

## RCA Backs Off Stand On Brain Death For Transplants

42

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*Critics see move as jeopardizing lives of Orthodox Jews; internal study cites 'rabbinic confusion' on issue.*

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In a move termed by one leading critic "an act of anti-Semitism" that may cause the medical community to deny organ transplants to Orthodox Jews, the central body of Modern Orthodox rabbis in the U.S. is backing away from using brain death as the indicator of death.

The move is significant because vital organs can be transplanted from people declared brain dead, but they are not viable if doctors have to wait for the heart and breathing to stop.

Some rabbis have expressed concern that if brain death is no longer the consensus of the definition of death, according to a reading of a new Rabbinical Council of America report, Orthodox Jews may be denied organ transplants by the medical community since they would not be willing to be donors.

They were reacting to an internal study distributed to the RCA's 1,000 members that dealt with the halachic [Jewish law] issues of determining death and organ transplantation.



The 110-page study, which was prepared by a committee of seven rabbis over the last four years, does not take an explicit position on which definition of death to accept. The committee, chaired by Rabbi Asher Bush, included Rabbi Kenneth Auman of Brooklyn and Rabbi Tzvi Flaum, the dean of students at Lander College for Women in Manhattan. The latter two did not return calls for comment.

The report presented the opinion of a majority of halachic poskim [decisors], who say that death is defined by the cessation of breathing and heart beats, and the minority who say brain death represents death.

Rabbi Hershel Billet, a former president of the RCA and spiritual leader of the Young Israel of Woodmere, said he believes the Orthodox community in the diaspora should "embrace the minority opinion because that is the only way the community will be able to donate vital organs and also receive vital organs." And since the majority of halachic authorities and doctors in Israel accept the brain death criteria, it should be supported because "Israel must have a serious organ donation possibility in order to save lives."

Rabbi Billet said he believes the committee acted in a “very serious, sincere, scholarly and responsible” way in researching the subject. And he rejected any suggestion that its study was “an attempt to curry favor with any other faction of the Orthodox community.”

Rabbi Moshe Kletenik of Seattle, president of the RCA, said it was designed only as an “educational tool to empower the local rabbi in assisting congregants in dealing with these issues.”

“We are cognizant of the fact that there are different views on these complex issues, and the RCA is not taking a position,” he said.

In 1991, however, the RCA developed a health care proxy that clearly stated that “brain death” was the halachically accepted criterion of death. It was written by Rabbi Moshe Tendler and was adopted by the executive committee of the RCA.

Shortly thereafter, a majority of the RCA’s Vaad Halacha issued rulings that the committee said caused “confusion and even ill-will.”

Since then, the committee found, “science continues to learn more and progress,” and it said this must be considered in making halachic determinations. It said also that there has been “significant confusion” regarding the rulings of “a number of the greatest rabbis” of the previous generation that the committee sought to clear up. And it said it was offering a “clear and objective reading of existing rabbinic literature.”

Rabbi Kletenik said the committee’s decision not to adopt a definition of death was in keeping with the RCA’s move in recent years.

“Brain death was the position taken many years ago, but over the last several years that has changed,” he said. “When we published our new health care proxy [about a year ago], it was clear we are not taking a position.”

Rabbi Tendler said the committee’s report was “written with an agenda, which was to confuse the issue and push the point that brain death is not acceptable, despite the fact that the Chief Rabbinate [in Israel] approved it and Reb [Moshe] Feinstein approved it.”

Rabbi Tendler is the son-in-law of the late Rabbi Feinstein, a leading halachic posek (decisor) of his generation.

“Their final conclusion is that a Jew who is in need of a heart transplant can receive a heart from a brain-dead patient but he can’t donate his heart if he is brain dead,” he said. “Such a ruling defames Judaism and exposes every Jew to the hatred of non-Jews. It is saying that a Jew can take a vital organ from a non-Jew even though Jews consider him still alive — that his life doesn’t count. How could you justify such a ruling?”

Rabbi Tendler added that some sections of the committee’s study displayed a “stupidity that comes from people who don’t have the slightest idea of medical protocols. ... [This] is an opinion that has to be rejected as anti-Jewish; it is an act of anti-Semitism.”

Robby Berman, founder and director of the Halachic Organ Donor Society here, which encourages organ donations from Jews to the general public, said the committee’s report “clearly has an agenda.”

“It is not an objective review but rather transparently goes to great lengths to try to discredit any and all medical and halachic acceptance of brain death,” he said.

To counter the comments of more than a dozen renowned rabbis who accept brain death and support organ donations, Berman said the committee “attempts to discredit their opinion in various ways,” such as saying they voiced a different opinion in private or later changed his mind or that his signed written opinion was forged.

Such was case with Rabbi Binyamin Walfish, former executive vice president of the RCA. The study said that in late 1983 or early 1984, Rabbi Walfish reported that he had met with Rabbi Joseph Soloveitchek, whose work helped to shape Modern Orthodoxy in America, and that Rabbi Soloveitchik had accepted the “brain death” criteria.

“The Rav [Soloveitchik] was not actively involved in public affairs at that late date in his life,” the study said, but went on to note that Rabbi Soloveitchik’s brother, Ahron, as well as other close relatives, said Rabbi Soloveitchik never would have accepted the “brain

as other close relatives, said Rabbi Soloveitchik never would have accepted the "brain death" criteria.

Asked about that, Rabbi Walfish, who was reached by phone in Jerusalem, insisted that he had in fact spoken with Rabbi Soloveitchik about the issue. He recalled that he had earlier spoken with Rabbi Tendler about a new test that could conclusively determine the brain stem had died.

"My words to him were that Rabbi Tendler says this test is foolproof," Rabbi Walfish recalled. "He said that in these things Rabbi Tendler knows what he is talking about, and I approve it."

Rabbi Walfish added that he had not read the study and did not know where the committee gathered the refuting statements.

"They didn't ask me about it, so how can they refute what I said when they didn't ask me what I said?" he said.

Berman said he found also that the study "omits pertinent medical evidence that supports the neurological criteria of death that was given to [it] by Dr. Noam Stadlan, a neurosurgeon, months before publication, and it also omits critical rabbinic testimonials..."

Stadlan, who is also an assistant professor in the Division of Neurosurgery at Rush University in Chicago, told The Jewish Week that he too found the study "very clearly skewed."

"It gives reasons for a one-sided analysis of halacha, but not a reason for presenting one side of the medical data," he said. "It totally ignores the other side. There have been thousands of patients reported in the medical literature who have been declared brain dead, and not a single patient has ever recovered any function or started to breathe after fulfilling the appropriate brain-death criteria. ..."

"The data supporting the concept of 'brain death' is in fact quite good," he continued, adding, "In an era of transplants and artificial organs, it is not enough to decide on criteria for death. It is necessary to identify which parts of the body and which functions need to be present in order for the person to be considered alive. If a collection of tissue is no longer a human being, it doesn't matter if circulation is present or not."

Asked about the committee's assertion that there have been many medical advances in recent years that must be taken into consideration, Stadlan replied: "A lot of the basic ideas are the same. ... There have been changes, but the underlying assumptions are still the same."

Rabbi Yosef Adler of Teaneck, N.J., said that although the "preponderance of the evidence" presented in the study was against the brain-death definition, he believes the committee did not have an agenda but rather presented an "objective study."

Asked if he is concerned the medical community will reject transplants to Orthodox Jews if the brain-death definition is no longer accepted, Rabbi Adler replied: "It's beyond my control. If that's their perception, there is nothing I can do to change it."

He added that as one who endorses brain death and is a "card-carrying member of organ transplantation," he would hope the medical community realizes that Orthodox Jews are not monolithic on this issue.

Rabbi Avi Shafran, a spokesman for the fervently Orthodox Agudath Israel of America, said in an e-mail that his organization sides with the judgment of "major halachic decisors" who have ruled that "merely 'brain dead' human beings ... are still alive."

"And so, while saving another's life is a most weighty imperative, Jewish religious law, or halacha, does not permit one life to be taken to save the life of another — no matter how diminished the 'quality' of the life of the former, no matter how great the potential of the life of the latter," Rabbi Shafran wrote. "And halacha forbids any action that might hasten death, including the death of a person in extremis."

Asked whether such a position might create anti-Semitism and prevent Orthodox Jews from receiving organ transplants, Rabbi Shafran replied: "I can't say whether being logical here may lead to anti-Semitism. But fear of Jew-hatred, even when warranted, cannot be the only factor in Jewish decisions. More it is, would have to shoulder much of the Torah's

the only factor in Jewish decisions. were it so, we'd have to abandon much of the Torah, God forbid."

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**Comments**

*Submitted by Yussi Rieder (not verified) on Wed, 12/01/2010 - 15:58.*

I was involved in a case where in a large hospital two neurologists for the hospital declared a man "brain dead" and insisted they were going to "pull the plug". After intervention by a number of askonim and a prominent Doctor they did not pull the plug. Three months later the "brain dead" (by the testimony of TWO neurologists) person came out of the coma and began to talk. His quality of life needs improvement but his children have a father. This happened about 6 years ago. Good thing they did not "harvest his organs". I can document this case.

*Submitted by Noam Stadlan (not verified) on Wed, 12/01/2010 - 17:00.*

There is not a single report in the MEDICAL literature of an adult who regained any function or started breathing after being declared dead using ADEQUATE criteria. If indeed this patient was declared dead using ADEQUATE criteria, it would be the first verified, and it should be published. If you would like to send me the information I would be happy to review it([noamstadlanatgmaildotcom](mailto:noamstadlanatgmaildotcom)). There are a number of reports of cases like this in the commercial media. The reason none have been reported in peer reviewed medical journals is the overwhelming likelihood that either ADEQUATE criteria were not used, or there was some miscommunication regarding exactly what was found, and they were not brain dead using appropriate criteria. Although obviously this does happen, it is a rare occurrence

*Submitted by Anonymous (not verified) on Wed, 12/01/2010 - 18:16.*

You write in the article that the RCA is the "the central body of Modern Orthodox rabbis in the U.S." With all due respect I am not sure where you arrive at that statement from. They certainly have the most amount of members but is centrality only defined numerically? Furthermore, a great percentage of those "1,000 members" are retired or non-practicing rabbis. Lastly, the RCA is essentially comprised of both alumni from Yeshiva University and right-wing Orthodox yeshivot. Many of those 1,000 members are indeed not "Modern Orthodox."

The International Rabbinic Fellowship (IRF) is composed of nearly 200 Modern Orthodox rabbis, of which the vast majority are serving in some rabbinic fashion. The IRF most important to this discussion is committed to the highest ethical ideals and would never articulate a stance that in effect stated that non-Jewish human life was not as human as Jewish life. By stating that organs may be harvested from non-Jews who are brain dead but not from Jews in similar situations that is precisely the message being sent.

I think it is time once and for all to stop describing the RCA as either the "central" rabbinic organization of Modern Orthodoxy or to describe it as a pure "Modern Orthodox" institution when an untold number of its membership are alumni from decidedly non-Modern Orthodox institutions.

*Submitted by Anonymous (not verified) on Wed, 12/01/2010 - 18:50.*

There are numerous cases of patients declared 'brain dead' who showed some recovery, and rare cases of patients who had full recovery. Just do a Google search and read about such cases.

*Submitted by RJB (not verified) on Wed, 12/01/2010 - 19:51.*

There never has been a documented case a patient being declared brain-stem dead by two neurologists and after an apnea test and blood flow study. If your story was true the doctors would have published their findings in a medical journal, overturned all of current medical knowledge and they would have become famous overnight.

*Submitted by Anonymous (not verified) on Wed, 12/01/2010 - 22:33.*

I actually was told the RCA had 1,000 rabbis. About five years ago, I bought their list of rabbis and put it in Excel sheet. The actual number was closer to 800. I made random calls. About 10% were dead. Another 10% retired.

*Submitted by false numbers (not verified) on Thu, 12/02/2010 - 10:41.*

At the last RCA conference, the one where they debated about women in clergy roles, they only had a little over 90 people present, a quarter of them also members of the iRF. The entire group that voted was only in the eighties. The RCA is like one of those dying congregations of the 1960's that still claims a thousand members and then wakes up to discover that they only have 200 members, most of whom have retired.

*Submitted by zach (not verified) on Thu, 12/02/2010 - 11:50.*

"Orthodox Jews may be denied organ transplants by the medical community since they would not be willing to be donors."

Patent nonsense. There is no criteria for recipients based on their willingness (or the willingness of some group to which they belong) to donate organs.

*Submitted by Anonymous (not verified) on Thu, 12/02/2010 - 13:35.*

There may be a few Rabbis in the RCA that are qualified to speak to issues of this magnitude, just as there are only a few Rabbis outside of the RCA who are qualified to speak to this issue and the opinions of Rabbis, such as Billet, are completely irrelevant to what is a life and death halachic question.

Rabbi Tendler says that his father-in-law R. Moshe Feinstein "approved it", but R. Dovid Feinstein has never confirmed that as his father's position, despite being asked that question on many occasions. Rabbi Tendler's statements about what defames Judaism are ridiculous. There are great living halachic authorities, including R. Eliashiv, who clearly do not accept Rabbi Tendler's position and do not defame Judaism.

Finally, since the positions of Rabbi Moshe Feinstein and Rabbi Joseph Soloveitchek, Zichronom Livracha, are based on limited (and disputed) testimony, it is difficult to cite their views on either side of the controversy.

*Submitted by Michael Rogovin (not verified) on Thu, 12/02/2010 - 14:05.*

Many people and mass media use the term "brain death" to include anything from a persistent vegetative state (ie: coma) to what is truly brain death or brain stem death: the irreversible end of all brain activity (including involuntary activity necessary to sustain life) due to total necrosis of the cerebral neurons following loss of brain oxygenation. There are documented cases of people recovering from PVS, though it is rare, and AFAIK not a single case of recovery from true brain death (indeed that is why it is called irreversible). Confusion over these two very different medical conditions wrecks havoc on the halachic debate.

According to many poskim, true brain death is the halachic equivalent to decapitation which is a halachically permissible standard of death. This is, I believe, the position taken by Rabbi Tendler, the Israeli rabbinat and those who follow them. Under such a position, mechanically pumping air into the lungs of such a body is a desecration of a met and is not preserving a life. It is hard to let go of hope and say goodbye to a loved one. We are taught to respect life without regard to modern notions of quality. We must be careful of those who rush to harvest organs from dying persons before they are gone. But there does not seem to be a conflict here. The person is gone, the neshama has moved on and it is time to bury the body. If the organs will save a life or help others, then it is one of the highest honors for the person who has died for their organs to be used in this way.