



Session 7: Islamic Bioethics of Brain Death & End-of-Life Healthcare Ethics Brief Summary



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Focus Questions

- What is death?
 - Defining death depends on which register of reality we are looking at
 - Ontologically vs. Legally vs. Socially vs. Biologically
 - To gain an understanding of something we utilize multiple faculties of our being to probe it; as we do so parts of it become unveiled but the true and full reality is known only to Allah [swt]
- How do jurists and physicians relate the notion of the soul to the concept of death?
 - Variably [See *Islamic Perspectives on Death by Neurologic Criteria*]
- What are the main juridical stances on withdrawing and withholding life support?
 - Let's proceed with a mini-lecture





Medicalized Dying

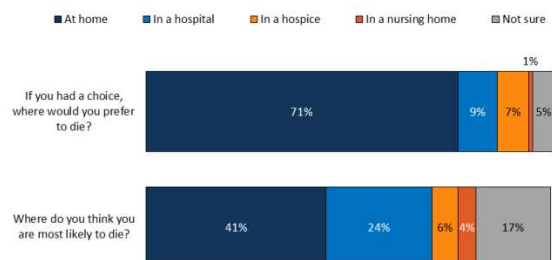
FROM THE NATIONAL CENTER FOR HEALTH STAT

Percentage of Deaths,* by Place of Death[†] — National United States, 2000–2018



Figure 13

Seven in Ten Americans Would Prefer to Die at Home; Four in Ten Think They Are Likely to Die at Home



NOTE: Somewhere else (Vol.) and Depends (Vol.) responses not shown.

SOURCE: Kaiser Family Foundation/The Economist Four-Country Survey of Aging and End-of-Life Medical Care (conducted March 30–May 29, 2016)



The spectrum of End-of-Life Care decisions

Total number of deaths in the United States: 2.5 million ~~per year~~

- "Sudden" deaths: $\pm 500,000$
 - Heart attacks
 - Strokes
 - Motor vehicle accidents
 - Other
- Anticipated and negotiated deaths: ± 2 million
 - Withholding life support: e.g. DNR
 - Withdrawing life support: e.g. ventilator

Palliative sedation and suicide

- By individuals (40,000)
- Physician assisted suicide: Death w/ dignity acts are legal in 9 states



EOLC Context: Knowledge Gaps & Value Conflicts



Philosophy & Practice of Healthcare

- Hospice Care
 - What, where, when ethically appropriate?
- Palliative Care
 - Scope, methods, and Islamically approved?

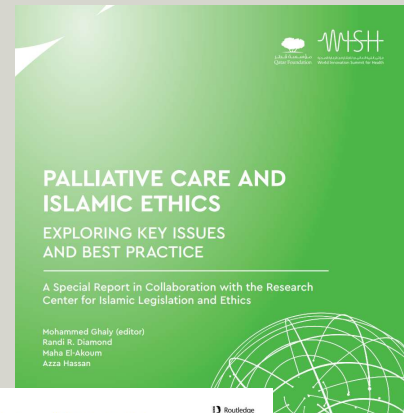
Decisional Contexts & Constructs

- Withdrawal & Withholding Life Support (& ANH)
 - Suffering? Futility? Brain Death?
- Terminal Sedation & Assisted Dying
 - Dignity



Hospice and Palliative Care

- High resource context
 - 30% of all healthcare \$ spent on last 6 mo. of life
 - Many treatments are not biologically efficacious
 - Myth of more care = better care
- Muslims do not have palliative care models
 - Imported and alien models
 - About managing death decisions not about facilitating dying faithfully
- Colonized Mentality & Missionary Bioethics
 - Origins of hospice
 - Origins of palliation



Charged Topics & Fact-Value Fusion

- Withdrawal & Withholding Life Support
 - Suffering
 - Futility
- Terminal Sedation & Assisted Dying
 - Dignity
- Artificial Nutrition & Hydration
 - Suffering
 - Futility
- “Brain Death”



Wittgenstein's Language Game Approach

- A **functional** and postmodern approach to language
- Language statements are **not ‘true or false’** but bear meaning to the speaker/person expressing themselves.
- In each **‘form of life’** language therefore is part of a **‘game’** – people part of each game communicate with each other.
- Each game has a **‘criteria of coherence’**, which is only understood in relevance to **that** game.
- Religious Language is meaningful when used in the **context of the correct ‘game’**, hence believers understand each other.
- If one does not understand it, it is deemed a **‘category mistake’** e.g. a scientist physically looking for a ‘soul’.



Life is of *instrumental* value

○ Qur'anic verses

- "I have not created man and jinn except for worship" (Al-Dhariat: 56)
- "And worship your Lord until there come onto you death" (Hijr: 99)

○ Prophetic teachings:

- لَا يَتَمَنَّى أَحَدُكُمْ الْمَوْتَ وَلَا يَدْعُ بِهِ مِنْ قَبْلِ أَنْ يَأْتِيَهُ إِنَّهُ إِذَا مَاتَ أَحَدُكُمْ انْقَطَعَ عَمَلُهُ وَإِنَّهُ لَا يَزِيدُ الْمُؤْمِنَ عُمْرُهُ إِلَّا خَيْرًا " .

Sahih Bukhari 2682

- " لَا يَتَمَنَّى أَحَدُكُمْ الْمَوْتَ لِيُزِيلَ بِهِ قَرْبًا إِلَى اللَّهِ فَإِنْ كَانَ لَا بُدَّ مُتَمَنِّيًّا فَلْيُقِلِّ اللَّهُمَّ أَحْبَبِي مَا كَانَتْ الْحَيَاةُ خَيْرًا لِي " وَتَوَقَّيْ إِذَا كَانَتْ الْوَفَاةُ خَيْرًا لِي " .

Sahih Bukhari 2680a

○ Life of utility/value related to capacity for merit-making

- Discharging religious duties
- Ability to effect good works

Goals of Healthcare

→ To preserve the tool by which you design your afterlife

- Prophetic statement

- الْمُؤْمِنُ الْقَوِيُّ خَيْرٌ وَأَحَبُّ إِلَى اللَّهِ مِنَ الْمُؤْمِنِ الضَّعِيفِ وَفِي كُلِّ خَيْرٍ آخِرٌ أَوْصَى مَا يَنْفَعُكَ

“A strong believer is better and more beloved to God than a weak/sickly believer and/yet in each is goodness, hasten to that which benefits you....” (Ibn Majah 83)

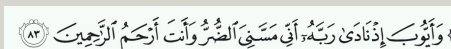
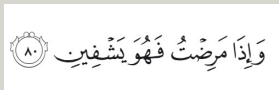
- Healthcare produces health which increases one’s capacity for good works

- Medical practice = *fardh kifaya*

- Healthcare seeking = **permissible (recommended) act** which becomes obligatory when certainly life-saving

Scriptural source-texts

- **Qur’anic verses:**



- **Prophetic Statements:**

- قَالَ قَالَتِ الْأَعْرَابُ يَا رَسُولَ اللَّهِ أَلَا نَتَدَاوَى قَالَ " نَعَمْ يَا عِبَادَ اللَّهِ تَدَاوَوْا فَإِنَّ اللَّهَ لَمْ يَضَعْ دَاءً إِلَّا وَضَعَ لَهُ شِفَاءً أَوْ قَالَ دَوَاءً إِلَّا دَاءً وَاجِدًا " . قَالُوا يَا رَسُولَ اللَّهِ وَمَا هُوَ قَالَ " الْهَرَمُ " .

Jami` at-Tirmidhi 2038

- فَخَرَجَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ " هُمْ الَّذِينَ لَا يَكْتُمُونَ وَلَا يَسْتَرْفُونَ وَلَا يَنْطَبِرُونَ وَعَلَى رَبِّهِمْ يَتَوَكَّلُونَ "

Jami` at-Tirmidhi 2446

MORAL THEOLOGY OF HEALING

Juridical and Theological Points of deliberation:

- Reconcile
 - Prophetic “directive” to seek care
 - Posited rewards for abstaining from (some) clinical treatment
- And
 - Theocentric notion of illness and disease
 - God brings about cure w/o need for an intermediary and this is certain knowledge
 - Medical treatment is always based on probabilistic knowledge

WHEN MUST A PATIENT SEEK HEALTHCARE?
BRINGING THE PERSPECTIVES OF ISLAMIC JURISTS
AND CLINICIANS INTO DIALOGUE

by Omar Qureshi and Aasim I. Padelá

Moral Status of Seeking Care

Within the Four Sunni Schools of Thought

	HANAFI	MALIKI	SHAF'I	HANBALI
GENERAL RULING	Permissible	Permissible	Recommended	Permissible
EVER OBLIGATED	Yes	Yes	Yes	No
VIOLATE TRUST (TAWAKKUL)	No	No	No*	No
OTHER DETAILS	Obligation if the effectiveness of treatment (to remove illness-related harms or cure) is highly probable or certain			

*Seeking treatment is an act of trust. God created the sickness and its cure.

More Information on the Moral Status of Seeking Care

The moral status elevation from a *permitted* or *recommended* act to a moral obligation appears to hinge on the **certainty** regarding a fatal outcome without treatment and/or certainty about the clinical efficacy of treatment in removing harm associated with the illness. Seeking a specific treatment is **only obligatory** when it is **life saving** and not merely life-sustaining. While treatments might save a life, there may be no clinical certainty that they will. As a result, it is **generally permissible** to forgo life-sustaining treatments such as ventilators. Such **decisions should be made in consultation** with the **medical team, family members, and religious authorities**.



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Modern Fiqh Council

IFA-OIC in 1992:

- Seeking treatment is **obligatory** when neglect may result in
 - Death, i.e. treatment is life-saving
 - Loss of an organ or disability
 - If an illness is contagious and may harm others
- It is **recommended** when neglect may result in
 - Weakening of the body

Seeking
Treatment

Conceptual Linkage

When are *Muslim patients* obligated to seek treatment?

Answer:

when treatment is “life-saving” and treatment certainly prevents death/disability

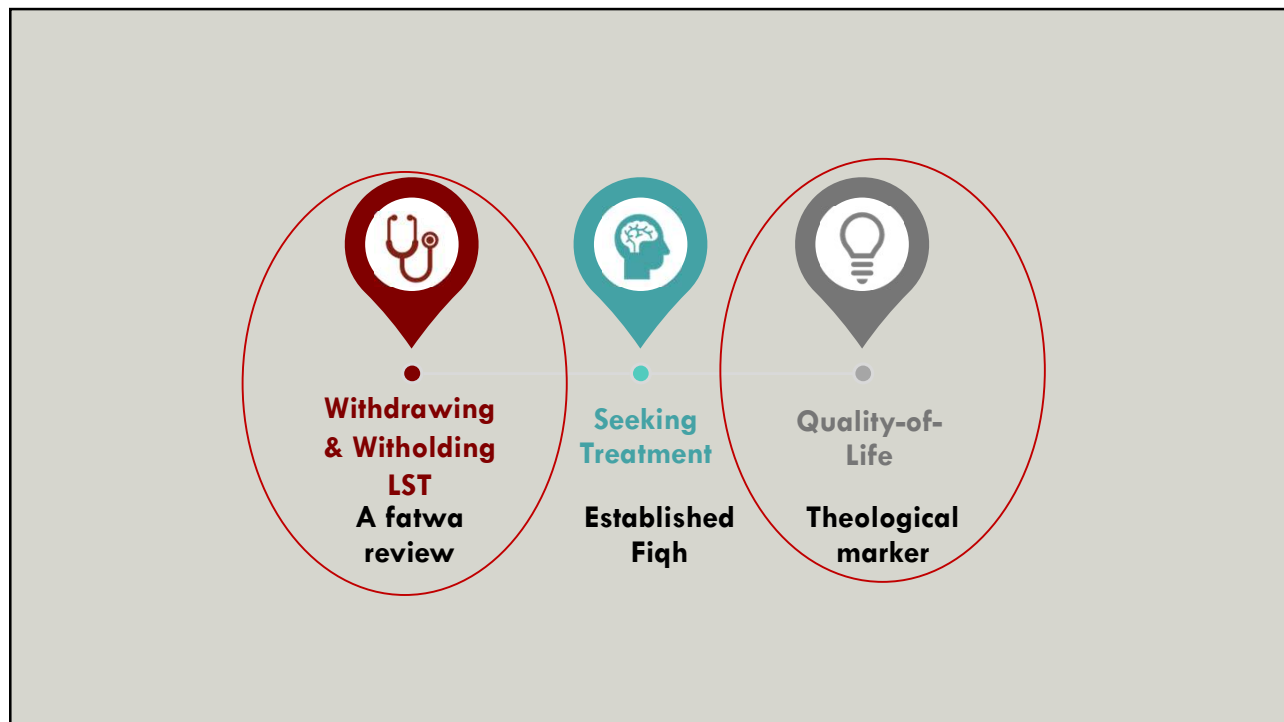


When are *Muslim physicians* obligated to offer treatment?

Answer:

Same as above
(reciprocal duty to the patient's obligation)

Seeking
Treatment



GLOBAL BIOETHICS
2020, VOL. 31, NO. 1, 29-46
<https://doi.org/10.1080/17445019.2020.1774243>

RESEARCH ARTICLE OPEN ACCESS

When can Muslims withdraw or withhold life support? A narrative review of Islamic juridical rulings

Afshan Mohiuddin^{a,b}, Mehrunisha Suleman^c, Shoaib Rasheed^d and Aasim I. Padele^{a,e,f}

Obligation to initiate or continue life support ceases to exist

1. When the clinical state of a patient is such that medical care is “futile” (**harms >> benefit**)
2. When individuals have “brain dead physiology” (**no outcome benefit**)

→ This coheres with proposed assessment of QOL (**mukallaf potential**) status as a construct for determining goals-of-care

Table 3. Conditions justifying the withdrawal of medical care.

Conditions justifying the withdrawal of medical care		Category of futility
Useless/futile care	IOMS, Muhammad bin Adam al-Kawthari	Imminent Demise
Terminal/Inevitable Death	OIC-IFA, Shaykh Jad al Haqq Ali al Haqq, Mufti Ebrahim Desai, Darul Uloom Zakariyya (respirator)	
Brain Death	IFC-MWL, OIC-IFA, IOMS, Yusuf al-Qaradawi, Mufti Ebrahim Desai	Qualitative
Sickness gets out of hand, recovery happens to be tied to a miracle, and ever-increasing pain	Yusuf al-Qaradawi	
Loss of <i>idrak</i> (Brain's ability to perceive)	ECFR	Physiologic or Qualitative
Worsens health	Ikram ul Haq	
Lack of personal or relative assets to support continuation	IFA-I	Imminent demise
No hope for cure	Ali Gomaa	

Table 4. Conditions justifying the withholding of medical care.

Conditions justifying the withholding of medical care		Category of futility
“Useless” care	IOMS, Yusuf al-Qaradawi	Imminent Demise/ Lethal Condition
Terminally ill/ No chance of survival	Madrasah In'aamiyyah, Jamiatul Ulama	
Patient unfit for resuscitation, illness unresponsive to treatment and death certain, incapacitated patient or state of mental inactivity, untreatable brain damage, resuscitation would be inappropriate/ineffective	Saudi Committee for Fatwa & Research (resuscitation)	Imminent Demise/ Lethal Condition

Findings & Gaps from the fatwa review

- Withholding vs. withdrawing care
 - Different moral acts & contexts
 - Yet, no distinction made save for:
 - Madrasah Inaamiyyah's ruling
 - Evaluating the act of withdrawal depends on how the disconnecting is regarded as either an act or commission or an act of omission
- Impractical & Incomplete Judgements
 - Futility: physiological vs. practical; specific symptom or overall trajectory?
 - What is life-sustaining treatment? Ventilator, BP meds, antibiotics?
 - Feeding tubes vs. IV nutrition: what is medical vs. what is fardh 'ayn?
 - Not translatable to standard POLST, DNR forms

Withdrawing
Care

The Continuum of Life Saving/Sustaining Treatments

- Defⁿ= techniques and procedures that artificially replace the function of vital organs, without which life cannot be sustained
- Examples
 - Replacement technologies
 - **Mechanical ventilation** – replaces pulmonary function
 - **Extracorporeal membrane oxygenation (ECMO)**- replaces cardiopulmonary functions
 - **Dialysis** – replaces kidney functions
 - Supportive technologies
 - **Left Ventricular Assist Device (LVAD)**- supports cardiac function
 - **Vasopressors**- medications that provide cardiac and circulatory support
 - General adjunctive therapies
 - **Antibiotics**
 - **Sedatives**
 - **Intravenous Fluids**
 - **Tube feeds vs Total parenteral nutrition**
 - Other
 - **CPR**

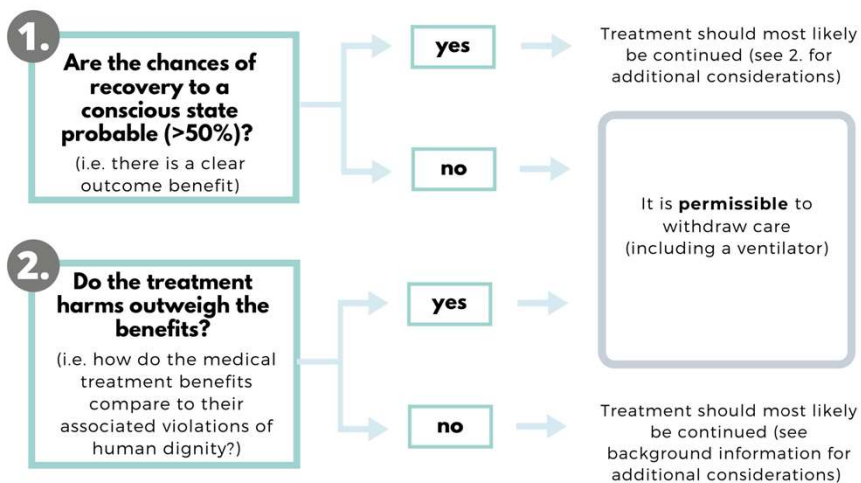


A Possible Theological Marker for QoL

- *Mukallaf*
 - A morally liable individual
 - Having sufficient cognitive capacity for assessing benefit/harm of actions
 - 'aql (full intellect) exists on a continuum from *tamyiz* (discernment) to *rushd* (uprightness)
 - Recall we are firstly accountable for religious duties
- *Mukallaf potential*
 - Covers children and non-Muslims
- Exception
 - Irreversible non-*Mukallaf* individuals (prior to disease or injury)

Quality-
of-Life

AS A PATIENT OR FAMILY MEMBER, IS IT PERMISSIBLE TO WITHDRAW LIFE SUSTAINING TREATMENT?



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ISLAMIC PERSPECTIVE ON WITHDRAWING LIFE-SUSTAINING TREATMENT

HURMAH

The idea of *hurmah* is that the human body is inviolable, which is indicated in the following saying of the Prophet (pbuh):

كَسْرُ عَظْمِ الْمَيِّتِ كَكَسْرِهِ حَيًّا

"Breaking the bone of the deceased is like breaking the bone of a living person" Sunan Abi Dawud 207



KARĀMAH

The idea of *karāmah* is that the human body is granted a certain sanctity by Allah (swt), such as referred to in the Quran:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ

"And we have certainly honored the children of Adam..."
Quran 17:70

Many types of clinical interventions, by their nature, intrude upon bodily integrity thus decisions about courses of medical care, particularly near the end-of-life, must balance the posited benefits attached to clinical procedures against the threats to *karamah* and *hurmah* via the violation of bodily integrity.

Juridical Views on Pain and Terminal sedation

Pain Control:

- Pain does not equal suffering but is a harm; subjective
- Loss of consciousness and control is to be avoided (*ḥifz al-aql; taklīf*)
- Must be proportionate and titrated to patient needs
- Ex: opiate and marijuana

Terminal sedation:

- Follows from above
- Not permitted as end-goal is not legitimate

ORIGINAL ARTICLE

Muslim American physicians' views on brain death: Findings from a national survey

Sadaf Popat, Stephen Hall*, Asim I. Padelai*
 *Duro College of Osteopathic Medicine, New York; *Initiative on Islam and Medicine; *Section of Emergency Medicine, The University of Chicago, Chicago, IL, USA

Table 3: Participant attitudes toward definitions of death

Statement	Strongly disagree, n (%)	Disagree, n (%)	Agree, n (%)	Strongly agree, n (%)
I consider death to be the irreversible cessation of cardiac and respiratory function, n = 250	6 (2.4)	20 (8.0)	117 (46.8)	107 (42.8)
I consider death to be the irreversible loss of "personhood" and "consciousness," n = 245	31 (12.7)	110 (44.9)	75 (30.6)	29 (11.8)
Brain death and cardiac death are the same state (i.e., both signifying a dead individual), n = 246	27 (11.0)	87 (35.4)	86 (35.0)	46 (18.7)
Brain death signifies the departure of a person's soul from the body, n = 243	26 (10.7)	96 (39.5)	87 (35.8)	34 (14.0)

Table 5: Logistic regression modeling of predictors on physician views toward various definitions of death

Model	Odds ratio (95% confidence interval)	P-value
Model 1 (bivariate): I consider death to be the irreversible cessation of cardiac and respiratory function, n = 235		
Years of medical practice	0.59 (0.33–1.04)	0.07
Model 2 (multivariate): I consider death to be the irreversible loss of "personhood" and "consciousness," n = 229		
Duration in the US*	3.52 (1.62, 7.63)	0.001
Years of medical practice	0.75 (0.47–1.20)	0.232
Model 3 (bivariate): Brain death and cardiac death are the same state (i.e., both signifying a dead individual), n = 246		
Religiosity	0.59 (0.34–1.01)	0.055
Model 4 (bivariate): Brain death signifies the departure of a person's soul from the body, n = 243		
Religiosity	0.57 (0.33–0.98)	0.043

*Defined as "born in the US or immigrated to the US as a child" = 0; "immigrated to the US as an adult" = 1



Moral Intuition & Empirical Data → Fiqh



Methodology

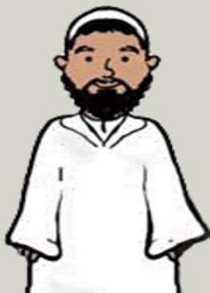
-Mailed questionnaire to random sample of 746 physicians from IMANA in 2013 (n= 255)

-3 waves with incentives

Withdrawing vs. Withholding

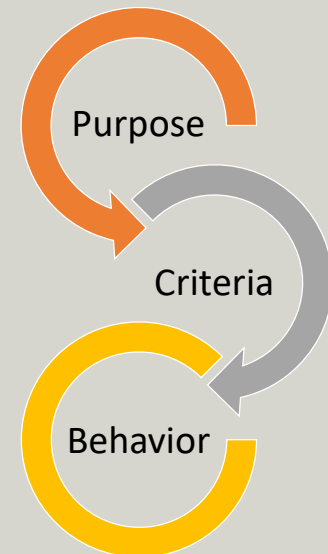
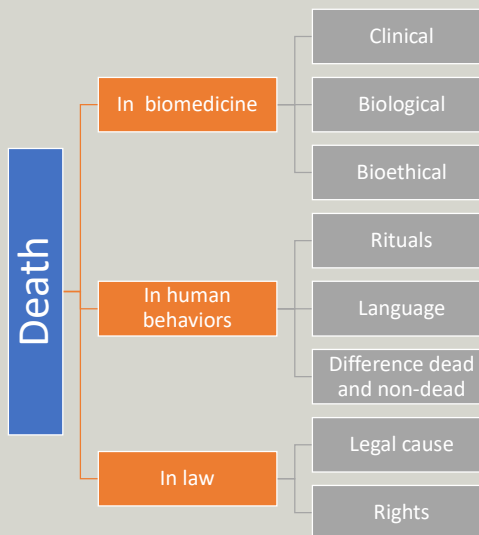
- **79%** found it more ethically problematic to withdraw >> withhold LST
- **18% disagree** that compliance with a competent patient's request to withdraw life support is mandatory

Death: Realism & the power of definition



Metaphysical, Biological, Sociological Phenomena
 with Diverse Moral Significations

Gazing upon death



35

What is death? A Fusion of Fact & Value

- **Clinical Practice and Clinical Ethics:**
 - The point at which medicine has nothing “meaningful” to offer
 - The point at which we are ethically justified to stop interventions
 - **Biologically:**
 - Bodily functions cease and the organism cannot maintain hemostasis
 - When the conditions of life are not met [defined biologically]
 - **Policy & Law:**
 - Point at which persons can be treated as bodies without rights (but might be due respect)
 - A declaration made by a healthcare provider or judge
 - **Community:**
 - Point at which death behaviors (mourning rituals) can begin
- Muslim scholars often neglect fusion of fact & value and the multiple “needs” for death

Death

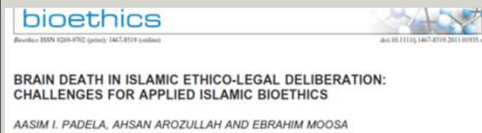
Death Criteria

- How is death determined in modern medicine?
 - Circulatory criteria
 - Neurological criteria
 - Loss of *critical* brain functions
 - Irreversible
 - **Prognostic tool**
- How is death conceived of in Islam?
 - Theology:
 - Removal of soul from the body
 - Law:
 - Indicators of bodily incapacity to carry out functions of soul
 - No circulation/respiration
 - Inclination of the nose
 - Sinking of the temples

Why “brain death”?

- Purposes:
 - Organ procurement to save or enhance the life of another (*maslaha ‘amm*)
 - Mark the end of the clinician’s ethical duty to restore patient health or preserve life (*hifz an-nafs*)
 - Provide families with meaning in face of tragedy (organ donation)
 - Address moral duties related to withdrawal and withholding of life support in face of clinical or physiological ineffectiveness
- Deliverables of sciences
 - Biomedical: Best practices for organ procurement to benefit most lives
 - Clinical: Point at which clinical treatments are physiological futile
 - Social Science: What meaning-making is optimal

Islamic juridical councils on brain death



Year	Juridical Body	Endorsed Brain Death as
		• Legal Death (LD) • Unstable Life (UL)
1981	Religious Rulings Committee of Kuwait	Brain death is NOT legal death
1982	Senior Religious Scholars Commission in Saudi Arabia	Yes, LD
1985	IOMS	Yes, UL
1987	Council of Islamic Jurisprudence of Muslim World League	Yes, UL
1988	OIC-IFA	Yes, LD
1994	Majlis al-Shura al-Islami, South Africa	Yes, LD
1994	Majlis al-Ulama, South Africa	BD person is alive
1995	United Kingdom Muslim Law Council	Yes, LD
1996	Indonesian Council of Ulama	Yes but unclear

Withdrawing
Care

Ethico-legal frames employed by jurists

- Proponents
 - *maṣlaḥa*: creating brain death on account of organ donation
 - Qa'ida: living take precedence over dead
 - Death determination is purview of physicians
- Detractors
 - *Istiṣḥab* (continuity): presume living until traditional criteria of death are fulfilled
 - Qa'ida: certainty is not removed by doubt

Withdrawing
Care

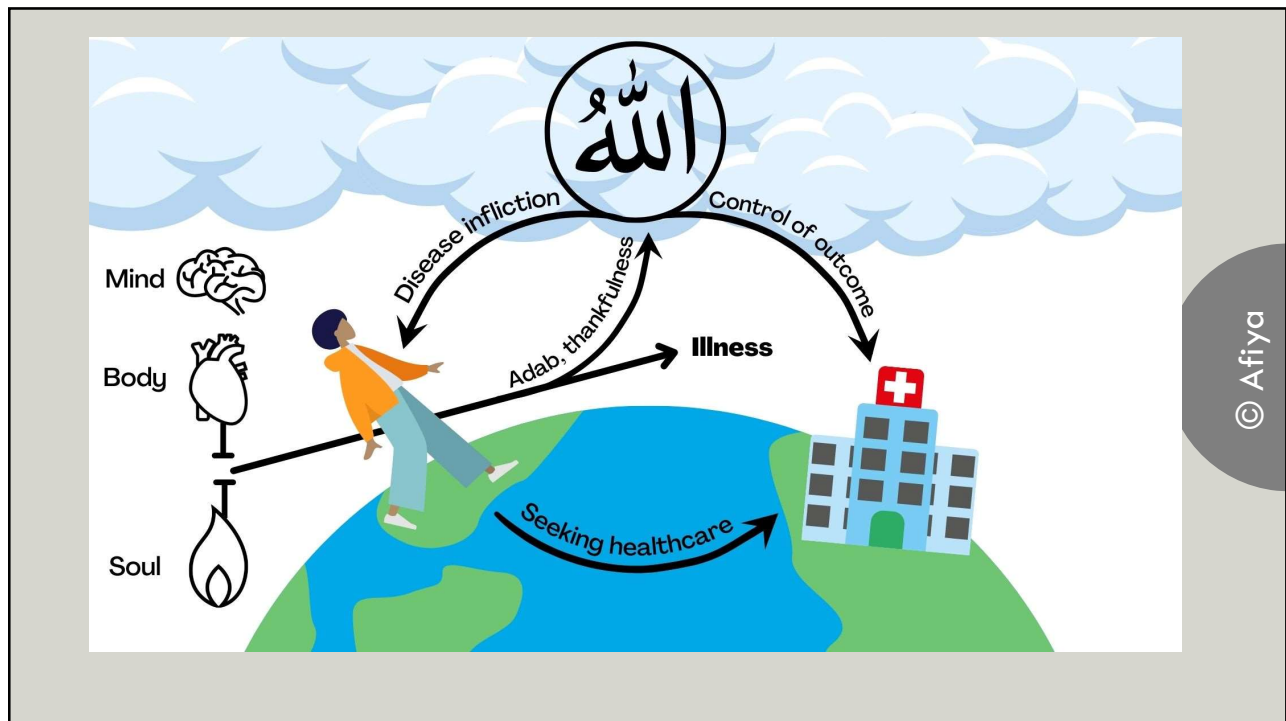
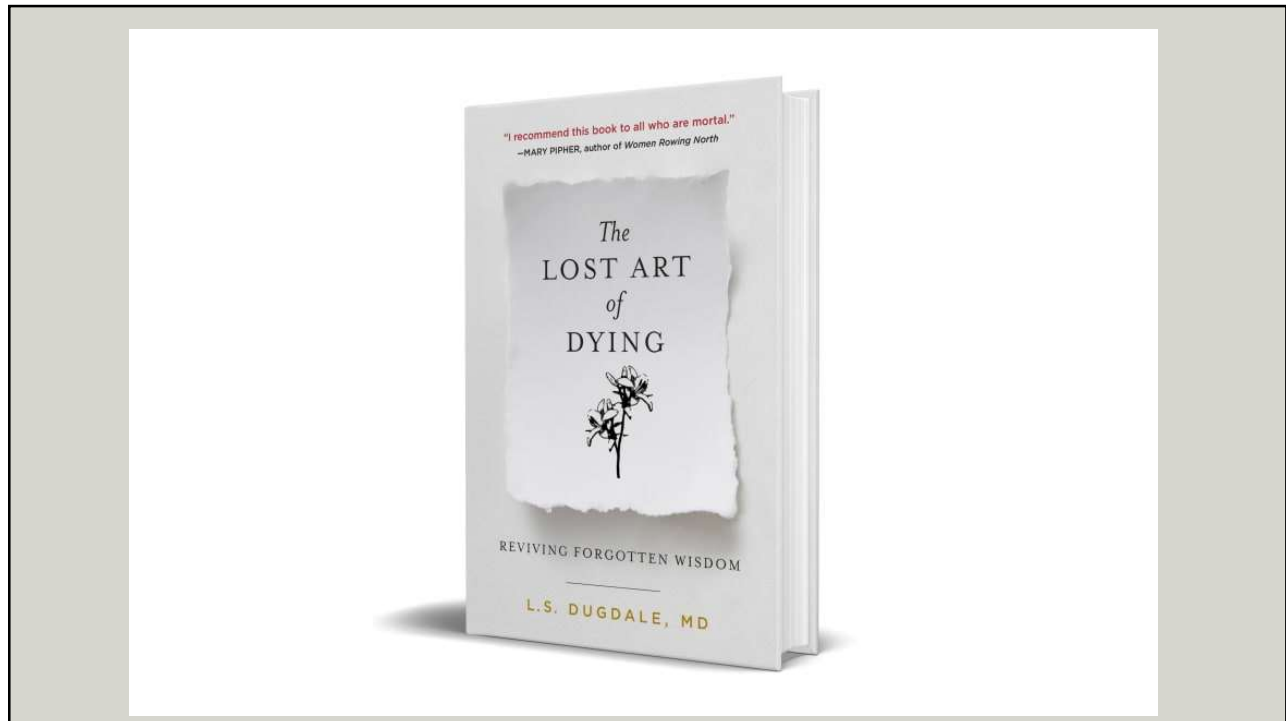
Verdicts on Brain Death

- OIC-IFA – BD is Legal Death
 - all **vital** functions of brain cease **irreversibly** and the **brain has started to degenerate**
 - Organ donation permitted
- IOMS – unstable life
 - “if a person has reached brain-stem death **some of the rulings of unstable life** apply”
 - Withdrawal of life support is permitted but not organ donation

WLS & OD

Multiplicity of realities

- Sh. M. al-Ashqar & some OIC-IFA members
 - Brain death allows for withdrawal of life support
 - Onset of ‘iddah and disbursement of inheritance when heart stops
- Different purposes lead to different criteria = multiple death constructs operating in society
- Theoretically, social structuring of healthcare could follow religious morality



Ethico-Legal Duties & Moral Comportment of the Provider

Adab with God

- Recognize one is but an instrument
(Sahih Bukhari 5678) مَا أَنْزَلَ اللَّهُ دَاءً إِلَّا أَنْزَلَ لَهُ شِفَاءً
- Strive hard to deliver best of care
(Tirmidhi and others) " إِنْ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ "
- Give comfort and hope:
(Tirmidhi 2231) " إِذَا دَخَلْتُمْ عَلَى الْمَرِيضِ فَنَفْسُوا لَهُ فِي أَجَلِهِ فَإِنَّ ذَلِكَ لَا يَرْدُّ شَيْئًا وَيُطَيِّبُ نَفْسَهُ ".
"When one of you visits the ill, then reassure him regarding his lifespan.
Indeed that will not repel anything, but it will comfort his soul."

Further Counsel

- Build up inflorescent dignity at end-of-life through spiritual support
 - Counsel to "set right" affairs of this world
 - Have "good" opinion of God and afterlife
- Respect and acknowledge human dignity
 - Illness does not lessen intrinsic (attributed by God) dignity → ending a life threatens this value
 - Limit "indignities in care"

Advice: Moral Agency & Moral Responsibility

- Without capacity there is no obligation
 - taklif
- Without agency there are religious exemptions
 - Rukhsa and azeema
- Without voice there is no response
 - Change with hand, voice, heart



The Materials: You got this now!

- Krawietz, B. *Brain Death and Islamic Traditions, Shifting Borders of Life in Islamic Theology and Law*. Islamic Ethics of Life: Abortion, War and Euthanasia. University of South Carolina Press. 2003
- Padela AI, Arozullah, A., and Moosa, E. (2013). *Brain Death in Islamic Ethico-legal Deliberation: Challenges for Applied Islamic Bioethics*. *Bioethics*, 27(3), 132-139 [with Erratum](#)
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