

Done with Brain Death

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Over the last two decades much ink has been spilled regarding the halakhic analysis of whether or not brain-stem death is equivalent to halakhic death. So much has been written, in fact, that from a substantive point of view, little, if anything, new can be said.

The debate, far from being theoretical, has far reaching implications. When the brain-stem dies, if the patient had previously been connected to a ventilator, the heart may continue beating for a few more days before it too dies. Since organs—for the purposes of life saving transplantation—typically need to be recovered before the heart stops beating, we need to know if halakha views a beating heart as a sign of life. If so, organ transplantation would be forbidden since removing the organs would be akin to killing the donor.

Halakhic Analysis

Many, if not all, of the halakhic articles written in English and Hebrew over the past 25 years, both accepting and rejecting brain-stem death as halakhic death, may be found at the website of the Halachic Organ Donor Society (www.hods.org). The primary halakhic sources are *Talmud Yoma* page 85a and *Mishna Ohalot* 1:6.

Institutional Positions

Among the Orthodox rabbinic institutions that take a position on this issue are the Chief Rabbinate of Israel and the Rabbinical Council of

America who both accept brain stem death as halakhic death and support organ donation. The Halakhic committee of the Chief Rabbinate issued its ruling with unanimous consent in 1986. In 1991 the Rabbinical Council of America held a three day convention at Spring Glen, NY where halakhic presentations were made on the issue of brain-stem death.

The RCA convention voted to adopt a resolution accepting brain-stem death as halakhic death and supporting organ donation. [Even though no new medical information has surfaced that was not considered in their deliberations before the vote in 1991, the RCA is currently reviewing its position on this issue.]

This RCA resolution, the article in *The New York Times* announcing the RCA's newly adopted position, and the RCA's Living Will which explicitly promotes heart transplants from people who have died brain-stem death, are available at www.hods.org.

Rabbinic Positions

While the rabbis who reject brain-stem death succeed in making their voices heard, less well-known are the prominent rabbinic figures that accept brain-stem death and support organ donation. They are former Chief Rabbis Avraham Shapiro ז"ל, Rabbi Mordechai Eliyahu and Rabbi Ovadiah Yosef, current Sephardic Chief Rabbi Shlomo Amar, Rabbi Shaul Yisraeli ז"ל, Rabbi Zalman Nechemia Goldberg, Rabbi Avraham Shlush, Rabbi Nachum Rabinovitch, and Rabbi Dr. Avraham Steinberg.

While Rabbi Moshe Feinstein, Rabbi Shlomo Zalman Auerbach and Rabbi Yosef Dov Soloveitchik accepted brain-stem death as halakhic death, their positions are often challenged as being mischaracterized. Instead of revisiting their writings, yet again, I think it important to note the oral testimonies given by people who spoke with them about this issue. (All of the following oral testimonies are available to be seen on video at www.hods.org)

Rabbi Moshe Feinstein

Rabbi Moshe Tendler, Rabbi Mordechai Tendler, Rabbi Shabtai Rappaport, and Dr. Ira Greifer testified that they heard many times Rabbi Moshe Feinstein state that he was of the opinion, and ruled in actual cases, that

a person in a state of unconsciousness and irreversible cessation of respiration, as confirmed by brain-stem death, is halakhically dead—even though the heart continues to beat—and should be an organ donor.

The following is a partial transcript of Rav Dovid Feinstein's emphatic and unambiguous testimony:

My father's position was very simply that the stopping of breathing is death. It doesn't matter if the heart is functioning or not functioning . . . that is the way he explained the *gmorah* in *Yoma*. . . I don't think anyone ever argued that point [when he was alive]. It is very simple—cessation of breathing. I don't think anyone ever said any differently . . . it doesn't matter if his heart is working or is not working. If a patient is available for a heart transplant . . . he would definitely encourage it.

Rabbi Shlomo Zalman Auerbach

Rabbi Auerbach, after initially rejecting brain-stem death, ultimately accepted it as halakhic death after the famous sheep experiment showed that a decapitated (thus 'brain-stem dead') pregnant sheep attached to a ventilator could have its blood pressure and heart beat maintained and fetus kept alive. He did, however, require proof that every cell in the brain was dead. He dictated his position to Rabbi Dr. Avraham Steinberg and had the ruling published in *ASSIA* magazine (no 53-54, 1994). Rav Steinberg states:

Rav Shlomo Zalman Auerbach told me, specifically. . . I have written his words and he checked it and agreed for it to be published, and his position clearly was that the heart, *per se*, is not necessarily a sign of life and death. In other words, a person can be defined as dead even though his heart is still functioning. What is important to Rav Auerbach was brain function.

Rabbi Yosef Dov Soloveitchik

There are students and family members of Rabbi Soloveitchik who claim they never heard the Rav accept brain-stem death as halakhic death. This is not tantamount to asserting that they heard the Rav reject the idea. It is possible that those people simply never heard him state his position on the issue.

Since the RCA had a policy of accepting Rav Soloveitchik's position on

all halakhic matters, Rabbi Benjamin Walfish, former Executive Director of the RCA, turned to Rav Soloveitchik when he was asked about brain-stem death by RCA member Rabbi David Silver z"l.

Rabbi Walfish states:

I met with Rav Soloveitchik in 1983-84 to discuss this concept of brain-stem death and Rabbi Soloveitchik told me personally that he accepted it . . . I'll testify to that. As far as the *gmorah's* definition of death, the Rav felt that it was the stopping of breathing that was the definition of death according to the *gmorah* [Talmud Yoma 85a].

. . . Rabbi Tendler told me about the Harvard criteria and brain-stem death and so on and I went to see the Rav on the subject. . . . He asked me whether Rabbi [Moshe] Tendler is certain that this test [Apnea test] is conclusive without any doubt and that it has been tested and it's accepted as conclusive proof that the brain-stem is dead. I said yes. I offered to have Rabbi Tendler call the Rav and the Rav said "No it's not necessary. If Rabbi Tendler says this is so he knows what he is talking about in these matters and we can accept it." And that is when I wrote the letter to Rabbi [David] Silver explaining to him the procedure and telling him the exact language that should be written into the Pennsylvania law as the definition of death.

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After all is said and done, there remains a halakhic debate as to whether or not brain-stem death is halakhic death. There are enough living halakhic authorities on both sides of the divide that one is forced to recognize a plurality of halakhic positions on this issue as there are with many issues. The Halachic Organ Donor Society offers a unique organ donor card for the Jewish community that allows people to define death either at brain-stem death or at cessation of heartbeat. At either point, one may become an organ donor and help save lives. No matter what your definition of death is, everyone is invited to register for an organ donor card on-line at www.hods.org to fulfill the mitzvah of *pikuah nefesh*. "*Lo ta'amod al dam re'ekha*—Don't stand idly by the blood of your brother." Leviticus 19:16.