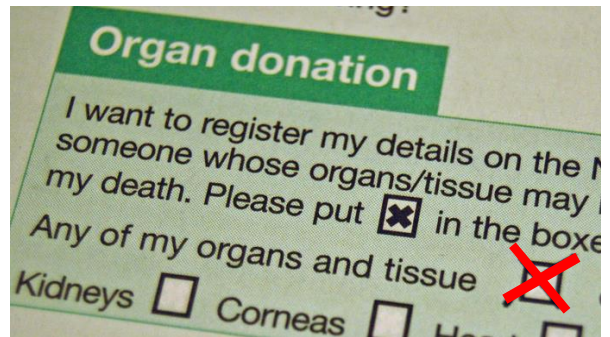


# Managing Organ Donors

## Permissible Premortem Nontherapeutic Interventions

Thaddeus Mason Pope, JD, PhD, HEC-C  
June 17, 2021

1



2



3

Remove organs  
after death

4

# BUT

5

What else has  
she authorized

6

Non-therapeutic  
interventions

7

MV CPR  
vasopressors  
hormonal therapy

8

**Not** for patient  
Only for **organ**

9

organ **protection**  
therapy  
donor **optimization**  
procedures

10

donor  
management

11



intensive care  
for organ  
preservation

12

	Alive	Dead
Neurological	<b>X</b>	<b>X</b>
Circulatory	<b>X</b>	<b>X</b>

13

	Alive	Dead
Neurological	<b>X</b>	<b>X</b>
Circulatory	<b>X</b>	<b>X</b>

14



15

Dead → Not a patient

16

Not a patient → **No** Tx duty

17



18

**Only** a donor  
**Not** a patient

19

# FOCUS

20



21

on **only** organ  
optimization

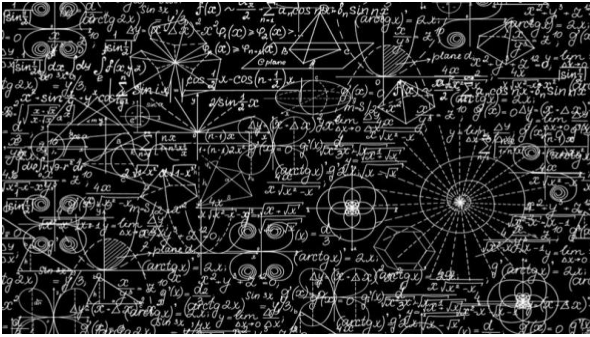
22

# BUT

23

	Alive	Dead
Neurological	X	X
Circulatory	X	X

24



25

Alive → Still a patient

26

Still a patient → Tx duty

27

Problem

28



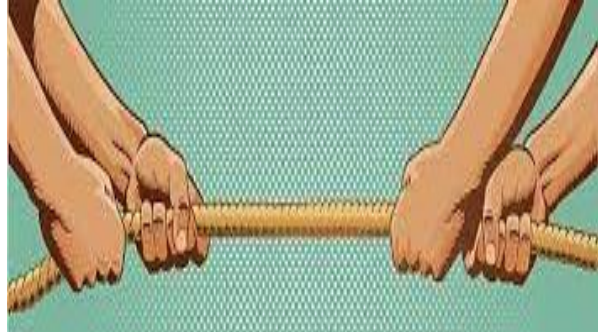
29

2 roles

30

donor | patient

31



32

This  
presentation

33

	Alive	Dead
Neurological	X	X
Circulatory	X	X

34

**Pre**-mortem  
**non**-therapeutic  
interventions

35

Roadmap

36

4

37

Legal  
challenges

38

1<sup>st</sup> person  
consent

39

Surrogate  
consent

40

Ways  
forward

41

Legal  
Challenges

42

3

43

1 Conflict

44



45



46

2 wishes

47

Be donor

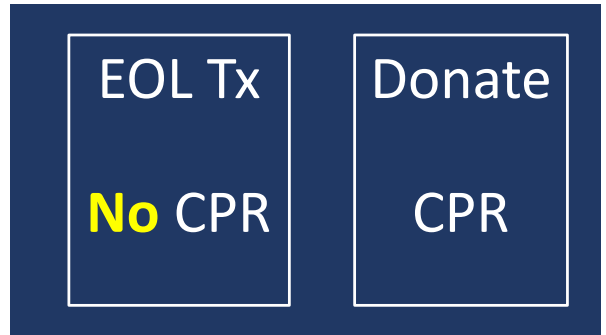
EOL Tx

48





49



50

**Which** wish prevails?

51



52

**2** Dead donor rule

53



**World Health Organization**

WHO GUIDING PRINCIPLES

ON HUMAN CELL, TISSUE AND ORGAN TRANSPLANTATION<sup>1</sup>

54

Alive	Dead
Focus on patient	Focus on organ

55

Alive	Dead
Treatment team	Transplant team

56



57



58

PMNI

59

Alive	Dead
Focus on patient	Focus on organ

60



61



62

donor | patient

63

Clinicians have the very **COI** that DDR aims to prevent

64

**3** Consent

65

Alive → Still a patient

66

Still a patient → Tx duty

67

May not do **anything** to Pt without consent

68

## Consent: A guide for Canadian physicians

Fourth edition: May 2006 / Updated: April 2021

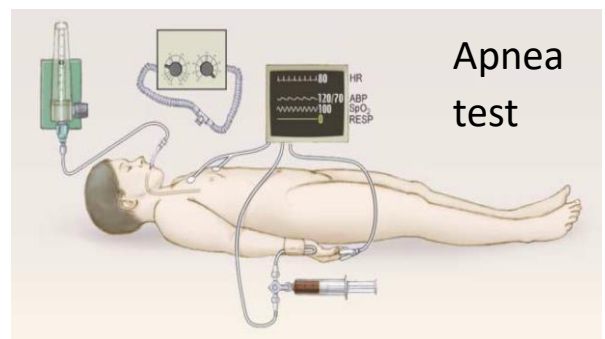
69

“physician may be liable in **assault and battery** when no consent was given at all”

70

**EXCEPTION TO THE RULE**

71



72



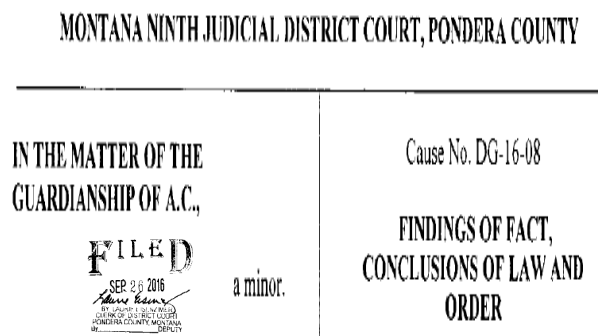
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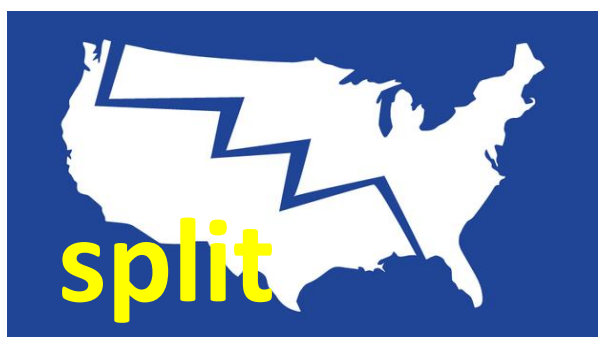
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76

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

77



78

# No

79



80



81



82



83



84

Apnea test  
**unique**

85

Other PMNI  
**need** consent

86

Where?

87

**1<sup>st</sup> person**  
**consent**

88



89

PMNI **too?**

90



# No

91

Consent  
to donate

Authorize  
PMNI

92

# beadonor.ca

What is involved in the organ donation process and how long will donation take?

93

Suggest only  
**post**-mortem  
interventions

94



MyHealth.Alberta.ca

Once the person is confirmed dead, he or she is kept on organ support in the critical care unit.

95



96



“possibility of donation  
is considered **only when**  
... brain death has been  
declared ...”

97

Not just **lack**  
of openness &  
transparency

98

**mis**representation

99

Suggest **zero**  
**pre**-mortem  
interventions

100

Organ Donation Fact vs  
Myth

101

Myth

If I am admitted to the hospital and the doctors find out I am an organ  
donor, they won't try as hard to save my life.

102



103

## FACT:

The doctors working to save your life have **nothing to do** with donation or transplantation. Donation is considered only after a person has been declared dead.

104



105

“Doctors and nurses involved in your care are **not involved** in ... transplantation.”

106



## Organ and Tissue Donation Myths and Facts

107

*MYTH: If doctors know I support organ and tissue donation, they won't work as hard to save my life.*

**FACT:** The number one priority of healthcare providers is to save the lives of sick or injured people. To ensure you receive the best possible care, the medical professionals who care for you before death are **not the same** professionals **involved in the** recovery or transplantation of your organs or tissue.

108

Government of  
Northwest Territories




# Organ & Tissue Donation

for Northwest Territories'  
Residents

109

## What do I need to know?



- The first priority of health care professionals is to save lives. Your choice to become a donor **does not affect** the quality of life-saving medical care you receive.

110

5/25/2021 Organ Donation Myths and Facts | Organ Donor



# HRSA

Health Resources & Services Administration  
<http://www.hrsa.gov>

<http://www.hhs.gov>

[organdonor.gov](http://organdonor.gov)

111

## Fact

When you are sick or injured and admitted to a hospital, the **one and only priority is** to save your life.

112

Consent donate  
**≠**  
Consent PMNI

113

We do **not** get 1<sup>st</sup>  
person consent

114

But we  
**should**

115

3

116



117

We prefer to  
hear from  
patient **herself**

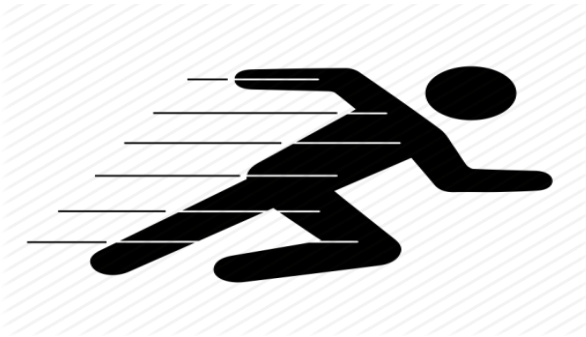
118

Do not want 2<sup>nd</sup>  
best substitutes  
unless **necessary**

119



120



121



122



123

Moorman & Carr	<b>62%</b>
Barrio-Catelejo	<b>63%</b>
Shalowitz et al.	<b>58%</b>

124

**So...**

125

No direction  
from patient  
herself

126

# Surrogate consent

127

Less respectful  
Slower  
Inaccurate

128

**4** more  
problems

129

Surrogate is  
**constrained**

130

**1** Limit by  
**statute**

131



132

Dec.  
2020

**Guidance on deceased organ and tissue donation in Scotland: Authorisation requirements for donation and pre-death procedures**



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

March 2021 (1st Ed.)

133

“pre-death procedure may **only** be carried out ... if ... specified as ... Type A ... or Type B”

134

Many PMNI neither Type A nor Type B

135

Statute **prohibits** PMNI even with consent

136

**2** Limited by **AD**

137

AD says “no” (CPR, MV...)

Surrogate **lacks** authority to say “yes”

138

B. AGENT'S AUTHORITY: I grant to my agent full authority to make decisions for me regarding my health care; provided that, in exercising this authority, my agent shall follow my desires as stated in this document or otherwise known to my agent. Accordingly, my agent is authorized as follows:

139

3 Limited  
by BI

140

Surrogate must make  
decisions in patient's  
**best interest**

141



Consent and Capacity Board



The Court of Protection

142

**non**-therapeutic  
Zero benefit  
Positive risk harm

143



144



PMNI promotes  
patient's **non-clinical**  
interest to be donor

145



146

**4** Limited  
by conflict

147



148

**SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY**

Case Title: Millard v Australian Capital Territory

Citation: [2020] ACTSC 138

Hearing Dates: 21–22, 25, 27 May 2020

Decision Date: 28 May 2020

149

Alive	Dead
Boyfriend (agent)	Father (NOK)

150

Father	Boyfriend
<i>Donate</i>	<i>No PMNI</i>

151

**Conclusion**

152

Many PMNI **not** authorized

153

**Impairing** transplant outcomes


154



155




156




**Minimal** – blood, urine

157



**Moderate** – biopsy,  
bronchoscopy

158



**High** – heparin, MV,  
femoral cannulation

159




**Minimal** – implied

160



**Moderate** – patient or  
surrogate consent

161



**High** – not  
allowed

162

# 1<sup>st</sup> person consent

163

Respect Pt  
More PNMI  
More & better organs

164

SPECIFICATIONS: Please complete Parts 1 AND Part 2.

<b>*Part 1:</b>		<b>*Part 2:</b>
<input type="checkbox"/> I consent to the donation of All my organs, tissues and eyes OR <input type="checkbox"/> I consent to the donation of Only the organs and tissues checked below:		I consent to donate my organs and/or tissues for the purpose(s) of:
<b>Organs</b> <input type="checkbox"/> Heart <input type="checkbox"/> Intestines <input type="checkbox"/> Kidneys <input type="checkbox"/> Liver <input type="checkbox"/> Lungs <input type="checkbox"/> Pancreas	<b>Tissues</b> <input type="checkbox"/> Blood vessels <input type="checkbox"/> Bone and Connective Tissue <input type="checkbox"/> Corneas <input type="checkbox"/> Eyes <input type="checkbox"/> Skin	<input type="checkbox"/> Transplant AND Research <input type="checkbox"/> Transplant Only <input type="checkbox"/> Research Only

165



166

## ADVANCE HEALTH CARE DIRECTIVE FORM

PAGE 4 of 7

### PART 3 DONATION OF ORGANS, TISSUES, AND PARTS AT DEATH (OPTIONAL)

(3.1)  Upon my death, I give my organs, tissues, and parts (mark box to indicate yes).

By checking the box above, and notwithstanding my choice in Part 2 of this form, I authorize my agent to consent to any temporary medical procedure necessary solely to evaluate and/or maintain my organs, tissues, and/or parts for purposes of donation.

167

# 1<sup>st</sup> person consent for PMNI

168

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B [medicalfutility.blogspot.com](http://medicalfutility.blogspot.com)