F42 Dead or Alive: A Bioethics Approach to the Understanding of Brain Death Diagnosis by Families and Courts—A Report on Two Cases From the United States and Argentina

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Learning Overview: After attending this presentation, attendees will understand the challenges that come with a brain death diagnosis, and the dilemmas that surround decision making at the end of life with families, especially in cases of a child or a young adult. Attendees will see how the ethics of care shows a unique understanding of suffering and denial in families of a brain-dead patient and how poor and insufficient a simple legal approach can be, as it seems not to afford an answer that would overcome the despair and sadness of the patient's family. Attendees will also see the courts' understanding of a medical diagnosis and the difficulties legal professionals face when trying to analyze a medical decision from a legal approach.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by showing key aspects of the important role of bioethics in delivering bad news for families in medical situations at the end of life and the challenges professionals of the law, the courts, and the forensic sciences must deal with in order to guarantee surrogate decision making, the patient's dignity, and a good understanding of the medical diagnoses from courts.

Brain death is a hard diagnosis to make and even harder for families to accept. The idea of a corpse beating and breathing is extremely challenging to personal and religious beliefs. Fear always surrounds brain death diagnosis—the health team fears to err on the diagnosis and families fear to let go of their beloved one before his/her time.

The brain death definition states that death is "the irreversible cessation of all functions of the entire brain, including the brain stem." This definition is found in the Uniform Declaration of Death Act (1981) of the United States and in the Organ Transplantation Act (24193) and the National Protocol for the Certification of Brain Death under Neurological Criteria, both from Argentina.

The diagnosis of brain death has important ethical, legal, and clinical implications. Although the concept of brain death is long-established criteria, how brain death is determined in practice can vary. These differences in practices can contribute to confusion, particularly on the lay public, but also in the courts.

Usually, a family's refusal to accept the diagnosis of brain death, the proper consideration of a patient's or a family's religious and personal views of death and perspectives on organ donation, and how accommodating hospitals should behave toward bereaved families can spark much controversy and debate. The goal is to present the challenges that a brain death diagnosis brings to health teams, families, and courts at the crossroads of medicine, individual rights, and a legal approach.

Brain death will be examined through two cases: Jahi McMath, a 17-year-old girl whose parents defied a brain death diagnosis, and the Ahumada Nuñez Case and the Argentine court's decision in a criminal case with a young brain death victim.

This presentation will show how juridification of clinical practice can lead to therapeutic obstinacy and can also result in a self-fulfilling prophecy: asking a judge about a medical decision that should have been decided between doctors and the patient/family, according to a legal and bioethical framework that opens the chance of legal scrutiny over doctors' decisions. Involving courts in clinical practice can lead to judicial obstinacy, can harm the patient's dignity, and shatter the family's deepest loving feelings.

Bioethicists in the clinical environment are tasked with being respectful to all parties when there is conflict, trying to reach a consensus in which agreement is quite challenging. Palliative care can be a better approach to help families cope with a brain death diagnosis and to help health care professionals do what is in the best interests of the patient.

This presentation seeks to provide a unique insight into how doctors and courts respond to the changing medicolegal culture and its consequences on patient care. The complexity of decision making at the end of life suggests a multidisciplinary approach, which must include training of health professionals and courts, as well as societal education and engagement.

This presentation will highlight the importance of ethical discussion by healthcare professionals about their everyday decision-making practice and how this can be influenced by changes in the law. This presentation will also raise questions about the ethical role of the law in the decision-making process.

This presentation will conclude that all that is needed is **diligence** in acquiring professional and scientific knowledge; **dedication** to the patient and family's needs, doubts, and fears; and **devotion** to truth, care, and empathy.

Brain Death, Juridification of Clinical Decision, Bioethics