

## **2. The Respiratory-Brain Death Act of 5768 (2008)<sup>1</sup>**

### **Definitions**

1. In this Act -

“Test by instruments” — a test for the patho-physiological parameters required to determine respiratory-brain death, the test to satisfy all the following conditions:

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

“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, 5756-1996<sup>2</sup>.

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

“a specialist”— a physician who has formally qualified as a specialist within the meaning of the Physicians Ordinance [New Version], 5737-1976<sup>3</sup>.

“The Minister”— the Minister of Health.

### **Time of Death**

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

### **Determining Respiratory-Brain Death**

3. The determination of respiratory-brain death of the patient 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 Appendix; in this clause, “minor” — a person more than 2 months-old and less than 13 years-old;

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<sup>1</sup> Approved by the *Knesset* on the 17<sup>th</sup> of the Second *Adar*, 5768 (March 24, 2008). The proposed law and its explanations were publicized in the Proposed *Knesset* Bills #198 on the 15<sup>th</sup> of *Shevat* 5768 (January 22, 2008), page 120.

<sup>2</sup> *Sefer Chukim* 5756, page 327.

<sup>3</sup> *Dinei Medinat Yisrael, Nusach Chadash* 30, page 594.

- (2) They are not directly involved in treating the patient;
- (3) They are not involved in organ transplantation.

### **Conditions Determining Respiratory-Brain Death**

4.(A) The determination of respiratory-brain death shall be performed in accordance with a directive to be drawn up by the Director, as long as it includes 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 spontaneous respiration;
- (3) There is clear clinical proof of the complete and irreversible cessation of whole brain function, including brain-stem function;
- (4) Test by devices has proved the complete and irreversible cessation of brain function, including brain-stem function;
- (5) Medical conditions liable to give rise to errors in the findings of the tests aforesaid in Clause 4, paragraphs (1) to (4), have been ruled out.

(B) The Director shall draw up and issue procedures for documenting the process of determining respiratory-brain death; this documentation shall be an integral part of the patient's medical record.

(C) The Minister shall draw up a directive as to a hospital's duty to possess 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.

### **Public Medical Accreditation and Monitoring Committee**

5.(A) The Director shall appoint a committee to accredit physicians for the purpose of determining respiratory-brain death and to monitor the work of the said physicians in determining respiratory-brain death, the said Committee to comprise ten members, who shall be:

- (1) The Chairman of the Israel Medical Association's Scientific Council, or another physician appointed with the consent of the Chairman of the Israel Medical Association, to chair the said Committee;
- (2) Three physicians 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 physician;
- (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 physician 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.

### **The Committee's Duties and Authorities**

6.(A) The Committee shall determine ways to train and accredit physicians for determining respiratory-brain death under the provisions of this Act, and for this purpose -

(1) Shall determine the content of programs to train physicians to be accredited for determining respiratory-brain death, the said training to include at least the following subject areas: medicine, law, ethics and Jewish religious law (*halacha*);

(2) Shall approve the awarding of certificates, signed by the Committee Chairman, to graduates of the said training, accrediting them to determine respiratory-brain death;

(B) The Committee shall carry out inspections of the procedures employed in hospitals to determine respiratory-brain death, shall use physicians 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 procedures the Committee is to follow in carrying out its inspections of hospitals, its methods of work, and agenda and schedule of meetings; the Committee shall determine its own agenda in as far as they have not been determined under this Act.

### **Hospital Director's Responsibility**

7. A hospital director will make sure that specialists employed by the hospital in the specialties listed in the Second Appendix shall be trained and accredited to determine respiratory-brain death under the provisions of this Act.

### **Informing Family Members**

8.(A) A physician 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 there is a concern that the patient is in a state of respiratory-brain 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.

(B) Physicians certificated under the provisions of this Act may take steps to determine the patient's respiratory-brain death in accordance with the

provisions of this Act; the time of the patient's death shall be the time at which his respiratory-brain death is determined, in so far as it has been determined.

(C) Once respiratory-brain 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 respiratory-brain death; further, the attending physician shall inform the family members that they may consult a social worker, psychologist or clergyman of the patient's religion; in this Clause:

“social worker” — as defined in the Social Workers Act, 5756-1996<sup>4</sup>;

“psychologist”— a person registered in the Psychologists' Register under the provisions of the Psychologists Act, 5737-1977<sup>5</sup>.

(D) The aforesaid provisions of this Act notwithstanding, should respiratory-brain 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 the respirator, and the treatment directly supporting the respiratory treatment shall not be halted, until heart function ceases.

### **Altering the Appendixes**

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

### **Implementation and Regulations**

10. 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 regarding its implementation.

### **Commencement**

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

### **First Appendix**

(The definition of “medical device” cited in Article 1)

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

### **Second Appendix**

(Clause 3(1))

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<sup>4</sup> *Sefer Chukim*, 5756, page 152.

<sup>5</sup> *Sefer Chukim*, 5737, page 158.

## 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