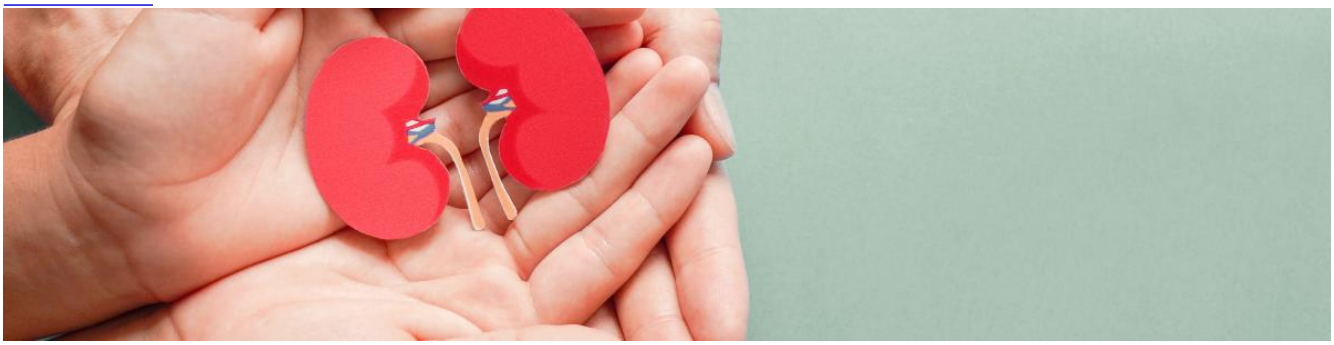
Brain-Stem Death and Organ Donation

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by Rabbi Marc D. Angel

When I served as President of the Rabbinical Council of America (1990-92), I asked Rabbi Moshe Tendler to develop a health care proxy for the RCA, that would take into consideration issues relating to halakhic organ donation. An internationally renowned authority in halakha and medical ethics, Rabbi Tendler concluded that brain-stem death constitutes halakhic (as well as medical) death; that organ donation is permissible and praiseworthy according to halakha; that Jews faithful to halakha should arrange for a health care proxy form, that will assure that decisions will be made in consultation with proper medical and halakhic authority.

Rabbi Tendler's report and health care proxy form were discussed at an RCA convention, as well as in other study forums sponsored by the RCA. There was substantial controversy at the time, but the consensus of the RCA rabbis was to adopt Rabbi Tendler's position and to issue a health care proxy form in line with his recommendations. In spite of strong pressure from right-wing Orthodox groups, and intense opposition from some rabbis within the RCA, we succeeded in making a decision that was halakhically and medically sound, that provided for halakhic organ donation that could save lives. This was, to my mind, a very proud moment for the RCA. It demonstrated that the modern Orthodox rabbinate was capable of making an important decision in a responsible way--and that it had the courage to withstand external--and internal--pressures.

Once we took our position, the attacks on the RCA's decision increased. I wrote an article for Jewish Action Magazine, published by the Orthodox Union, that I reprint below, presenting our arguments in favor of our position.

During the past few years, a committee of the RCA has revisited the issue of halakhic definition of death and the permissibility of organ donation. The committee recently issued its lengthy report. While not taking a formal position, the report backed away from the RCA's previous stance, and seems to tilt away from the brain-stem death definition of death. By not upholding the earlier position of the RCA, the current RCA leadership has decided it was most prudent for the RCA not to make such important decisions for the public, but to back away from taking a formal stand. The modern Orthodox rabbinate has again shown itself unable or unwilling to assume halakhic leadership and responsibility. It would prefer to straddle the fence, and let others make the important and controversial decisions.

An important article on "Death by Neurological Criteria" by Dr. Noam Stadlan offers a critique of the RCA's new report. It is available at torahmusings.com, and I recommend it highly. I also suggest that readers visit the website of the HOD Society for more information on the topic.

My article, going back to spring 1992, is printed below. I believe that the basic points of that article continue to be valid today. It reflects an optimism I had then about modern Orthodox rabbinic decision-making--an optimism which has been much dampened in recent years.

THE RCA HEALTH CARE PROXY
PROVIDING RESPONSIBLE HALAKHIC
LEADERSHIP TO OUR COMMUNITY

WHAT IS A HEALTH CARE PROXY?

A person, Heaven forbid, may become critically ill and be physically or mentally incapable of responding to doctors’ questions concerning continued treatment. Who then will have the right to make these life and death decisions? If an individual has prepared a health care proxy form, the person named in that form as his proxy would be empowered to make these decisions. If an individual has not designated a proxy, the medical staff will decide.
Obviously, a Jew who wishes such decisions to be made in consonance with halakhah should appoint a trusted person to be his or her health care proxy and should prepare the necessary health care proxy form. Federal law now requires health care providers to inform patients of their right to a health care proxy. Religious Jews should utilize this right to assure that their treatment will conform to halakhic standards.

The Rabbinical Council of America has issued a health care proxy form, prepared by Rabbi Dr. Moshe Tendler, Chairman of the RCA's Medical Ethics Commission. Members of the RCA have received a copy of the health care proxy, as well as material relating to the medical and halakhic issues involved. A Yom Iyyun was held on November 21, 1991, which included presentations by Rabbi Tendler and two world-renowned medical experts—Dr. Dominick Purpura, Dean of the Albert Einstein Medical College of Yeshiva University and Professor of Neurology; and Dr. Fred Plum, head of the Department of Neurology of the New York Hospital and Cornell University Medical College. The RCA has taken the responsible position of responding to a pressing communal need, providing vital information to the rabbis of the RCA so that they might guide their congregants wisely.

THE BRAIN-STEM DEATH ISSUE

A significant feature of the RCA health care proxy form is that it accepts brain-stem death as the definition of death.
This definition allows for the possibility of transplants of vital organs. Organs may, with the proper permission and safeguards, be taken from brain-stem dead individuals and transplanted to save the lives of others.

When the brain-stem dies, a fact that can be determined with absolute certainty by means of various tests, a person no longer can breathe independently—the brain-stem controls respiration, as well as other vital life processes. Brain-stem death includes respiration death and is irreversible.
At the RCA Yom Iyyun, Dr. Purpura and Dr. Plum both indicated that the brain-stem death definition today is accepted universally in the medical world. It is policy in all fifty states of the United States. It is defined specifically and can be determined with complete accuracy.

Dr. Purpura, in his lecture to the RCA, pointed out the historical background relating to brain-stem death. Ancient teachers thought that life was centered in the heart and that the brain was useless. By the mid-seventeenth century, researchers discovered that the brain controlled various aspects of the body. During the past several centuries, it has become clear that the brain is the center of life, that it controls all aspects of the living organism. Modern research has demonstrated how each part of the brain controls specific functions, with the brain-stem controlling respiration and other vital functions.
The brain simply cannot be equated with other vital organs. It is unique. Our brain defines who we are.

WHAT BRAIN-STEM DEATH IS NOT

Much of the confusion surrounding the brain-stem definition of death derives from the popular, unscientific use of the phrase “brain death.” If a person is in a deep coma, if his upper brain is not functioning, if he is in a persistent vegetative state—he is not brain dead. Death occurs only with the death of the brain-stem, not with the non-functioning of the upper brain.

THE HALAKHIC BASIS

The brain-stem definition of death was accepted by the Chief Rabbinate in Israel after thorough discussions with halakhic and medical authorities. The text of the Chief Rabbinate’s decision was published in Tehumin in 5746 (1986) and in English translation in Tradition, Summer, 1989. Based on this decision of the Chief Rabbis, organ transplants do take place in Israel under halakhic supervision.

Rabbi Shaul Yisraeli, in evaluating the issues involved, concluded that the decision of the Chief Rabbinate was sound and that the arguments of opponents were halakhically unfounded (Barkai, Spring 5747, pp. 32—41).

Rabbi Moshe Feinstein already had accepted the brain-stem definition of death in a responsum dated 5736 (1976). He ruled that when a patient showed no signs of life—e.g. no movement or response to stimuli—then the total cessation of independent respiration is an absolute proof that death has occurred (Iggerot Moshe, Yoreh De’ah, 3:132). If a person cannot breathe any longer due to brain-stem death, then a respirator attached to the person is merely pumping air into a dead body. Even if the heart continues to beat, the person is deemed to be dead. Indeed, after death, it is possible for individual organs to move spasmodically. Rambam, in his commentary on Mishnah Aholot 1:6, discusses the case of decapitation, and notes that pirkhus, movement of limbs after death, is not to be construed as a sign of life. Rabbi Moshe Tendler has referred to brain- stem death as “physiological decapitation.” With the death of the brain-stem, the control center of breathing and other vital functions has been cut off totally and irreversibly.

In a letter dated May 24, 1976, Rabbi Moshe Feinstein wrote to Assemblyman Herbert J. Miller, Chairman of the New York State Assembly Committee on Health. Rabbi Feinstein stated clearly, “The sole criterion of death is the total cessation of spontaneous respiration. . . the total cessation of independent respiration is an absolute proof that death has occurred.”

Opponents of the brain-stem death definition have attempted to confuse the public as to Rabbi Feinstein’s position. Although they are free to disagree with Rabbi Feinstein’s pesak, it is unconscionable that they should try to misrepresent his clear and consistent view, i.e. that brain-stem death is the true definition of

death. Rabbi Mordechai Halperin (Assia, December 1989) researched the issue carefully and concluded that the evidence was clear that Rabbi Feinstein definitely accepted the brain-stem death definition. This position was confirmed by Dr. Ira Greifer of the Albert Einstein Medical College, who had spent several days discussing the issue in great detail with Rabbi Feinstein. Rabbi Feinstein's acceptance of the brain-stem death definition also was confirmed by others who had discussed the question with him. In short, the RCA health care proxy is corroborated by the authoritative decisions of Rabbi Moshe Feinstein and the Chief Rabbinate of Israel. It is based on the very best scientific knowledge available.

SOME IMPLICATIONS

Those who reject the brain-stem death definition consider it murder to remove vital organs from a person who is brain stem dead, but whose heart is still beating. The implication of this position is that organ transplantation is forbidden. A doctor would not be allowed to remove vital organs from the brain-stem dead body; nor would it be ethical for a patient to benefit from an organ which had been the result of "murder." I asked a rabbi of my acquaintance who opposes the brain stem definition of death what he would rule if a Jewish doctor asked him whether he could remove the heart of a brain-stem dead body to save the life of another person. The rabbi answered: "Let the doctor rely on Rabbi Tendler!" When I pressed the matter, insisting that he give the pesak and not defer to others, he refused to do so. In other words, he publicly went on record opposing the RCA position; and yet, privately, if confronted with a life and death situation he would rely on the RCA [i.e. Rabbi Tendler's] position.

Rabbi Mordekhai Eliyahu, in a recent discussion with the RCA, told us that a number of rabbis who publicly oppose the Chief Rabbinate's ruling, nevertheless send their friends and relatives to receive organ transplants—organs which can be taken only from a brain-stem dead body. Several leading rabbis from Israel recently issued a brief statement opposing the brain-stem death definition. We have politely requested a responsum, fully argued and reasoned, so that we might study the basis of their pesak. No reply has been forthcoming to date.

Unfortunately, the brain-stem death issue has become a matter of public controversy and confusion. Since life and death decisions hinge on this matter, it is imperative that the public have lucid and accurate information. People may choose to follow the RCA's decision—based on the finest halakhic and scientific authority—or they may choose to reject it. There are serious arguments in opposition to the RCA's position, but everyone should understand what the case

for the RCA is and should not misrepresent its position.

People should not intellectualize and abstract the issue; rather, they should see it in personal terms. If a loved one, Heaven forbid, needed an organ transplant in order to live, would you rely on the RCA decision to allow transplants from brain-stem dead bodies? Or would you let the loved one die? Or would you choose the morally repugnant position of allowing the transplant even though you believed that halakhically it entailed murder?
The RCA position is not only well-founded on halakhic and scientific authority. It also is humane, responsible and compassionate. It is a demonstration of responsible halakhic and moral leadership to our community.

Friday, January 7, 2011

Rabbinic Statement Regarding Organ Donation

We, the undersigned Orthodox rabbis and rashei yeshiva affirm the following principles with regard to organ donation and brain stem death:
First and foremost, the halakhic definition of death is a long-standing debate amongst gedolei ha-poskim, and it should not be forgotten that, among others in the U.S. and Israel, the former Chief Rabbis of Israel, R. Avraham Shapira and R. Mordechai Eliyahu, zikhronam li'vracha, and, yibadel li'chayim, Rav Gedalia Dov Schwartz, the av beis din of the Beit Din of America, are strong proponents of the position that brain stem death constitutes the halakhic definition of death.
Both positions, that brain stem death constitutes death, and that only cardiac death can define death, are halakhically viable. This remains so even in light of the findings of the President's Council on Bioethics in 2008.
With regard to this long-standing debate, and its critical implications for organ donation, we affirm our position that:

1. Brain stem death is a halakhically operational definition of death. As such, organs may be removed for transplantation under strict halakhic supervision and guidance.
2. In light of the serious moral issues and profound lifesaving potential presented by the possibility of organ donation, we strongly recommend that rabbis who are rendering decisions for their laity on this matter demonstrate a strong predisposition to accept the halakhic view of the gedolei haposkim who define the moment of halakhic death to be that of brain stem death, or that they refer their laity to rabbis who do so.

3. Even as we adopt the brain stem definition of death, we emphasize that the greatest of care is needed in applying this definition in practice, and that safeguards are necessary to insure the organ removal is done in accordance with halakhic principles. Each person should consult with his or her rabbi and appropriate medical professionals to understand how this determination of death is made, and how to ensure that the appropriate procedures will be in place.

4. Rabbis and laity who follow the position that brain stem death is not considered to be halakhic death should be aware that it is medically possible to donate certain body parts after cardiac death and that it is a mitzvah to do so. Thus,

<>a.It is both halakhically permissible and desirable and ethically mandated for every Jew to be an organ donor consistent with his or her definition of halakhic death.

<>b.Rabbis and community leaders must do all in their power to communicate this responsibility to the community, and to encourage all Jews to sign organ donor cards, in line with their halakhic definition of death.

5. To adopt a restrictive position regarding donating organs and a permissive position regarding receiving organs is morally untenable. Such an approach is also highly damaging to the State of Israel, both internally and in regards to its relationship with the larger world, and to the Jewish People as a whole. This approach must thus be unequivocally rejected by Jews at the individual and the communal level.

Signed:

R. Shlomo Riskin, Efrat, Israel

R. Yuval Cherlow, Petach Tikva, Israel

R. Binny Lau, Jerusalem, Israel

R. Yoel Bin Nun, Israel

R. David Bigman, Ma’ale Gilboa, Israel

R. Yehudah Gilad, Ma’ale Gilboa, Israel

R. Binyamin Walfish, Jerusalem, Israel

R. Dr. Avraham Walfish. Israel

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R. Dov Linzer, Riverdale, NY

R. Avi Weiss, Riverdale, NY

R. Barry Gelman, Houston, TX

R. Asher Lopatin, Chicago, IL

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