Cleveland Clinic

1

Dead Donor Rule Disregarded: Four Pervasive Derelictions

Brain Death, DCD, NRP, PMI

2

Thaddeus Pope

for

Cleveland Clinic Bioethics
September 29, 2025

3

nothing
to disclose

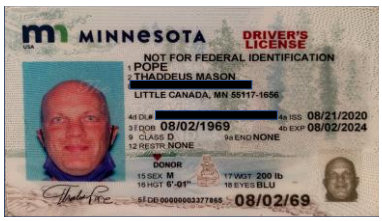
4

I am
pro-donation

5

I am a FPA donor
with **designation**
on my Minnesota
driver's license

6



7

Cleveland Clinic | Newsroom

February 14, 2025 /

Cleveland Clinic Reached New Milestones in Organ Transplantation

8

but

9

critical
OT practices

10

11

12

13

14

T.J. Hoover is **not** unique

15

May - July
2025

16

17

18

The New York Times https://www.nytimes.com/2025/07/20/us/organ-transplants-donors-alive.html

A Push for More Organ Transplants Is Putting Donors at Risk

People across the United States have endured rushed or premature attempts to remove their organs. Some were gasping, crying or showing other signs of life.

By Brian M. Rosenthal and Julie Tate

July 20, 2025 Updated 5:40 p.m. ET

19

dozens of cases

across the country

20

"**eyes** open and tracking"

"purposeful movement to **pain**"

21

almost

took organs before death

22

Secretary... X.com

@SecKennedy

https://x.com/robertkennedyjr

Hospitals began organ harvesting while patients still showed signs of life. That's horrifying—

23

24

TJ Hoover + >100 cases

25

violating the dead donor rule

26

death → remove organs

27

28

remove organs → death

29

30

not new

31

DDR close calls reported for **decades**

32

33

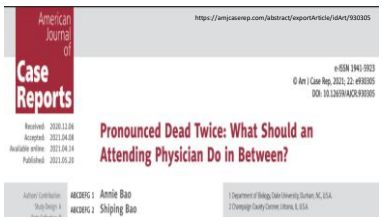
34

Los Angeles Times

close call - in death ruling of potential organ donor

John Foster at Fresno Community (April 12, 2007)

35



36

serious errors

37

with **death** determination, we want **100%** accuracy

38

we want **zero** false positives

39

never want to say someone is dead

when they are **not**

40

but

41

accidental DDR violations

42

ENERGY & COMMERCE
CHAIRMAN BRETT GUTHRIE

Sept. 16, 2025

E&C Leaders Send Bipartisan Letter to HRSA Following Oversight Hearing on Concerning Practices in Organ Procurement and Transplant System

43

accidental DDR violations

44

45

deliberate violations

46

not **clinicians** deviating from rules for OT

47

OT rules **themselves** breach DDR

48

roadmap

49

50

4 parts

51

organ transplantation

52

dead donor rule

53

4 **violations** of the DDR

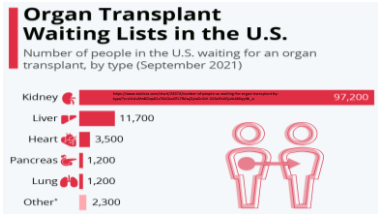
54

what to do **next**

55

organ transplantation

56



57

58

living donors
or
deceased donors

59

most organs from **deceased** donors

60

2024

61

7000 living

41,000 deceased

62

14%
transplants from **living** donors

63

86%
transplants from **deceased** donors

64

65

66

deceased donation

67

dead donor rule

68

procure vital single organs

only from donors **already** dead

69

codified in **law**

70

Maryland Health - General § 5-202(b)(2)

71

"pronouncement of death … shall be made **before** any vital organ is removed for transplantation"

72

La. Rev. Stat. 40:1061.25

73

"**dead donor rule** … protects the integrity of human organ donation by providing"

74

"donors must be dead **before** procurement … begins"

75

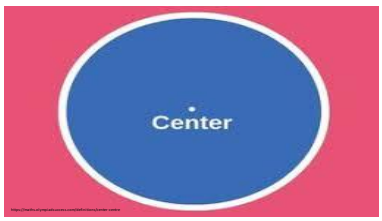
"organ procurement … must **not cause** the death"

76

77

even where **not** codified

78



79

World Health Organization

WHO GUIDING PRINCIPLES ON HUMAN CELL, TISSUE AND ORGAN TRANSPLANTATION[1]

80

that's the **core** DDR

81

first

determine death

82

then

take organs

83

but

84

3 layers to DDR

85

2d layer

86

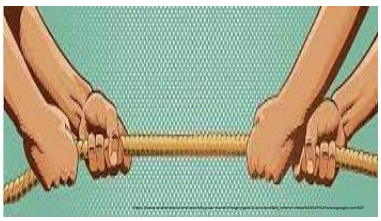
separate death determination clinicians - from transplant clinicians

87

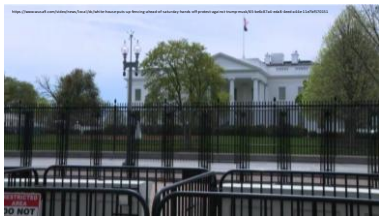
88

"physician, … who … determines … death shall **[not]** participate in … transplanting"

89



90



91

also built
2d fence
for DDR

92

avoid COI that might cause DDR violations

93

so…

94

not only

95

follow DDR

96

but also

97

avoid even
appearance
of impropriety

98

3d layer

99

burden of proof

100

DDR

101

~~**P**DDR~~

102

presumed alive until rebutted

103

recap

104

3 layers to DDR

105

1. death **before** OT
2. OT MD cannot determine death
3. do not determine death until **sure**

106

that's the **definition** of DDR

107

DDR matters

108

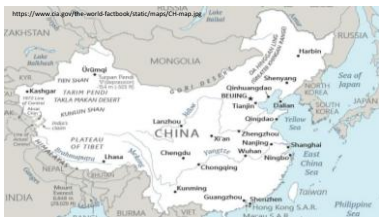
109

4 recent examples

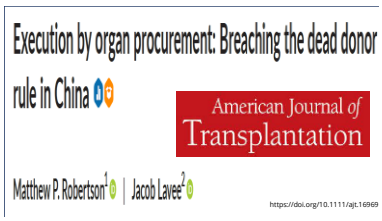
110

example 1

111



112



113

114

115

116

example 2

117

118

A brief history of Israel's theft and trafficking of Palestinian organs

There are over three decades of evidence that Israeli doctors harvest Palestinian organs in direct violation of international law. These stolen body parts were not just used for transplantation and research but for sale and profit.

BY HEALTHCARE WORKERS FOR PALESTINE - FEBRUARY 22, 2025 - 24

119

example **3**

120

121

122

CORREIO BRAZILIENSE

JUSTICE

Doctor sentenced to 21 years for death after removing boy's organs

123

Justiça analisa apelações de médicos envolvidos na morte do menino Paulo Pavesi; órgãos foram retirados ilegalmente

De todos os envolvidos, apenas um permanece preso. Paulo Pavesi foi morto em 2000, aos 10 anos, e teve os órgãos retirados enquanto ainda estava vivo; caso aconteceu em Poços de Caldas.

Por Alex Araújo, Jô Andrade, g1 Minas — Belo Horizonte

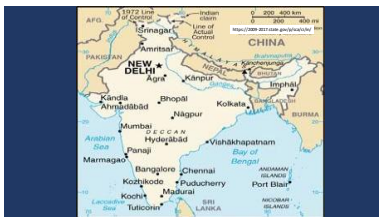
16/04/2024 11h37 · Atualizado há 2 semanas

5 more criminal prosecutions

124

example **4**

125



126

Bar and Bench

Kerala court issues summons to Lakeshore Hospital, 8 doctors on allegations of illegal organ transplantation

https://www.barandbench.com/news/litigation/kerala-court-summons-lakeshore-hospital-8-doctors-allegations-illegal-organ-transplantation

127

128

129

1968

130

131

132

Tucker v. Lower

No. 2831 (Richmond, Va., L. & Eq. Ct., May 23, 1972).

133

Heart Donor Identified

The Medical College of Virginia's heart transplant patient was listed as satisfactory yesterday afternoon; meanwhile, the identity of the donor was learned late yesterday.

He was Bruce Oliver Tucker, 33, of 109 E. Charity St. here, who suffered fatal brain injuries last Friday evening when he fell from a three-foot high wall he was sitting on and hit his head on concrete, according to a friend. The accident occurred between 11th and 12th Sts. on East Cary Street.

Tucker, who was a Negro, died Saturday at MCV of "irreparable" brain injuries, according to one source. He worked at the Schluderberg-Kurdle Co., Inc. (Eskay) a

Eskay egg plant, said Tucker had worked there for "20 or 22" years, and described him as a "good employe who was always punctual." Eggs are candled and graded at the Cary Street Eskay plant.

Bowles said he was not at work last week due to illness, but understood that Tucker's accident occurred sometime after the plant had closed Friday evening.

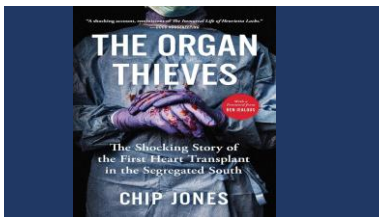
A brother of the donor, Grover Tucker of Dinwiddie, when asked if his brother were the donor, said "Yes, he's the one."

Another brother, William Tucker of Richmond, declined to confirm or deny that Bruce Tucker was the donor, but added, "If it were done, it was done without authorization." He declined further comment.

State medical officials could not be reached for comment

Bruce O. Tucker

134



135

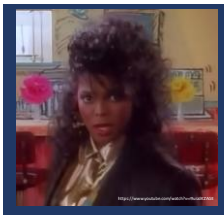
136

motivator
BD laws
1970 →

137

Tucker v. Lower
1968

138



what have you done for me **late-ly**?

139

DDR violations **continue** to be prosecuted

140

2 cases

141

case **1**

142

143

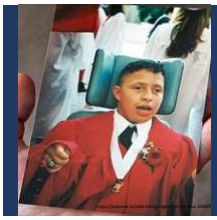
transplant surgeon

Hootan Roozrokh

144

DCD

145



Ruben Navarro

146

patient did **not** die after WLST

147

SO…

148

149

220mg morphine
+
84mg Atavan

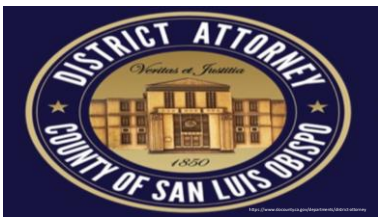
150

nurse reported to **police**

151

charged & prosecuted

152



153

"The defendant a transplant surgeon administered excessive amounts of narcotics and tranquilizers … to **hasten his death,** so that he could **harvest his organs"**

154

jury acquitted

155

but

156

2-month trial

157

3 years of his life

158

case **2**

159

160

DBD

161

162

163

164

not BD

165

hastened death

or

started OT before BD

166

$1,200,000

167

other cases

168

Mississippi Electronic Courts
Tenth Circuit Court District (Lauderdale Circuit Court)
CIVIL DOCKET FOR CASE #: 38CI1:23-cv-00039-rb
Internal Use Only
Edit Case Data
Edit Case Participants

DENISON et al v. Mississippi Organ Recovery Agency Inc. et al Date Filed: 03/16/2023

169

why review these court cases?

170

DDR has **teeth**

171

172

recap

173

never want to say someone is dead

when they are **not**

174

never take vital organs until **after** individual determined dead

175

when are donors dead

176

2 ways to be dead

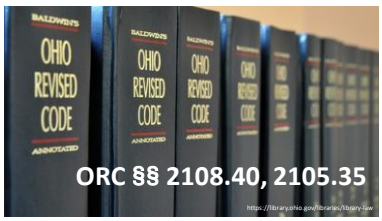
177

UDDA

178

law on death in all U.S. jurisdictions

179



180

2 ways
to determine death

181

"irreversible cessation of **circulatory & respiratory** functions"

182

or

183

"irreversible cessation of all functions of the entire **brain**"

184

circulatory criteria
or
neurologic criteria

185

to date, **87%** deceased donation is after **BD**

186

just **13%** after CD

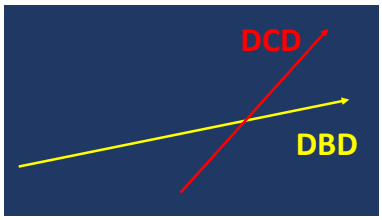
187

but

188

2010 - 2024

189



190

OPTN Organ Procurement & Transplantation Network

U.S. Department of Health & Human Services

HRSA Health Resources & Services Administration

191

	2024	2023	2022	2021	2020	2019	2018	2017
All DCD + non-DCD	41,119	39,679	36,421	34,814	33,310	32,322	29,681	28,588
Brain Death Donor	28,144	29,721	28,729	27,770	27,462	27,306	25,721	25,131
DCD Donor	12,975	9,958	7,692	7,044	5,847	5,016	3,960	3,457

https://optn.transplant.hrsa.gov/data/view-data-reports/national-data/

192

DCD

193

>160% increase
last 5 years

194

DBD

195

only **3%** increase
last 5 years

196

DCD **>** 1/3
DBD < 2/3

197

DCD 50%
DBD 50%

198

DDR violations

199

4 violations

200

DBD

201

DCD

202

NRP

203

PMI

204

measure OT against **UDDA**

205

Neurology

Rethinking Brain Death—Why "Dead Enough" Not Good Enough

The UDDA Revision Series

206

UDDA ≠ human death

207

NRP
PMI
DBD
DCD
UDDA

208

DBD

209

2 problems

210

problem 1

211

212

law | **medicine**

213

clinicians do **not** assess what **UDDA** requires

214

UDDA

215

law on death in all U.S. jurisdictions

216

irreversible cessation
all functions
entire brain

217

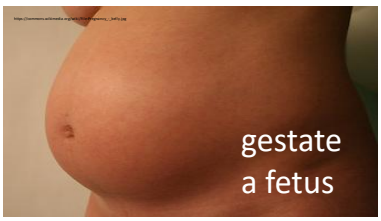
but

218

brain dead
people
do stuff

219

220



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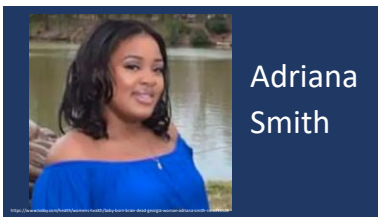


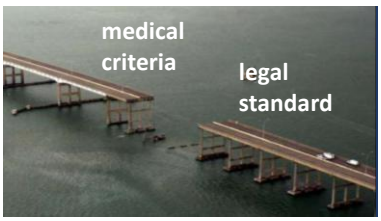
222

clinicians assess only
some functions
part of brain

223

UDDA requires
all functions
entire brain

224



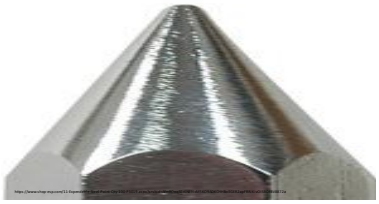
225

medically dead

≠

legally dead

226



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AMERICAN ACADEMY OF NEUROLOGY

228

Pediatric and Adult Brain Death/Death by Neurologic Criteria Consensus Guideline

Report of the AAN Guidelines Subcommittee, AAP, CNS, and SCCM

David M. Greer, MD, MA,* Matthew P. Kirschen, MD, PhD,* Ariane Lewis, MD,* Gary S. Gronseth, MD, Alexander Rae-Grant, MD, Stephen Ashwal, MD, Maya A. Babu, MD, MBA, David F. Bauer, MD, MPH, Lori Billinghurst, MD, MSc, Amanda Corey, MD, Sonia Partap, MD, MS, Michael A. Rubin, MD, MA, Lori Shutter, MD, Courtney Takahashi, MD, Robert C. Tasker, MBBS, MD, Panayiotis Nicolaou Varelas, MD, PhD, Eelco Wijdicks, MD, PhD, Amy Bennett, JD, Scott R. Wessels, MPS, ELS, and John J. Halperin, MD

Correspondence
American Academy of Neurology
guidelines@aan.com

Neurology® 2023;101:1112-1132. doi:10.1212/WNL.0000000000207740

229

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

Correspondence
J.A. Russell
james.a.russell@ahey.org

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

230

patient can **satisfy** BD guidelines

231

dead

232

yet…

233

"neuro-endocrine function **may be present**"

234

AMERICAN ACADEMY OF NEUROLOGY

235

may determine BD **despite** function hypothalamus

236

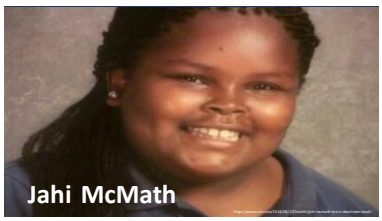
"**not inconsistent** with the whole brain standard of death"

237

but

238

239



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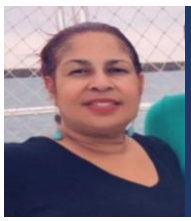


Beverly Whitehead

241

WRONG

242

UDDA

requires

243

irreversible
cessation of

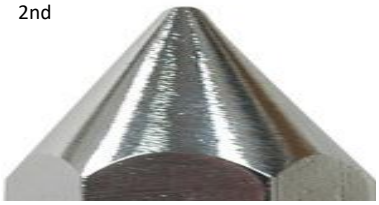
244

all functions
of the
entire brain

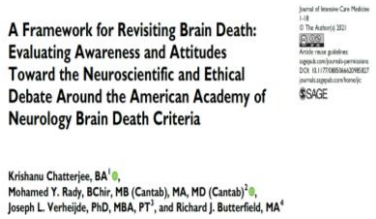
245

246

2nd



247



A Framework for Revisiting Brain Death: Evaluating Awareness and Attitudes Toward the Neuroscientific and Ethical Debate Around the American Academy of Neurology Brain Death Criteria

Krishanu Chatterjee, BA[1], Mohamed Y. Rady, BChir, MB (Cantab), MA, MD (Cantab)[2], Joseph L. Verheijde, PhD, MBA, PT[3], and Richard J. Butterfield, MA[4]

248

200 clinicians
Mayo Clinic

249

if you:
use AAN protocol
get positive result

250

does that establish loss of "**all** functions of the **entire** brain"?

251

no

252

253

UDDA

requires

254

1. cessation
2. all functions
3. entire brain

255

AAN guidelines

do **not**

256

that's

problem **1**

257

mismatch

legal criteria to

medical standards

258

problem 2

259

even if guidelines

were legally valid

260

widespread

noncompliance

261

UDDA

262

when you make determination of irreversible cessation

263

"accordance with **accepted medical standards**"

264

but

265

variability

266

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;

JAMA Neurology 2016 Feb;73(2):213-8
doi: 10.1001/jamaneurol.2015.3943

267

Improving uniformity in brain death determination policies over time

Neurology 2017 Feb 7;88(6):562-568
doi:10.1212/WNL.0000000000003597

268

Variability of brain death determination guidelines in leading US neurologic institutions

Neurology 2008 Jan 22;70(4):284-9
doi: 10.1212/01.wnl.0000296278.59487.c2

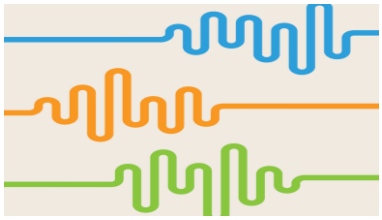
269

Variability in reported physician practices for brain death determination

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

Neurology 2019 Feb 26;92(9):e888-e894
doi: 10.1212/WNL.0000000000007009

270



271

272

273

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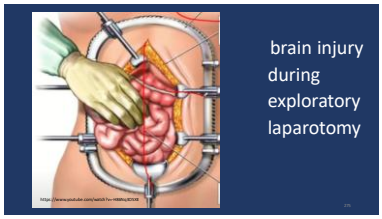

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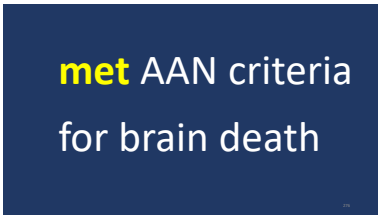


276

277

278

279

trial court

AAN criteria met

→ Aden is dead

280

281

dad **wins**

282

Supreme Court of Nevada

283

irrelevant Aden meets AAN criteria

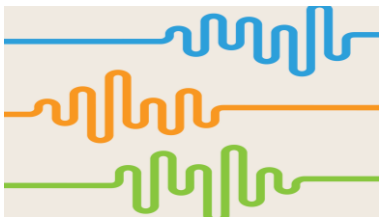
not the "right" criteria

284

unclear they are "**accepted** medical standards"

as UDDA requires

285



286

state 1 ≠ state 2

287

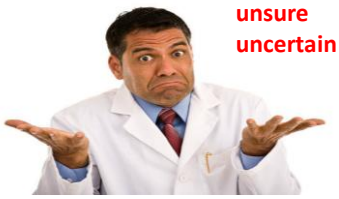
hospital 1 ≠ hospital 2

288

MD 1
≠
MD 2

289

290



291

292

amended
NUDDA

A.B. 424 (2017)

293

determination of BD "must be made in accordance **with** …"

294

accepted medical standards

295

NEW YORK STATE | Department of Health

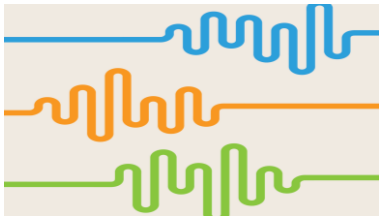
296

NJ Health
New Jersey Department of Health

297

298

299



300

that's problem **2**

301

failure

determine BD using "accepted standards"

302

that's

DBD

303

let's move to a **second** DDR violation

304

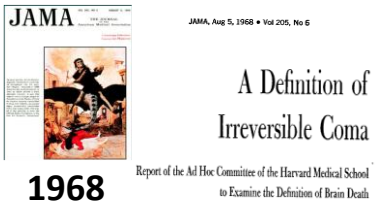
DCD

305

1960s

OT was DCD

306



1968

307

1970 →

308

50 years
almost all
OT was BD

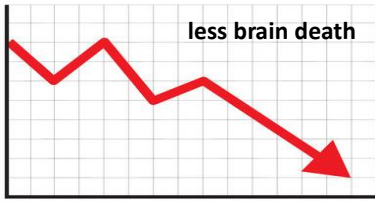
309

BD – can keep organs perfused **whole** time

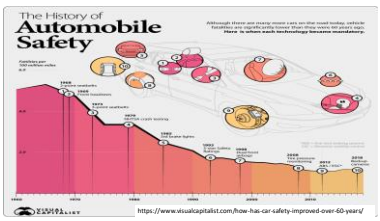
310

but

311



312



313

1990s

314

DCD

315

316

catastrophically critically ill (but **alive** patient)

317

family decides to **stop** LST

318

likely that heart will **stop**

319

320

even when heart stops

321

not dead **yet**

322

UDDA

323

"**irreversible** cessation of circulatory & respiratory functions"

324

2 problems

325

problem **1**

326

cessation is **not irreversible** as UDDA requires

327

we **can** reverse cessation of circulatory function

328

we **won't** (because Pt does not want that)

329

330

but

331

we **could**

332

response

333

we interpret "irreversible" as "**permanent**"

334

not what UDDA says

335

problem **2**

336

even if UDDA required only "permanent" cessation

337

is even **that** satisfied?

338

after heart stops

339

standoff

observation

340

ensure heart does not restart **spontaneously**

341

how long?

342

343

after 5 min

344

if **no** circulatory function

345

→ dead

346

WLST
asystole
stand off
declaration

347

why
5 min

348

hearts **have** restarted at 4:20

349

DDR
problem

350

some clinicians wait only **2 min**

351

ASTS American Society of Transplant Surgeons

Sept. 2025

ASTS Position Statement on a 5-minute observation period

"**heterogeneous** waiting times ranging from 2 to 5"

352

353

but

354

unclear that circulatory cessation was **irreversible**

355

heart **might** have restarted

356

at 2:09
or
at 3:44

357

DDR

358

~~**P**DDR~~

359

D~~**E**~~DR

360

~~ADDR~~

almost

361

~~MDDR~~

mostly

362

~~JADDR~~

just about

363

DDR

364

365

DDR

2d problem

366

even if guidelines **were** legally valid

367

368

AJS The American Journal of Surgery

Anji E Wall et al., **Variation** in donation after circulatory death hospital policies in a single donor service area, Am J Surg . 2022;224(1 Pt B):595-601.

369

"significant variability … uniform standards are needed"

370

371

let's move to a specific **type** of DCD

372

NRP

373

normothermic
regional
perfusion

374

TA-NRP

375

DCD requires absence of circulation

376

but

377

bad for organs, especially heart

378

minimize
warm
ischemia

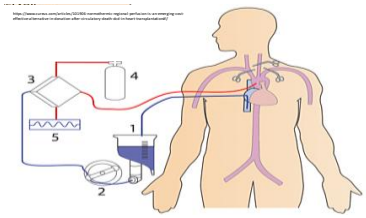
379

so …

380

restart circulation
in the donor

381



382

improves
organ quality

383

problem

384

said dead **because**
irreversible cessation
of circulatory function

385

reversed it

386

basis for death
determination
no longer true

387

response

388

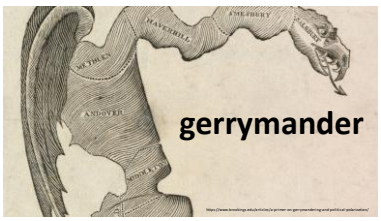
before restart → cut or clamp vessels to brain

389

even if no longer **circulatory** dead, w/o perfusion to brain, patient is **brain** dead

390

391



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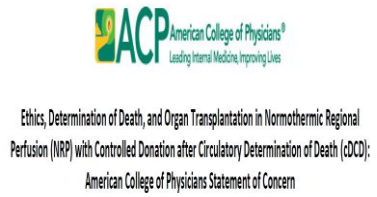


393

"ethical & legal propriety … has **not** been met"

394

395

"**unclear** whether NRP violates the DDR"

396

The Irreversible Cannot Be Reversed: Normothermic Regional Perfusion Is Euthanasia

397

NRP

398

really only regional?

399

only a **hypothesis**

do not **know** no perfusion to brain

400

American Journal of Transplantation

Editorial

Normothermic regional perfusion in donation after circulatory determination of death—Confirming the absence of brain reperfusion

Commentary on [https://doi.org/10.1016/j.ajt.2025.03.029]

Sam D. Shemie, Christopher J.E. Watson

401

do not **know** donor is dead

402

may be

consciousness

pain perception

403

ASTS American Society of Transplant Surgeons

Sept. 2025

ASTS Position Statement on vascular ligation and/or venting of the aortic arch vessels during Thoracoabdominal Normothermic Regional Perfusion (TA-NRP)

"**emerging** evidence … support … absence of cerebral blood flow"

404

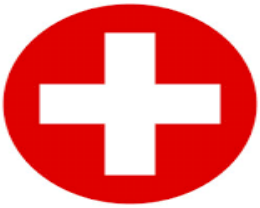
HRSA Health Resources & Services Administration

Health Systems Bureau
5600 Fishers Lane
Rockville, MD 20857

September 27, 2024

"**circulation** to the brain … definitely … **restored**"

405



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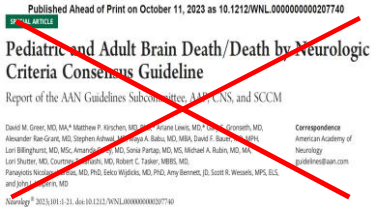

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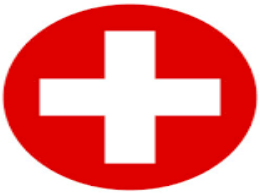

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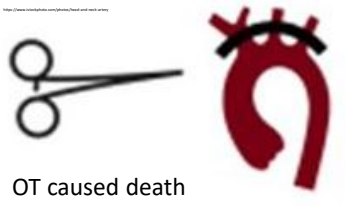


409

DDR

410

death → OT

411

412

OT → death

413

recap

414

DBD
DCD
NRP

415

1 more DDR violation

416

PMI

417

DCD entails some ischemic damage

418

SO …

419

pre-mortem
non-therapeutic interventions

420

MV CPR
vasopressors
hormonal therapy

421

heparin
femoral cannulation

422

not for patient
only for **organ**

423

organ **protection** therapy

donor **optimization** procedures

424

donor management

425

DDR

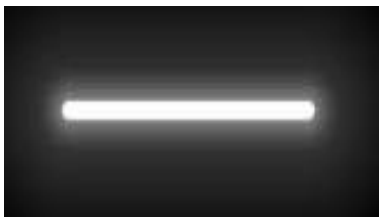
426

alive	dead
focus on patient	focus on organ

427

alive	dead
treatment team	transplant team

428



429

PMI

430

alive	dead
focus on patient	focus on organ

431

432

donor | patient

433

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

434

recap

435

DBD NRP
DCD PMI

436

we **breach** the DDR

437

every single day

438

what next

439

4 paths

440

441

442

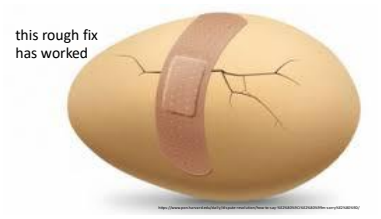
continue
OT **as is**

443

444

445

446



447

but

448

449

450

HHS.gov @HHSGov X.com

https://x.com/droz

.@DrOzCMS: "If we lose trust in the organ transplantation system of this country, tens of thousands of people are going to die yearly

451

so …

452

453

454

revise OT to comply

455

BD **only** when no neuroendocrine function

456

DCD **>** 5 min

457

no NRP
until evidence

458

but

459

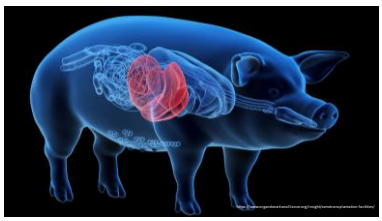
460

UDDA is strict & demanding

461

we would **lose** many organs

462



463

464

465

change UDDA

466

instead of aligning **guidelines** to law

467

align **law** to guidelines

468

we tried

469

Uniform Law Commission
Better Laws. Stronger States.

470

UDDA →
RUDDA

471

match
legal criteria to
medical standards

472

but

473

474

so …

475

~~RUDDA~~

476


The New York Times

Donor Organs Are Too Rare. We Need a New Definition of Death.

July 30, 2025

477

478

drop DDR

479

~~DDR~~

480

let people **decide** when they are "dead enough" to donate organs

481

5 reasons

482

1 **already** tried

483

In re T.A.C.P.

No. 79582.

Supreme Court of Florida

Nov. 12, 1992.

484

2 growing calls

485

The NEW ENGLAND JOURNAL of MEDICINE

Perspective

FEBRUARY 6, 2020

Altruism *in Extremis* — The Evolving Ethics of Organ Donation

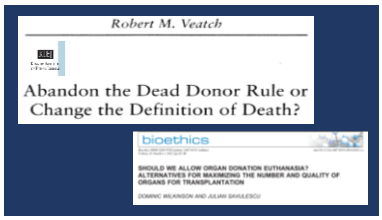
Lisa Rosenbaum, M.D.

486

3 foremost bioethicists

487

488



489

4 public opinion

490

Abandoning the dead donor rule? A national survey of public views on death and organ donation

Michael Nair-Collins, Sydney R Green, Angelina R Sutin

491

70% support procuring organs even if **not** dead

492

5 honest transparent

493

no DDR
≠
expand OT

494

matching rules to practice

495

496

in sum

497

conflict
DDR ***v*** OT

498

ignore mismatch
change guidelines
change law
drop DDR

499

conclusion

500

increase
number & quality of organs

501

but

502

zero sum situation

503

more certain death → fewer organs

504

more organs → less certain death

505

506

utility DDR compliance

507

how much **uncertainty of death** can we tolerate in OT?

508

509

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