



### **Halachic Organ Donations**

Dear Editor, I understand Robby Berman's desire to promote brain death as a halachically acceptable standard for removal of vital organs (Letters, February 11). He directs an organization pledged to maximize organ donation. But his assertion that a Jew who is forbidden by his halachic authority to accept that standard should be treated in any way differently from others regarding the receiving of available organs however procured is both unreasoned and cruel.

Principled Orthodox Jews present their halachic queries to decisors they have accepted because of their Torah knowledge and skill in applying it. To advocate penalization of a believing Jew for doing that, just because the decision rendered strikes a layman as "unfair," shows a serious inexperience with how halachic decision-making works.

Were a person prevented from donating his organs because of some medical consideration, no one (one hopes) would seek in any way to limit his right to receive an organ. Being constrained by a duly rendered halachic decision is no different. Mr. Berman is free to reject such halachic decisions if he wishes, but to equate Jews who live by them with people who are simply "too squeamish, too selfish, or too lazy" to bequeath their organs is beyond the Jewish pale.

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### **Halachic Disputes Belong In The Beis Midrash**

Dear Editor, I was saddened to read Mr. Robby Berman's letter in response to mine in the February 11 issue of the 5TJT.

To recap: A new Israeli law openly discriminates against those who do not sign an organ-donor card—which would permit removal of vital organs once Israeli doctors declare someone "brain dead"—by lowering their names on the organ-recipient list should they themselves need an organ. I noted in my letter that this is a precedent-setting law that overturns centuries of medical ethics wherein the sole determinant for priority of care is the medical condition of the patient.

I cited as an example a hypothetical case wherein a thief or murderer could, solely by virtue of having signed the organ-donor card, get priority for an organ over a Hatzalah member, the head of a soup kitchen, one of our major halachic authorities, or any of myriad Israeli citizens—Jewish, Muslim, and Christian—who contribute all sorts of benefits to society but are forbidden to sign this card as a matter of religious principle.

Rav Elyashiv, shlita, and many other major halachic authorities forbid their followers to sign organ-donor cards anywhere, but permit, under limited circumstances, those in dire need of an organ to receive an organ once it has been removed from a person declared legally dead outside of Eretz Yisrael. He does not require a person to remove his name from the organ recipient list, as Mr. Berman seems to demand.

Mr. Berman claims a person who follows this p'sak and remains a potential organ recipient is thereby “asking doctors to murder the brain-dead patient.” Mr. Berman, who to my knowledge does not have semichah or training as an ethicist, also claims that following this nuanced approach of leading poskim from all camps in Orthodoxy (from YU to the Eidah Chareidis) is “morally repulsive and halachically untenable.”

Mr. Berman further declares that “the principles of justice and fairness dictate that one who refuses to donate organs to society should not benefit by taking organs from society” and that my “cry of religious discrimination is spurious”—even though the law clearly discriminates against those who cannot sign this card for reasons of religious belief.

Indeed, the physician who first proposed this sort of law in an article in *The Lancet* reportedly openly declared his disdain for chareidi Jews who will not allow their vital organs to be removed until they are considered dead according to the halachic ruling of their poskim, and apparently an unfortunate incident involving a chareidi parent prompted him to launch this “give an organ to get an organ” campaign.

The view of a layman like Mr. Berman regarding what is morally repulsive and halachically untenable is of no concern to me, nor presumably to the great majority of 5TJT readers, who subscribe to the halachic imperative that one must follow the ruling of one's poseik on matters large and small, and not deviate one iota from his poseik's prescribed path.

The ends do not justify the means. One is absolutely forbidden to shorten another's life, even by seconds, in order to save someone else's life, and one must allow oneself to be killed rather than commit this cardinal sin (“yehareig v'al ya'avor”). For those hundreds of thousands of Orthodox Jews whose poskim—Rabbi Hershel Schachter, Rabbi Mordechai Willig, Rabbi J. David Bleich, British Chief Rabbi Jonathan Sacks, and virtually all Ashkenazic chareidi poskim—“brain death” is not a sufficient criterion for death in halachah (There are notable exceptions, such as Rav Dovid Feinstein, shlita, who reportedly does accept “brain death.”)

Indeed, Rav Elyashiv prohibited his followers from traveling to China to obtain organs, because of his concern that the organ “donors”—prisoners condemned to death—might have their lives shortened, even by only seconds, in order to coordinate the organ transfer.

It is obvious that the major halachic authorities will not change their halachic decisions based on discriminatory laws nor on pronouncements by Mr. Berman or others that, to them, the poskim's decisions are morally repulsive and halachically untenable. In Israel, the new law will have virtually no effect on the hundreds of thousands of Orthodox Jews whose poskim forbid both organ donation and receipt of organs. It is not at all certain that such a law will increase organ procurement.

But one thing is certain: it will be precedent-setting. The new Israeli law will alter forever the sacred tenet of medical ethics—deciding treatment solely based on medical need. States like Colorado are currently considering similar laws. People will look to Israel and use this new law as justification to enact similar laws here. (Indeed, in the landmark Golubchuk case in Canada, in which doctors sought to pull the plug on an elderly Orthodox Jewish man, the Canadian media reported on the infamous “timer” ventilator then being developed in Israel—which would enable a ventilator to

be stopped, indirectly—and suggested such a device be used to end the life of Mr. Sam Golubchuk, z”l. Fortunately, those of us who aided the family were able to prevail and get an injunction, and he subsequently died of natural causes.)

As a result of other countries enacting laws based on the Israeli precedent, Orthodox Jews and others whose religious beliefs preclude organ removal upon “brain death” will certainly be much less likely to get organs in the U.S. and around the world.

I suggest that we make allowance for the full and unfettered practice of religion, if not in Israel, then at least in the United States. There are halachic alternatives available to increase organ donation, but Mr. Berman seems to be either unaware of these or indifferent to them.

Over the past decade, I have on numerous occasions invited Mr. Berman—who says that he wishes to educate Jews nationwide about halachic approaches to organ donation—to participate in the *yarchei kallah* on medical halachah that I cofounded in 1998, and that is held regularly in Jerusalem and around the world (visit [www.j-c-r.org](http://www.j-c-r.org) and click on “*yarchei kallah*”). We could together have learned the sugyos involved in these matters, in *chavrusa*-style learning with kollel fellows, followed by shiurim by major halachic authorities, such as Rav Mordechai Eliyahu, zt”l (for whom I twice served as translator for shiurim on “brain death”), Rav Aharon Soloveitchik, zt”l (who told me that his brother, Rav Yosef Ber Soloveitchik, zt”l, never accepted “brain death”), Rav Zalman Nechemiah Goldberg, Rav Moshe Sternbuch (whom Mr. Berman continues to incorrectly list as a supporter of the “brain death” concept), Rav Yitzchak Zilberstein, Rav Dovid Morgenstern, and many more. He could have asked questions, raised challenging issues, and gotten answers. So far, he has chosen not to do so.

I again invite Mr. Berman, a former journalist, to set aside what seems to be a media campaign in the secular press against those who disagree with his tactics—including the distinguished rabbis of the halachah committee of the Rabbinical Council of America (one of whom is our own Rabbi Tzvi Flaum, shlita), whose recent paper dealt responsibly and thoroughly with the subject of “brain death”—and sit down to learn these sugyos.

The Halachic Organ Donor Society, which Mr. Berman founded with noble intent, could become an organization wherein all viewpoints in halachah—including those of major authorities such as Rav Elyashiv—are given their proper weight and respect and not subjected to derogatory characterizations.

Mr. Berman deserves our gratitude for over a decade of passionate advocacy to increase organ transplantation worldwide. Many of his goals are enviable, and he has sacrificed much to accomplish them. He is in many ways an idealist. We’ve publicly argued in the secular media for over a decade, although we’ve never formally met.

When bar patrons argue, the owner often says, “Take it outside.” Mr. Berman, and all those who feel passionately about end-of-life matters: I suggest we take our argument “inside” . . . to the *beis midrash*, where it belongs.

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*Dr. Zacharowicz, a neurologist and Far Rockaway resident, is a member of the Executive Committee of the newly formed Arichas Yomim division of Agudath Israel of America, which is aimed at educating families and professionals about Orthodox Jewish perspectives on end-of-life issues.*