

LEGAL ASPECTS OF PROLONGED USE OF ARTIFICIAL LIFE SUPPORTS¹

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I. Introduction

Every soul shall have
A taste of death:
And only on the Day
Of Judgment shall you
Be paid your full recompense
Only he who is saved
Far from the Fire
And admitted to the Garden
Will have attained
The object (of Life):
For the life of this world
Is but goods and chattles
Of deception. . .

The Holy Quran Sura 3: Verse 185

The prolonged use of artificial life supports
has become a subject of great concern in the

1/ This article is the revised text of a paper delivered as part of a panel discussion entitled "Prolonged Artificial Life Support" at the 9th Annual Convention of the Islamic Medical Association of the U.S. and Canada, Newark, New Jersey, October 24, 1976. The panel included Dr. Iqbal Ansari, Dr. S. Sultan Ahmad, Dr. Hamdi Massoud, Mr. Muzammil Siddiqi and the author.

For purposes of this paper, artificial life support is viewed as technical devices such as respiratory and circulatory equipment.

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fields of religion, philosophy, medicine and law.³ One legal aspect, which is inextricably tied to all other aspects, legal and non-legal is the concept of brain death and its recognition by the law. Other legal aspects involve the rights and liabilities of various interested parties who may be faced with the decision to withhold or withdraw artificial life supports. These may be identified as the rights and liabilities of patients, relatives, physicians and hospitals. The legal aspects discussed herein will focus on case law and legislation effecting (1) the recognition of the

3/It is difficult to separate a legal view of this problem from the crucial moral, ethical and religious questions involved. No definitive statement has been issued by the Imam of the World Community of Islam in the West, the Honorable Warus-u-deen Muhammad. However, it is evident that his spiritual teaching, focuses on life as it affects a person's mind or mentality. A higher regard is given to the state of one's mental life rather than the physical or material life. Therefore, it might appear, according to this tenet, that when one's mind is no longer able to function, it is of less consequence that one's heart or lungs may continue to function by means of artificial life supports. If a being's mind is sound, and alert, it may be said that this person has life. When that mind is unconscious, no longer functional, cannot perceive or respond to its environment, as a practical matter, that being might be considered dead.

In 1957 Pope Pius XII declared to an assembly of physicians that when death becomes inevitable a physician can abandon further efforts to stave off death "in order to permit the patient already virtually dead to pass on in peace." Baughman, "Euthanasia: Criminal, Tort, Constitutional and Legislative Considerations," 48 Notre Dame Law 1208 (1972-73).

In the famous Karen Ann Quinlan case (discussed infra), it was demonstrated that the Catholic Church acquiesced in Joseph Quinlan's request for discontinuance of the medical treatment his daughter was receiving. His decision was "according to the teachings of the Catholic Church, a morally correct decision." Matter of Quinlan, 355 A.2d 647 at page 659.

concept of brain death and (2) the liabilities of physicians.

The development of the underlining issues may be seen in three stages:

1. The medical field's development of the brain death theory;
2. The gradual judicial and legislative recognition of such theory;
3. The present case law and legislation which effects the decision to withhold or withdraw artificial life supports; and
4. The physicians potential liability for discontinuing artificial life support.

II. Brain Death

The traditional concept of death, the common law definition⁴ i.e. cessation of circulatory and respiratory functions, was based on a medical determination. This concept has become outmoded because of the advances in medical technology and a new theory has emerged, cessation of brain function, or brain death. The traditional standard is no longer generally acceptable by medical science in view of the new theory. However, the new theory's gradual acceptance in medical circles was based on a purely medical determination which the law had not sanctioned. All statutes and legal precedents were according to the common law definition. The issue has been and continues to be critically debated in medical, legal and religious circles because this new definition allows a patient to be declared dead because of cessation of brain function while the circulatory and respiratory systems are kept "functional" with the help of artificial life supports. These patients with "dead brains" and "live organs" are prime candidates as donors in transplant operations.^{5/}

The attack on the traditional definition of death was inspired by two separate studies. One done by the Harvard Medical School, and the other by the World Medical Association. In 1968, the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death issued a report entitled "A Definition of

4/Black's Law Dictionary (4 ed. rev. 1968), 488 defines death as:

"The cessation of life; the ceasing to exist; defined by physicians as total stoppage of the circulation of the blood, and a cessation of the animal and vital functions consequent thereon, such as respiration, pulsation, etc."

Irreversible Coma." The Harvard committee concluded that any organ that did not function was dead and developed a four-part test to determine when a brain did not function. The test which indicates that brain death has occurred is as follows:

1. Unreceptivity and Unresponsivity – There is a total unawareness to externally applied stimuli and inner need and complete unresponsiveness – our definition of irreversible coma. Even the most intensely painful stimuli evoke no vocal or other response, not even a groan, withdrawal of a limb, or quickening of respiration.

2. No Movements or Breathing – Observations covering a period of at least one hour by physicians is adequate to satisfy the criteria of no spontaneous muscular movements or spontaneous respiration or response to stimuli such as pain, touch, sound, or light. After the patient is on a mechanical respirator, the total absence of spontaneous breathing may be established by turning off the respirator for three minutes and observing whether there is any effort on the part of the subject to breath spontaneously.

3. No Reflexes – Irreversible coma with abolition of central nervous system activity is evidenced in part by absence of elicitable reflexes. The pupil will be fixed and dilated and will not respond to a direct source of bright light.

4. Flat Electroencephalogram – Of great confirmatory value is the flat or isoelectric EEG . . . at least ten full minutes of recording are desirable, but twice that would be better.^{6/}

According to this concept, a human being whose brain is dysfunctional could be considered dead. The Harvard committee stated that a non-functioning brain is one that is in deep, irreversible coma and, therefore, the state of being in an irreversible coma is death.

While the Harvard committee was meeting in Cambridge, the World Medical Association met in Sydney, Australia,^{7/} to examine the same

5/Capron and Kass, "A Statutory Definition of the Standards For Determining Human Death: An Appraisal and a Proposal" 121 Univ. of Penn. L. Rev. 87 at page 110 footnote 81.

6/A Definition of Irreversible Coma, 205 Journal Am. Med. Ass'n 6 (1968).

7/Thanatology Time, Aug. 16, 1968 at 66 as noted at page 255, footnote 80, in "The Time of Death – A Legal, Ethical and Medical Dilemma" 18 Catholic Lawyer 243.

definition of death issue. The conclusions of the Harvard committee and the Association were remarkably similar and both agreed that at least two physicians should share the responsibility of determining death, but that a doctor who is to perform a transplant operation should not be involved in a declaration of death involving the organ donor for that operation.

Though the Harvard committee's four-phase test has been challenged by comparative studies^{8/} which offer alternate tests for determining cessation of brain function, it is becoming established in the medical profession that irreversible coma or cessation of brain function is acceptable as a new standard for determining death.

III. Legal Recognition of Brain Death

Judges and juries have gradually begun to recognize the brain death theory in determining civil and criminal cases and state legislatures have subsequently enacted legislation such as the Anatomical Gift Act and new "death statutes" which recognizes cessation of brain function as a standard for determining death. The recognition of this theory by courts and legislatures is in no sense uniform. Therefore, the extent of rights and the scope of liabilities involved when life supports are removed have the potential for variance depending upon the jurisdiction. For example, the Quinlan case (discussed *infra*) is precedent for New Jersey alone and is not binding on other states or the federal court system. Further, innovative legislation such as the California "right to die" law (discussed *infra*) may or may not be enacted by various other states.

Case Law. The first instance when the question of criminal liability arose as a result of brain death and organ transplant occurred in 1968 in a *Texas* case.^{9/} The defendant, accused of homicide, argued that he was not guilty because the victim, in fact, had never died. He contended that since the victim's heart was

8/"Brain Death: Medico - Legal Fact or Fiction?" 3 Northern Kentucky State Law Forum 16; Korin, "On Cerebral, Brain and Systematic Death, Current Concepts of Cerebrovascular Disease," 8 Stroke 9 (1973); Jenkins, "Irreversible Cerebral Injury: The Medical Basis for and Neurological Determination of Brain Death," Symposium on the Medical - Ethical - Legal Aspects of Organ Transplantation, Washington, D.C. October 12, 1974.

9/Medical World News, Jan. 7, 1974 at 35-38.

beating in another person's body, no crime had been committed. He abandoned this contention when the donee of the organ died a few weeks later.

It was not until 1971 that the common law began to recognize the cessation of brain function as a new standard for determining death.^{10/} A jury in *Portland, Oregon*, found that a victim's death was not caused by a doctor removing the victim's kidney for transplant purposes but rather it was caused by a gun shot wound. The evidence upon which the jury based its finding was a flat EEG reading prior to the removal of the kidney.

In 1972, a jury in *Richmond, Virginia*, accepted the concept of brain death.^{11/} It was concluded that death occurs when the brain dies (as evidenced by a flat EEG) and not necessarily when circulation and respiration cease. Four physicians were consequently held not liable for medical malpractice in a civil suit brought by the family of a deceased donor for wrongful removal of the heart. In this case, supportive measures were stopped when the EEG became flat, and this resulted in immediate cessation of respiration and circulatory functions. A transplant operation was immediately undertaken.

In early 1973, a family withdrew permission for the removal of kidneys from a potential donor because they feared that the state's case against the defendant might be jeopardized as a result.^{12/} Again, a flat electroencephalogram reading was used as evidence of death even though circulatory and respiratory functions were to be continued by means of artificial support. Surgeons were unwilling to delay the transplantation until these functions ceased normally because of the high probability of failure with such delays.

The key issue in two California cases in 1974 was whether the removal of a gunshot victim's beating heart for use in a transplant means that death nevertheless was caused by acts of violence. Defendants in both cases were charged with homicide and pleaded guilty. In the first California case,^{13/} the judge dismissed a

10/State v Brown, 8 Ore. App. 72,491 p. 2d 1193 (1971).

11/Tucker v Lower No. 2831 (Richmond, Va. Law & Equity Ct., May 23, 1972).

12/American Medical News, Jan. 7, 1974 at page 4.

13/American Medical News, Jan. 21, 1974 at page 2.

manslaughter charge and upheld the defendant's contention that according to the traditional definition, death is the total cessation of vital functions, including circulation, heartbeat, pulse and respiration, and not brain death regardless of its ultimate diagnostic and prognostic value.

An opposite result was obtained in the second California case.^{14/} Despite a flat EEG, the victim's heart and respiration were maintained artificially for transplant purposes until the heart was removed. There the trial judge ordered the jury to accept irreversible cessation of brain function as the definition of death. The accused was convicted of voluntary manslaughter. Interestingly enough, the defense attorney suggested that perhaps the physicians involved should be tried for homicide.

Statutes. Presently, only nine states have adopted brain death as a legal definition in state statutes.^{15/} Kansas was the first state to adopt legislation recognizing the brain death concept. The statute provides "alternative definitions of death" outlined in two paragraphs.^{16/} The alternative definition concept in the Kansas statute has become a model and is found in most of the other statutes as well. Under the first, a person is considered "medically and legally dead" if a physician concludes:

"there is the absence of spontaneous respiratory and cardiac function and . . . attempts at resuscitation are considered hopeless."^{17/}

The second definition of death turns on the absence of spontaneous brain function if during "reasonable attempts" either to "maintain or

restore spontaneous circulatory or respiratory function," it appears that further attempts at resuscitation or supportive maintenance will not succeed. According to the last sentence of the second definition, stating that death is to be pronounced before artificial life supports are discontinued, it would appear the second definition is designed to aid transplant operations.

The legislation has been criticized as having the primary fault of developing the misconception that there are two separate phenomena of death.^{18/} It appears to establish a special definition for organ transplantation which physicians would not have to apply to prove the deaths of those persons who are not prospective organ donors. This criticism appears well directed. The statute allows a person to be deemed dead or alive depending upon the purpose for which the potential cadaver may be used.

IV. The Discontinuance of Artificial Life Supports

A. Case Law. The only case in this area, *Matter of Quinlan*, 355 A.2d 647, 70 N.J. 10, (1976) was decided by the Supreme Court of New Jersey. The opinion absolves relatives, physicians and hospitals of civil and criminal liability for disconnecting artificial life supports where the decision to do so has been subject to the scrutiny of the "ethics committee," or like body, of a hospital. Karen Ann Quinlan for reasons that are unclear ceased breathing for at least two 15-minute periods on the night of April 15, 1975. On the following day, she was in a state of "irreversible coma" according to medical opinion. Artificial life support, i.e., an MA-2 respirator, which provides air to the lungs on a controlled volume basis, was used to "assist" the patients breathing. It was believed by the physicians that Karen would not return to a cognitive sapient state and disconnecting the life support would cause her to discontinue breathing and therefore die.^{19/} In the lower court her father, Joseph

14/*People v Lyons* (Alameda County Cal., Super. Ct. May 21, 1974) reported in 15 Cr. L.R. ptr 2240 (1974).

15/See Statutory Appendix ALASKA STAT. @09.65.120 (Supp. 1975); CALIF. HEALTH & SAFETY CODE @ 7180, 7181 (Deering 1975); KAN. STAT. ANN. @ 77-202 (Supp. 1975); MD. ANN. CODE art. 43, @ 54F (Supp. 1975); Mich. Pub. Acts of 1975, No. 158 (July 23, 1975); N.M. STAT. ANN. @ 1-2-2.2 (Supp. 1975); OKLA. STAT. ANN. 63 @ 2-301 (g) (Supp. 1975); VA. CODE ANN. @ 32-364.3:1 (Supp. 1975); W. VA. CODE ANN. @ 16-19-1 (b) (Supp. 1975). (Various states such as Illinois have adopted brain death as a legal definition for purposes of the Uniform Anatomical Gift Act).

16/See Statutory Appendix - Kansas.

17/Note, 16 supra.

18/*Capron and Kass*, supra at note 5, page 109.

19/According to both the common law definition of death and the emerging brain death definition Karen Ann Quinlan was alive. *Matter of Quinlan* 348 42d 801 at 817. This appears to contradict the medical opinion that she was in a state of irreversible coma unless that term as used by the New Jersey doctors means something different from the term as it has been used by the Harvard committee.

Quinlan, sought (1) to obtain guardianship of his daughter, who was then a guardian of the state due to her incompetence, and (2) to receive express power from the court to authorize discontinuance of life-support systems without incurring civil or criminal liability. The Superior Court held that the state had an interest in protecting incompetents, that continued use of the life-support systems did not violate any constitutional rights of the daughter or relatives, that a reasonable construction of the homicide law would prevent removal of the respirator and that the father, though qualified to be the guardian, would be an inappropriate appointment in view of his concurrence in the decision to discontinue the life-support.

On appeal to the Supreme Court of New Jersey it was held that Karen Ann Quinlan's constitutional right to privacy was being infringed. In balancing the right of privacy with the state interest the Court stated that an individual's right to privacy could extend to permit a patient's decision to discontinue life support since:

"... the State's interest *contra* weakens and the individual's right to privacy grows as the degree of bodily invasion increases and the prognosis dims. Ultimately there comes a point at which the individual's rights overcome the State interest." 70 N.J. at 41,355 A2d at 664

Further, the Court broke new ground by holding that Karen's right to privacy could be asserted by her father upon his being appointed guardian. In declaratory relief the court stated that upon the concurrence of the guardian and family, should the attending physician conclude that the patient would not return to a competent sapient state and recommend that the artificial life support be discontinued, consultation should be sought with the ethics committee, or like body, of the hospital. Should the committee agree that there is no reasonable possibility of the patient ever emerging from the comatose condition to a cognitive sapient state, the life support could be discontinued without any participants in the decision being subject to civil or criminal liability.^{20/}

^{20/}Though the respirator was disconnected, at the time of this writing, Karen is still alive but remains in coma.

Though *Quinlan* is the only case of its kind, the precedents which support the notion of a right of privacy being balanced against the (parens patriae) interest of the state, appear unassailable. However, the crucial question in *Quinlan* is whether the right of privacy may be extended so that a relative could assert the right on behalf of a patient. It has been suggested that this far-reaching constitutional pronouncement may have been avoided had the court resorted to the concept of substituted judgment.^{21/} The Supreme Court has been more narrow in its constitutional judgments and is not compelled to follow the *Quinlan* rationale.

B. *Statutes*. The only legislation in this area was passed by the California legislature in September of 1976, effective January 1, 1977.^{22/} At the close of the 1976 legislative session many states had proposed statutes similar to the California law^{23/}. The legislation gives any adult person of sound mind who is not pregnant the right to execute a directive instructing a physician to withhold artificial life supports if such person

"... should have an incurable injury, disease or illness certified to be a terminal condition by two physicians, ..."

where the artificial life supports would serve only to prolong the moment of death and where the persons physician has determined that death would be imminent whether the life-supports were withheld or withdrawn. The person must show that at least 14 days from the time of execution of the directive the person had been diagnosed and notified by a named physician as having a terminal condition. The directive has effect for 5 years and must be signed by two witnesses.

In certain circumstances the directive will be of no force and effect unless certain requirements are met. For instance the directive will not be effective if the person (referred to as the

^{21/}Hyland and Baime, "In Re Quinlan: A Synthesis of Law and Medical Technology" 8 Rutgers. Camden Law Journal 37 (1976) at page 58.

^{22/}"The Natural Death Act" Calif. Health and Safety Code Chap. 39, @ 7185, Part 1, Div. 7.

^{23/}Alabama, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Maryland, Kentucky, Massachusetts, Missouri, Montana, Oregon, Pennsylvania, Rhode Island, Tennessee, Virginia, Washington, and Wisconsin.

declarant) is a patient in a skilled nursing facility at the time the directive is executed unless one of the two witnesses to the directive is a patient advocate or ombudsman as may be designated by the State Department of Aging for that purpose pursuant to any other applicable provision of law. It is stated that the intention of this provision is to require special assurance that the patient is capable of willfully and voluntarily executing a directive.

A directive may be revoked at any time without regard to ones mental state or competency. A revocation may be accomplished by methods such as cancellation, defacement, obliteration, burning, tearing or other destruction. A written document expressing an intent to revoke, signed and dated by the declarant may also be used. (This type of revocation becomes effective only upon communication to the attending physician by the declarant or by a person acting on his behalf). A verbal expression by the declarant of his intent to revoke the directive is also allowed. (Here also the revocation becomes effective only upon communication to the attending physician).

The act further provides that there will be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to the Statute unless that person has actual knowledge of the revocation. A directive may be reexecuted at any time in accordance with the formalities required by the Act. If the declarant becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until the declarant is able to communicate with the attending physician.

The statute also protects those acting under the direction of a physician. No physician or health facility, acting under the direction of a physician, who participates in the withholding or discontinuing artificial life supports in accordance with the statute shall be subject to any civil or criminal liability.

The legislation does contain a loop-hole for the physicians who would feel bound by religious,^{24/} ethical, or moral standards to

24/At the conference a heart surgeon privately expressed to the author that his religious and moral feeling was that "... only Allah has the right to take our precious life away. Therefore I could never disconnect respiratory or circulatory apparatus to bring about the death of my

continue the use of life supports despite the directive. The statute provides that no physician or licensed health professional shall be criminally or civilly liable for failing to effectuate the directive of the patient pursuant to the statute, but such failure shall constitute unprofessional conduct if the physician refuses to make necessary arrangements or fails to take necessary steps to transfer the patient to a physician who will effectuate the directive.

Before executing a directive a patient must become "qualified" to do so. The patient must receive diagnosis and certification in writing from two physicians (one of whom must be the attending physician), that he or she is afflicted with a terminal condition. If an "unqualified" patient has executed a directive the attending physician is not bound by the directive, but may give weight to it as evidence of the patients intent. However, he may also consider other factors, such as, information from the affected family or the nature of the patients illness, injury or disease, before determining whether the circumstances justify effectuating the directive. Under these circumstances there is not criminal or civil liability for failing to effectuate a directive.

The Act provides that effectuating a directive does not constitute suicide and that executing a directive shall not restrict, inhibit, or impair in any manner the sale, procurement, or issuance of any life insurance policy nor shall it be deemed to modify the terms of an existing policy. Further the Act provides that no life insurance policy shall be legally impaired or invalidated in any manner by the withholding or withdrawing of artificial life supports from an insured patient despite any terms in the policy to the contrary. Also no insurer shall require any person to execute a directive as a condition for being insured from or receiving, health care services.

Any person who conceals, cancels, defaces, obliterates or damages anothers directive, without consent, shall be guilty of a misdemeanor. A person who engages in falsifying or forging a directive of another or concealing personal knowledge of a revocation which directly causes death to thereby be hastened, shall be subject to prosecution for unlawful homicide.

patient. I must do everything in my power to save the life. . ." The author declined to advise the good doctor that the use of such life support might in some cases be viewed as impeding Allah's efforts to bring death as opposed to assisting Him in sustaining life.

Nothing in the Act is to be construed to condone, authorize or approve mercy killing, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.^{25/}

LIABILITY OF PHYSICIANS

The discontinuance of artificial life support is considered a form of euthanasia. It is passive or negative euthanasia, sometimes referred to as antidythanasia. Euthanasia in any form is legally a crime, but very few perpetrators of "mercy killings" have received rigid sentencing in the courtroom.^{26/} The *Quinlan* holding that there is a constitutional "right to die" may result in an increased number of requests for physicians to "pull the plug." This presents a real dilemma for physicians who practice in the forty-one (41) states that have not recognized brain death. Removing artificial life support (from a patient with a flat EEG reading) in one of these states could subject the physician to criminal or civil liability. This is not to say that a judge or jury might not in that instance recognize brain death as a legal definition of death as in *Tucker v Lower*, but who is inclined to take that chance? This is especially true in view of the widespread belief that euthanasia in various forms is practiced freely by the medical profession and that the majority of such occurrences are "covered up."^{27/}

In view of the above an examination of criminal liability appears beneficial. Research of the law pertaining to euthanasia reveals that there has never been a case on euthanasia considered by the United States Supreme Court. Though there have been various cases involving "mercy killing" by the laity,^{28/} very few cases involving euthanasia and a physician have reached the lower

courts, and there are no American appellate court or Supreme Court decisions on this aspect of the subject. According to the Hippocratic Oath^{29/} a physician swears "to give no deadly medicine to anyone if asked, nor suggest any such counsel." However, as mentioned earlier it is widely believed that many doctors perform euthanasia in various ways, but few are indicted, fewer of such cases reach the court and only a small portion of them develop into any form of trial.

There have been no cases found which involve a physician's being criminally charged for discontinuing artificial life support or antidythanasia. However it may be beneficial to examine some of the precedents in the general area of criminal liability for euthanasia.

In 1949 the state of New Hampshire brought a criminal action of murder against Dr. Herman N. Sander, for allegedly injecting ten cubic centimeters of air, four times, into the veins of his patient, a woman with terminal cancer.^{30/} Within ten minutes after the injections she expired apparently of an air embolism. The testimony of a forensic pathologist indicated the cause of death could not be determined with any degree of certainty. The doctor was acquitted by the jury of his "act of mercy" on the basis of temporary insanity. The case did not decide the legality of the act of euthanasia.

It wasn't until 1974 that another "mercy killing" suit was filed against a physician in a U.S. court.^{31/} The defendant, Dr. Montemarano, was a New Jersey doctor, chief resident surgeon at Long Island Hospital. On December 7, 1972 he allegedly injected intravenously, toxic potassium chloride into his male patient who was suffering from terminal cancer of the throat. The patient expired immediately. Months later the district attorney who claimed to have "irrefutable evidence" charged the physician with "willful

25/It must be noted that the legislation does not solve the problem stated in the *Quinlan* case i.e. whether the next of kin may exercise rights of privacy for an irreversibly comatose patient where there is no way of determining the patients wishes.

26/Brown & Truitt, "Euthanasia and the Right to Die" 3 Ohio Northern University Law Review 615 pages 618-621.

27/Medical World News, Sept. 14, 1973 at page 74.

28/Vaughn, "The Right to Die," 10 Cal. West L. Rev. 614 (1974).

29/". . . an ethical code attributed to the ancient Greek physician Hippocrates, adopted as a guide to conduct by medical men throughout the ages and still used during the ceremony of graduation at many universities and schools of medicine." Encyclopedia Britannica, Micropaedia Vol. V, page 56, (1975).

30/Brown and Truitt, supra at note 26. *State v Sander* (N.H. 1950) New York Times, March 10, 1950 at 1, col. 6; see "Note Humanitarian Motive As A Defense to Homicide," 48 Mich. L. Rev. 1197.

31/New York Times, Feb. 10, 1974, at 6, col 2; 39 ALB L. Rev. 826 n. 41 (1975).

murder" and at the time of indictment labeled the death "an apparent mercy killing." Upon exhumation of the body for autopsy, no traces of the alleged "death drug" were found, but the case still came to trial. After deliberating for one hour, the jury found the defendant innocent. The trial was clouded by contradictory witnesses, conflicting evidence concerning the autopsy, and by certain cloak and dagger evidence concerning charges of illegal drug traffic and blackmail. Dr. Montemarano's license to practice medicine was neither revoked nor suspended.

Outside the United States an interesting case arose in 1963 involving a physician and the death of a thalidomide baby.^{32/} In Leige, Belgium, the parents of a new born defective infant decided to kill the child. A drug to "put the baby to sleep" was obtained from the family doctor, who had also prescribed the thalidomide for the mother when she was pregnant. Although the parents of the thalidomide baby, the mother's sister, and the family physician were all prosecuted, they were acquitted of the charge of murder.

These cases and others^{33/} reveal that few of those who have committed euthanasia have never been convicted of the crime of murder. No state has ever appealed a verdict finding a defendant, charged with euthanasia, guilty of a lesser offense.^{34/} Thus, there are very few written opinions involving this issue.

CONCLUSION

Physicians, always dedicated to the preservation of life at any cost, are now being asked to consider antidysthanasia which is legally still a crime — The *Quintan* holding that there is a constitutional "right to die" that may be asserted or exercised by the next of kin may result in an increased number of requests for physicians to discontinue the use of artificial life supports. In spite of this decision, this complex issue will continue to be debated by the physicians, lawyers, religious scholars, and philosophers. Hopefully such deliberations will never become misfocused in assuming that life and death are in hands other than Allah's.

32/Gallalue, "Tragedy at Leige," Look, March 2, 1963 at page 72.

33/Brown and Truitt, supra footnote 26 at page 621.

34/See State v. Zygmanski, No. 1197-72 (Super. Ct. Mammouth City, New Jersey, October 15, 1973).

Alaska

Alaska Stat. @ 09.65.120 (Cum. Supp. 1975) provides:

A person is considered medically and legally dead if, in the opinion of a medical doctor licensed or exempt from licensing under AS 08.64, based on ordinary standards of medical practice, there is no spontaneous respiratory or cardiac function and there is no expectation of recovery of spontaneous respiratory or cardiac function or, in the case when respiratory and cardiac functions are maintained by artificial means, a person is considered medically and legally dead, if, in the opinion of a medical doctor licensed or exempt from licensing under AS 08.64, based on ordinary standards of medical practice, there is no spontaneous brain function. Death may be pronounced in this circumstance before artificial means of maintaining respiratory and cardiac function are terminated.

California

Cal. Health & Safety Code @ 7180 (West Supp. 1976) provides:

A person shall be pronounced dead if it is determined by a physician that the person has suffered a total and irreversible cessation of brain function. There shall be independent confirmation of the death by another physician.

Nothing in this chapter shall prohibit a physician from using other usual and customary procedures for determining death as the exclusive basis for pronouncing a person dead.

Kansas

Kan. Stat. Ann. @ 77-202 (Cum. Supp. 1975) provides:

A person will be considered medically and legally dead if, in the opinion of a physician, based on ordinary standards of medical practice, there is the absence of spontaneous respiratory and cardiac function and, because of the disease of condition which caused, directly or indirectly, these functions to cease, or because of the passage of time since these functions ceased, attempts at resuscitation are considered hopeless; and, in this event, death will have occurred at the time these functions ceased; of

A person will be considered medically and legally dead if, in the opinion of a physician, based on ordinary standards of medical practice, there is the absence of spontaneous brain function; and if based on ordinary standards of medical practice, during reasonable attempts to either maintain or restore spontaneous circulatory or respiratory function in the absence of aforesaid brain function, it appears that further attempts at resuscitation or supportive maintenance will not succeed, death will have occurred at the time when these conditions first coincide. Death is to be pronounced before artificial means of supporting respiratory and circulatory function

are terminated and before any vital organ is removal for purposes of transplantation.

These alternative definitions of death are to be utilized for all purposes in this state, including the trials of civil and criminal cases, any laws to the contrary notwithstanding.

Maryland

Md. Ann. Code art. 43, @ 54F (Cum. Supp. 1975) provides:

(a) A person will be considered medically and legally dead if, based on ordinary standards of medical practice, there is the absence of spontaneous respiratory and cardiac function and, because of the disease or condition which caused, directly or indirectly, these functions to cease, or because of the passage of time since these functions ceased, attempts at resuscitation are considered hopeless; and, in this event, death will have occurred at the time these functions ceased; or

(b) A person will be considered medically and legally dead if, in the opinion of a physician, based on ordinary standards of medical practice and because of a known disease or condition, there is the absence of spontaneous brain function; and if based on ordinary standards of medical practice, during reasonable attempts to either maintain or restore spontaneous circulatory or respiratory function in the absence of spontaneous brain function, it appears that further attempts at resuscitation or supportive maintenance will not succeed, death will have occurred at the time when these conditions first coincide. Death is to be pronounced before artificial means of supporting respiratory and circulatory function are terminated and before any vital organ is removed for purposes of transplantation.

(c) These alternative definitions of death are to be utilized for all purposes in this State, including the trials of civil and criminal cases, any laws to the contrary notwithstanding.

Michigan

M.C.L.A. @ 326.8b

Sec. 8b. (1) a person will be considered dead if in the announced opinion of a physician, based on ordinary standards of medical practice in the community, there is the irreversible cessation of spontaneous respiratory and circulatory functions. If 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, based on ordinary standards of medical practice in the community, there is the irreversible cessation of spontaneous brain functions. Death will have occurred at the time when the relevant functions ceased.

(2) Death is to be pronounced before artificial means of supporting respiratory and circulatory functions are terminated.

(3) The means of determining death in subsection (1) shall be used for all purposes in this state, including the trials

of civil and criminal cases.

New Mexico

N.M. Stat. Ann. @ 1-2-2.2 (Supp. 1975) provides:

A. For all medical, legal and statutory purposes, death of a human being occurs when, and "death," "dead body," "dead person" or any other reference to human death means that:

(1) based on ordinary standards of medical practice, there is the absence of spontaneous respiratory and cardiac function and, because of the disease or condition which caused, directly or indirectly, these functions cease, or because of the passage of time since these functions ceased, there is no reasonable possibility of restoring respiratory or cardiac functions; in this event death occurs at the time respiratory or cardiac functions ceased; or

(2) in the opinion of a physician, based on ordinary standards of medical practice:

(a) because of a known disease or condition there is the absence of spontaneous brain function; and

(b) after reasonable attempts to either maintain or restore spontaneous circulatory or respiratory functions in the absence of spontaneous brain function, it appears that further attempts at resuscitation and supportive maintenance have no reasonable possibility of restoring spontaneous brain function; in this event death will have occurred at the time when the absence of spontaneous brain function first occurred. Death is to be pronounced pursuant to this paragraph before artificial means of supporting respiratory or circulatory functions are terminated and before any vital organ is removed for purposes of transplantation in compliance with the Uniform Anatomical Gift Act [12-11-6 to 12-11-14].

B. The alternative definition of death in paragraphs (1) and (2) of subsection A of this section are to be utilized for all purposes in this state, including but not limited to civil and criminal actions, notwithstanding any other law to the contrary.

Oklahoma

Okla. Stat. tit. 63, @ 1-301 (g) (Cum. Supp. 1976) provides:

The term "dead body" means a human body in which there is irreversible total cessation of brain function; and if, based upon ordinary standards of medical practice, during reasonable attempts to either maintain or restore spontaneous circulatory or respiratory function in the absence of aforesaid brain function, it appears that further attempts at resuscitation or supportive maintenance will not succeed, death will have occurred at the time when these conditions first coincide. Death is to be pronounced before artificial means of supportive respiratory and circulatory function are terminated and before any vital organ is removed for purposes of transplantation.

Virginia

Va. Code Ann. @ 32-364.3:1 (Cum. Supp. 1976) provides:

A person shall be medically and legally dead if, (a) in the opinion of a physician duly authorized to practice medicine in this State, 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 (b) in the opinion of a consulting physician, who shall be duly licensed and a specialist in the field of neurology, neurosurgery, or electroencephalography, when based on the ordinary standards of medical practice, there is the absence of spontaneous brain functions and spontaneous respiratory functions and, in the opinion of the attending physician and such consulting physician, based on the ordinary standards of medical practice and considering the absence of the aforesaid 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 spontaneous functions, and, in such event, death shall be deemed to have occurred at the time when these conditions first coincide.

Death, as defined in subsection (b) hereof, shall be pronounced by the attending physician and recorded in the patient's medical record and attested by the aforesaid consulting physician.

Notwithstanding any statutory or common law to the contrary, either of these alternative definitions of death may be utilized for all purposes in the Commonwealth, including the trial of civil and criminal cases.

West Virginia

W. Va. Code Ann. @ 16-19-1 (b) (Cum. Supp. 1975) provides:

"Death" means that a person will be considered dead if in the announced opinion of the attending physician, based on ordinary standards of medical practice, the patient has experienced an irreversible cessation of spontaneous respiratory and circulatory functions; or, 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, based on ordinary standards of medical practice, the patient has experienced an irreversible cessation of spontaneous brain functions.

Death will have occurred at the time when the relevant functions ceased.

*The best of princes is one who visits the wise.
The worst of scholars is one who visits princes.
(sayings of the Prophet)*

*"If you are uninterested in what I say, there is an end to it.
If you like what I say, please try to understand which previous influences have made you like it.
If you like some of the things I say, and dislike others, you could try to understand why.
If you dislike all I say, why not try to find out what formed your attitude?"*

Idries Shah (from Reflections)