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Hospitals struggle to resolve brain-death issue with families

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Hospitals in two states recently were in the difficult position of having to disagree with a family about terminating life support for patients declared dead. In one case the family refused to accept that a young girl was dead, and in the other the family struggled with a state law that seemed to require keeping a woman on life support even if her family and physicians wanted to end it.

Both cases suggest that the public — and some lawmakers — still need to be educated about how death is determined and the futility of continuing life support, says Craig B. Garner, JD, formerly chief executive officer at Coast Plaza Hospital in Norwalk, CA, and now an attorney and adjunct professor at the Pepperdine University School of Law, Malibu, CA.

The first case involves 13-year-old Jahi McMath, who died after surgery at a California hospital but the family refused to allow termination of her life support. The family eventually won the right to remove her from the hospital. The other case centered on Marlise Muñoz, a pregnant 33-year-old woman whose husband wanted to remove her from life support, but the hospital was stymied by a Texas law that seemed to require the continuation of support if the fetus was alive. (For more details on both cases, see the story on p. 45.)

Many states have adopted laws restricting the ability of doctors to end artificial life support for terminally ill pregnant patients, Garner notes. Twelve have laws that automatically invalidate a woman's advance directive if she is pregnant, which means that a woman must remain on life-sustaining treatment until she gives birth.

Garner notes that though the medical community, and to some extent the legal community, has largely come to terms with the definition of death in recent years, families still might resist what seems the only reasonable action to clinicians. Ethical debates about such cases among clinicians and risk managers are rare these days, but the general public and grieving families are a different matter.

"They may see reflexes and actions from the respirator, and that can make it very difficult for them to accept the explanation that the patient is dead," Garner says. "The hospital has to counter the notion of miracles and the idea that sometimes these patients do wake up."

Stories about "Lazarus" patients waking up after being declared dead are always apocryphal or can be explained by the diagnosis being wrong to begin with, Garner says. Once clinicians are certain that the patient meets the death criteria, without a doubt, then there is no hope for the patient coming back and families must be educated about that certainty, he says.

Hospitals must proceed gently, of course, and allow for some time delay if the family is waiting for someone to appear at the bedside, for example. But if the family seeks to prevent the termination of support, Garner says the hospital is on solid ground if it has properly determined the death.

”The family will have to go to court to try to stop the hospital, but the hospital really doesn’t have to do anything at that point,” Garner says. “The hospital is doing what they deem appropriate for the patient, according to accepted clinical guidelines. That doesn’t mean you would rush to terminate support while the family is saying no, but the legal obligation really is on the family.”

The best solution is to have the lead physician begin educating the family member about the process as soon as it appears the patient will not survive, Garner says. The Texas case was even more difficult for the clinicians, Garner suspects, because they wanted to terminate support and so did the grieving husband. Administrators at the hospital must have felt restricted by the law even if they disagreed with it, and they were put in the awkward position of denying the husband’s wishes.

”Whenever possible you want to work the family and help them through this process, to be an ally instead of opposing their wishes,” Garner says. “That is going to be the likely outcome if you take the right approach with families early on and help them understand, but the Texas case shows that this can still be a difficult issue for everyone sometimes.”

Source

Executive Summary

Two recent cases show that hospitals are continuing to struggle with the termination of life support for patients declared brain dead. The cases suggest that hospitals should emphasize educating families about how death is determined.

One case involved a family trying to maintain life support, while the other had a family trying to remove it.

Both cases posed difficult legal and public relations problems for the facilities.

Neither case changes the clinical definition of death.