

RCA HEALTH CARE PROXY: PROVIDING RESPONSIBLE HALACHIC LEADERSHIP TO OUR COMMUNITY

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What Is A Health Care Proxy?

A person may, Heaven forbid, become critically ill and be physically or mentally incapable of responding to doctors' questions concerning continued treatment. Who will then have the right to make these life and death decisions? If an individual has prepared a health care proxy form, the person named in that form as his proxy would be empowered to make these decisions. If an individual has not designated a proxy, the medical staff will decide.

Obviously, a Jew who wishes such decisions to be made in consonance with *halachah* should appoint a trusted person to be his/her health care proxy and should prepare the necessary health care proxy form. Federal law now requires health care providers to inform patients of their right to a health care proxy.

Religious Jews should utilize this right to assure that their treatment will conform to halachic standards.

The Rabbinical Council of America has issued a health care proxy form, prepared by Rabbi Dr. Moshe Tendler, Chairman of the RCA's Medical Ethics Commission. Members of the RCA have received a copy of the health care proxy, as well as material relating to the medical and halachic issues involved. A Yom Iyun was held on November 21, which included presentations by Rabbi Tendler, and two world-renowned medical experts—Dr. Dominick Purpura, Dean of the Albert Einstein Medical College of Yeshiva University and Professor of Neurology; and Dr. Fred Plum, head of the Department of Neurology of the New York Hospital and Cornell University Medical College. (A videotape of the conference is available from the RCA office.) The RCA has taken the responsible position of responding to a pressing communal need, and providing vital in-

formation to the rabbis of the RCA so that they might guide their congregants wisely.

The Brain-Stem Death Issue

A significant feature of the RCA health care proxy form is that it accepts brain-stem death as the definition of death.

This definition allows for the possibility of transplants of vital organs. Organs may, with the proper permission and safeguards, be taken from brain-stem dead individuals and transplanted to save the lives of others.

When the brain-stem dies, a fact that can be determined with absolute certainty by means of various tests, a person can no longer breathe independently—the brain-stem controls respiration, as well as other vital life processes. Brain-stem death includes respiration death and is irreversible.

At the RCA Yom Iyun, Dr. Purpura and Dr. Plum both indicated that the brain-stem death definition is universally accepted today in the medical world. It is policy in each of the fifty states of the United States. It is specifically defined and can be determined with complete accuracy.

Dr. Purpura, in his lecture to the RCA, pointed out the historical background relating to brain-stem death. Ancient teachers thought that life was centered in the heart and that the brain was useless. By the mid-seventeenth century, researchers discovered that the brain controlled various aspects of the body. During the past several centuries, it became clear that the brain was the center of life, that it controlled all aspects of the living organism. Modern research has demonstrated how each part of the brain controls specific functions, with the brain-stem controlling respiration and other vital functions.

The brain simply cannot be equated with other vital organs. It is unique. Our brain defines who we are.

What Brain-Stem Death Is Not

Much of the confusion surrounding the brain-stem definition of death derives from the popular, unscientific use of the phrase "brain death." If a person is in a deep coma, if his upper brain is not functioning, if he is in a persistent vegetative state—he is *not* brain dead. Death occurs only with the death of the brain-stem, not with the non-functioning of the upper brain.


The Halachic Basis

The brain-stem definition of death was accepted by the Chief Rabbinate in Israel after thorough discussions with halachic and medical authorities. The text of the Chief Rabbinate's decision was published in *Tehumin* in 5746 (1986) and in English translation in *Tradition*, Summer, 1989. Based on this decision of the Chief Rabbis, organ transplants do take place in Israel under halachic supervision. Rabbi Shaul Yisraeli, in evaluating the issues involved, concluded that the decision of the Chief Rabbinate was sound and that the arguments of opponents were halachically unfounded. (*Barkai*, Spring 5747, pp.32-41.)

Rabbi Moshe Feinstein had already accepted the brain-stem definition of death in a responsum dated 5736 (1976). He ruled that when a patient showed no signs of life—e.g. no movement or response to stimuli—then the total cessation of independent respiration is an absolute proof that death has occurred. (*Iggrot Moshe, Yoreh Deah*, Vol.III, no. 132.) If a person cannot breathe any longer due to brain-stem death, then a respirator attached to the person is merely pumping air into a dead body. Even if the heart continues to beat, the person is deemed to be dead. Indeed, after death, it is possible for individual organs to move spasmodically. Maimonides, in his commentary on

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Mishnah Ohaloth 1:6, discusses the case of decapitation, and notes that *pirchus*, movement of limbs after death, is not to be construed as a sign of life. Rabbi Moshe Tendler has referred to brain-stem death as "physiological decapitation." With the death of the brain-stem, the control center of breathing and other vital functions has been totally and irreversibly cut off.

In a letter dated May 24, 1976, Rabbi Moshe Feinstein wrote to Assemblyman Herbert J. Miller, Chairman of the New York State Assembly Committee on Health. Rabbi Feinstein stated clearly, "The sole criterion of death is the total cessation of spontaneous respiration...the total cessation of independent respiration is an absolute proof that death has occurred." Opponents of the brain-stem death definition have attempted to confuse the public as to Rabbi Feinstein's position. Although they are free to disagree with Rav Moshe's *psak*, it is unconscionable that they should try to misrepresent his clear and consistent view, i.e. that brain-stem death is the true definition of death. Rabbi Mordechai Halperin (*Assia*, December 1989) researched the issue carefully and concluded that the evidence was clear that Rav Moshe definitely accepted the brain-stem death definition. This was further confirmed by Dr. Ira Greifer of the Albert Einstein Medical College, who had spent several days discussing the issue in great detail with Rav Moshe. Rav Moshe's acceptance of the brain-stem death definition was also confirmed by others who had discussed the question

with him. In short, the RCA health care proxy is based on the authoritative decisions of Rav Moshe Feinstein and the Chief Rabbinate of Israel. It is based on the very best scientific knowledge available.

Some Implications

Those who reject the brain-stem death definition consider it murder to remove vital organs from a person who is brain-stem dead, but whose heart is still beating. The implication of this position is that organ transplantation is forbidden. A doctor would not be allowed to remove vital organs from the brain-stem dead body; nor would it be ethical for a patient to benefit from an organ which had been the result of "murder." I asked a *talmid chacham* of my acquaintance who opposes the brain-stem definition of death what he would rule if a Jewish doctor asked him whether he could remove the heart of a brain-stem dead body to save the life of another person. The rabbi answered: "let the doctor rely on Rabbi Tendler!" When I pressed the matter, insisting that *he* give the *psak* and not defer to others, he refused to do so. In other words, he publicly went on record opposing the RCA position; and yet, privately, if confronted with a life and death situation he would rely on the RCA position. Rabbi Mordecai Eliyahu, in a recent discussion with the RCA, told us that a number of rabbis who publicly oppose the Chief Rabbinate's ruling, nevertheless send their friends and relatives to receive organ transplants—organs

which can only be taken from a brain-stem dead body. Several leading rabbis from Israel recently issued a brief statement opposing the brain-stem death definition. We have politely requested a responsum, fully argued and reasoned, so that we might study the basis of their *psak*. No reply has been forthcoming to date.

Unfortunately, the brain-stem death issue—which is actually quite clear and straightforward—has become a matter of public controversy and confusion. Since life and death decisions hinge on this matter, it is imperative that the public have lucid and accurate information. People may choose to follow the RCA's decision—based on the finest halachic and scientific authority – or they may choose to reject it. There are concerned and thoughtful arguments which disagree with it, but everyone should at least understand what the case for the RCA is and should not misrepresent it.

People should not intellectualize and abstract the issue, but should see it in personal terms. If a loved one, Heaven forbid, needed an organ transplant in order to live, would you rely on the RCA decision to allow transplants from brain-stem dead bodies? Or would you let the loved one die? Or would you choose the morally repugnant position of allowing the transplant even though you believed that halachically it entailed murder?

The RCA position is not only well-founded on halachic and scientific authority. It is also humane, responsible and compassionate. It is a demonstration of responsible halachic and moral leadership to our community. □

Rabbi Angel serves as Rabbi of Congregation Shearith Israel, the historic Spanish and Portuguese Synagogue of New York City. The author/editor of 12 books and hundreds of articles, he has written and lectured extensively on halachic issues. His most recent books are Voices in Exile: A Study in Sephardic Intellectual History, Ktav, 1991; and The Essential PeleYoetz: An Encyclopedia of Ethical Jewish Living, Sepher-Hermon Press, 1991.)

THE FOLLOWING FORMS ARE AVAILABLE UPON REQUEST:

<p style="text-align: center;">RCA HEALTH CARE PROXY</p> <p style="text-align: center;">Rabbinical Council of America 275 7th Avenue New York, NY 10001 (212) 873-0300</p>	<p style="text-align: center;">THE HALACHIC LIVING WILL</p> <p style="text-align: center;">Agudath Israel of America 84 William Street New York, NY 10038 (212) 797-9000</p>
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