



**Statement of the NCBC to the  
Determination of Death Committee of the  
Uniform Law Commission  
July 21, 2023**

We write to express serious reservations about the proposed revision to the 1981 Uniform Determination of Death Act (UDDA)—specifically Option 2 of Section 3: The Determination of Death—that would change the current language to “(1) permanent cessation of circulatory and respiratory functions; or (2) permanent (A) coma, (B) cessation of spontaneous respiratory functions, and (C) loss of brainstem reflexes.” The proposed revision would replace the standard of whole brain death with one of partial brain death. We urge the Commission to retain the current standard of “irreversible cessation of all functions of the entire brain, including the brain stem.”

The basis for our objection is that the proposed revision will allow patients who exhibit partial brain function to be declared “legally dead” when they are not biologically dead. Pope Saint John Paul II stated that “the *complete* and *irreversible* cessation of all brain activity, if rigorously applied, does not seem to conflict with the essential elements of a sound anthropology.”<sup>1</sup> Catholic teaching cannot accept anything less than whole brain death as a legal definition of death.

Organ donation can be a “genuine act of love” that entails “a giving something of ourselves.”<sup>2</sup> The Catholic Church allows the faithful to choose this generous act and the NCBC has long supported the practice, assuming the proper conditions are met. Most importantly, vital organs may be procured only after death has been determined with moral certitude. Vital organs may not be procured prior to death and their removal must not be the cause of the donor’s death, as emphasized in the *Ethical and Religious Directives for Catholic Health Care Services* of the U.S. Conference of Catholic Bishops (ERDs, 63 & 64).<sup>3</sup> As recently as

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<sup>1</sup> Pope John Paul II, “Address to 18<sup>th</sup> International Congress of the Transplantation Society” (2000) in *The National Catholic Bioethics Quarterly* 1.1 (Spring 2001): 89–92.; [https://www.vatican.va/content/john-paul-ii/en/speeches/2000/jul-sep/documents/hf\\_jp-ii\\_spe\\_20000829\\_transplants.html](https://www.vatican.va/content/john-paul-ii/en/speeches/2000/jul-sep/documents/hf_jp-ii_spe_20000829_transplants.html).

<sup>2</sup> *Ibid.*

<sup>3</sup> US Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services*, 6th edition (2018).

2008, Pope Benedict XVI reiterated the high clinical and ethical standards that must be met in properly establishing that a donor has indeed died in order for vital organ retrieval to proceed:

In an area such as this, in fact, there cannot be the slightest suspicion of arbitration [arbitrariness] and where certainty has not been attained the principle of precaution must prevail.... [I]n these cases the principal criteria of respect for the life of the donator must always prevail so that the extraction of organs be performed only in the case of his/her true death.<sup>4</sup>

If the Commission were to support the idea that partial brain death is sufficient for vital organ retrieval, the NCBC would be obliged to advise those whom it serves—Catholic bishops, state conferences of Catholic bishops, Catholic health care systems and professionals, and Catholic patients and their families—that the Commission’s new definition of death lacks the ethical safeguards required to support vital organ donation with confidence. The proposed change in such an important standard undoubtedly will dissuade people from becoming donors and ultimately reduce the number of organs available for transplant.

We are also concerned that, at present, the clinical guidelines developed by the American Academy of Neurology and others do not assess neuroendocrine function, thus allowing patients with integrated functioning of the hypothalamus to be declared whole brain dead. This already calls into question the required rigor of application for whole brain death. Rather than seeking to adjust and improve the current clinical protocols, the Uniform Law Commission is poised to change the standard to partial brain death.

We are further concerned that the substitution of the term “permanent” for “irreversible” will be used to justify protocols that actively occlude blood flow to the brain during controlled circulatory death. Under this controversial protocol, the transplant team could directly cause the death of the donor. The Commission should retain the standard of whole brain death by maintaining the current UDDA language. Moreover, it should encourage medical professionals

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<sup>4</sup> Pope Benedict XVI, “Address to Participants at an International Congress Organized by the Pontifical Academy for Life” (November 7, 2008); [https://www.vatican.va/content/benedict-xvi/en/speeches/2008/november/documents/hf\\_ben-xvi\\_spe\\_20081107\\_acdlife.html](https://www.vatican.va/content/benedict-xvi/en/speeches/2008/november/documents/hf_ben-xvi_spe_20081107_acdlife.html)

to update clinical testing guidelines to fully comply with the current legal definition of brain death, not change the legal definition to comply with deficient medical criteria.

The Ethicists of The National Catholic Bioethics Center