

THE WORLD MEDICAL ASSOCIATION, INC.

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**WORLD MEDICAL ASSOCIATION RESOLUTION ON PHYSICIAN PARTICIPATION IN  
CAPITAL PUNISHMENT**

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Adopted by the 34th World Medical Assembly in Lisbon, Portugal, September 28 - October 2, 1981 and amended by the 52<sup>nd</sup> WMA General Assembly in Edinburgh, Scotland during October 2000

RESOLVED,

that it is unethical for physicians to participate in capital punishment, in any way, or during any step of the execution process.

**A. Introduction**

1. Advances in medical sciences, especially surgical techniques, tissue typing and immuno-suppressive drugs, have made possible a significant increase in the rates of successful transplantation of organs and tissues. In the light of these developments, there is a need for renewed reflection on ethical issues concerning organ and tissue donation and transplantation and on principles relevant to the resolution of these issues. Therefore, the World Medical Association has undertaken a review of issues and principles concerning transplantation and has developed this policy to provide guidance to medical associations, physicians and other health care providers as well as to those who develop policy and protocols bearing on these issues.
2. This policy is based on principles of general and medical ethics. In matters of ethics, conflicts of values and principles are unavoidable; for example, there is a tension between a desire to procure organs for the purpose of providing important medical treatments on the one hand and the preservation of choice and personal liberty on the other. Applicable principles are referenced throughout this policy where they may help to clarify and make explicit the reasoning behind a given statement.

**B. Professional Obligations of Physicians**

3. The WMA considers that policies and protocols concerning organ and tissue donation and transplantation must be developed in recognition of the medical ethics that underlies the practice of medicine and the patient-physician relationship. Medical ethics encompasses duties of respect for persons, justice, beneficence, autonomy, confidentiality, and privacy. In addition to fiduciary duties to the patient, medical ethics also encompasses more general obligations to society. Because of their knowledge and expertise regarding the benefits of transplantation, physicians are in a unique position to actively promote consideration of organ donation among the public.
  - 3.1 The primary obligation of physicians is to their individual patients, whether they are potential donors or recipients of transplanted organs or tissues. In conjunction with this obligation physicians may also have responsibilities to the family members and close friends of their patients, for example, to seek and consider their views on organ retrieval from their deceased relative or friend. The obligation to the patient has primacy over any obligations that may exist in relationship to family members. Nevertheless, this obligation is not absolute; for example, the physician's responsibility for the well-being of a patient who needs a transplant does not justify unethical or illegal procurement of organs or tissues.

3.2 Physicians have responsibilities to society, which include promoting the fair use of resources, preventing harm and promoting health benefit for all; this may include promoting donation of organs and tissues.

3.3 Transplant surgeons should ensure that the organs and tissues they transplant have been obtained in accordance with the provisions of this policy. In all cases the physician has an independent responsibility to ensure that organs to be used for transplantation have been procured in a legal and ethical manner.

#### **C. Values**

4. The expression of compassionate concern for others suffering from ill health and disability through voluntary altruistic giving is a fundamental value for organ and tissue donation.
5. Free and informed decision making about medical treatments such as organ donation or undergoing transplantation is a fundamental value of health care and societies more generally. Such decision-making requires both understanding and absence of coercion.
6. Privacy and the dignity of the patient are fundamental ethical values. In its broadest meaning privacy refers to a zone of personal space and choice essential to the dignity of human beings that should be protected from unwanted intrusion or access. Informational privacy refers more specifically to the right of patients to control collection, use, disclosure of and access to their health information.
7. Individuals should have timely access, on just and equitable terms and conditions, to necessary and effective medical treatment. The responsibility to ensure the availability of and equitable access to medical treatment, including organ and tissue transplantation, is shared among different parties or stakeholders including governments, health institutions and health care professionals and providers.

#### **D. Organ and Tissue Procurement: Social Aspects**

8. The WMA encourages its members to support the development of comprehensive, coordinated national strategies concerning organ and tissue procurement in consultation and cooperation with all relevant stakeholders. In developing strategy, due consideration should be given to human rights, ethical principles and medical ethics. Ethical, cultural and societal issues arising in connection with such a strategy, and with the subject of donation and transplantation in general, should be resolved, wherever possible, in an open process involving public dialogue and debate informed by sound evidence.
9. Some types of organ and tissue transplantation have become established and important health care services. To the extent that the lack of organs and tissues is a barrier to the provision of needed treatment, the medical profession has an obligation to promote policies and protocols to procure organs and tissues for needed treatment consistent with societal values.
10. Policies and protocols to procure organs and tissues for transplantation should be consistent with physicians' professional obligations and societal values, including free and informed decision making, privacy, and equitable access to needed medical care.
11. It is important that individuals have the opportunity to become aware of the option of donation as well as the opportunity to choose whether or not to donate (e.g. facilitated choice). Awareness and choice should be facilitated in a coordinated multi-faceted approach by a variety of stakeholders and means, including media awareness and public campaigns. Physicians should provide their patients with the opportunity to make a choice with respect to organ donation, ideally in the context of an ongoing relationship with the patient and in advance of any crisis giving urgency to the choice.
12. The WMA supports informed donor choice. National Medical Associations in countries that have adopted or are considering a policy of "presumed consent", whereby there is a presumption that

consent has been given unless there is evidence to the contrary, or “mandated choice”, whereby all persons would be required to declare whether they wish to donate, should make every effort to ensure that these policies do not diminish informed donor choice, including the patient’s right to refuse to donate.

13. Consideration should be given to the establishment of national donor registries to collect and maintain a list of country citizens who have chosen either to donate or not to donate their organs or tissues. Any such registry must protect individual privacy and the individual’s ability to control the collection, use, disclosure of and access to his or her health information for purposes other than registration. Provisions must be in place to ensure that the decision is adequately informed and that registrants can withdraw from the registry without penalty.

#### **E. Organ and Tissue Procurement at the Institutional and Individual Levels**

14. Experience in Spain and elsewhere has shown that organ donation can be enhanced by local policies and protocols. The WMA recommends that organ procurement programmes, hospitals and other institutions in which procurement occurs should:
  - 14.1 develop policies and protocols encouraging the procurement of organs and tissues consistent with the statements in this policy;
  - 14.2 make these policies and protocols known to transplant coordinators, physicians and other health care providers in the institution;
  - 14.3 ensure that adequate resources are available to support proper implementation of the policies and protocols.
15. Physicians have an obligation to ensure that interactions at the bedside, including those discussions related to organ donation, are sensitive and consistent with ethical principles and with their fiduciary obligations to their patients. This is particularly so given that conditions at the bedside of dying patients are not ideal for the process of free and informed decision making. Protocols should specify that whoever approaches the patient, family members or other designated decision maker about the donation of organs and tissues should possess the appropriate combination of knowledge, skill and sensitivity for engaging in such discussions. Medical students and practising physicians should seek the necessary training for this task, and the appropriate authorities should provide the resources necessary to secure that training.

#### **F. Free and Informed Decision Making About Organ Donation**

16. The WMA considers that the potential donor’s wishes are paramount. In the event that the potential donor’s wishes about donation are unknown and the potential donor is unconscious or otherwise unable to express his/her will, the family or a specified other person may serve as a substitute decision-maker and may be entitled to give or refuse permission for donation unless there are previously expressed wishes to the contrary.
17. Evidence of the free and informed decision of the potential donor, or, where legally relevant, of the appropriate substitute decision-maker, must be ascertained before organ procurement can begin. In countries where presumed consent is the legal norm, the organ procurement process should include reasonable steps to discover whether the potential donor has opted out of donation.
18. The purpose for providing the opportunity to choose may be to procure organs or tissues for transplant. Success in achieving this outcome should not be construed as a criterion for measuring the quality of the process of free and informed decision-making. The quality of this process depends on whether the choice was adequately informed and free of coercion and not on whether the outcome is a decision to donate.
19. Free and informed decision making is a process requiring the exchange and understanding of information and the absence of coercion. Because prisoners and other individuals in custody are not in a position to give consent freely and can be subject to coercion, their organs and tissues must not

be used for transplantation except for members of their immediate family.

20. In order for the choice to donate organs or tissues to be duly informed, prospective donors or their substitute decision makers should, if they desire, be provided with meaningful and relevant information. Normally, this will include information about:
  - 20.1 the benefits and risks of transplantation
  - 20.2 procedures and definitions involved in the determination of death
  - 20.3 testing of organs and tissues to determine their suitability for transplantation, which may reveal unsuspected health risks in the prospective donors and their families
  - 20.4 measures that may be required to preserve organ function until death is determined and transplantation can occur
  - 20.5 what will happen to the body once death has been declared
  - 20.6 what organs and tissues they are agreeing to donate, and
  - 20.7 the protocol that will be followed concerning the family in the event that the family objects to donation.
21. Prospective donors should be informed that families sometimes object to donation; donors should be encouraged to discuss their choice with their family to prevent conflict.
22. Prospective donors or their substitute decision makers should be given the opportunity to ask questions about donation and should have their questions answered sensitively and intelligibly.
23. Where the wishes of the patient are known and there is no reason to believe that the choice to donate has been coerced, has not been adequately informed, or has changed, these wishes should be carried out. This should be clarified in law, policy and protocols. Under these circumstances, families should be encouraged to respect the patient's clearly expressed wishes.
24. Where the wishes of the patient are unknown or there is uncertainty about the patient's wishes, applicable national law regarding medical decision making for incompetent patients should prevail.
25. Protocols for free and informed decision making should also be followed in the case of recipients of organs and tissues. Normally, this should include information about:
  - 25.1 the risks of the procedure
  - 25.2 the likely short, medium and long-term survival, morbidity, and quality-of-life prospects
  - 25.3 alternatives to transplantation
  - 25.4 how organs and tissues are obtained.
26. In the case of living donors, special efforts should be made to ensure that the choice about donation is free of coercion. Financial incentives for providing or obtaining organs and tissues for transplantation can be coercive and should be prohibited. Individuals who are incapable of making informed decisions, for example minors or mentally incompetent persons, should not be considered as potential living donors except in very limited circumstances, in accordance with ethics committee review or established protocols. In order to avoid a conflict of interest, the physician who obtains informed consent from the living donor should not be part of the transplant team for the recipient.

#### **G. Determination of Death**

27. The WMA considers that the determination of death is a clinical matter that should be made according to widely accepted guidelines established by expert medical groups, and as outlined in The World Medical Association's Declaration on Death (WMA Document 17.B).

28. Protocols and procedures should be developed to educate and support patients and families who, for cultural or religious reasons, do not accept the concept of “brain death”.
29. In order to avoid a conflict of interest, the physician who determines and/or certifies the death of a potential organ or tissue donor should not be involved in the organ or tissue removal or in subsequent transplantation procedures or responsible for the care of potential recipients of these organs or tissues.

#### **H. Justice in Access to Organs and Tissues**

30. The WMA considers there should be explicit policies open to public scrutiny governing all aspects of organ and tissue donation and transplantation, including the management of waiting lists for organs and tissues to ensure fair and appropriate access.
31. Policies governing the management of waiting lists should ensure efficiency and fairness. Criteria that should be considered in allocating organs and tissues include severity of medical need, length of time on the waiting list, and medical probability of success measured by such factors as type of disease, other complications, and histocompatibility. There should be no discrimination based on social status, lifestyle or behaviour.
32. Special appeals for organs for a specific recipient raise concerns of justice since the recipient may not be the most appropriate to receive the organ based on explicit criteria (e.g. severity of need or probability of benefit).
33. In limited circumstances (e.g. between family members), directed donations of organs and tissues may be appropriate, providing that the decisions to donate are fully informed and voluntary.
34. Payment for organs and tissues for donation and transplantation should be prohibited. A financial incentive compromises the voluntariness of the choice and the altruistic basis for organ and tissue donation. Furthermore, access to needed medical treatment based on ability to pay is inconsistent with the principles of justice. Organs suspected to have been obtained through commercial transaction should not be accepted for transplantation. In addition, the advertisement of organs should be prohibited. However, reasonable reimbursement of expenses such as those incurred in procurement, transport, processing, preservation, and implantation is permissible.

#### **I. Experimental and Newly Developing Transplantation Procedures**

35. The WMA considers that, although many transplantation procedures have become standard medical care for a range of medical conditions, others are experimental and/or morally controversial and require further research, safeguards, guidelines, and public debate.
36. Experimental procedures require protocols, including ethics review, that are different and more rigorous than those for standard medical procedures.
37. Xenotransplantation raises special issues, particularly in light of the risk of unwitting cross-species transmission of viruses and other pathogens. There is an urgent need for extensive public debate about xenotransplantation to ensure that developments in this field are consistent with societal values. International guidelines to govern these practices should be developed.
38. Transplantation of brain or reproductive tissues should not become accepted treatments until there has been extensive public debate and scientific review and publicly acceptable and scientifically sound guidelines have been developed.
39. Transplantation of tissues developed using cell nuclear replacement technologies require scientific review, public debate and appropriate guidelines before becoming accepted treatments.

