

# **Legal Definitions of Death**

## **UNIFORM DETERMINATION OF DEATH ACT**

This Act provides comprehensive bases for determining death in all situations. It is based on a ten-year evolution of statutory language on this subject. The first statute passed in Kansas in 1970. In 1972, Professor Alexander Capron and Dr. Leon Kass refined the concept further in "A Statutory Definition of the Standards for Determining Human Death: An Appraisal and a Proposal," 121 Pa. L. Rev. 87. In 1975, the Law and Medicine Committee of the American Bar Association (ABA) drafted a Model Definition of Death Act. In 1978, the National Conference of Commissioners on Uniform State Laws (NCCUSL) completed the Uniform Brain Death Act. It was based on the prior work of the ABA. In 1979, the American Medical Association (AMA) created its own Model Determination of Death statute. In the meantime, some twenty-five state legislatures adopted statutes based on one or another of the existing models.

The interest in these statutes arises from modern advances in lifesaving technology. A person may be artificially supported for respiration and circulation after all brain functions cease irreversibly. The medical profession, also, has developed techniques for determining loss of brain functions while cardio respiratory support is administered. At the same time, the common law definition of death cannot assure recognition of these techniques. The common law standard for determining death is the cessation of all vital functions, traditionally demonstrated by "an absence of spontaneous respiratory and cardiac functions." There is, then, a potential disparity between current and accepted biomedical practice and the common law.

The proliferation of model acts and uniform acts, while indicating a legislative need, also may be confusing. All existing acts have the same principal goal-extension of the common law to include the new techniques for determination of death. With no essential disagreement on policy, the associations which have drafted statutes met to find common language. This Act contains that common language, and is the result of agreement between the ABA, AMA, and NCCUSL.

Part (1) codifies the existing common law basis for determining death-total failure of the cardio respiratory system. Part (2) extends the common law to include the new procedures for determination of death based upon irreversible loss of all brain functions. The overwhelming majority of cases will continue to be determined according to part (1). When artificial means of support preclude a determination under part (1), the Act recognizes that death can be determined by the alternative procedures.

"Uniform Determination of Death Act" developed jointly by the National Conference on Commissioners of Uniform State Law, the American Medical Association and the American Bar Association, approved October 19, 1980 and February 10, 1981.

Under part (2), the entire brain must cease to function, irreversibly. The “entire brain” includes the brain stem, as well as the neocortex. The concept of “entire brain” distinguishes determination of death under this Act from “neocortical death” or “persistent vegetative state.” These are not deemed valid medical or legal bases for determining death.

This Act also does not concern itself with living wills, death with dignity, euthanasia, rules on death certificates, maintaining life support beyond brain death in cases of pregnant women or of organ donors, and protection for the dead body. These subjects are left to other law.

This Act is silent on acceptable diagnostic tests and medical procedures. It sets the general legal standard for determining death, but not the medical criteria for doing so. The medical profession remains free to formulate acceptable medical practices and to utilize new biomedical knowledge, diagnostic tests, and equipment.

It is unnecessary for the Act to address specifically the liability of persons who make determinations. No person authorized by law to determine death, who makes such a determination in accordance with the Act, should, or will be, liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts or the acts of others based on that determination. No person who acts in good faith, in reliance on a determination of death, should, or will be, liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts. There is no need to deal with these issues in the text of this Act.

Time of death, also, is not specifically addressed. In those instances in which time of death affects legal rights, this Act states the bases for determining death. Time of death is a fact to be determined with all others in each individual case, and may be resolved, when in doubt, upon expert testimony before the appropriate court.

Finally, since this Act should apply to all situations, it should not be joined with the Uniform Anatomical Gift Act so that its application is limited to cases of organ donation.

1        §1. *[Determination of Death.]* An individual who has sustain  
2        either (1) irreversible cessation of circulator and respiratory  
3        functions, or (2) irreversible cessation of all functions  
4        of the entire brain, including the brain stem, are dead. A  
5        determination of death must be made in accordance with  
6        accepted medical standards.

1        §2. *[Uniformity of Construction and Application.]* This Act  
2        shall be applied and construed to effectuate its general purpose  
3        to make uniform the law with respect to the subject of this Act  
4        among states enacting it.

1 §3. [Short Title.] This Act may be cited as the Uniform  
2 Determination of Death Act.

## **Legislative Proposals For the Definition of Death**

### **1. New York State**

An Act to amend the public health law, in relation to a definition of death. The People of the State of New York, represented in Senate and Assembly, do enact as follows: Section 1. The public health law is hereby amended by adding t Hereto a new section, to be section forty-one hundred forty-a, to read as follows:

4140-a. Deaths: Definition of death. A person shall be pronounced dead if in the announced opinion of a duly licensed physician based on prevailing standards of medical practice such person has experienced an irreversible cessation of. *spontaneous* respiratory and circulatory functions. If, the use of artificial means of support precludes a determination that these functions have ceased, a person shall be pronounced dead if in the announced opinion of a duly licensed physician based on prevailing standards of medical practice such person has experienced a total and irreversible cessation of brain function, unless the physician receives written notice from a parent, spouse or next of kin of such person that such pronouncement conflicts with such person's beliefs.

2. This act shall take effect immediately.

### **2. Missouri**

An Act - providing means for determining whether a person is dead and when death occurred, and providing the purposes for which the means shall be used.

Be it enacted by the General Assembly of the State of Missouri, as follows:  
Section 1. 1. A person shall be considered dead if in the announced opinion of a physician, based on ordinary standards of medical practice, he has experienced an irreversible cessation of spontaneous respiratory and circulatory functions. In the event that artificial means of support preclude a determination that these functions have ceased, a person shall be considered dead if in the announced opinion of a physician, based on ordinary standards of medical practice, he has experienced an irreversible cessation of spontaneous brain *functions*. Death shall have occurred at the time when the relevant functions ceased.

2. The means of determining death in subsection 1 shall be used for all purposes in this state, including the trials of civil and criminal cases.

### 3. Kansas

A person will be considered medically and legally dead, if in the opinion of a physician, based on ordinary standards of medical practice, there is the absence of spontaneous respiratory and cardiac function and, because of the disease or *condition* which caused, directly or indirectly, these *functions* to cease, or because of the passage of time since these *functions* ceased, attempts at resuscitation are considered hopeless; and, in this event, death will have occurred at the time these *functions* ceased; or

A person will be considered medically and legally dead if, in the *opinion* of a physician, based on ordinary standards of medical practice, there is the absence of spontaneous brain function; and if based on ordinary standards of medical practice, during reasonable attempts to either *maintain* or restore spontaneous circulatory or respiratory *function* in the absence of aforesaid brain function, it appears that further attempts at resuscitation or supportive maintenance will not succeed, death will have occurred at the time when these conditions first coincide. Death is to be pronounced before artificial means of supporting respiratory and circulatory function are terminated and before any vital organ is removed for purpose of transplantation.

These alternative definitions of death are to be utilized for all purposes in this state, including the trials of civil and criminal cases, any laws to the contrary notwithstanding.

### 4. Capron & Kass

A person will be considered dead if in the *announced* opinion of a physician, based on ordinary standards of medical practice, he has experienced an irreversible cessation of spontaneous respiratory and circulatory functions. In the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of a physician, based on ordinary standards of medical practice, he has experienced an irreversible cessation of spontaneous brain functions. Death will have (occurred at the time when the relevant functions ceased.

Capron, A. M. and Kass, L. R. "A Statutory Definition of the Standards for Determining Human Death" University of Pennsylvania Law Review 121:87-118, 1972.

## 5. Vetch

A person will be considered dead if in the announced *opinion* of a physician, based on ordinary standards of medical practice, he has experienced an irreversible cessation of spontaneous respiratory and circulatory functions. In the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of a physician, based on ordinary standards of medical practice, he has experienced an irreversible cessation of *spontaneous* cerebral functions. Death will have occurred at the time when the relevant *functions* ceased.

It is provided, however, that no person shall be considered dead even with the announced *opinion* of a physician solely on the basis of an irreversible cessation of spontaneous cerebral functions if he, while competent to make such a decision, has explicitly rejected the use of this standard or, if he has not expressed himself on the matter while competent, his legal guardian or next of kin explicitly expresses such rejection.

It is further provided that no physician shall *pronounce* the death of any individual in any case where there is *significant* conflict of interest with his obligation to serve the patient (*including* commitment to any other patients, research, or teaching programs which might directly benefit from *pronouncing* the patient dead).