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ETHICAL AND LEGAL DILEMMAS REGARDING THE TERMINATION OF LIFE SUPPORT FOR THE POTENTIAL ORGAN DONOR PATIENT

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Abstract

This paper examines the medical and legal complexities surrounding the termination of care and life support for patients diagnosed with brain death. The primary issue is a legislative vacuum regarding the precise criteria for determining and officially declaring brain death. The study specifically analyzes the discretionary application of resuscitation protocols, ventilator support, and vasopressor administration, highlighting how such decisions can be based on the subjective judgment of the attending physician or medical team.

The ethical dilemmas inherent in this medical decision-making process are not limited to the legal framework but also extend to the psycho-social, religious, and socio-political contexts. The reluctance of lawmakers to establish clear, rigid criteria for declaring death in brain-dead patients suggests an acknowledgment of the potential societal impact of such legislation. This reveals a significant disconnect between legal texts and their practical interpretation.

This research draws upon an analysis of existing legal statutes, established medical protocols, and illustrative case examples. The methodology involves a comparative analysis of legal texts and current medical practices, focusing on key questions related to the aforementioned issues. Ultimately, the work highlights a significant axiological disjunction—a conflict of values—between the formal language of the law and the reality of medical practice.

Keywords: Ethics, Jurisprudence, Brain Death.

Introduction

This paper examines the medical and legal complexities surrounding the termination of care and life support for patients diagnosed with brain death. The central issue is a legislative vacuum concerning the application of legal criteria for determining and officially declaring brain death. The study demonstrates that the application of resuscitation protocols, ventilator support, and vasopressor administration can be interpreted as a decision subject to the subjective judgment of the attending physician or medical team.

The ethical dilemmas posed by this medical decision-making process must be analyzed not only within the legislative framework but also within the psycho-social, religious, and socio-political contexts. The reluctance of lawmakers to establish rigid and clear rules of application of legal criteria for declaring death in brain-dead patients suggests an awareness of the potential societal impact of such legislation. This reluctance reflects a fear of unpredictable effects on public perception regarding the end of life.

Brain death and organ donation in Romanian Legislation

In Romania, legal provisions for organ donation from brain-dead patients are issued by the National Transplant Agency, a body tasked with coordinating transplant activities

nationally and representing the country internationally (Government of Romania, 2004. *Ordinance 79*).

Potential organ donors are identified by a designated professional, i.e., an Intensive Care and Anesthesia doctor. This individual, often referred to as the KDP, or the person responsible for identifying potential donors, is appointed by the head of the Intensive Care Unit (ICU) and approved by regional management (Romanian Ministry of Health, 2013. *Order 860*). Their responsibilities include:

- Identifying potential donors in brain death.
- Diagnosing brain death.
- Maintaining the physiological stability of the potential donor to preserve organs (Romanian Ministry of Health, 2012. *Order 1246*).

The actual removal of organs, tissues, and cells is performed according to specific protocols outlined in Order No. 855 of July 26, 2017.

A crucial aspect of the protocol allows for the non-application of resuscitation measures and cardiac support for deceased donors who have no cardiac activity, if it is medically determined that such procedures are futile or contraindicated (Romanian Ministry of Health, 2014. *Order 1527*). This determination must be documented in the patient's medical records by two primary care physicians. This provision highlights the significant medical discretion involved in end-of-life care for potential organ donors.

Patients declared brain dead who are not organ donors (due to lack of consent or other exclusionary factors) can be disconnected from life support and have their medical care in the ICU terminated (Romanian Ministry of Health, 2014. *Order 1170*).

The decision to terminate care carries a significant legal risk. In Romania, if a complaint is filed by the family of the potential donor regarding the decision of suppressing life support, the action could be legally interpreted as manslaughter under Article 192, Paragraph 2, of the Penal Code. This article states that manslaughter resulting from the "non-compliance with legal provisions or precautionary measures for the exercise of a profession or trade" is punishable by imprisonment from two to seven years (The Criminal Code of Romania).

To prove manslaughter, the following three conditions must be met:

1. A person's death resulted from a specific action or omission.
2. The action or omission was a result of failing to comply with legal provisions or precautionary measures related to a professional activity.
3. The act was committed through fault (i.e., with criminal negligence as described in Barbu, 2022).

In the event of a criminal investigation, a medical-legal doctor serves as a crucial expert witness. Their medico-legal expertise bridges the gap between the medical and legal worlds, providing the main evidence (along with witness testimony) needed to determine if the legal criteria for manslaughter have been met. This highlights the complex intersection of medical ethics, law, and professional liability in end-of-life care.

Medical-legal expertise in criminal proceedings is a distinct form of analysis used to determine the facts of a crime. This term first appeared in canon law as *peritorum medicorum iudicium*, which outlined rules for an independent doctor to examine a deceased person who was a victim of a crime (Baltaga, 2018).

Medical-legal expertise serves a dual function. It discovers and highlights important data for a case and presents scientifically sound conclusions. This dual role gives it two key characteristics:

- The expertise provides a scientifically supported opinion and, at times, a material operation the court cannot perform.

- The medical-legal expert provides an opinion on the facts but does not judge the case's merits. The court retains the ultimate authority to make a final judgment (Mihuleac, 1971, p. 76).

The purpose of forensic research is to establish judicial truth by working backward from effects to causes. This process relies on specific principles, including:

- Obtaining objective evidence: The process requires using scientific criteria to derive the truth.
- Testing opinions: Experts must be aware of the risk of error and test their conclusions. This can involve using witness testimony and cross-checks.
- Avoiding errors: The expert's methodology must prioritize avoiding mistakes to ensure the reliability of the legal truth.
- Scientific proof: The expert must only make statements that can be scientifically proven.
- Relevance of evidence: Scientific evidence has no value until it is verified after the fact (Beliş, 2003, p. 195).

To ensure the effectiveness of the medical act for justice, medical-legal experts must apply a specific methodology to provide reliable criteria for solving the various problems raised during a criminal investigation or trial.

In a legal context, a medical-legal expert's role is to apply their specialized knowledge to determine the materiality of a criminal act, specifically focusing on the medical aspects. It's crucial that experts do not offer opinions on the legal elements of a case, as that is the sole purview of legal professionals.

The expert's findings and the process used to arrive at them are detailed in an expert report. This document is a critical piece of evidence, and its contents are legally prescribed by the Code of Criminal Procedure. The report must be clear, thorough, and cannot be replaced by other documents, such as a hearing transcript (Văduvă & Văduvă, 1997, p. 141). This report is of great importance, as incorrect medical conclusions can lead to severe consequences for the medical professionals involved, including their careers and freedom.

A significant issue exists in the declaration of brain death. Medically, brain death is considered the patient's death, and vital functions are only sustained artificially. However, legally, in Romania, the official declaration of death and the issuance of a death certificate (Romanian Law 119/1996) can only occur after all life support has been removed and all vital functions have ceased. The medical declaration of brain death is not legally equivalent to a patient's death. This creates a discrepancy between medical practice and legal requirements, leaving a gap that can be exploited in legal proceedings.

From a legal standpoint, a brain-dead individual does not lose their legal status as a patient until an official death certificate is issued. This means that, despite the medical diagnosis of brain death, the patient must be cared for until a legal declaration of death. This is often only possible after life support is withdrawn and all vital functions have ceased.

This discrepancy between the medical and legal definitions of death can expose healthcare workers to legal risk. If a brain-dead patient experiences cardiac arrest, the medical team could face accusations of malpractice or manslaughter, especially if a criminal complaint is filed. In such cases, the conclusions of a forensic medical expert are of critical importance in determining legal culpability.

Ethical dilemmas in caring for brain-dead patients

Caring for a brain-dead patient presents a complex set of ethical dilemmas for medical professionals. These challenges stem from the futility of continued care, the potential for perceived degradation of patient dignity, and the profound legal and emotional implications of the situation.

Key Ethical Dilemmas:

1. **Futility of Care:** Medical staff face the difficult question of whether to continue life-sustaining treatments, like mechanical ventilation, for a patient with no chance of recovery. Continuing care may be seen as pointless, and the resources used could potentially benefit other patients.
2. **Respect for Patient Will and Family Communication:** A crucial dilemma involves respecting a patient's previously expressed wishes (if known) and navigating disagreements with family members regarding care decisions. Misunderstandings with the family can complicate an already sensitive situation.
3. **Psychological Burden:** Healthcare workers often feel immense stress and anxiety when they must decide to terminate a patient's life support. This responsibility can lead to feelings of regret and professional failure. It's essential that medical facilities provide support and counseling resources to help staff cope with the emotional toll of these challenges.

Religious and cultural beliefs, such as the Orthodox Christian view on the integrity of the body for resurrection (The Holy Bible, New International Version. *1 Corinthians 15:35-58*), can influence a family's decision to refuse organ donation. While it's recommended to exhaust all options to obtain consent, medical staff must respect a verbal refusal. In such cases, life support is maintained until the refusal is formally documented.

Models of brain death diagnosis in European countries and the United States

The diagnostic models for determining brain death (BD) across key European countries exhibit substantial heterogeneity, particularly in the definition of death and the mandated use of ancillary tests. While the overarching concept of BD is accepted, two principal definitions emerge: Whole-Brain Death (the irreversible loss of all brain function) and Brainstem Death (the irreversible loss of only brainstem function). Countries like France, Germany, Spain, and Italy adhere to the Whole-Brain Death standard, whereas the United Kingdom employs the Brainstem Death criterion, which generally does not mandate ancillary tests for adults but uses them when clinical assessment is compromised. Conversely, France mandates the use of ancillary tests, such as two Electroencephalograms (EEGs) or cerebral angiography, to confirm the diagnosis, reflecting a stricter legal requirement. Germany makes these tests mandatory only in specific cases, such as in young children, while in Spain and Italy, ancillary tests are often utilized in clinical practice even if not strictly mandated by law. Furthermore, the protocol for certifying the diagnosis varies in the number and specialty of required independent physicians, ranging from two in the UK, Germany, and Spain to three (including an anesthesiologist and a neurologist) in Italy, with all procedures being grounded in country-specific legal frameworks such as the UK's *Airedale NHS Trust v Bland* [1993], Germany's *Transplantationsgesetz*, and Italy's *Legge 29 dicembre 1993, n. 578*. These variations highlight the non-uniform application of BD criteria across Europe, suggesting diverse interpretations of the neurological standard for declaring death. The United States generally follows the Whole-Brain Death model, aligning with most continental European countries, but the specific requirements for ancillary testing and the number of required physicians can vary by state or institution (Uniform Determination of Death Act (UDDA) 1981, adopted by most states and Walter, 2020).

Conclusion

A thorough legal reform is needed to provide the necessary tools for optimal resolution of ethical and legal dilemmas associated with the care of brain-dead patients. The legal declaration of death must be made equivalent to a medical diagnosis of brain death. This change would explicitly define brain death as the cessation of life, bringing Romanian law in

line with legislation in other countries, such as Germany, United Kingdom, France, Spain Italy and the United States. Such a modification would directly impact the legal framework for potential organ donors, simplifying the process and reducing ambiguity for medical professionals.

References

- Airedale NHS Trust v Bland* [1993] AC 789; [1993] UKHL 17.
- Baltaga, E. (2018). *Theoretical aspects regarding the role of forensic expertise in the process of investigating criminal cases*. IBN, Chisinau
- Barbu, R. (2022). *Medical Malpractice. Criminal liability in case of manslaughter of the patient. Part I*. Juridice.ro. <https://www.juridice.ro/685138/malpraxis-medical-raspunderea-penala-in-caz-de-ucidere-din-culpa-a-pacientului-partea-i.html>.
- Beliş, V. (2003). *Forensic medicine in medico-judicial practice*. Juridica.
- Government of Romania. (2004). *Ordinance 79/19.08.2004 for the establishment of the National Transplant Agency*. Published in the Official Monitor of Romania, Part I, No. 794 of 27.08.2004.
- Gesetz über die Spende, Entnahme und Übertragung von Organen und Geweben (Transplantationsgesetz - TPG). 1997, *Bundesgesetzblatt (BGBl. I)*, page 2631.
- Legge 29 dicembre 1993, n. 578: "Definizione e accertamento della morte" *Gazzetta Ufficiale della Repubblica Italiana*, n. 303.
- Ley 30/1979, de 27 de octubre, sobre extracción y trasplante de órganos. *Boletín Oficial del Estado (BOE)*, n° 263.
- Loi n° 2021-1017 du 2 août 2021 relative à la bioéthique. *Journal Officiel de la République Française (JORF)*, n°0178.
- Mihuleac, E. (1971). *Judicial expertise*. Ed. Scientific.
- Romanian Law 119/1996. *Law 119/1996 with regard to civil status documents*. Published in the Official Monitor of Romania, Part I, No. 282 of 05.11.1996
- Romanian Ministry of Health. (2013). *Order 860/12.07.2013 Regarding the accreditation criteria in the field of transplantation of human organs, tissues and cells*. Published in the Official Monitor of Romania, Part I, No. 445 of 22.07.2013.
- Romanian Ministry of Health. (2012). *Order 1246/6.12.2012, Art.3*. Published in the Official Monitor of Romania, Part I, No. 847 of 14.12.2012.
- Romanian Ministry of Health. (2014). *Order 1527/16.12.2014 regarding the methodological norms for the application of title VI "Performing the removal and transplantation of human organs, tissues and cells for therapeutic purposes" from Law no. 95/2006 on health reform*. Published in the Official Monitor of Romania, Part I, No. 948 of 23.12.2014.
- Romanian Ministry of Health. (2014). *Order 1527/16.12.2014, Art.1, Paragraph 2*. Published in the Official Monitor of Romania, Part I, No. 948 of 23.12.2014.
- Romanian Ministry of Health. (2014). *Order 1170/10.10.2014 approving the form models for the application of the provisions of title VI of Law no. 95/2006 on health reform*. Published in the Official Monitor of Romania, Part I, No. 784 of 28.10.2014.
- The Criminal Code of Romania. *Law No. 286/2009*. Published in the Official Monitor of Romania, Part I, No. 510 of 24.07.2009.
- The Holy Bible, New International Version. *1 Corinthians* 15, 35-58.
- Uniform Determination of Death Act, 1, 12 U.L.A. 589 (1981)
- Văduvă, N., & Văduvă, L. (1997). *Expertise, technical-scientific and medico-legal findings as means of proof in the criminal process*. Terathopius.
- Walter, K. (2020). Brain Death. *JAMA*, 324(11), 1116