

## Alabama

### State Law:

#### Section 22-31-1

**Determination of death.** An individual who, in the opinion of a medical doctor licensed in Alabama, has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards. (*Acts 1979, No. 79-165, p. 276, §1; Act 2000-710, p. 1506, §1.*)

**State Law:**

**AS 09.68.120. Definition of Death.**

An individual is considered dead if, in the opinion of a physician licensed or exempt from licensing under AS [08.64](#) or a registered nurse authorized to pronounce death under AS [08.68.395](#), based on acceptable medical standards, or in the opinion of a mobile intensive care paramedic, physician assistant, or emergency medical technician authorized to pronounce death based on the medical standards in AS [18.08.089](#), the individual has sustained irreversible cessation of circulatory and respiratory functions, or irreversible cessation of all functions of the entire brain, including the brain stem. Death may be pronounced in this circumstance before artificial means of maintaining respiratory and cardiac function are terminated.

## State Law:

### **14-1107. Determination of death and status; rules**

In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

1. A determination of death must be made in accordance with accepted medical standards.
2. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date and time of death and the identity of the decedent.
3. A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report.
4. In the absence of prima facie evidence of death under paragraph 2 or 3, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.
5. A person whose death is not established under paragraphs 1 through 4, who is absent for a continuous period of five years, during which time that person has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. That person's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.
6. In the absence of evidence disputing the time of death stated on a document described in paragraph 2 or 3, a document described in paragraph 2 or 3 that states a time of death one hundred twenty hours or more after the time of death of another person, however the time of death of the other person is determined, establishes by clear and convincing evidence that the person survived the other person by one hundred twenty hours.

**State Law:**

**20-17-101. Death -- Legal definition.**

(a) An individual is dead who has sustained either:

(1) Irreversible cessation of circulatory and respiratory functions; or

(2) Irreversible cessation of all functions of the entire brain, including the brain stem.

(b) A determination of death shall be made in accordance with accepted medical standards.

**HISTORY:** Acts 1979, No. 99, §§ 1, 2; 1985, No. 386, §§ 1, 2; A.S.A. 1947, §§ 82-537, 82-538.

**State Law:**

CALIFORNIA CODES

**HEALTH AND SAFETY CODE**

**SECTION 7180**

7180. (a) An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is **dead**. A determination of death must be made in accordance with accepted medical standards.

(b) This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

(c) This article may be cited as the Uniform Determination of Death Act.

## Colorado

### State Law:

#### **12-36-136. Determination of death.**

(1) An individual is dead if:

- (a) He has sustained irreversible cessation of circulatory and respiratory functions; or
- (b) He has sustained irreversible cessation of all functions of the entire brain, including the brain stem.

(2) A determination of death under this section shall be in accordance with accepted medical standards.

Source: L. 81: Entire section added, p. 778, § 1, effective May 21.

Editor's note: Prior to the enactment of this section, the Colorado Supreme Court had adopted the concept of "Brain death" as set forth in the "Uniform Brain Death Act". See *Lovato v. District Court*, 198 Colo. 419, 601 P.2d 1072 (1979).

#### ANNOTATION

Law reviews. For article, "Probate and Non-probate Distribution Issues in the Case of A Murder/Suicide", see 17 Colorado Law 1061 (1988).

**State Law:**

**Sec. 19a-504a. Continuation or removal of life support system. Determination of death.**

(a) For the purpose of this section, "life support system" means any mechanical or electronic device utilized by any medical facility in order to replace, assist or supplement the function of any human vital organ or combination of organs.

(b) For purposes of making a determination concerning the continuation or removal of any life support system in a general hospital licensed under section 19a-491, an individual who has sustained either

(1) irreversible cessation of circulatory and respiratory functions, or

(2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead.

Determination of death shall be made in accordance with accepted medical standards.

## Delaware

### State Law:

#### **§ 1760. Determination of death.**

(a) An individual who has sustained either:

(1) Irreversible cessation of circulatory and respiratory functions or

(2) Irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death pursuant to this section must be made in accordance with accepted medical standards.

(b) A determination of death pursuant to this section may be made by a person certified to practice medicine under this chapter by either:

(1) Personal examination of the individual believed to be dead, or

(2) The use of information provided by an EMT-P (paramedic) using telemetric or transtelephonic means in accordance with protocols approved by the Board of Medical Licensure and Discipline, following recommendations of the Board's Advanced Life Support Committee.

(c) This section must be applied and construed to effectuate its general purpose to make uniform the law with respect to the determination of death among states enacting it.

(d) This section may be cited as the "Uniform Determination of Death Act".



## **State Law:**

District of Columbia Official Code 2001 Edition Currentness Division I. Government of District. Title 7. Human Health Care and Safety. (Refs & Annos) Subtitle A. General. Chapter 6. Death. Subchapter I. Determination of Death. (Refs & Annos) § Search Term Begin 7-601 Search Term End. Standard.

An individual who has sustained either: (1) irreversible cessation of circulatory and respiratory functions; or (2) irreversible cessation of all functions of the entire brain, including the brain stem; is dead. A determination of death must be made in accordance with accepted medical standards.

CREDIT(S)

(Feb. 25, 1982, D.C. Law 4-68, § 2, 28 DCR 5045.)

## **HISTORICAL AND STATUTORY NOTES**

### **Prior Codifications**

1981 Ed., § 6-2401.

## **Legislative History of Laws**

Law 4-68, the "Uniform Determination of Death Act of 1981," was introduced in Council and assigned Bill No. 4-206, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on September 29, 1981, and October 13, 1981, respectively. Signed by the Mayor on November 9, 1981, it was assigned Act No. 4-114 and transmitted to both Houses of Congress for its review.

## **Uniform Law**

This section is based upon § 1 of the Uniform Determination of Death Act. See 12A Uniform Laws Annotated, Master Edition, or ULA Database on Westlaw.

## Florida

### State Law:

Title XXIX PUBLIC HEALTH Chapter 382 VITAL STATISTICS [View Entire Chapter](#)

#### **382.009 Recognition of brain death under certain circumstances.—**

(1) For legal and medical purposes, where respiratory and circulatory functions are maintained by artificial means of support so as to preclude a determination that these functions have ceased, the occurrence of death may be determined where there is the irreversible cessation of the functioning of the entire brain, including the brain stem, determined in accordance with this section.

(2) Determination of death pursuant to this section shall be made in accordance with currently accepted reasonable medical standards by two physicians licensed under chapter 458 or chapter

459. One physician shall be the treating physician, and the other physician shall be a board-eligible or board-certified neurologist, neurosurgeon, internist, pediatrician, surgeon, or anesthesiologist.

(3) The next of kin of the patient shall be notified as soon as practicable of the procedures to determine death under this section. The medical records shall reflect such notice; if such notice has not been given, the medical records shall reflect the attempts to identify and notify the next of kin.

(4) No recovery shall be allowed nor shall criminal proceedings be instituted in any court in this state against a physician or licensed medical facility that makes a determination of death in accordance with this section or which acts in reliance thereon, if such determination is made in accordance with the accepted standard of care for such physician or facility set forth in 1s.

766.102. Except for a diagnosis of brain death, the standard set forth in this section is not the exclusive standard for determining death or for the withdrawal of life support systems.

## Georgia

### State Law:

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#### CHAPTER 10. VITAL RECORDS

O.C.G.A. § 31-10-16 (2011)

##### **§ 31-10-16. Criteria for determining death; immunity from liability**

(a) A person may be pronounced dead by a qualified physician, by a registered professional nurse authorized to make a pronouncement of death under Code Section 31-7-176.1, or by a physician assistant authorized to make a pronouncement of death under subsection (j) of Code Section 4334-103, if it is determined that the individual has sustained either (1) irreversible cessation of circulatory and respiratory function or (2) irreversible cessation of all functions of the entire brain, including the brain stem.

(b) A person who acts in good faith in accordance with the provisions of subsection (a) of this Code section shall not be liable for damages in any civil action or subject to prosecution in any criminal proceeding for such act.

(c) The criteria for determining death authorized in subsection (a) of this Code section shall be cumulative to and shall not prohibit the use of other medically recognized criteria for determining death.

HISTORY: Code 1933, § 88-1715.1, enacted by Ga. L. 1975, p. 1629, § 1; Code 1933, § 881716, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-70; Code 1981, § 31-10-16, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1992, p. 1392, § 3; Ga. L. 2009, p. 859, § 9/HB 509.

## Hawaii

**§560:1-107 Evidence of death or status.** In addition to the rules of evidence, the following rules relating to a determination of death and status apply:

- (1) Death occurs when an individual has sustained either:
  - (A) Irreversible cessation of circulatory and respiratory functions; or
  - (B) Irreversible cessation of all functions of the entire brain, including the brain stem.      A determination of death must be made in accordance with accepted medical standards;
- (2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent;
- (3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report;
- (4) In the absence of prima facie evidence of death under paragraph (2) or (3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence;
- (5) An individual whose death is not established under the preceding paragraphs who is absent for a continuous period of five years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier;
- (6) In the absence of evidence disputing the time of death stated on a document described in paragraph (2) or (3), a document described in paragraph (2) or (3) that states a time of death one hundred twenty hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours. [L 1996, c 288, pt of §1]

## Idaho

### State Law:

#### TITLE 54 PROFESSIONS, VOCATIONS, AND BUSINESSES CHAPTER 18 PHYSICIANS AND SURGEONS

##### **54-1819. DEFINITION AND PROCEDURE FOR DETERMINATION OF DEATH.**

- (1) An individual who has sustained either
  - (a) irreversible cessation of circulatory and respiratory functions, or
  - (b) irreversible cessation of all functions of the entire brain, including the brain stem, is dead.
- (2) A determination of death must be made in accordance with accepted medical standards which mean the usual and customary procedures of the community in which the determination of death is made.

## **Illinois**

(755 ILCS 40/10) (from Ch. 110 1/2, par. 851 10)

### **Sec. 10. Definitions.**

"Death" means when, according to accepted medical standards, there is (i) an irreversible cessation of circulatory and respiratory functions or (ii) an irreversible cessation of all functions of the entire brain, including the brain stem.

## Indiana

### State Law:

#### IC 1-1-4-3 Uniform Determination of Death Act

Sec. 3.

(a) Only an individual who has sustained either:

(1) irreversible cessation of circulatory and respiratory functions; or

(2) irreversible cessation of all functions of the entire brain, including the brain stem; is dead. A determination of death must be made in accordance with accepted medical standards.

(b) This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among states enacting it.

(c) This section may be cited as the Uniform Determination of Death Act. *As added by P.L.11986, SEC.1.*

## Iowa

### State Law:

#### **702.8 Death.**

*“Death”* means the condition determined by the following standard: A person will be considered dead if in the announced opinion of a physician licensed pursuant to [chapter 148](#), a physician assistant licensed pursuant to [chapter 148C](#), or a registered nurse or a licensed practical nurse licensed pursuant to [chapter 152](#), based on ordinary standards of medical practice, that person 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 two physicians, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous brain functions. Death will have occurred at the time when the relevant functions ceased. [C79, 81, §702.8] 2001 Acts, ch [113](#), [§5](#); 2008 Acts, ch [1088](#), [§137](#)



## Kansas

### State Law:

**77-205. Determination of death** . An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

## Kentucky

### State Law:

#### **446.400 Determination of death -- Minimal conditions to be met.**

For all legal purposes, the occurrence of human death shall be determined in accordance with the usual and customary standards of medical practice, provided that death shall not be determined to have occurred unless the following minimal conditions have been met:

- (1) When respiration and circulation are not artificially maintained, there is an irreversible cessation of spontaneous respiration and circulation; or
- (2) When respiration and circulation are artificially maintained, and there is a total and irreversible cessation of all brain function, including the brain stem and that such determination is made by two (2) licensed physicians.

Effective: July 15, 1986 History: Created 1986 Ky. Acts ch. 132, sec. 1, effective July 15, 1986.

## Louisiana

### State Law:

#### **§111. Definition of death**

A. A person will be considered dead if in the announced opinion of a physician, duly licensed in the state of Louisiana based on ordinary standards of approved medical practice, the person 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, duly licensed in the state of Louisiana based upon ordinary standards of approved medical practice, the person has experienced an irreversible total cessation of brain function. Death will have occurred at the time when the relevant functions ceased. In any case when organs are to be used in a transplant, then an additional physician, duly licensed in the state of Louisiana not a member of the transplant team, must make the pronouncement of death unless a hospital has adopted a written policy allowing that a single physician, duly licensed in the state of Louisiana, not a member of the transplant team, may make the pronouncement of death. In all cases in which a hospital written policy provides that a single physician makes the pronouncement of death, such policy shall also require an opinion by a second physician, not a member of the transplant team, as to the candidacy of the person for the process of organ donation.

B. The medical pronouncement of death by a coroner may also be based on personal observation, information, or statements obtained from coroner investigators or emergency medical technicians at the scene who are reporting from firsthand observation of the physical condition of the deceased. The time of death shall be reported as the time that the death was reported or discovered. The name of the personnel that the coroner is relying on shall be noted on the coroner's day record or protocol.

Added by Acts 1976, No. 233, §1; Acts 2001, No. 317, §1; Acts 2010, No. 937, §1, eff. July 1, 2010.

## Maine

### State Law:

#### **Title 22: HEALTH AND WELFARE Subtitle 2: HEALTH Part 6: BIRTHS, MARRIAGES AND DEATHS Chapter 706: UNIFORM DETERMINATION OF DEATH ACT**

##### **§2811. Determination of death**

An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards. [1983, c. 33, (NEW).]

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## **Maryland**

### **State Law:**

#### **Article - Health - General**

##### **§5–202.**

(a) An individual is dead if, based on ordinary standards of medical practice, the individual has sustained either:

- (1) Irreversible cessation of circulatory and respiratory functions; or
- (2) Irreversible cessation of all functions of the entire brain, including the brain stem.

(b) (1) This subsection does not apply to the removal of a vital organ while the individual is alive, if the individual gives informed consent to the removal.

(2) A pronouncement of death under this section shall be made before any vital organ is removed for transplantation.

## **Massachusetts**

### **Section 1-107. [Evidence of Death or Status.]**

In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:—

- (1) Death occurs when an individual has sustained either (i) irreversible cessation of circulatory and respiratory functions or (ii) irreversible cessation of all functions of the entire brain, including the brain stem. A determination of death shall be made in accordance with accepted medical standards.
- (2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.
- (3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.
- (4) In the absence of prima facie evidence of death under paragraph (2) or (3), the fact of death may be established by evidence, including circumstantial evidence.
- (5) An individual whose death is not established under the preceding paragraphs who is absent for a continuous period of 5 years, during which the person has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The person's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

## Michigan

### State Law:

#### **DETERMINATION OF DEATH ACT (EXCERPT) Act 90 of 1992**

##### **333.1033 Determination of death; conditions; accepted medical standards; persons authorized to pronounce death of person.**

Sec. 3.

(1) An individual who has sustained either of the following is dead:

- (a) Irreversible cessation of circulatory and respiratory functions.
- (b) Irreversible cessation of all functions of the entire brain, including the brain stem.

(2) A determination of death shall be made in accordance with accepted medical standards.

(3) A physician or registered nurse may pronounce the death of a person in accordance with this act. This subsection does not prohibit a health facility or agency licensed under article 17 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.20101 to 333.22260 of the Michigan Compiled Laws, from determining which of its medical personnel may pronounce the death of a person in that health facility or agency.

**History:** 1992, Act 90, Imd. Eff. June 4, 1992

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## Minnesota

### 2010 Minnesota Statutes Resources Topics

#### Death Determination of Death Act Popular Names of Acts Uniform Laws

### 145.135 UNIFORM DETERMINATION OF DEATH ACT.

Subdivision 1.**Citation.** This section may be cited as the Uniform Determination of Death Act. Subd.

2.**Determination of death.** An individual is dead if the individual sustains irreversible cessation of:

(1) circulatory and respiratory functions; or

(2) all functions of the entire brain, including the brain stem. A determination of death must be made in accordance with generally accepted medical standards.

**History:** 1989 c 93 s 1



## **Mississippi**

### **State Law:**

**MISSISSIPPI CODE of 1972 \*\*\* Current through the 2011 Regular Session \*\*\* TITLE 41.**

#### **PUBLIC HEALTH**

#### **CHAPTER 36. DETERMINATION OF DEATH Miss. Code Ann. § 41-36-3 (2011) § 41-36-3.**

##### **Determination of death**

An individual who has sustained either (a) irreversible cessation of circulatory and respiratory functions or (b) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

**HISTORY:** SOURCES: Laws, 1981, ch. 410, § 2, eff from and after passage (approved March 24, 1981).

Missouri

State Law

**Chapter 194 Death--Disposition of Dead Bodies Section 194.005**

August 28, 2010

**Death, legal definition.**

194.005. For all legal purposes, the occurrence of human death shall be determined in accordance with the usual and customary standards of medical practice, provided that death shall not be determined to have occurred unless the following minimal conditions have been met:

- (1) When respiration and circulation are not artificially maintained, there is an irreversible cessation of spontaneous respiration and circulation; or
- (2) When respiration and circulation are artificially maintained, and there is a total and irreversible cessation of all brain function, including the brain stem and that such determination is made by a licensed physician.

## **Montana**

**50-22-101. Determination of death.** An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brainstem, is dead. A determination of death must be made in accordance with accepted medical standards.

**History:** En. 69-7201 by Sec. 1, Ch. 228, L. 1977; R.C.M. 1947, 69-7201; amd. Sec. 1, Ch. 86, L. 1983.

## Nebraska

### Nebraska Revised Statute 71-7202

[Revised Statutes](#) » [Chapter 71](#) » 71-7202

#### **71-7202. Determination of death.**

Only an individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

#### **Source**

Laws 1992, LB 906, § 2.

#### **Annotations**

The Uniform Determination of Death Act does not establish a rule of evidence requiring that in all cases involving an alleged decedent, the fact of death must be medically established. *State v. Edwards*, 278 Neb. 55, 767 N.W.2d 784 (2009).

The presence of an independent heartbeat and the existence of some brain stem activity means that an infant is alive for purposes of this section. *In re Interest of Tabatha R.*, 252 Neb. 687, 564 N.W.2d 598 (1997).

## **Nevada**

### **NRS 451.007 Determination of death.**

1. For legal and medical purposes, a person is dead if the person has sustained an irreversible cessation of:

- (a) Circulatory and respiratory functions; or
- (b) All functions of the person's entire brain, including his or her brain stem.

- 1. A determination of death made under this section must be made in accordance with accepted medical standards.
- 2. This section may be cited as the Uniform Determination of Death Act and must be applied and construed to carry out its general purpose which is to make uniform among the states which enact it the law regarding the determination of death.

(Added to NRS by 1979, 226; A 1985, 130)

## New Hampshire

### State Law:

#### **Section 141-D:1**

141-D:1 Title. – This chapter shall be known and may be cited as the "Uniform Determination of Death Act." Source. 1986, 191:1, eff. July 1, 1987.

#### **Section 141-D:2**

**141-D:2 Determination of Death.** – An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death shall be made in accordance with accepted medical standards. Source. 1986, 191:1, eff. July 1, 1987.

## New Jersey

### State Law:

NEW JERSEY REGISTER VOLUME 39, ISSUE 9 ISSUE DATE: MAY 7, 2007 RULE ADOPTIONS  
LAW AND PUBLIC SAFETY DIVISION OF CONSUMER AFFAIRS BOARD OF MEDICAL  
EXAMINERS

Adopted Repeal and New Rules: N.J.A.C. 13:35-6A

### **Declarations of Death Upon the Basis of Neurological Criteria**

Purpose; Definition of Brain Death; Requirements for Physicians Authorized to Declare Death on the Basis of Neurological Criteria; Standards for Declaration of Brain Death; Organ Donation; Exemption to Accommodate Personal Religious Beliefs; Pronouncement of Death

Proposed: May 15, 2006 at 38 N.J.R. 2021(a). Adopted: January 10, 2007 by the Board of Medical

Examiners, Sindy M. Paul, M.D., President. Filed: March 26, 2007 as R.2007 d.120, without change.

Authority: N.J.S.A. 26:6A-1, specifically 26:6A-4 and 45:9-2. Effective Date: May 7, 2007. Expiration

Date: March 17, 2010. Federal Standards Statement A Federal standards analysis is not required because

the adopted repeal and new rules are governed by N.J.S.A. 26:6A-1 et seq. The adopted repeal and new rules are not subject to any Federal requirements or standards.

Full text of the adopted new rules follows: SUBCHAPTER 6A. DECLARATIONS OF DEATH UPON  
THE BASIS OF NEUROLOGICAL CRITERIA

#### **13:35-6A.1 Purpose**

(a) The rules in this subchapter are established pursuant to N.J.S.A. 26:6A-1 et seq. (P.L. 1991, c. 90), the New Jersey Declaration of Death Act, and set forth:

1. Requirements, by specialty or expertise, for physicians authorized to perform a clinical brain death examination and declare death upon the basis of neurological criteria; and
2. Accepted medical standards, including criteria, tests and procedures, to govern declarations of death upon the basis of neurological criteria.

### **13:35-6A.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Apnea" means the absence of respiration and a terminal PCO<sub>2</sub> greater than 60 mmHG or a terminal PCO<sub>2</sub> at least 20 mmHg over the initial normal baseline PCO<sub>2</sub>.

"Brain death" means the irreversible cessation of all functions of the entire brain, including the brainstem.

"Examining physician" means a physician who performs a clinical brain death examination and meets the qualifying criteria set forth at N.J.A.C. 13:35-6A.3. The term "examining physician" may refer to one or more physicians involved in the clinical brain death examination.

### **13:35-6A.3 Requirements for physicians authorized to declare death on the basis of neurological criteria**

(a) A physician performing a clinical brain death examination shall be plenary licensed and shall hold the following qualifications, dependent on the age of the patient upon whom a declaration of brain death is to be made:

1. Age below two months: When declarations of brain death are to be made upon children below two months of age, the examining physician shall be a specialist in neonatology, pediatric neurology or pediatric neurosurgery.
2. Age between two months and 12 months: When declarations of brain death are to be made upon children at or above two months of age, and at or below 12 months of age, the examining physician shall be a specialist in pediatric critical care, pediatric neurology or pediatric neurosurgery.
3. Age greater than 12 months: When declarations of brain death are to be made upon patients above 12 months of age, the examining physician shall be duly qualified by training and experience to declare brain death. For purposes of this section, neurologists, neurosurgeons, critical care specialists and trauma surgeons shall be deemed to be duly qualified physicians. In addition, any physician who has been granted privileges by a hospital to declare brain death may serve as the examining physician pursuant to this subchapter.

### **13:35-6A.4 Standards for declaration of brain death**

(a) Declarations of brain death shall be made in accordance with accepted medical standards. A patient may be pronounced dead if a physician meeting the requirements set forth in N.J.A.C. 13:35-6A.3 determines in accordance with the criteria set forth in this section that brain death has occurred.

(b) The examining physician who is to pronounce brain death shall:



1. Determine a reasonable basis to suspect brain death. Brain death may be declared where the etiology of the insult or injury is sufficient to cause brain death and, in the judgment of the examining physician, is irreversible;
2. Exclude complicating medical conditions that may confound the clinical assessment of brain death, including:
  - i. Severe hypothermia, defined as core body temperature at or below 92 degrees Fahrenheit in adults, or outside the clinically established age specific range in a child;
  - ii. The effects of neuromuscular blockade(s). In the event a neuromuscular blockade was used to treat the patient, the examining physician shall establish that the effects of the blockade are reversed prior to performing clinical examinations for brain death;
  - iii. The effects of CNS depressants. If CNS depressants are present and serum blood level is therapeutic or below the therapeutic range, a clinical examination may be initiated. If serum blood levels are not available, above the therapeutic range or unknown, or there is an overdose or toxic exposure of an unknown agent, a brain death evaluation may proceed without reliance on clinical examination if, in the judgment of the examining physician, the injury or cause of coma is non-survivable. In such event, an objective measure of intracranial circulation shall be used as a confirmatory test;
  - iv. Severe metabolic imbalances, unless in the judgment of the examining physician any such imbalances do not confound the clinical assessment of brain death; and
  - v. Mean arterial pressure less than 60 mmHg in an adult or outside the clinically established age specific range in a child;
3. Perform a clinical examination to evaluate the patient for the presence of brain death. The following clinical findings, if present, are indicative of brain death:
  - i. A determination that supraspinal motor response(s) to pain is absent;
  - ii. A determination that brainstem reflexes are absent, which determination may be established by ascertaining all of the following:
    - (1) No pupillary response to light;
    - (2) No deviation of the eyes to irrigation of each ear with 50 ml of cold water. The tympanic membrane shall be determined to be intact;
    - (3) No corneal reflex; and
    - (4) No response to stimulation of the posterior pharynx and/or no cough response to tracheobronchial suctioning; and
  - iii. The presence of apnea, which shall be established in accordance with the following testing procedure:

- (1) Arterial PCO<sub>2</sub> is normalized to greater or equal to 40 mmHg;
- (2) 100 percent oxygen is delivered via the ventilator for 10 minutes prior to starting the test;
- (3) A baseline arterial blood gas is drawn;
- (4) A pulse oximeter is connected and the ventilator is disconnected;
- (5) 100 percent oxygen is delivered into the trachea via cannula in the ET tube, at six liters/minute;
- (6) If tolerated, the patient is left off the ventilator for eight to 10 minutes and the patient is observed carefully for respiratory movements. Another blood gas is drawn at the end of the eight to 10 minutes and the ventilator is reconnected;
- (7) The length of the apnea test and the PCO<sub>2</sub> at the end of the test are documented in the patient record; and
- (8) If the patient does not tolerate the apnea test, as evidenced by significant drops in blood pressure and/or oxygen saturation, or the development of significant arrhythmias, the test shall be discontinued and either repeated or supplanted with a confirmatory test.

iv. When, in the judgment of the examining physician, a clinical examination cannot be performed due to the nature of injuries, intoxication, patient instability, electrolyte imbalances or any other reason, a confirmatory test such as an intracranial blood flow, four vessel cerebral angiography, radionuclide angiography, transcranial Doppler ultrasound, CT angiogram, or MR angiogram shall be substituted for the clinical examination; and

4. Confirm the diagnosis with a confirmatory test or by a repeat clinical examination, consistent with the following:

- i. When a clinical examination of a patient shows the absence of all supraspinal and brain stem reflexes as established by the criteria in (b)3 above, the examining physician shall confirm the diagnosis of brain death with an objective confirmatory test measuring intracranial circulation such as an intracranial blood flow, four vessel cerebral angiography, radionuclide angiography, transcranial Doppler ultrasound, CT angiogram or MR angiogram.
- ii. In the event confirmatory testing is not available or is clinically precluded, the examining physician shall repeat the clinical examination after a period of observation, which period shall be not less than 48 hours for patients below the age of two months, not less than 24 hours for patients between the ages of two months to one year, and not less than six hours for patients greater than one year of age.

### **13:35-6A.5 Organ donation**

If the person to be declared dead upon the basis of neurological criteria is or may be an organ donor, then the examining physician shall not have any responsibility for any contemplated recovery or transplant of that person's organs, and shall not serve in the capacity of organ transplant surgeon, the attending physician of the organ recipient, or otherwise an individual subject to a potentially significant conflict of interest relating to procedures for organ procurement.

**13:35-6A.6 Exemption to accommodate personal religious beliefs**

Death shall not be declared on the basis of neurological criteria if the examining physician has reason to believe, on the basis of information in the patient's available medical records, or information provided by a member of the patient's family or any other person knowledgeable about the patient's personal religious beliefs, that such a declaration would violate the personal religious beliefs of the patient. In these cases, death shall be declared, and the time of death fixed, solely upon the basis of cardio-respiratory criteria.

**13:35-6A.7 Pronouncement of death**

The examining physician shall document within the patient record the results of all tests performed and shall sign the chart. After a clinical examination and a confirmatory test or examination have been completed and documented on the patient's chart, and if the examining physician has been able to make all requisite determinations consistent with N.J.A.C. 13:35-6A.5, then the examining physician may authorize the pronouncement of death. The actual pronouncement of death may thereafter be made by the examining physician or any plenary licensed physician acting upon the authorization of the examining physician.

## New Mexico

### State Law:

#### **12-2-4. Determination of death.**

A. For all medical, legal and statutory purposes, death occurs when an individual has sustained either:

- (1) irreversible cessation of circulatory or respiratory functions; or
- (2) irreversible cessation of all functions of the entire brain, including the brain stem.

B. A determination of death shall be made in accordance with accepted medical standards.

C. Death is to be pronounced pursuant to the provisions of Subsection A of this section before artificial means of supporting circulatory or respiratory functions are terminated and before any vital organ is removed for purposes of transplantation, therapy, research or education in compliance with the provisions of the Jonathan Spradling Revised Uniform Anatomical Gift Act [24-6B-1 NMSA 1978].

D. The definition of death set forth in Subsection A of this section is to be utilized for all purposes in this state, including civil and criminal actions, notwithstanding any other law to the contrary.

## **New York**

### **State Law:**

#### **GUIDELINES FOR DETERMINING BRAIN DEATH**

Revisions to the 2005 Brain Death Determination Guidelines, which revise and update New York's 2005 guidelines, represent a broad consensus on the criteria for determining brain death. They incorporate the guidelines of the American Academy of Neurology (AAN), initially released in 1995 and revised in 2010. They also draw upon a consensus-building process that included ethical, legal and clinical review by the New York State Task Force on Life and the Law, as well as recommendations by an outside working group of expert physicians from across the State.

## **North Carolina**

### **§ 90 323. Death; determination by physician.**

The determination that a person is dead shall be made by a physician licensed to practice medicine applying ordinary and accepted standards of medical practice. Brain death, defined as irreversible cessation of total brain function, may be used as a sole basis for the determination that a person has died, particularly when brain death occurs in the presence of artificially maintained respiratory and circulatory functions. This specific recognition of brain death as a criterion of death of the person shall not preclude the use of other medically recognized criteria for determining whether and when a person has died. (1979, c. 715, s. 3.)

## North Dakota

### State Law:

#### **23-06.3-01. Determination of death.**

An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

#### **23-06.3-02. Notice to family in case of imminent death.**

If it appears to a physician who has primary responsibility for the treatment and care of an individual that the death of the individual is imminent, the physician shall make reasonable efforts to notify the individual's next of kin. If after making reasonable efforts the next of kin are not notified, the physician shall document in the medical records of the individual the efforts made to notify the next of kin. If notice is given, the physician shall provide the next of kin with appropriate information regarding the individual's medical condition and available medical therapies.

## Ohio

### **2108.40 Definition of death.**

An individual is dead if the individual has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the brain, including the brain stem, as determined in accordance with accepted medical standards. If the respiratory and circulatory functions of a person are being artificially sustained, under accepted medical standards a determination that death has occurred is made by a physician by observing and conducting a test to determine that the irreversible cessation of all functions of the brain has occurred.

A physician who makes a determination of death in accordance with this section and accepted medical standards is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for the physician's acts or the acts of others based on that determination.

Any person who acts in good faith in reliance on a determination of death made by a physician in accordance with this section and accepted medical standards is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for the person's actions.

Effective Date: 03-15-1982; 2008 HB529 04-07-2009



## **Oklahoma**

§63-3121. Sections 1 through 3 of this act shall be known and may be cited as the "Uniform Determination of Death Act".

§63-3122. An individual who has sustained either: 1. irreversible cessation of circulatory and respiratory functions, or 2. irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards; provided however all reasonable attempts to restore spontaneous circulatory or respiratory functions shall first be made, prior to such declaration.

§63-3123. The Uniform Determination of Death Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. This act 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.

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## Oregon

### State Law:

#### **DETERMINATION OF DEATH**

##### **432.300 Determination of death.**

- (1) A person is dead if the person has sustained either:
  - (a) Irreversible cessation of circulatory and respiratory functions; or
  - (b) Irreversible cessation of all functions of the entire brain, including the brain stem.
- (2) A determination of whether the conditions described in subsection (1)(a) or (b) of this section have occurred must be made in accordance with accepted medical standards.
- (3) For purposes of this section as it relates to fetal death, heartbeats shall be distinguished from transient cardiac contractions and breathing shall be distinguished from fleeting respiratory efforts or gasps.
- (4) This section may be cited as the Uniform Determination of Death Act. [1987 c.517 §2 (enacted in lieu of 146.001); 1997 c.783 §28]

**Pennsylvania**

**State Law:**

**SENATE BILL**

**No. 1092 Session of 1981**

INTRODUCED BY JUBELIRER, GEKAS, SNYDER, MANBECK, LINCOLN, LYNCH,  
HELFRICK, MELLOW AND MOORE, SEPTEMBER 28, 1981

AS REPORTED FROM COMMITTEE ON HEALTH AND WELFARE, HOUSE OF  
REPRESENTATIVES, AS AMENDED, NOVEMBER 10, 1982 AN ACT

1 Providing for determination of death. 2 The General Assembly of the Commonwealth of  
Pennsylvania 3 hereby enacts as follows: 4 Section 1. Short title. 5 This act shall be known and  
may be cited as the "Uniform 6 Determination of Death Act." 7 Section 2. Uniformity of  
construction and application. 8 This act shall be applied and construed to effectuate its 9 general  
purpose to make uniform the law with respect to the  
10 subject of this act among states enacting it. 11 Section 3. Determination of death. 12 An  
ONLY AN individual who has sustained either: <-- 13 (1) irreversible cessation of  
circulatory and 14 respiratory functions; or 15 (2) irreversible cessation of all functions of the  
16 entire brain, including the brain stem, is dead.

1 A determination of death must be made in accordance with 2 accepted medical standards. 3  
Section 4. Effective date. 4 This act shall take effect in 60 days.

**Rhode Island**

**§ 23-4-16 Uniform determination of death.** – A person who has sustained either: (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

**History of Section.** (P.L. 1982, ch. 411, § 1.)

## **South Carolina**

### **SECTION 44-43-450.** Short title.

This act may be cited as the Uniform Determination of Death Act.

### **SECTION 44-43-460.** When individual is deemed to be dead; standards applicable to determination.

An individual who has sustained irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

**South Dakota**

34-25-18.1. Determination of death. Any individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death shall be made in accordance with accepted medical standards.

**Source:** SL 1990, ch 273.

## **Tennessee**

68-3-501. Uniform Determination of Death Act. (a) This section may be cited as the "Uniform Determination of Death Act." (b) An individual who has sustained either: (1) Irreversible cessation of circulatory and respiratory functions; or (2) Irreversible cessation of all functions of the entire brain, including the brain stem; is dead. A determination of death must be made in accordance with accepted medical standards. (c) This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among states enacting it. [Acts 1976, ch. 780, § 1; 1982, ch. 763, §§ 1-4; T.C.A., § 53-459.]

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## Texas

Sec. 671.001. STANDARD USED IN DETERMINING DEATH. (a) A person is dead when, according to ordinary standards of medical practice, there is irreversible cessation of the person's spontaneous respiratory and circulatory functions.

(b) If artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician, according to ordinary standards of medical practice, there is irreversible cessation of all spontaneous brain function. Death occurs when the relevant functions cease.

(c) Death must be pronounced before artificial means of supporting a person's respiratory and circulatory functions are terminated.

(d) A registered nurse or physician assistant may determine and pronounce a person dead in situations other than those described by Subsection (b) if permitted by written policies of a licensed health care facility, institution, or entity providing services to that person. Those policies must include physician assistants who are credentialed or otherwise permitted to practice at the facility, institution, or entity. If the facility, institution, or entity has an organized nursing staff and an organized medical staff or medical consultant, the nursing staff and medical staff or consultant shall jointly develop and approve those policies. The board shall adopt rules to govern policies for facilities, institutions, or entities that do not have organized nursing staffs and organized medical staffs or medical consultants. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 201, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 965, Sec. 8, eff. June 16, 1995. Sec. 671.002. LIMITATION OF LIABILITY.

(a) A physician who determines death in accordance with Section 671.001(b) or a registered nurse or physician assistant who determines death in accordance with Section 671.001(d) is not liable for civil damages or subject to criminal prosecution for the physician's, registered nurse's, or physician assistant's actions or the actions of others based on the determination of death.

(b) A person who acts in good faith in reliance on a physician's, registered nurse's, or physician assistant's determination of death is not liable for civil damages or subject to criminal prosecution for the person's actions. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 201, Sec. 2, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 965, Sec. 9, eff. June 16, 1995.



## Utah

### State Law:

#### **Title 26 Utah Health Code Chapter 34 Uniform Determination of Death Act Section 2**

##### **Definition of death -- Determination of death.**

26-34-2. Definition of death -- Determination of death.

(1) An individual is dead if the individual has sustained either:

(a) irreversible cessation of circulatory and respiratory functions; or

(b) irreversible cessation of all functions of the entire brain, including the brain stem.

(2) A determination of death shall be made in accordance with accepted medical standards. Amended by Chapter 297, 2011 General Session Download Code Section Zipped WordPerfect 26\_34\_000200.ZIP  
1,668 Bytes

## **Vermont**

### **State Law:**

#### **§ 5218. Determination of death**

An individual who has sustained either irreversible cessation of all functions of the entire brain, including the brain stem, or irreversible cessation of circulatory and respiratory functions is dead. A determination of death must be in accordance with accepted medical standards. (Added 1981, No. 62, eff. April 30, 1981.)

## Virginia

### State Law:

A. A person shall be medically and legally dead if:

1. In the opinion of a physician duly authorized to practice medicine in this Commonwealth, based on the ordinary standards of medical practice, there is the absence of spontaneous respiratory and spontaneous cardiac functions and, because of the disease or condition which directly or indirectly caused these functions to cease, or because of the passage of time since these functions ceased, attempts at resuscitation would not, in the opinion of such physician, be successful in restoring spontaneous life-sustaining functions, and, in such event, death shall be deemed to have occurred at the time these functions ceased; or
2. In the opinion of a physician, who shall be duly licensed and a specialist in the field of neurology, neurosurgery, electroencephalography, or critical care medicine, when based on the ordinary standards of medical practice, there is the absence of brain stem reflexes, spontaneous brain functions and spontaneous respiratory functions and, in the opinion of another physician and such specialist, based on the ordinary standards of medical practice and considering the absence of brain stem reflexes, spontaneous brain functions and spontaneous respiratory functions and the patient's medical record, further attempts at resuscitation or continued supportive maintenance would not be successful in restoring such reflexes or spontaneous functions, and, in such event, death shall be deemed to have occurred at the time when these conditions first coincide.

B. A registered nurse or a physician assistant who practices under the supervision of a physician may pronounce death if the following criteria are satisfied: (i) the nurse is employed by or the physician assistant works at (a) a home health organization as defined in § [32.1-162.7](#), or (b) a hospice as defined in § [32.1-162.1](#), or (c) a hospital or nursing home as defined in § [32.1-123](#), including state-operated hospitals for the purposes of this section, or (d) the Department of Corrections; (ii) the nurse or physician assistant is directly involved in the care of the patient; (iii) the patient's death has occurred; (iv) the patient is under the care of a physician when his death occurs; (v) the patient's death has been anticipated; (vi) the physician is unable to be present within a reasonable period of time to determine death; and (vii) there is a valid Do Not Resuscitate Order pursuant to § [54.1-2987.1](#) for the patient who has died. The nurse or physician assistant shall inform the patient's attending and consulting physicians of his death as soon as practicable.

The nurse or physician assistant shall have the authority to pronounce death in accordance with such procedural regulations, if any, as may be promulgated by the Board of Medicine; however, if the circumstances of the death are not anticipated or the death requires an investigation by a medical examiner, the nurse or physician assistant shall notify the chief medical examiner of the death and the body shall not be released to the funeral director.

This subsection shall not authorize a nurse or physician assistant to determine the cause of death. Determination of cause of death shall continue to be the responsibility of the attending physician, except as provided in § [32.1-263](#). Further, this subsection shall not be construed to impose any obligation to carry out the functions of this subsection.

This subsection shall not relieve any registered nurse or physician assistant from any civil or criminal liability that might otherwise be incurred for failure to follow statutes or Board of Nursing or Board of Medicine regulations.

C. Death, as defined in subdivision A 2, shall be determined by one of the two physicians and recorded in the patient's medical record and attested by the other physician. One of the two physicians determining or attesting to brain death may be the attending physician regardless of his specialty so long as at least one of the physicians is a specialist, as set out in subdivision A 2.

D. The alternative definitions of death provided in subdivisions A 1 and A 2 may be utilized for all purposes in the Commonwealth, including the trial of civil and criminal cases.

(Code 1950, § 32-364.3:1; 1973, c. 252; 1979, c. 720, § 54-325.7; 1986, c. 237; 1988, c. 765; 1996, c. [1028](#); 1997, cc. [107](#), [453](#); 2002, c. [92](#); 2004, c. [92](#); 2010, c. [46](#); 2011, c. [613](#).)

## **Washington**

### **State Law:**

Washington State has NO State Law about Brain Death.

## West Virginia

### State Law:

#### **§16-10-1. Determination of death.**

An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

## Wisconsin

### State Law:

**146.71 Determination of death.** An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death shall be made in accordance with accepted medical standards.

146.71 - ANNOT.

**History:** 1981 c. 134.

## Wyoming

### State Law:

#### **35-19-101. Determination of death.**

An individual who has sustained either irreversible cessation of circulatory and respiratory functions, or irreversible cessation of all functions of the entire brain including the brain stem, is dead. A determination of death shall be made in accordance with accepted medical standards.

#### **35-19-102. Uniformity of construction and application.**

The Uniform Determination of Death Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

#### **35-19-103. Short title.**

This act, W.S. 35-19-101 through 35-19-103, may be cited as the "Uniform Determination of Death Act."