

The Argument Over Organ Donation And Brain-Stem Death

It is unfortunate that The Jewish Press published Avi Goldstein's letter to the editor without checking the veracity of its accusations ("Consult With Rav On Organ Donation," Feb. 21).

Mr. Goldstein claimed: "The material [of the Halachic Organ Donor Society] is written so as to bias the reader in favor of organ donation, when in fact the matter is very controversial." To prove his point, he wrote that Rav Elyashiv forbids organ donation from a brain-stem dead person — implying that our literature omits this information. Yet on page 3 of our 8-page educational brochure, Rav Elyashiv's position is clearly stated.

While the HOD Society pleads guilty to aggressively educating the public about organ donation and halacha, it has taken great pains to fairly present both sides of the organ donation debate. In fact, before publication of its brochure, the HOD Society had the text reviewed by a number of rabbis, including a high-ranking officer (who is opposed to organ donation because of the "moment of death" debate) of Agudath Israel of America. He felt "the text fairly and accurately represents the facts."

Mr. Goldstein claimed Rav Moshe's opinion concerning organ donation is "...very much in doubt." While there are those who claim to be doubtful of Rav Moshe's opinion concerning the "moment of death" debate, his writings in Igros Moshe (Yore Deah 3:132, and 4:54) state that he supported brain-stem death as halachic death.

Furthermore, while the "doubters" do not have direct testimony from Rav Moshe as to his opinion, both his son-in-law Rav Moshe Tendler and Dr. Ira Greifer testified that Rav Moshe conveyed to them his view that brain-stem death is halachic death. In addition, the Chief Rabbinate of Israel in 1986 investigated the issue and concluded that this indeed was the opinion of Rav Moshe. On what factual basis does Mr. Goldstein contradict this written and oral testimony?

Mr. Goldstein stated that organ donation "is premised on the assumption that brain-stem death is halachically death." This is not true. Certain organs, in rare instances, may be recovered even from a person whose heart has irreversibly ceased to function, a transplantation that even Rav Elyashiv could not halachically object to on the basis of the "moment of death" debate. In fact, the unique HOD Society membership card registration form — which Mr. Goldstein is in possession of — clearly does not support one halachic position over the other. It pro-

vides options to be checked off to accommodate the differing halachic approaches. As such, Mr. Goldstein may register for a HOD Society card while side-stepping the "moment of death" debate.

Mr. Goldstein also wrote: "For Mr. Berman to make the blanket suggestion that readers fill out donor cards is highly irresponsible. One should consider such a step only after careful consultation with a qualified halachic authority." Again, our brochure clearly states on page 4: "This brochure is meant as a general overview... One should consult one's rabbi for specific halachic guidance."

Thousands of Americans, and hundreds of Israelis, die every year due to the lack of organ donor consent. If the Jewish people take the obligation of *pikuach nefesh* (saving the lives of others) seriously, they should seriously learn the halachic issues concerning organ donation. Halachic debate among *gedolim* is not an excuse for halachic ignorance among laymen.

I invite your readers and Mr. Goldstein to read the numerous articles about live organ donation, brain-stem death organ donation, and non-heart beating organ donation found at www.hods.org. There, one can register for a HOD Society organ donor card — after, of course, consulting with a *posek*.

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HOD Society

Avi Goldstein Responds: I wish to clarify that my disagreement with Mr. Berman is limited to the harvesting of organs during the time when the brain stem has ceased to function but the heart is still beating. I fully agree that in cases where the donor's life is not in question, organ donation is a wonderful thing.

Regarding brain-stem death, Mr. Berman and his HOD Society present a skewed and simplistic version of the halachic discourse. The society's brochure presents the issue as a debate between the permissive ruling of Israel's Chief Rabbinate (based on the purported view of Rabbi Moshe Feinstein) and the restrictive ruling of Rabbi Yosef Shalom Elyashiv. The issue of whether cessation of independent respiratory function is an unerring indicator of death did not originate in the twentieth century. Earlier authorities, from Rashi (implicitly, in Yoma 85a) to the Chacham Tzvi (explicitly, in Responsum No. 77), insist that for death to be established, respiration must cease and the heart must stop beating. Even if it were true that Rabbi Feinstein took a lenient view, his opinion would not carry the day against earlier authorities.

Moreover, Rabbi Feinstein's clearest pronouncement

on the subject is in Igros Moshe, Choshen Mishpat 2:72, where he declares that removing the heart from a transplant donor is murder. Rabbi Eliezer Waldenberg, in his Tzitz Eliezer (Vol. 17:66), records that in 1986, after the Chief Rabbinate permitted Haifa's Rambam Hospital to perform liver transplants, leading authorities were asked to endorse the view of Rabbi Feinstein, Rabbi Yitzchak Yaakov Weiss of the Edah HaChareidis, and Rabbi Waldenberg himself that such an operation is prohibited.

In response, Rabbi Shmuel HaLevi Wosner wrote: "A heart or liver removal from a sick person who, according to our holy Torah, is still alive, and especially when the heart is still beating, even if no signs of breathing are observed, for the purpose of a transplant is considered murder."

Other sages who oppose the brain-stem death criterion include Rabbi Shlomo Zalman Auerbach and Rabbi Moshe Sternbuch. I refer interested readers to a thorough exposition of this subject by Rabbi J. David Bleich, in Contemporary Halachic Problems, Volume IV, pp. 316-350.

My primary contention is that a potential donor must not decide life-and-death matters by reading a brochure. And while it is true that in the brochure itself ("buried" at the bottom of page 6) the potential donor is told to seek rabbinic guidance, no such caveat appears on the accompanying registration form, which is the most critical part of the brochure.

As I stated in my first letter on the subject, an issue of such gravity is within the purview of only the greatest authorities. There is no such authority on HOD's Board of Directors. On the registration form, the prospective donor is given two options. In the first option, he instructs that if he has suffered brain-stem death, his organs are to be made available for transplant. States the form: "This option allows full recovery of all organs." The second option permits organ transplantation only upon "irreversible cessation of heartbeat." But the form warns: "This option unfortunately minimizes the possibility of organ donations and also severely limits the number of organs that may be recovered."

This reminds me of magazine subscription cards that offer a one-year or two-year term. The one-year price is "good," but the two-year deal is "your best value." G-d forbid that the life-and-death issue of brain-stem death be decided in this cavalier fashion.

We all want to live, and we all want our loved ones to enjoy life as long as possible. But we cannot extend one life by taking another.