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## May Brain-Dead Jews Donate Organs for Transplant?

Orthodox Rabbinic Group Seeks To Clarify Its Controversial Ruling



Getty Images

**At Work:** Surgeons at the 12 de Octubre Hospital of Madrid performing a liver transplant.

**By Joy Resmovits**

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With recent pronouncements from Orthodox authorities diverging in multiple directions, uncertainty reigns on just when and under what conditions traditionally observant Jews may donate their vital organs to save others.

Under strong fire, the country's major Modern Orthodox rabbinic body is seeking to clarify its position on a study by its own authorities that is seen as casting doubt on whether Jews who are brain-dead may donate their vital organs for transplants. The same study, meanwhile upholds the right of Jews to receive such organs.

In a statement released January 6, the Rabbinical Council of America reiterated that it is neutral on the question of whether Jewish law regards death to have occurred when brain function ceases or only when only the heart stops.

“The RCA takes no official position as an organization on the issue of whether or not brain-stem death meets the halachic [Judaic legal] criteria of death,” the organization’s public statement declared.

The group, which represents 900 Orthodox rabbis, has faced weeks of intense criticism since it was disclosed that its committee on Jewish law had questioned an earlier RCA view upholding the brain death standard. In its statement, the RCA termed the committee’s conclusion an “informational guide” that was not meant as a conclusive directive for when organs may be harvested.

The statement urged each RCA rabbi “to determine for himself, based upon his own study, consultation with halachic authorities and his own conscience, which halachic position he will adopt.”

The RCA committee on Jewish law’s view on the matter was issued in a 110-page paper released for internal use last June, but was disclosed last November by The New York Jewish Week. The committee, known as the Vaad Halacha, is charged with formulating for the RCA “halachic positions, options, and views on a variety of pressing matters related to the public arena,” according to the group’s website.

The committee’s revised view aroused alarm in the medical community, which interpreted the paper as stepping away from identifying brain death as death. Critics vented their outrage in letters to the editor and statements to the press.

Rabbi Moshe Tendler, a professor of biology and a bioethicist at Yeshiva University, as well as a senior teacher at Y.U.’s rabbinical school, termed the paper “an act of anti-Semitism.” The RCA study, he told The Jewish Week, could lead the medical community to deny organ transplants to Orthodox Jews.

Meanwhile, a smaller group of Modern Orthodox rabbis are urging support for the view that brain stem death constitutes death, and that Jews in a brain dead state can donate organs.

In a January 7 statement the rabbis — many of them associated with the International Rabbinic Fellowship, a liberal-leaning group within Modern Orthodoxy — warned that allowing Jews to receive organs but not to give them was “morally untenable,” and was damaging to Israel and Jews at large. “This approach must thus be unequivocally rejected by Jews at the individual and the communal level,” it read.

Among the 65 signatories were Rabbi Shlomo Riskin of the West Bank settlement of Efrat, Yeshiva Chovevei Torah founder Rabbi Avi Weiss, Rabbi Haskel Lookstein of the Ramaz School and Congregation Kehilath Jeshurun in New York, and others.

At the same time, Great Britain’s Chief Rabbi, Jonathan Sacks, recently issued an edict unequivocally rejecting brain death as a standard for organ donation.

“It is the considered opinion of the London Beth Din, in line with most Poskim [halachic decisors] worldwide, that in Halacha cardio-respiratory death is definitive,” Sacks’ statement declared.

The issue of brain death in Jewish law bears heavily on the permissibility of organ donation under Jewish law: In the first stage of some deaths, individuals lose the function of their brain stem, which sends the body breathing instructions — though a machine may keep their hearts pumping. This state is known as brain death. If a doctor has to wait until the heart stops to harvest organs, the majority of those organs are no longer viable for implantation.

Judaism and traditional Jewish religious law embrace medical progress because of the imperative of the sanctity of saving human life. But all commandments, including the saving of human life, are canceled out if they are achieved at the cost of murder. If Jewish law does not count brain death as the end of a life, then harvesting organs is tantamount to murder — which is forbidden.

Over the years, different poskim, or religious decisors, have taken different sides on the tenacious issue. Tendler issued a health care proxy in the early 1990s stating that brain death is accepted as death. The RCA’s executive committee endorsed the proxy until a majority bloc of the Vaad Halacha issued a 1991 response rejecting Tendler’s claim. A few years ago, the Vaad Halacha set ought to explore the issue more deeply. The November study was its result.

In its recent statement, the RCA acknowledges that publicly clarifying a study issued under its own auspices is an “unusual step.” The step was necessary, insiders say, because of intense internal pressure from the rabbis within the RCA who accept brain death as death. External pressure came from doctors who weighed in, some particularly incensed about the study’s claim that “All agreed that even if an organ was removed *beissur* [in violation of a halachic law], it may still be used.”

One of those physicians is Kenneth Prager, a pulmonary specialist who chairs Columbia University Medical Center’s Medical Ethics Committee and Organ Donor Council. “If an Orthodox Jew wants to say that brain death is not death, and therefore it is against Halacha to remove a vital organ from a dead person because that’s killing a person, that’s fine,” Prager told the Forward. “But to then justify accepting an organ from another person that is viewed as having been murdered to donate an organ is morally repugnant.”

Prager said he found that the study “left the clear-cut impression that the proper halachic approach was not to recognize brain death as death.... The bottom line is that was the Vaad’s conclusion after years of doing research on the issue.”

Rabbi Asher Bush, the study’s author, said the paper was misread and misrepresented. “A lot of what’s coming out has nothing to do with the paper,” said Bush, who hinted that further guidance may come from his halachic committee. In a phone interview, he qualified the study’s most inflammatory line — concerning the unqualified acceptance of

receiving organs from brain dead donors while leaving the permissibility of organ donation by those in this state under doubt. This was not a position the committee meant to encourage, Bush explained, but was rather meant as a retroactive statement about what should be done with an available organ.

The RCA's own clarifying statement — authored by RCA President Rabbi Moshe Kletenik and First Vice President Rabbi Shmuel Goldin — says that the study was meant to serve as an “informational guide,” and not a conclusive position paper on how rabbis should rule. In so doing, the RCA did not deal with the substantive criticisms of the study.

The statement also notes that the debate over the halachic definition of death aside, “almost all authorities maintain that organ donation... is not only allowed, but a mitzvah” when it contributes toward saving someone's life.

Robby Berman, founder and director of the Halachic Organ Donor Society and an initial critic of the study, said the statement is not enough. “The RCA paper contains medical mistakes, citation errors, historical distortions of [rabbinic rulings] and morally reprehensible halachic positions,” he said.

Given the uproar in the medical and religious circles, and among those involved in transplants, “I understand why the RCA felt the need to issue some kind of statement,” said Berman. “But a ‘clarification’... that rabbis should not use the document as if it is a *psak* [ruling] does not suffice. The RCA needs to retract the document, fix its flaws, and reissue it. That would be the right thing to do.”

In a subsequent e-mail to the Forward, Berman said that after consultation with his group's board, he wished to amend his statement.

“While we were disappointed with the original RCA paper [and] believe that it was one-sided and contained medical and historical inaccuracies, we are very encouraged by the recently released RCA announcement,” Berman wrote. “It confirms the RCA's acknowledgement that brain death is recognized by major *Gedolei Hatorah* [giants of Torah] such as Rav Gedalia Schwartz, Rav Moshe Tendler, and the Chief Rabbinate of Israel, all of whom support the mitzvah of organ donation upon brain death.”

Goldin told the Forward that defending or retracting the study's contents is not the job of RCA leadership, but rather that of the paper's authors. He said he personally accepts brain death as death. “I thought that the study was weighted to one side and therefore reflected the position of the people who were writing it,” he said. “This is an area of Halacha where the final determination has not yet been made. What's reflected is healthy debate around a very critical issue.”

Goldin stressed that the internal document was not meant to be publicized. But the document is publicly available on the website of the synagogue of the Vaad chairman, Rabbi Bush.

But Kletenik, the RCA's president, defended the paper itself. "We see no reason to retract it," he said.

*Forward staff writer Josh Nathan-Kazis contributed to this story.*

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Leon Zacharowicz MD · [4 weeks ago](#)

Those who have agendas other than the determination of orthodox Jewish law have apparently achieved their objective, via public mockery of scholars with whom they disagree on public policy grounds, of neutralizing an important internal paper on whether "brain-stem death" constitutes death in orthodox Jewish law. If the answer is 'yes,' then organ donation is essentially mandatory. If the answer is 'no' or 'maybe,' then removal of vital organs from a live patient, even if that patient is imminently going to die, is akin to murder.

The great majority of internationally recognized orthodox rabbinic authorities are unwilling at present to agree that "brain-stem death," as currently determined by a physician, is sufficient to permit removal of vital organs. Their reasons are far beyond the

scope of this article, but are based on medical findings and on their interpretations of Jewish law.

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Norm · [4 weeks ago](#)

Dr. Z-yes the vaunted Gadols can look into the the Torah, written 2500 years ago, and try to determine whether Barak, the redachter, got some message from the invisible man in the sky as to whether a procedure, which could not have been imagined then, violated some precept of our tribe at that time. Fine-if the same people who believe that whatever created the universe doesn't want us to mix animals when we plow or mix cloth and doesn't want us to use our intelligence to preserve the life of another at the expense of someone who doesn't need, or in the much publicized recent case, didn't want, his organs to be buried with him that's fine.

But what do you have to say about the hypocrisy of the same people who say that a Jew CAN receive such an organ donation ffrom a breathing Brain dead person if he is NOT a Jew?

What are gentiles? Spare Parts?

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Leon Zacharowicz MD · [4 weeks ago](#)

The comment by "Norm" is indicative of the ignorance that pervades this public discussion, as well as an anti-religious bias which precludes serious discussion. Anyone even remotely familiar with the Chinese organ donor case and similar rulings would understand immediately that leading rabbinic authorities such as Rabbi Elyashiv do not think along the lines suggested in the last two sentences of the comments by "Norm." Indeed, in that case, Rabbi Elyashiv forbade his followers from going to China to accept organs being procured from individuals said to be convicts about to be executed out of concern of the remote possibility that a non-Jewish criminal's life might be shortened, even by a second, to provide an organ to a Jewish recipient.

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Adam · [3 weeks ago](#)

Dr. Leon Zacharowicz appears on all the blogs and all the talk-backs about how people who accept brain death are ignorant, and how he has a close personal relationship with "internationally recognized orthodox rabbinic authorities," and that he has "learned the sugya," and everyone is biased except for him and his Yarchei Kallah Wiener. Get a life Leon. Argue the merits of the case. Don't argue ex cathedra that your posek is bigger than my posek. Haven't you heard? Size does not matter. It is the quality of the argument/experience. I find it amusing that a neurologist rejects the neurological criteria of death. Doesn't that hurt your practice of medicine when people find out that you reject the very science which you purport to be trained in?

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Adam · [3 weeks ago](#)

If you want to see Rabbi Flaum pretending to read a quote, making it up to fit his ideology, check out this video of him quoting a book at presentation he gave in front of rabbis and doctors. To see his lie exposed look at the pages of the book he is 'reading' from. [http://failedmessiah.typepad.com/failed\\_messiahco...](http://failedmessiah.typepad.com/failed_messiahco...)

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