

*J. H. Davis,<sup>1</sup> M.D. and R. K. Wright,<sup>2</sup> M.D.*

## Influence of the Medical Examiner on Cadaver Organ Procurement

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Patients who die from severe head injuries constitute a major reservoir of potential kidney donors, for such injuries usually occur in otherwise healthy individuals. Death from injury mandates a medical examiner's investigation, and jurisdiction over the body occurs at the moment of pronouncement of death. In Florida, when any person dies of criminal violence, by accident, by suicide, suddenly when in apparent good health, when unattended by a practicing physician or other recognized practitioner, in any prison or penal institution, in police custody, in any suspicious or unusual circumstances, by criminal abortion, by poison, by disease constituting a threat to public health, by disease, injury, or toxic agent from employment; or when a dead body is brought into the state without proper medical certification; or when a body is to be cremated, dissected, or buried at sea, the medical examiner shall determine the cause of death and shall make or have performed such examinations, investigations, and autopsies as he shall deem necessary [1]. It is the duty of any person who becomes aware of such a death under the circumstances described above to report such death and circumstances immediately to the medical examiner [2].

In order for these potential donors to become available there must be a cooperative arrangement between the medical examiner and the transplant team. Furthermore, in the event of death caused by criminal activities, there must be a planned team approach to the forthcoming courtroom testimony. This necessitates an understanding of the evidentiary needs and the procedural aspects of the court. When proper planning leads to proper court presentation a favorable appellate decision will result to support the transplant program.

Appellate cases that pertain to this problem have been reported. In a general sense the decision of the Supreme Court of New Jersey in the matter of an alleged incompetent [3] should be studied by every serious student of transplant law and procedure. A portion of the ruling states:

...should the attending physicians conclude there [is] no reasonable possibility of daughter's ever emerging from her comatose condition to a cognitive, sapient state and that the life-support apparatus should be discontinued, physicians should consult with hospital ethics committee and if committee should agree with physicians' prognosis, the life-support systems may be withdrawn and said action shall be without any civil or criminal liability therefore, on the part of any participant, whether guardian, physician, hospital or others.

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<sup>1</sup>Dade County medical examiner and professor of pathology, University of Miami School of Medicine, Coral Gables, Fla.

<sup>2</sup>Assistant chief medical examiner of Dade County; assistant professor of pathology and assistant professor of epidemiology and public health, University of Miami School of Medicine, Coral Gables, Fla.

There are two appellate cases involving homicides in which the defense claimed that the removal of life-support apparatus was an independent, intervening cause of death, thus implying that the physicians were responsible instead of the accused assailants. In the first of these, *Oregon v. Brown* [4], the court stated:

... testimony of physician that "cause of death of homicide victim was a gunshot wound of the head with resulting damage to the brain which resulted in damage to the vital centers of the brain which control respiration and other body activities" was sufficient to refute claim that, since victim was taken to hospital and kept alive by an artificial respiration machine which, until it was turned off, kept him breathing and his blood circulating, the turning off of machine was the act which terminated victim's life rather than bullet wound inflicted by defendant.

In *California v. Saldana* [5] the court stated:

... removal of artificial life-support systems from homicide victim after all electrical activity in brain had ceased was not independent, intervening cause of death so as to relieve defendant of criminal responsibility.

Just as donor kidneys must be available on a timely basis to assure a successful transplant, so the autopsy performed as part of a medical examiner's investigation may be hampered by too long a resuscitative effort applied to a dead body. In a case in Florida [6], the court was petitioned by the surviving spouse to allow cessation of resuscitation on the basis that

... the continuation of the extraordinary medical procedures now being employed by St. Vincent's Medical Center may diminish or destroy the possibility of obtaining an effective examination of his deceased wife's brain tissue, by virtue of the fact that under the present conditions that tissue is continuously undergoing a process of deterioration.

These court decisions, and pertinent legal reviews [7-10], indicate the potential for an allegation that the physician was responsible for the death of the patient instead of the criminal act of the assailant. The courts must have proper testimony to be used as evidence to counter such allegations. A recent incident was reported in a Miami newspaper [11] with the headline "What Legally Killed Student Who Was Mugged For Dollar?"

In Dade County, Florida, since the commencement of the transplant program, it has been the policy of the office of the medical examiner to cooperate with the program. This was not the policy in New York City, where the transplant program faltered until clarified by the court [12]. However, this cooperation must be programmed in such a way that the medical examiner retains statutory jurisdictional control and is assured that the program will not be jeopardized by courtroom allegations. Therefore, the relationship of the medical examiner with the transplant service in Dade County is conducted as follows.

1. When it appears that there is a potential donor whose eventual death would bring the case under the jurisdiction of the medical examiner, a notification by telephone is made to the medical examiner on call. The caller relates the biographic data, a short case history, and what is known about the circumstances surrounding the injury. The medical examiner will usually state that there is no objection on his part pursuant to his statutory obligations. The only possible denial would occur in a case where the *corpus delicti*, not establishable by other means, would be destroyed by the proposed transplant procedure. To date we have never been presented with such facts nor, for that matter, can we envision the possibility of such.

In Florida property rights of the dead body are still vested in the next of kin, and appropriate permission must be obtained from that source as well. Florida, like many jurisdictions in the United States, allows autopsies not authorized by next of kin as part of the medical examiner's investigation into the cause of death. Retention of body parts may be done only for investigational purposes. Thus, the property rights of the family to the dead body in a case falling under the medical examiner's jurisdiction are not eliminated or voided, they are only limited [13].

2. The medical record must clearly indicate the fact of brain death and the irreversibility of the effects of injury.

3. The surgeon removing the kidneys must describe in detail in his surgical note the absence of injury to this area of the body and the exact details of his surgical dissection. This written report becomes part of the medical examiner's record. Following excision of the kidneys the body is delivered to the office of the medical examiner for customary autopsy and other investigations.

By adherence to the above procedures clear proof of the adequacy of safeguards for the injured, for the next of kin, and for the medical examiner is assured. These records may then be used in the event that testimony is needed in a homicide trial.

Although no Dade County test cases have yet evolved, we have some homicide cases which may be expected to be litigated in the near future. The plan for litigation is to present at trial, in logical sequence, the following details:

- (1) the factual circumstances surrounding the injury and crime;
- (2) documentation of the status of the victim when first viewed by fire-rescue or other rescue personnel;
- (3) documentation of the status of the victim during initial and continued hospitalization;
- (4) documentation of the evidence which led to the pronouncement of death;
- (5) documentation of the absence of injuries or other medical causes of death in or about the renal area; and
- (6) documentation of the medical examiner's findings at autopsy.

Throughout each of these presentations the theme is expressed that the proximate cause of death is the injury which led to the hospitalization. The subsidiary theme is that the donation of the kidneys is not an independent, intervening cause of death.

It is essential that all participants in the transplant system be fully aware of the legal necessities and procedures. With a cooperative approach the court will have no alternative other than to sustain the opinion of the medical community. In this way the continual relationship of the medical examiner with the transplant program is assured.

## References

- [1] Fla. Stat. Ann. §406.11 (1975).
- [2] Fla. Stat. Ann. §406.12 (1975).
- [3] *In re Quinlan*, 70 N.J. 10, 355 A.2d 647 (1976).
- [4] *State v. Brown*, 491 P.2d 1103 (Or. App. 1971).
- [5] *State v. Saldana*, 121 Cal. Rptr. 243 (App. 1975).
- [6] *In re Cain*, Fla. Cir. Ct. (4th Cir. No 76-13095, 4 Dec. 1976).
- [7] Elliott, D. W., "When is the Moment of Death?" *Medicine, Science and the Law*, Vol. 4, No. 2, 1964, pp. 77-79.
- [8] Baker, J. C., "Liability and the Heart Transplant," *Houston Law Review*, Vol. 6, 1968, pp. 85-112.
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- [10] Richardson, D. R., "Matter of Life and Death: A Definition of Death, Judicial Resolution or a Medical Responsibility," *Howard Law Journal*, Vol. 19, 1976, pp. 138-148.
- [11] *Miami Herald*, Section A, p. 20, Column 1, 6 Dec. 1976.
- [12] *New York City Health and Hospitals Corp. v. Sulsona*, 367 N.Y.S.2d 686 (1975).
- [13] *Jackson v. Rupp*, 228 So.2d 916 (4th Dist. App. Fla., 1969).

Joseph H. Davis, M.D.  
Dade County Medical Examiner  
1050 N.W. 19th St.  
Miami, Fla. 33136