

Jewish Law and Organ Transplantation



By Fred Rosner, M.D., M.A.C.P.

The attitude of Judaism toward organ transplantation has always been a positive one, based on the concept of saving lives, i.e. the lives of recipients dying of organ failure. Thus, heart, lung, kidney, liver, and other life-saving organ transplantation is not only permitted in Judaism but is mandated, based on the supreme value of human life.

While much of the secular ethical system is based on rights (e.g., the right to die, the right to refuse therapy, the right to abortion, etc.), Judaism is an ethical system based on duties and responsibilities. The Jewish tradition, which dates back to Mount Sinai, is perhaps the longest unbroken tradition in biomedical ethics that is still followed by its adherents. Throughout the millennia, Judaism and medicine have marched hand-in-hand, as allies not as rivals. The mainstream of Jewish thought and tradition places an enormous value on human

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life and health, has given human beings an obligation to preserve life and health, and encourages recognized medical therapy with faith in G-d, the Healer of the sick. Jewish law is eminently qualified to apply its reasoned pragmatic rules of morality to the practice of medicine.

Moses Maimonides considers the healing of the sick to be a positive biblical commandment. He states that the precept of returning a lost object to its rightful owner (Deuteronomy 22:2) includes the healing of the sick, i.e., if

organ is removed from a donor and that surgical procedure hastens the death of the donor, it would be considered an act of murder in Judaism, one of the three cardinal sins. There is currently a discussion and a difference of opinion among rabbinic authorities as to whether or not total brain death (i.e. absence of spontaneous respiration) is an acceptable definition of death or whether cardiac standstill is also required.

Eye transplantation (i.e., corneal transplants) is also permissible in Judaism, based on the concept that a

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a doctor is able to restore a patient's "lost" health, he is obligated to do so. Failure or refusal to heal the sick is a violation of the negative biblical commandment of "not standing idly by the blood of one's fellow human being" (Leviticus 19:16).

All legal considerations and prohibitions are set aside for the overriding goal of saving the life of a recipient. These legal concerns, especially regarding the donor, include the possible desecration of the donor, deriving benefit from the donor, delaying the burial of the donor, obtaining permission or consent from the donor or from the donor's family.

The only critical issue is the establishment of the death of the donor. If an

blind person's life is in danger in that he may step in front of a bus or truck and be killed or fall down a flight of stairs and be killed.

In regard to kidney transplantation, the Jewish issue is whether or not an altruistic donor with two kidneys is allowed or required or prohibited from donating one of his kidneys to save the life of a patient dying of kidney failure because of the risk to the donor of the surgery, i.e. general anesthesia and the risk of being left with only one kidney. The answer adopted by most rabbinic authorities is that, if the danger to the donor is much less than the danger to the recipient without the organ, the donor is permitted but not required to donate the organ. If the risk to the

Every year more than five thousand Americans and 100 Israelis die from organ failure. Jews have a lower organ donor consent rate than many other ethnic groups. In fact, while thirty percent of Europeans carry organ donor cards, only four percent of Israelis do.

Out of 80,000 Americans currently waiting for organs, 50,000 are in need of a kidney. It is often assumed that kidney dialysis is a cure-all. However, not only does dialysis severely inhibit living a normal life, but 23 out of every 100 people who begin dialysis die within the first year.

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donor is minimal, as in bone marrow transplantation, most rabbinic opinion requires the donor to donate bone marrow to save the life of his fellow man.

When it will become possible to use animal organs for transplantation into humans (xenotransplantation), Judaism would certainly allow it because of the overriding consideration of saving human lives. After the Lebanon incursion by Israel to eliminate terrorism emanating from that country, the Israeli rabbinate allowed the obtaining and storage of human skin from deceased people for transplantation to burn victims or others who require such transplantation to save their lives.

Because of the growing shortage of donor organs for transplantation, it is important for the Jewish community to be aware of the above discussion and to be ready and prepared to donate an organ to save the life of one's fellow man. In fact, Rabbi Moshe Feinstein, one of the greatest rabbinic authorities of the twentieth century, said that it is a mitzvah (commandment or meritorious act) to donate an organ although it is not one of the 613 biblical commandments.

One final question concerns the permissibility or lack thereof of materially compensating organ donors. The rulings of most rabbinic authorities indicate that financial compensation is permitted in Jewish Law. However, the family must not withhold a cadaver organ because remuneration is refused or not available. The family has no property rights or estate rights to the body of its relative. It is forbidden to let someone die (i.e. the potential recipient dying of organ failure) because one receives no payment to save him. Altruism should be the motivation to donate organs for transplantation. ☆

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