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Legal Research: Life Extension and Cryogenics

Cryogenics and other forms of life extension are currently only available to persons who have been declared legally dead, or where legal death has occurred. “Legal death” occurs when one ceases to possess brain activities, or the ability to resume brain activity. “It appears that once brain death has been determined, no criminal or civil liability will result from disconnecting the life support devices.” *Dority v. Superior Court of San Bernardino County*, 193 Cal.Rptr. 288, 291 (1983)).

Cryogenics organizations believe they can sufficiently preserve a person after the deceased has been declared dead because the deceased’s brain has not begun to significantly deteriorate to constitute Information-Theoretic Death. Information theoretic death is the deterioration of the deceased’s brain to the extent that the information their brain contains cannot be retrieved. If information theoretic death occurs to the deceased, cryogenic preservation of the deceased is pointless because they would not be the same or similarly capable person, and their brain would not contain sufficiently similar information for the cryogenically preserved person to use the same label as the deceased. In the case of cardiac arrest, in which the heart muscles cease beating, Information-theoretic death usually occurs after legal death because the brain has not yet begun to break down upon the cessation of brain activities. In such a scenario, there is usually fresh oxygenated blood in the deceased’s brain at the moment of legal death, giving cryogenics specialists perhaps minutes to begin preservation procedures and avoid brain destruction.

There is no general cryogenics statutes at the federal or state level, so there are no regulatory agencies or inspectors directly related to cryogenics. Instead, organizations that conduct cryogenics are covered by statutes that related to organ donation. The organ donors and recipients are treated as the same person, the deceased donating their body and its individual parts to themselves to be used later. Since no one has been successfully preserved and brought back to life, the adequacy of donor statutes has not been tested.

The Uniform Anatomical Gift Act (UAGA), which has been adopted in varying degrees in every state, is the statute that covers organ donation. Alcor is the most well known cryogenics preservation organization, and it is the longest running and successful cryogenics organization, with operations in California and Arizona. The California version of the UAGA is CA Health and Safety Code 7150-7157. The statute grants a person the right to donate their body and organs for medical research, but doesn't mention cryogenics. The person must be at least 18 years old, and donate for to a licensed medical or procurement organization for transplantation or research. Alcor is considered the procurement organization because they are licensed by the CA state Department of Health Services for procurement, distribution, and storage of human bodies or parts.

A landmark case in 1992 in California required the state Health Department to certify the death certificate and issue disposition permits for people who request cryogenic suspension. The case of Mitchell v. Roe, ruled on by the California Court of Appeals found in favor of organizations like Alcor, who were denied such permits by the Health Department, and the Health Department was required to set up a procedure to

certify organizations like Alcor, under CA Health and Safety Code, who wish to provide cryogenic services to patients. The court did not rule on or make any determinations regarding the legality or definition of death, or the legal framework in which cryogenically preserved individuals should be treated or labeled. Instead, the Court stated:

"Should cryonically suspended people be considered 'dead' or should a separate category of 'suspended' people be created? How should such people be registered in official records? ... [W]hat happens to the estate and the assets of the 'decedent' after the decedent is put in cryonic suspension? ... [W]hat would happen to such estate and assets if and when cryonic suspension is successful and decedent is restored to life? Whose identity is the person to assume or be assigned and what of the record of the person's death? Alcor also stores body parts, such as human heads and hands. In such cases, whose identity will the suspended heads and hands assume upon their restoration; the identity of the original owner of the body part or the identity of the new body to which the body part will be attached?"

Mitchell v. Roe, 9 Cal. Rptr. 2d 572, (Cal. Ct. App. 1992)

Arizona adopted the UAGA as the Arizona Public Health & Safety Statute 36-841, amended in 1987. Arizona permits banks or storage facilities for medical education, research or advancement of medical science or transplant to be donees of gifts of bodies. Alcor fits the definition of the Bank or storage facility in Arizona. There are no regulations or statutes, however, regarding the procedures such storage facilities are required to follow.

In California, CA Health & Safety Code 7100 grants individuals the legal right to determine the disposition of their body upon death, and if the individual does not state how they wish to be disposed, it is up to their family to decide. The decedent directs the type of interment for their remains, and the person who the deceased grants control to

must faithfully carry out the deceased's directions to the extent that the directions do not conflict with the duties of the coroner.

Arizona's statute regarding disposition of remains is found in the Public Health and Safety code, 36-831.01. It states that people who are given the duty of burial are required to comply with the deceased's wishes regarding disposition if they are reasonable and do not impose economic or emotional hardship.

Those who wish to be cryogenically preserved must seek to avoid autopsy at all costs. California grants individuals the right to avoid autopsy via CA Government Code 27491.43. The statute states that if the coroner receives a certificate of religious belief from the decedent that an autopsy would be contrary to the deceased's religious belief, the coroner may not perform an autopsy on the body. The deceased may declare they adhere to any religion, and the state will not inquire into the validity of the declaration and will abide by the deceased's wishes.

However, if the coroner has reasonable suspicion that the death was caused by a criminal act or contagious disease which is a public hazard, the coroner may overrule the deceased's request for the avoidance of autopsy. At least five other states have adopted statutes similar to California's statute regarding the deceased's wish to avoid autopsy on religious grounds.