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New Front In Fight Over Organ Donation

Advocate seeks
endorsements from reluctant
Orthodox groups.

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An advocacy group's attempt to obtain endorsement from leading Orthodox organizations is putting organ donation — one of the most disputed issues among interpreters of Jewish law today — in the spotlight.

It is also illuminating the deadlock between major interpreters of Jewish law, which has resulted in a strong hesitation by the leaders of Orthodox organizations to take a position on organ donation.

This is on top of a longstanding reluctance among Jews in general, and Orthodox Jews in particular, to consider donating organs.

That view is based on Judaism's traditional care in dealing with the body of someone who has died, and on the belief that only people buried with all their organs will be wholly resurrected when the messiah comes. Experts say that concept has no basis in Jewish law.

"People always ask me 'what is the position of the OU [Orthodox Union] and the RCA [Rabbinical Council of America] on organ donation?'" said Robby Berman, founder of the Halachic Organ Donation Society, the advocate trying to force a decision on this issue.

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"I don't mind rabbis who are against organ donation. But I do mind when leaders refuse to take any position at all," he said.

The issue is more than academic: More than 84,000 Americans are waiting for donated organs to replace their diseased kidneys, liver, heart, lung or and pancreas.

Some 9,000 are in New York State, according to Elaine Berg, president of the New York Organ Donor Network. Many of them, though no one knows how many, are Jews. And Jews are, of course, are among the 16 people who die each day in the United States waiting for a transplant.

At the same time, fewer Jews permit their loved ones to become organ donors than do Americans in general, Berg said, because there is confusion in the Jewish community about whether or not it is permissible.

Between July 1999 and March 2001, the most recent statistics Berg had available, 31 percent of Jewish families approached by her organization consented, compared with a consent rate of 54 percent among Americans in general.

"People's attitudes have not caught up with the changes in medical technology" that can conclude whether there is brain function or not, said Modern Orthodox Rabbi Irving "Yitz" Greenberg, who with his wife decided to donate the organs of their 36-year-old son, J.J., after he was killed by a van while bike riding in Jerusalem in 2002.

Six people, including one who was days away from death, received organs from J.J. Greenberg.

"In the past, cutting the body was a form of defacement, but today, for organ donation, it is a form of respect for the living," Rabbi Greenberg said.

Learning that more than 100 Israelis die each year waiting for organs — even in a country where a high number of traffic accidents could potentially provide many donors — turned Berman from a journalist into an advocate.

He founded the Halachic Organ Donor Society — the Hebrew word *hod* formed from the acronym means "glory" — in De-

cember 2001 with seed money from Stephen Flatow, whose daughter, Alisa, was killed by terrorists in 1995.

When her organs were donated to save others' lives, "it put organ donation on the radar screen of Orthodox Jews," Berman said.

But just as quickly, it fell off.

Since founding HODS, Berman, an assertive Upper East Sider, has been on the road trying to get Orthodox Jews to carry his organization's organ donor card. The card offers a choice between the two sides in dispute among decisors of Jewish law.

Those who carry the card can check off one of two boxes: one that says they are willing to be donors upon the irreversible cessation of brain-stem function, or one stating they will donate upon the irreversible cessation of a heartbeat.

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About 1,000 people now carry the cards, Berman said, including three dozen Orthodox rabbis. According to the group's Web site, www.hods.org, they include prominent New York Modern Orthodox congregational Rabbis Haskel Lookstein, Saul Berman, Marc Angel and Allan Schwartz. They also include Rabbi Yaacov Warhaftig, a judge of Israel's chief rabbinate; Rabbi Shlomo Riskin of Efrat; and the chief rabbis of Haifa and Bet El.

But Berman has run into major roadblocks recently in getting the issue out among the Modern Orthodox. He was slated to speak at several synagogues in London in June, but a prominent Orthodox rabbi there persuaded congregational leaders to revoke their invita-

even though we all feel the pressure to move this forward."

The RCA's Jewish law committee has met only since Passover, according to the organization's executive vice president, Rabbi Basil Herring. One of the first items on its agenda is organ donation, but RCA president Rabbi Kenneth Auman said it is unclear when a decision will be made, or even if one will be made.

"It's hard to say how long the process will take," Rabbi Auman said. "All the rabbis on the committee have their own shuls and communities, so it will take awhile. Whether the halacha committee's job is to provide reports and recommendations, or to set policy of the RCA is not 100 percent clear at this point."

Some close to the issue said it was Rabbis Willig and Schachter who pressured the OU not to endorse HODS, though Blitz denied that.

Thorny Halachic Issue

Jewish legal debate about organ donation is nothing new. Related issues in Jewish literature go back to the Talmud, and the contemporary conflict dates to the 1970s, soon after the first heart transplant and when kidney donation became possible.

The issue's importance extends far beyond the relatively small Orthodox Jewish community, since at the painful moment of having to choose whether or not to donate a loved one's organs, many other Jews fall back on what they understand to be a traditional position prohibiting donation.

"Whenever you come to the issue of dying, everybody becomes religious," said Rabbi Tendler, who is also a medical doctor and who believes that brain-stem death permits organ donation, even if the heart continues to beat. "Even the liberal Jews, when they hear some rabbis say it's not proper, they back off" the opportunity to allow their loved one to donate organs.

"Not to give a donation is very easy. There is an emotional problem in letting a loved one be cut open," he said. "But from a halachic view, here's a chance for a dead man to do a mitzvah. A dead man can do a great mitzvah and can save as many as nine people: two kidneys, a liver can be split in half, a heart, two lungs and two corneas."

According to Rabbi Tendler, the heart can continue to beat when the brain has irreversibly ceased functioning and respiration is supported only by a ventilator. He cited a 1998 experiment in Israel performed for the benefit of leading rabbis there in which a pregnant sheep was decapitated and her body attached to a ventilator. An hour later, a live lamb was delivered by Caesarean section.

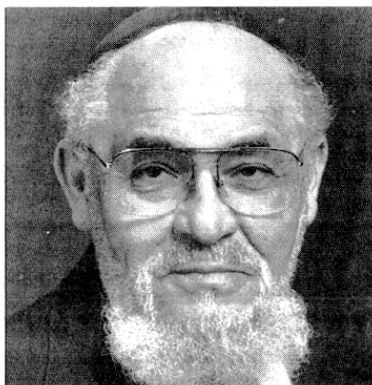
Rabbis opposing organ donation "are absolutely insensitive to their obligation to perform the mitzvah of pikuach nefesh [saving a life]," Rabbi Tendler said. "Not only their mitzvah, but they are interfering with the mitzvah of others as well."

Rabbi J. David Bleich, also a senior member of the Yeshiva University rabbinical school faculty, opposes Rabbi Tendler, saying that the only criterion for determining death is irreversible cessation of the heartbeat. At that point, however, most organs become unusable for donation.

"Brain death is a medical myth and hence a halachic hallucination," he told *The Jewish Week*. In most cases, Rabbi Bleich considers organ donation tantamount to the murder of the donor.

For now he looks to the future, when he hopes this debate over Jewish law will become purely academic.

"Next week, next year, in the next decade, I hope medicine will be able to harvest organs from cadavers," Rabbi Bleich said. "Or better yet, we'll have artificial organs." ■



Rabbi Moshe Tendler, a physician and authority on Jewish bio-ethics, says organ donations after brain death are permitted.



Rabbi J. David Bleich of Yeshiva University says brain death "is a medical myth," and disallows such organ donations.

tions this week.

Berman appeared late last year before the Orthodox Union's executive committee here and asked the members to endorse his mission. The committee voted 15-1 to begin an educational initiative on the subject and decide whether or not to endorse HODS, Berman said.

OU president Harvey Blitz said the vote was just on whether to look into the matter further, however.

Last Thursday night, at another executive committee meeting, the OU leadership decided to defer to an affiliated group, the Rabbinical Council of America, whose newly reconstituted Jewish law committee has just begun to consider what position to take on organ donation.

"At heart it is a halachic issue and the OU is not a halacha-deciding organization, so we're waiting to see what the RCA does with this issue," Blitz told *The Jewish Week*.

But Berman pointed out that the OU has taken positions on medical ethics matters involving interpretation of Jewish law, such as stem cell research.

Blitz said that "Jewish law puts a tremendous premium on extending life and not terminating it prematurely. This really has to be thought through with tremendous care. You can't necessarily rush to get an answer

The RCA does have available an advance health-care directive, which it adopted in 1991 and includes a clause relating to organ donation. It is available on the RCA Web site, www.rabbis.org.

The issue is being revisited because of Berman's efforts to gain the RCA endorsement, RCA leaders said. It is also being reconsidered because some consider the way it is printed in the directive overly broad.

"You have to understand, there is controversy," said Rabbi Heshie Billet, previous president of the RCA, who was approached by Berman over a year ago for the group's endorsement.

"The medical ethics committee that drafted the directive was under the guidance of one individual, Rabbi Moshe Tendler, who believes in brain death. There are other points of view," said Rabbi Billet.

Since the directive was adopted, Rabbis Mordechai Willig and Hershel Schachter, who like Rabbi Tendler are on the senior faculty of the Yeshiva University rabbinical school and are regarded as important interpreters of Jewish law, have said that they do not approve of organ donation, according to sources close to the issue.

Rabbi Willig declined to be interviewed. Multiple messages left for Rabbi Schachter were not returned.