

Cerebro-Respiratory Death Act, 2008

Translated by Nachum Steigman

1. Definitions

In this Act:

“Test by instruments” – a test for the pathophysiological parameters required to determine cerebro-respiratory death, the test to satisfy all the following conditions:

1. It is independent of clinical examination;
2. It is intended to confirm lack of circulation to the brain or the lack of electro-physiological activity in the brain;
3. It is performed using a medical device or instrument.

“hospital” – a general hospital, and a hospital as designated by the Minister, by order.

“the Director” – the Director-General of the Ministry of Health.

“the Committee” – the Public Medical Accreditation and Monitoring Committee, appointed under the provisions of Article 5.

“patient”, “medical record” – as defined by the Patients’ Rights Act, 1996.

“medical device” – a device listed in the First Appendix.

“a specialist” – a doctor who has formally qualified as a specialist within the meaning of the Physicians Ordinance [New Version], 1976.

“The Minister” – the Minister of Health.

2. Time of Death

The time of death shall be the time at which cerebral-respiratory or cardiac-respiratory death is determined under the provisions of this Act.

3. Determining Cerebral-Respiratory Death

A patient’s cerebral-respiratory death shall be determined only by two physicians accredited to do so by the Committee and who satisfy all the following conditions:

1. They are specialists in one of the medical specialties listed in the Second Appendix, and, in the case of a patient who is a minor, one of them is a specialist in medical specialty 3 or 7 as numbered in that Schedule; in this clause, “minor” – a person more than 2 months-old and less than 13 years-old;
2. They are not directly involved in treating the patient;
3. They do not work in organ transplantation.

4. Conditions Determining Cerebral-Respiratory Death

- (a) The determination of cerebral-respiratory death shall be performed in accordance with a directive to be drawn up by the Director, which, in any event, shall include the following conditions:
 1. The medical cause of the cessation of brain function is known and evident;
 2. There is clear clinical proof of the absolute cessation of autonomous respiration;
 3. There is clear clinical proof of the complete and irreversible cessation of whole brain function, including brain-stem function;
 4. Test by instruments has proved the complete and irreversible cessation of whole brain function, including brain-stem function;

5. Medical conditions liable to give rise to errors in the findings of the tests aforesaid in Clauses 4, paragraphs (1) to (4), have been ruled out.
- (b) The Director shall draw up and issue procedures for documenting the process of determining cerebral-respiratory death; this documentation shall be an integral part of the patient's medical records.
- (c) The Minister shall draw up a directive as to a hospital's duty to obtain and maintain a medical device for performing the aforesaid test by instruments; the said directive may be made applicable gradually to classes of hospitals over a period of time the Minister shall determine, by order.

5. The Public Medical Accreditation and Monitoring Committee

- (a) The Director shall appoint a committee to accredit doctors for the purpose of determining cerebral-respiratory death and to monitor the work of the said doctors in determining cerebral-respiratory death, the said committee to comprise ten members, who shall be:
1. The chairman of the Israel Medical Association's Scientific Council, or another doctor appointed with the consent of chairman of the Israel Medical Association, to chair the said Committee;
 2. Three doctors appointed at the recommendation of the chairman of the Israel Medical Association;
 3. Three rabbis appointed at the recommendation of the Chief Rabbinate of Israel, one at least of whom must be a doctor;
 4. A representative working in the field of ethics, a representative working in the field of philosophy, and a representative working in the field of jurisprudence, all three to be appointed at the recommendation of the president of the Supreme Court, one at least

of whom must be a doctor and one of whom must be from one of Israel's recognized non-Jewish ethno-religious communities;

- (b) The members of the Committee shall be appointed for a period of five years; the Director may reappoint them for a further five-year period, provided that after two consecutive periods of Committee membership no member shall be appointed for a further period of Committee membership until he has left the Committee for five years.

6. The Committee's Powers and Duties

- (a) The Committee shall determine ways to train and accredit doctors for determining cerebral-respiratory death under the provisions of this Act, and for this purpose:
1. Shall determine the content of programs to train doctors to be accredited for determining cerebral-respiratory death, the said training to include at least the following subject areas: medicine, law, ethics and Jewish religious law (*halacha*);
 2. Shall approve the award of certificates, signed by the Committee chairman, to graduates of the said training, accrediting them to determine cerebral-respiratory death;
- (b) The Committee shall carry out inspections of the procedures employed in hospitals to determine cerebral-respiratory death, shall use doctors certificated under the provisions of this Act to examine the soundness of the said procedures and shall monitor hospitals' implementation and application of the provisions of this Act.
- (c) The Minister may draw up and issue a directive as to the Committee's methods of work, procedures of debate, and the procedures it is to follow in carrying out its inspections of hospitals; the Committee shall determine its own procedures of debate in as far as they have not been determined under this Act.

7. Hospital Director's Responsibility

A hospital director shall take care that specialists employed by the hospital in the specialties listed in the Second Schedule shall be trained and accredited to determine cerebral-respiratory death under the provisions of this Act.

8. Informing Family Members

1. A doctor treating a patient (in this Article – the attending physician) shall inform the patient's family members who can be located with reasonable effort, that he fears that the patient is in a state of cerebral-respiratory death, and shall listen to what they have to say as to the patient's wishes in this regard, and shall take the patient's wishes into account should he have expressed them in writing; in this article "family member" – a first-degree relation or the patient's guardian.
2. Doctors certificated under the provisions of this Act may take steps to determine the patient's cerebral-respiratory death in accordance with the provisions of this Act; the time of the patient's death shall be the time at which his cerebral-respiratory death is determined, in so far as it has been determined.
3. Once cerebral-respiratory death has been determined, the patient's family members are entitled to be given the patient's medical records, in so far as they relate to the determination of cerebral-respiratory death; further, the attending physician shall inform the family members that they may consult a social worker, psychologist or minister of religion of the patient's religion; in this Clause:

"Social worker" – as defined in the Social Workers Act, 1996;

"Psychologist" – a person registered in the Psychologists' Register under the provisions of the Psychologists Act, 1977.
4. The aforesaid provisions of this Act notwithstanding, should cerebral-respiratory death have been determined, and this determination be incompatible with the

patient's religion or worldview according to information supplied by his family members, the patient shall not be disconnected from a ventilator, and the treatment directly supporting this respiratory procedure shall not be halted, until heart function ceases.

9. Altering the Schedules

The Minister may, by order, and with the consent of the Committee, alter the First and Second Schedules.

10. Implementation and Regulations

The Minister is responsible for the implementation of this Act and he may, with the approval of the Knesset Labor, Social Affairs and Health committee, promulgate regulations on any matter respecting its implementation.

11. Coming into Effect

This Act shall come into effect 14 months from the first day of the month following the Act's publication.

First Appendix

The "Tests by Medical Device" cited in Article 1 are as follows:

1. Brain-stem Auditory Evoked Response (BAER)
2. Transcranial Doppler (TCD)
3. Sensory Evoked Potential (SEP)
4. Computerized Tomography (CT) – Angiography (CT – A)
5. Angiography (MRA) Magnetic Resonance Imaging (MRI)

Second Appendix (Clause 3(1))

Relevant Medical Specialties

1. Anesthesiology
2. General intensive care
3. Pediatric intensive care
4. Neurology
5. Neurosurgery

6. Emergency medicine
7. Pediatrics
8. Internal medicine
9. Cardiology