

To harvest?

A reality-based ethical dilemma and fictional dialogue

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Ethicist: Can I run a case by you?

Neurologist: Of course. Your cases are always so simple and straightforward.

Ethicist: Funny...I am going to ignore your sarcasm. A 35-year-old man gets into an argument with his wife, shoots a bullet into her heart, killing her, and then puts a bullet into his brain.

Neurologist: A tragic and all too frequent occurrence.

Ethicist: The man has sustained catastrophic brain injury and requires a ventilator. His mother, who is his named health care surrogate, wants to donate his organs. Before you ask, there were no other advance directives or written communications.

Neurologist: Perhaps then at least some good will come from this tragedy. If the man is brain dead, I do not see an ethical issue.

Ethicist: He is not brain dead. However, he has sustained such a devastating traumatic brain injury that a permanent vegetative state is likely his best outcome. Notification of the appropriate organ procurement organization occurred as required by law. In this case, organ donation would have to be made using the donation after cardiac death protocol.

Neurologist: I see. So, he would be taken into the operating room, extubated, and his organs harvested immediately after his heart stopped and he is declared dead. Although macabre, I still do not see an ethical issue.

Ethicist: The ethics of organ donation after cardiac death are not that simple. Moreover, it would be more straightforward had his mother not told the attending physician that her son had specifically said that he never wanted to be an organ donor.

Neurologist: Did the attending physician record that statement in the medical record?

Ethicist: Yes, she did.

Neurologist: Now I am beginning to sense the dilemma. I suppose that his driver's license did not indicate his desire to be an organ donor.

Ethicist: No, it did not. As you must know by your last comment, many states recognize that designation on a driver's license as evidence of informed consent for organ donation. In that instance, the health care surrogate cannot prevent organ harvesting in a legally permissible situation. The states reason that they are honoring the informed consent and wishes of the donor.

Neurologist: By that reasoning, this man's stated desire to not be an organ donor should be equally honored and respected, and not overturned by the surrogate.

Ethicist: That was the dilemma that the ethics committee faced. The committee was leaning towards not allowing this man's organs to be harvested. The mother then changed her story. She now claims that her son never said that he did not want to be an organ donor, but rather he had stated that he never wanted to be an organ recipient.

Neurologist: That's rather convenient, and also unbelievable. I think that it is obvious that the mother wants some good to come from her son's terrible action and death.

Ethicist: Everyone is suspicious of her changed story, but both she and her family are now adamant about this version of the patient's statement concerning organ donation. They are arguing that the prior attending had misinterpreted their statement, or they were unclear in their grief. Additionally, the prior attending is now off the case.

Neurologist: What about the patient's prior statement of not wanting to be an organ donor? What is the argument for ignoring that statement? It seems that the prior statement cannot be ignored even with the family changing their position.

Ethicist: I agree with your suspicion that the original statement has validity. The question being was it informed dissent or not.

Neurologist: What?

Ethicist: It could be argued that when this man had stated that he did not want to donate his organs that he likely lacked informed dissent. Consequently, his stated desire to not be an organ donor could be ignored, and his mother's wishes now honored.

Neurologist: That position is also rather convenient and self-serving. If you check a box on a driver's license to be an organ donor, you accept that as binding informed consent. But if you tell someone you do not want to be an organ donor, you consider that statement to be nonbinding and lacking informed dissent.

Ethicist: I get that. I also get that there is substantial societal pressure to not let life-saving organs go to waste. I also get that there is a distraught mother and family seeking some good to come out of the unspeakable act of a member of their own family. I also get that the wishes of a man who should be honored, even though his actions were reprehensible. This is not an easy or comfortable decision to be part of.

Neurologist: I appreciate your dilemma. I would not want to make this decision.

Ethicist: I didn't expect you would. I just wanted to talk this out.

Neurologist: So...will you let the organs be harvested or not?

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