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New York - Does Jewish Law Permit Donating a Kidney? What About Selling One?

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New York - With the recent media attention of the arrest of a Brooklyn man who is accused of trafficking kidneys, one might wonder does the Jewish law permit selling and donating organs.

Renowned doctor and expert in medical law according to the Halacah, has written below article on this subject, and is posted on Aish.com

The Organ Shortage

There is a severe shortage of organs for transplantation throughout the world, including in the most scientifically advanced countries. The U.S. Government reports that each day, about 74 people receive an organ transplant. However, another 18 people die each day waiting for transplants that can't take place because of the shortage of donated organs. (www.organdonor.gov)

While organ transplantation has offered a new life to those whose native organs have failed, it has raised a myriad of ethical questions. Although the issues raised in live and cadaveric donation are different, all organ transplantation questions have three ethical issues that must be clarified: with respect to the donor, the recipient, and society at large.

The Donor

As our discussion focuses on donors who are alive, the issues of desecration of the dead body and prolonging the burial do not apply. The issues that do arise are whether the donor is allowed to wound himself to donate the organ, and whether the harvesting is acceptably safe. In most cases, the prohibition of wounding oneself may be superceded by other considerations, such as medical necessity, or as in this case, saving the life of another.

The consensus of modern poskim¹ (rabbinic legal decisors) is that one may undergo a small risk to save someone else from certain danger or death (see SARS and Self-Endangerment) Nevertheless, one may never obligate or coerce someone to donate an organ, even to save the life of another. Additionally, one may not significantly risk one's own health to save the life of another, and one who does is called a "pious fool."²

Donating a Kidney

With respect to kidney donation, the issue is whether the surgery poses a significant risk to the donor and whether living with only one kidney is an unacceptable risk.

Rabbi Moshe Feinstein,³ among other Rabbinic authorities,⁴ permitted, but did not require, the donation of a kidney to very ill person, considering the act to be a pious one.

Rabbi Shlomo Zalman Auerbach, arguably the preeminent decisor of Jewish law in Israel during the latter part of the 20th century, ruled that "if the seriously ill patient is present (and known to him...) it is certainly permissible for a person to even undergo much suffering, for example, by donating his kidney, to save the life of the patient."⁵

The 12 grown children argued over who would have the privilege of donating a kidney to their father.

Rabbi Yosef Shalom Elyashiv, a leading decisor in Israel, also rules that live organ donation of kidneys is permissible and appropriate, while not an obligation. Rabbi Elyashiv became personally involved in the case of well-known Knesset member Rabbi Avraham Ravitz, who required a kidney transplant. Rabbi Ravitz's 12 grown children argued over who would have the privilege of donating a kidney to their father. In the end, with the guidance of Rabbi Elyashiv, the choice was narrowed down to two sons, with the final decision being made by

means of a lottery.⁶

Dr. Avraham Steinberg, author of the Encyclopedia of Jewish Medical Ethics, encapsulates the four requirements necessary for ethical live organ donation.⁷ He asserts that:

1. surgery to remove the organ must not be dangerous
2. the donor must be able to continue his life normally after the donation
3. the donor must not require prolonged and chronic medical care, and
4. the success rate in the recipient must be high

Some decisors have expressed hesitation to allow live organ donation, concerned that the risk may be too great to the donor. However, as the risk of complication has been greatly lowered, even these opinions might permit live kidney donation. For the sake of thoroughness, we present here the few circumspect opinions:

Rabbi Yitzchak Weiss⁸ was very concerned about both the danger associated with the donor's surgery and the risk of living with only one kidney. As a result, he was inclined to forbid such a transplant, but suggested that kidney donation may be permissible if the donor will definitely save the life of the recipient by his donation. Even in such a case, he remained circumspect.

Rabbi Eliezer Yehuda Waldenberg⁹ is also hesitant to allow live donation, but writes that while it is not a mitzvah, if the expert doctors are sure that there will be no danger to the donor, he may donate a kidney to one who is seriously ill. Dr. Avraham Avraham describes Rabbi Waldenberg as meaning that certainty does not mean "there is no possibility of harm," but rather that "there is a good possibility he will not come to harm."¹⁰

Rabbi Ovadiah Yosef evaluates the objections of both Rabbi Weiss and Rabbi Waldenberg, but asserts that since the true risk of kidney donation is so low, there is a great mitzvah to donate a kidney.¹¹ He even suggests the possibility that donating a kidney to save a life might be required by the Torah's command "not to stand idly by as your neighbor's blood is shed."¹² Rabbi Yosef ends his responsa with the words: "Thus it appears that the standard rule is that it is permitted and also a mitzvah to donate one of his kidneys to save the life of a fellow Jew who suffers from renal failure."¹³

Donating Blood and Bone Marrow

Donation of blood and bone marrow are much easier to halachically justify. Blood and marrow are quickly renewable, and while the donation process is somewhat painful for bone marrow donation (sometimes requiring general anesthesia); both forms of donation are very safe, presenting minimal risk to the donor. For these reasons, these types of live donation are permitted by all.

Rabbi Shlomo Zalman Auerbach felt that it is a mitzvah to be a bone marrow donor to save a Jewish life.¹⁴ Both Rabbi Auerbach and Rabbi Moshe Feinstein ruled that one is permitted to donate blood to a blood bank even without knowing that it will go to save a life.¹⁵ Interestingly, Rabbi Auerbach ruled that a competent minor may agree to donate bone marrow and the parents of an incompetent minor may consent for him.¹⁶

If the potential donor does not wish to donate his blood or marrow, there is a difference of opinion. Some rabbinic authorities feel that one cannot be compelled to donate, even at the cost of the potential recipient's life, while others feel that coercion is permitted to save a life.¹⁷

By contrast, donations of other solid organs which present a significantly higher risk (such as liver lobes and lung lobes) are more difficult to justify.

The Recipient

The perspective of the recipient is straightforward. So long as the donor is permitted to donate the organ, and there is a medical indication for the transplant, the recipient is permitted to accept it, so long as there is no other viable, less dangerous medical treatment available.

The recipient must be capable of following the post-transplant medical regimen.

The recipient must understand the risks associated with transplant, including the need for life-long immunosuppressive therapy, and must be capable of following the necessary post-transplant medical regimen, including being able to afford the anti-rejection drugs.

Judaism has no intrinsic objection to accepting an organ donation per se, but only insists that no prohibitions be transgressed in the process of donation.

Society

Societal issues also come into play with respect to live organ donation, the most sensitive being payment for organs. While society wants to provide incentives to increase the donor pool, incentives that are too persuasive may unduly influence a potential donor to undertake a course of action that is not prudent. Donors are routinely reimbursed for expenses related to donating their organ, but such payment is not usually considered to undermine the purely altruistic motivation of the donor.

Selling Organs

Actual payment for organs themselves is a very controversial topic. Most experts in the field of transplantation, including surgeons and ethicists, have expressed opposition to payment for organs. In the United States, federal law prohibits the sale or trade of organs. The motivation behind the ban is a concern for exploitation of people who would not donate except for the monetary incentive, as is already the case in India. Additionally, there is a fear that the creation of a market in human organs will create an inequity between rich and poor. Those who can afford organs would be able to obtain them, while those who could not afford them would be left without options.

The best solution for society might be a national registry of people who are willing to donate for compensation.

Nevertheless, there are benefits to allowing direct payment for live organ donation. Obviously, it might increase the supply of organs, saving more lives, even if it does skew the distribution of the organs. While allowing compensation for organs would surely encourage only the poor to donate, causing a degree of inequity, in the current situation it is only the rich who currently can afford to buy a kidney on the black market anyway. Hence, the best solution for society might be a national registry of people who are willing to donate for compensation, with the kidneys allocated by the national registry in the same way that is currently done for cadaveric organs. This would hopefully lead to equal distributions to all recipients, including the poor.¹⁸

Advocates of organ sales point out that society does not object to the many people who undertake dangerous forms of employment for monetary compensation (such as miners, soldiers, firefighters and policemen).¹⁹

Another justification of payment for organs is that it would bring an end to the thriving international black-market in human organs, which now currently functions unregulated, with most of the profits going to middle-men, not the poor people selling their organs.²⁰

For society, increasing the organ supply makes fiscal sense. The cost of kidney surgery is far less than the cost of dialysis, which runs about \$50,000 per year. Even paying large sums of money to donors would save money in the long run.

But from a philosophical point of view, there is another reason to consider allowing the sale of organs. It may be a misplaced sense of paternalism that leads us to prevent the sale of organs by the poor. While other less traumatic means of helping the underprivileged would be far better, the reality of the world situation today is that there are millions of people who might welcome the chance to alleviate their poverty by selling an organ.

Society must also protect potential donors from coercive tactics or from being preyed upon due to donor ignorance. Informed consent is an absolute requirement of live organ donation. For this reason, mentally incompetent people who cannot consent to donate in a meaningful way are usually barred from becoming live donors. A particularly interesting question raised by Dr. Steinberg is the case of an incompetent potential living donor whose primary caregiver is a relative in need of the transplant. The potential donor may suffer more from not donating if the caregiver will die for lack of a donor organ!

May Jews Sell Organs?

Taking all this into account, we must ask whether selling one's organs is permitted from a Jewish legal perspective. In the final analysis, there is no intrinsic halachic objection to selling organs, per se. Rabbi Yaakov Weiner, Dean of the Jerusalem Center for Research,

integrates the issues that we have discussed (the problem of injuring oneself, the degree of acceptable risk, and the motivations that might drive someone to sell an organ) when he rules:²¹

One may sell his organs to save a life, if it causes no halachic risk to the donor's life. This would not be subject to the prohibition of injuring oneself, because selling the organ is seen as a great need to save life and also because saving a life is a mitzvah which suspends all others. If however a lifesaving situation does not obtain, for example, selling organs to a bank or for research purposes, then doing so is prohibited. But if the motivation for his selling the organ could be defined as a great need (e.g., avoiding bankruptcy with its accompanying legal and social repercussions), it would be permitted.

This ruling may seem novel, but in reality is very logical. There is no particular reason why receiving compensation for an action which involves risk should necessarily be forbidden either morally or halachically. While most secular experts remain opposed to payment for organs, there is a growing support for the idea. In an excellent article in the British medical journal *Lancet*,²² the authors make several cogent arguments for why payment for organs should be revisited, raising each objection and explaining how it might be solved. A review article in the *Israel Medical Association Journal*²³ also supported permitting payment for organs under tightly controlled guidelines.

The fact that one is being rewarded for an act, does not take away from the ethical value of that act.

From a Jewish legal point of view, the mere fact that one is being rewarded for an act, does not take away from the ethical value of that act. In fact, Rabbi Shlomo Zalman Auerbach ruled that "even if the person selling his kidney is poor (and needs the money for himself) or to pay off his debts, since he obtains this money by saving the life of another Jew, he will certainly be doing a mitzvah. This is true even if he would not have donated his kidney only to save life."²⁴

If we put aside the issue of live organ donation itself, there is a precedent in Jewish law for the selling of organs. Rabbi Moshe Feinstein ruled²⁵ that one may sell one's blood to a blood bank, as mentioned above. While blood is a renewable resource and blood donation causes no long-term disability in the donor, if the donation process for solid organs such as kidneys were to present no other halachic impediments, then the selling of blood and the selling of organs are similar issues.

Simply put, if donating an organ were to be permitted in a given situation, then there is no intrinsic reason why selling it should be forbidden. It is only external societal concerns and fear of exploiting the donor that might persuade us to forbid the selling of organs.

Conclusion

The consensus of Jewish legal experts is that live organ donation is a permissible and noble act, but is not an obligation. Those who are hesitant to allow live organ donation do not object to the concept, but feel that the risk may be too great to the donor. Since the risk of mortality or serious complication from live kidney donation is now so low, even those poskim who had discouraged live organ donation might consider it safe enough to be permitted.

Regarding the sale of organs, while the thought may be distasteful (and we pray for a society that would make donating one's organs for money unnecessary), we are a long way from such a world. If allowing payment for organs with proper safeguards would increase the number of lives saved, then Jewish law would sanction such an approach.

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Dr. Eisenberg continues to lecture around North America and now writes medical ethics articles for Jlaw.com and Aish.com.

Footnotes:

1 Responsa Igros Moshe, Yoreh Deah II 174:4

2 Responsa Radvaz, Volume 3:627 (1052)

3 Responsa Igros Moshe, Yoreh Deah II 174:4

4 See Hershler, Rabbi Moshe, "Where Organ Donors are Considered Mentally Incompetent by the Halacha," *Halacha U'Refuah*, vol.

- 2:122-128, Regensburg Institute, 198; Zilberstein, Rabbi Yitzchak, "May Parents Give Permission to Donate the Kidney of a Child to a Sibling," Halacha U'Refuah, vol. 4:156-57, Regensburg Institute, 1985; Halevi, Rabbi Chaim Dovid. "Donating Organs from Living Donors and Cadavers in Jewish Law," Assia vol. 4:251-259, Machon Schlesinger, 1983.
- 5 Nishmat Avraham, ibid
- 6 Personal communication with Dr. Avraham Steinberg. Rav Elyashiv used the goral of the GR"A, a traditional means of deciding complex questions. See also the Shaare Zedek Medical Center website, http://www.szmc.org.il/index.asp?id=110&top=2&page_id=985
- 7 Steinberg, Dr. Avraham. Encyclopedia of Jewish Medical Ethics; pp. 1095; Feldheim: New York, 2003
- 8 Responsa Minchas Yitzchak, 6:103
- 9 Responsa Tzitz Eliezer, X:25:7
- 10 Avraham, Dr. Avraham. Nishmat Avraham, Yoreh Deah, p. 347 (English version)
- 11 The risk of mortality from live kidney donation is now estimated at .03% with a low rate of serious complications. See Surman, O.S., "Perspective: The Ethics of Partial-Liver Donation," New England Journal of Medicine, 346:1038 (Number 14, April 4, 2002)
- 12 Leviticus 19:16
- 13 Responsa Yechava Da'at, III 84
- 14 Avraham, Dr. Avraham. Nishmat Avraham, Yoreh Deah (Vol. 2), p. 346 (English version).
- 15 Responsa Igros Moshe, Choshen Mishpat 1:103
- 16 See Encyclopedia of Jewish Medical Ethics, page 1096 for a full discussion of blood and bone marrow donation.
- 17 ibid.
- 18 Suggested in personal communication with Dr. Avraham Steinberg
- 19 The true danger of some of these professions was brought into stark relief with the events of September 11, 2001, when hundreds of firefighters and policemen perished in the Twin Towers of lower Manhattan.
- 20 Finkel, Michael, "This Little Kidney Went to Market," New York Times Magazine, May 27, 2001.
- 21 Weiner, Rabbi Yaakov, Ye Shall Surely Heal, p. 155, Jerusalem Center for Research, 1995. Also see Rabbi Weiner's extensive chapter entitled "Transplants from Live Donors."
- 22 Radcliffe-Richards, J et al, "The Case For Allowing Kidney Sales," The Lancet, 351:9120, June 27, 1998 p. 1950-1952
- 23 Rapoport, J., "Legalization of Rewarded Unrelated Living Donor Kidney Transplantation: Suggested Guidelines," Israel Medical Association Journal, 346:1038 (2002)
- 24 Avraham, Dr. Avraham. Nishmat Avraham, Even Ha'Ezer and Choshen Mishpat (Vol. 3), p. 347 (English version)
- 25 Responsa Igros Moshe, Choshen Mishpat 1:103

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