CORRESPONDENCE

Organ-Protective Intensive Care in Organ Donors

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in issue 33–34/2016

Legal Limbo

The review article focusing on this therapeutic approach (1) unequivocally shows the weak international evidence supporting it. Furthermore, the question that arises is that of the legal legitimization of donor-centered, rather than patient-centered, therapy in the temporal context. The authors remind us of the German Medical Association's guidelines, the German Transplant Act (*Transplantationsgesetz*, TPG), and of an opinion of the German National Ethics Council, all of which creates the impression of general legal admissibility—but organ-protective therapy has not been sufficiently considered by the legislature or the guideline issuer in a form that is oriented towards the will of the patient. The statement of the German National Ethics Council in particular contains numerous legal concerns regarding donor-centered therapy—especially before and after brain death has been ascertained (“the irreversible, total loss of brain function”) (2).

Whether a box checked next to organ donation on the organ donor pass is sufficient, furthermore, to deduce the purported agreement of the dying (but still alive) or already deceased “brain dead” patient for this therapy is an unconfirmed fiction, not a general assertion, and more than questionable in view of the jurisdiction relating to the concretization of living wills (German Federal Court of Justice, 6. 7. 2016–XII ZB 61/16; for the international discussion on equating brain death and individual death [2, 3]). In case of a therapy-limiting living will, which excludes intensive medical measures when the prognosis is poor, the checked box can hardly be assumed to be priority. In spite of the information for the public that was planned in the context of the decision-making solution according to section 2 of the German Transplant Act, the information brochures of the relevant organizations provide next to nothing regarding organ-specific therapy. And why would that be so? Well-informed patients might reject such an approach, in the same way that study participants decide against organ donation if brain death is not certified by apparatus-based diagnostic evaluation (4).

When deploying a form of “therapy” that is based on weak evidence in a scenario where the patient's wishes are not clear or presumed to be opposed, one may find oneself of thin ice in terms of the law. Clear information to the public on these aspects and patient-oriented legal specifications in the German Transplant

Act might help to strengthen public confidence in transplantation medicine. DOI: 10.3238/arztebl.2017.0137a

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In Reply:

The letter by Parzeller, Zedler, and Verhoff touches on central questions, even though only some of their comments point in the right direction.

Medically, the facts are clear: a patient who develops irreversible, total loss of brain function or has died subsequent to brain death requires intensive medical care until a final decision (organ donation, minimizing intensive care measures) has been made and implemented. Our article (1) aims to support intensive care doctors in caring for such patients; the need for further studies is evident. Clear and thoughtful legal regulations of the prerequisites and limitations of organ-protective intensive therapy is desirable; in Switzerland, such regulations at least exist as consensus-based and legally approved standards of the Swiss Academy of Medical Sciences (2).

The legal admissibility of organ-protective intensive care in Germany follows the general principles of medical law. In spite of the fundamental problem that patients' advance directives/living wills and declarations on organ donation are often not consistent with one another, some forms succeed in achieving satisfactory consistency. If a patient's advance directive says that the desire for limiting intensive care measures at the end of life should not make impossible the donation of organs, this is a satisfactory basis on which to

presume the patient's consent to limited organ-protective measures (3, 4). Such a declaration also readily satisfies the requirements of the German Federal Court of Justice in terms of the concreteness of the decision in a patient's advance directive/living will.

The letter's authors are correct that information on organ donation in Germany mostly dismiss the topic of organ-protective intensive care, rather than tackling organ donation including organ-protective measures candidly and transparently as a partial aspect of patient autonomy at the end of life. Indeed, it is the intention of our article to remedy this state of affairs.

DOI: 10.3238/arztebl.2016.0137b

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Conflict of interest statement

The authors of all contributions declare that no conflict of interest exists.

CLINICAL SNAPSHOT

X-ray of the left upper arm: distal spiral fracture of the humerus.

Spiral Fracture of the Humerus after a Tennis Serve

A 35-year-old former professional athlete in a team sport who once played on a national team was taken to the emergency room because of very severe arm pain that had arisen suddenly after a tennis serve. There was no relevant past medical history, and he was not taking any medication, illicit drugs, or anabolic steroids. Physical examination revealed marked swelling, local tenderness, and pain on movement in the middle and lower third of the upper arm, as well as a mild wrist drop with hypesthesia in the thumb and index finger, accompanied by loss of strength. The pulses in the injured arm were normal. An x-ray revealed a distal spiral fracture of the humerus with a bone wedge, without any evidence of pathological bone morphology (Figure). An osteosynthetic procedure was performed. The radial nerve was exposed at surgery and found to be macroscopically intact. It is obviously a rare event for a distal humerus fracture with radial nerve neurapraxia to be induced by the patient's muscular strength alone during tennis without any other precipitating factors. The pathophysiology in this case probably resembles that of throwers' fractures, which have been described in the literature (1, 2).

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Conflict of interest statement

The authors declare that no conflict of interest exists.

Cite this as: Huefner A, Dodt C: spiral fracture of the humerus after a tennis serve. Dtsch Arztebl Int 2017; 114: 138.

DOI: 10.3238/arztebl.2017.0138

Translated from the original German by Ethan Taub, M.D.