

The treatment of patients at end of life stage: A GCC overview

Andrea Tithecott - Partner, Head of Regulatory and Healthcare - Commercial / Regulatory / Legislative Drafting / Sustainability focused Corporate Governance / Sustainable Finance / Sustainable Business / Sustainable Sourcing / Climate Change & Energy Transition
a.tithecott@tamimi.com - Abu Dhabi

November 2017

The sensitive subject-matter of how to determine the best course of action with regard to the treatment, or other options, for a patient who is reaching the end of their life, who may be terminally ill or have an irreversible medical condition that is no longer responding to medical treatment, will always present great difficulties for medical practitioners. It requires great skill, care, medical and ethical judgment to balance the needs of the patient and their families, alongside what is medically 'doable', what should be done or should not be done, either from a medical or ethical stand-point, and, of course, to take into consideration what actions or decisions are permissible under the law. In the Gulf Corporation Council ('GCC') states, these already difficult decisions are over-layered with religious and cultural beliefs that must also be at the forefront of the mind of the care pathway decision-makers.

In some circumstances, it is not appropriate to continue to treat a patient, for example, at an end-of-life stage, perhaps with a terminal illness, or where a cardiac condition would mean that repeated attempts at resuscitation ('CPR') would be futile. The concept of withdrawing active intervention medical treatments is now accepted under both Islamic principles and under country-specific state laws. In this article we examine the current status of the law.

There are a number of significant 'concepts of care' that must be balanced when dealing with a patient at the end-of-life stage, these are:

- the over-arching duty to treat;
- futility of continuing to treat;
- whether to attempt or continue to attempt CPR;
- how to determine the moment when a patient has died (for example, 'brain dead'); and
- whether the organs of a deceased patient may be taken to benefit a living patient.

The Islamic perspective

The laws that govern end of life stage care in the GCC are rooted in Islamic principles. Islam considers that life is sacrosanct and that efforts to treat a patient should be continued. Historically, the thinking was that treatment options should continue notwithstanding that the end result would be that the patient would eventually die. A physician could be accused of terminating the life of a patient if all treatment options were not pursued with vigour. There has been a significant change in this approach in recent times.

There is now a great deal of support for the concept of the 'natural death', that it would be appropriate to withdraw active intervention for some patients to allow them to spend the last few weeks of their life peacefully, and that further intervention or life support is not required if it prolongs agony and suffering. In such cases, the patient would be allowed a natural death, while feeding, hydration and comfort treatments would be continued.¹

The concept of ‘futility’ now extends to patients not only at an end-of-life stage due to terminal illness, but also to cases where a patient suffers from a cardiac condition, or has been involved in a serious accident, and life support treatments by mechanical means become necessary. Under certain laws, CPR may be discontinued for a patient where three physicians agree that such resuscitation attempts would be futile. In the Kingdom of Saudi Arabia, for example, do not resuscitate (‘DNR’) orders can be put in place by way of an advance directive. Where no such DNR order has been made, CPR can be discontinued where three physicians agree that continued attempts would prove useless to improving the patient’s condition. **2**

A question that has vexed Islamic scholars and medical practitioners alike, is to determine at what point the patient has actually died. The point at which the patient dies is very important from a religious, spiritual and family perspective, but also in medical terms, because the diagnosis of death then potentially enables other decisions to be made, such as whether organs can be harvested for the benefit of living patients.

There are numerous ways to define the point of death, including:

- the irreversible loss of capacity to breath;
- irreversible cessation of cardiac and respiratory function;
- brain death (whole-brain death, and brainstem death); and
- the departure of the soul from the body.

Islam is not wholly agreed on the concept of brain death, but, on balance, the agreement favours whole-brain death. There is general support for an Islamic legal definition of brain death when the following conditions are met:

- total cessation of cardiac and respiratory functions, ruled as irreversible; and
- total cessation of all brain functions, and experienced specialised competent doctors have ruled that this is irreversible, and that the brain has started to disintegrate. **3**

The diagnosis of brain death permits the physician to disconnect mechanical life support treatment. The difficulty, and a matter that does not have full agreement under Islamic principles, is the agreed process for testing the patient to determine the cessation of all brain functions, or the evidence for the deterioration of the brain. If a strict approach is taken, in many situations, the diagnosis of brain death cannot be made, and this means that an organ cannot be harvested and transferred to a living patient.

While organ transplantation is permitted in the GCC , the transplant process is dependent upon having a brain-dead donor. By decision of the GCC Council of Health Ministers, GCC **4** states are required to establish uniform organ transplant laws and a GCC referral centre for transplants in the Kingdom of Saudi Arabia **5** whose responsibility will lie with the Saudi Center for Organ Transplantation.

GCC Federal laws

The principles for the rulings under Islamic laws have had a trickle-down effect into the laws of the GCC states. The current status of the laws are best illustrated in table A.

TABLE A: GCC OVERVIEW OF REGIONAL LAWS TOUCHING UPON END OF LIFE CARE

GCC OVERVIEW

United Arab Emirates

GCC OVERVIEW

Law No (7) of 1975 Human Medicine	Human Medicine Law indicates the duty to treat. However, local health authorities now accept withdrawal of active intervention at end-stage care.
Law No (4) of 2016 Medical Liability	Medical Liability law permits discontinuation of CPR and concept of DNR where three physicians agree, except where the patient has specifically requested that further attempts must continue. The recently revised organ donation law permits transplant of tissue and organs from live or deceased patients. Death must be proven by three specialized physicians, one specialized in nervous disease.
Federal Decree No (5) of 2016 Human Transplant	Death is defined as [paraphrased]: complete departure of life from the body... when the heartbeat and breathing have ceased completely and is irreversible... or if all functions of the brain have completely ceased and this is irreversible. Definition of death and 'brain death'
Ministry of Health and Prevention Resolution No (550) of 2017 Diagnosis of Death	Death: (i) spontaneous respiratory failure (ii) absence of pulse and lack of blood pressure (iii) absent heart rate when using a stethoscope Brain death: irreversible cessation of all functions of the entire brain, including the brain stem.

Kingdom of Saudi Arabia

Fatwa No. 26/3796 dated 28/07/1417H (09/12/1996)	DNR is not mentioned within any Saudi laws or regulations. Doctors rely on the Fatwa for removing life support from a patient shall be permitted if three specialised physicians or more agreed.
Directory of the Regulations of Organ Transplantation (" Directory "), endorsed by Ministerial Resolution No. 154219, dated 06/05/1434 and Ministerial Resolution No. 1081/1/29 dated 18/6/1414.	A significant body of law has been published on organ donation. The National Centre for Kidneys is a public entity founded by Supreme Order No. 7/1561/M dated 15/05/1404H (17/02/1984). The name of the centre was later amended by the Supreme Order No. 80 dated 20/06/1413H (16/12/1992) to become the Saudi Centre for Organ Transplantation expanding its specialisation to all organ transplantation issues.
Directory Appendix 8: Diagnosis of brain death by brain function criteria. Directory Appendix 9: Death documentation form by brain function criteria.	Definition of brain death: based on the irreversible cessation of all functions of the entire brain including the brain stem due to total necrosis of the cerebral neurons following loss of blood flow and oxygenation.

Qatar

Law No (2) of 1983 on Human Medicine	A physician may not refrain from treating a patient unless it is in the best interests of the patient, and the availability of medical care by others. There is very little under Qatar law which assists in understanding when it is appropriate to withdraw medical treatment. Organ transplants are permitted on live and deceased patients. Death defined as: Irreversible cessation of the heart and respiratory system, or irreversible cessation of all functions of the brain (brain death).
Law No (15) of 2015 on Human Transplants (defines brain death)	The diagnosis of death must be verified by a written report to be issued unanimously by committee consisting of three specialised doctors including doctor specialised in the neurological diseases, provided that the members of the committee shall not include the doctor, who has performed the operation, or is a relative of the donee patient or the deceased, or who has interest in his death.

Oman

GCC OVERVIEW

Decree 22/1996, on Human Medicine and Dentistry

There is no official Royal Decree, Ministerial Decisions nor other provision by Ministry of Health relating to the matter of withdrawal of treatment or DNR

The Grand Mufti of Oman, His Eminence Sheikh Ahmed bin Hamed Al Khalili, fatwa of 2014 on organ transplantation

In respect of withdrawal of life support, Oman follows the general regional position, that such decisions are unlikely to be made by physicians, but left for family members to make with guidance from a doctor, because any suggestion of ending viable life will offend Islamic principles. Article 13 of Decree 22/1996 states that 'A physician shall not divulge private secrets gained through practicing medicine unless the relevant party agrees to this. He is allowed to divulge secrets to a patient's family member such as the husband, wife, father, mother or adult sons, if the patient's condition is serious or if there are other sufficient reasons'. However, this only indicates that family members are involved in knowing confidential information pursuant to patient consent.

Organ transplantation in Oman is legal, allowing organ transplant after brain death under certain circumstances and in accordance with religious, legal and medical practices. Furthermore, Oman launched an Organ Donor Programme providing people with organ donor cards (once patients are brain-dead) where individual consent to donate organs will be specified on the donor card, according to the Ministry of Health. They can also choose what particular organ they would like to donate in order to transplant it to the people in need.

Bahrain

The National Health Regulatory Authority's Ethical Guide for Medical Practitioners

Sets out the measures to be applied to all those with a terminal illness or terminal condition that has become advanced, progressive and incurable. Key elements are summarized here:

- ensure that all decisions made in the care of the dying are in accordance with the patient's wishes as far as possible, respect the patient's dignity and aim to lessen their pain and suffering.
- Mechanical life support measures may only be discontinued where two consultants have confirmed that brain activity has ceased.
- not obliged to try to prolong life at all cost. Physician should understand the limits of medicine and recognise when prolonging life may not be of benefit to the patient.
- In exceptional circumstances where the patient is in a terminal condition, physician may direct that no attempt should be made to attempt resuscitation. This directive will only be valid for a period of 72 hours and should be made in consultation with the patient's family.

Bahrain regulates organ transplantation. Rules developed by the Ministry of Health, which are based on this law, state that:

- Donation is permitted by deceased persons, when the individual did not object to donating his/her organs while alive, written consent from the next of kin is sufficient.
- Death must be confirmed and diagnosed by three physicians, including a neurologist and excluding the surgeon who will perform the transplant.
- This does not include donation from patients with brain death.
- Harvesting the organs of an unidentified cadaver is permitted with the approval of three physicians in the field.

Decree Law No. 16 of 1998 Organ Transplantation

Kuwait

Decree No. (25) of 1981 Human Medicine, Dentistry and Paramedical Professions

Kuwaiti Fatwa of the Ministry of Charitable Endowments No. (132/79, 1979 organ donation
Law No. (7) of 1983

General duty to treat. Kuwait law does not permit a withdrawal of treatment, thus it is necessary to look to Islamic principles and rulings for direction as to how to proceed in the case of a patient at end-of-life state.

The Kuwaiti Fatwa sanctions live and deceased person organ donation. Law No. (7) of 1983 reiterated the position under the Fatwa and adding that living donors under the age of 21 must give their consent.

Conclusion

Significant steps have been taken towards coming to a consensus by Islamic scholars and under GCC State laws to ensure that patients' wishes at the

end-of-life stage of their care are taken into account to ensure their needs are met and at the same

time providing legal protection for those medical practitioners at the forefront of dealing with these difficult cases.

Footnotes:

1. *Do not resuscitate, brain death, and organ transplantation: Islamic perspective* by Hassan Chamsi-Pasha and Mohammed Ali Albar, 2017, *Avicenna J Med* Apr-Jun 7(2), 35-45
2. Fatwa No. 26/3796 dated 28/07/1417H (09/12/1996) issued by the General Mufti of KSA and the Head of the Scientists Authority
3. *Islamic Fiqh Academy of the Organisation of the Islamic Countries, ruling 1986, Third International Conference of Islamic Jurists, incorporated the concept of brain death into the legal definition of death in Islam.*
4. *There are numerous Islamic rulings, the most detailed of which is The Islamic Fiqh Council of Islamic World League Decree No. 2 (10th session) 1987*
5. GCC Health Ministers Decision No. 3 for the organ transplant congress (61) on 26/04/1427 (corresponding to 24/05/2006).