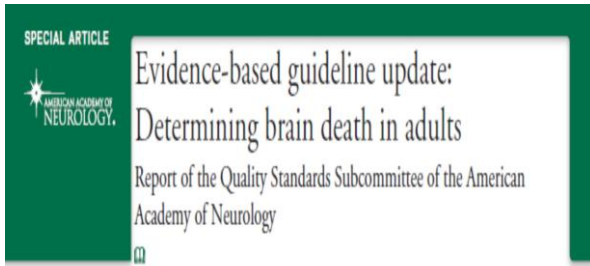
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final
confirmatory test

144



Eeko F.M. Wijdevits, MD, PhD

ABSTRACT

Objective: To provide an update of the 1995 American Academy of Neurology guideline with regard

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Guidance for the Clinician in Rendering Pediatric Care

Clinical Report—Guidelines for the Determination of Brain Death in Infants and Children: An Update of the 1987 Task Force Recommendations

abstract

Thomas A. Nakagawa, MD, Stephen Ashwal, MD, Mudit

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148



Almost all pediatric

149



Archie Battersbee 05/12/22

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generally,
consent **not**
required

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but

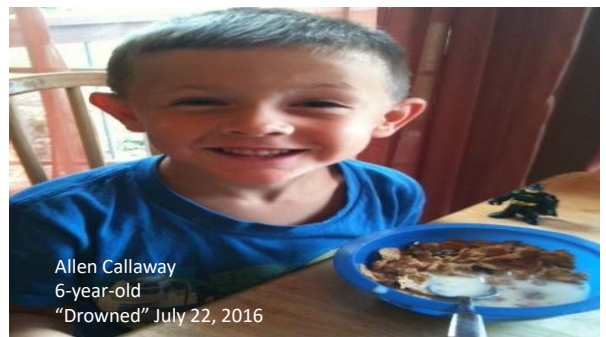
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variability
uncertainty

154



155



Allen Callaway
6-year-old
"Drowned" July 22, 2016

156

“**mother has sole authority**
to make medical decisions .
.. **including** . . . brain
functionality examinations”

157

Problem 6
consent for testing?

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Recap

159

6 problems

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public confusion
public mistrust
mismatch med/leg

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which med standard
religious exemption
consent to test

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JAMA | Special Communication

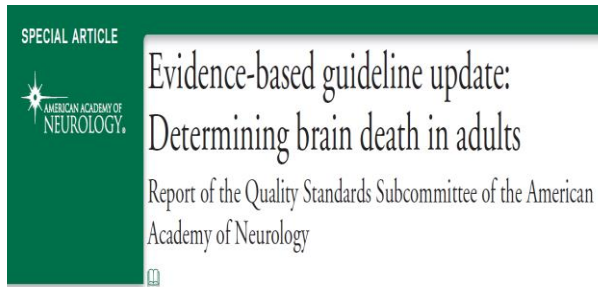
Determination of Brain Death/Death by Neurologic Criteria
The World Brain Death Project

David M. Greer, MD, MA; Sam D. Shemie, MD; Ariane Lewis, MD; Sylvia Torrance, BSc; Panayiotis Varelas, MD; Fernando D. Goldenberg, MD; James L. Bernat, MD; Michael Souter, MBChB; Mehmet Alif Topcuoglu, MD; Anne W. Alexandrov, PhD; Marie Baldisseri, MD, MPH; Thomas Bleck, MD; Giuseppe Citerio, MD; Rosanne Dawson, LLB; Arnold Hoppe, MD; Stephen Jacobs, MD, MHL; Alex Manara, MBChB; Thomas A. Nakagawa, MD; Thaddeus Mason Pope, JD, PhD; William Silvester, MD; David Thomson, MD; Hussain Al Rahma, MD; Rafael Badenes, MD, PhD; Andrew J. Baker, MD;

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Elco F.M. Wijdicks, ABSTRACT

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BD credentials
use checklists
2 independent physicians
use educational tools

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fix 3

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171

fix 4

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A Brain Based Definition of Death and Criteria for its Determination After Arrest
of Circulation and Neurologic Function

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fix 5

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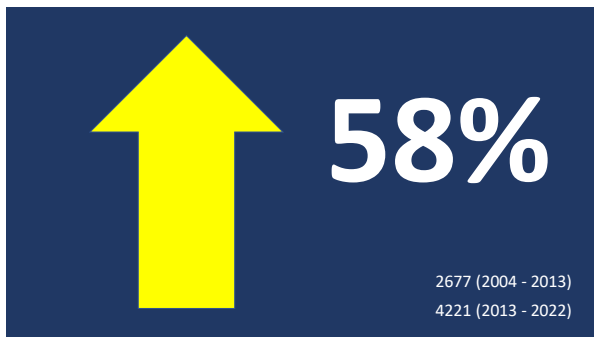
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