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our sages, and to issue rulings that are true to the halachah without error. I ask this blessing also for my children and grandchildren, and for all my descendants and students as well as for all Torah scholars.

I decided to print my responsa because I only clarify and elucidate the halachah. Other Torah scholars can analyze my reasoning and decide whether they concur with my opinions. As anyone can see, I did not blindly rely on others, not even on the great decisors who preceded me, but critically reviewed and decided for myself what the correct ruling should be, as Rav Akiva Eiger taught us to do.

I ask all who study my rulings likewise to critically analyze my writings. In doing so they will become aware of the halachic process, thereby learning to reach a halachic conclusion, and I will be rewarded for having taught this method. May Hashem grant all of us the gift of being able to study and teach all the days of our lives, and thus to merit the rewards of the final redemption, when Moshiach ben David comes to rebuild our Temple, and the world is filled with knowledge of Hashem

Iggeros Moshe, Yoreh De'ah III:132 (5 Iyyar 5736 [May 5, 1976])

Establishing the Time of Death

Our knowledge of when a man is considered to be [legally] dead is recorded in Talmud Yoma 85a: "If a house collapses [and buries] a man [within], we are required to remove the debris in an attempt to find him, even if it is the Sabbath. When he is found, he is examined *ad chotmo* [up to his nose]." So too does the Rambam rule in [*Mishneh Torah*, Laws of the Sabbath 2:19], as does the *Shulchan Aruch*, Orach Chaim [329:4]. If no [sign of] life is detected when the nose is examined, i.e., no respiratory activity is detected, then [the victim] is deemed to be dead—solely on the basis of his inability to breathe. If [the victim's] respiration is extremely shallow, he

is still regarded as alive; this is determined by placing a feather or a thin piece of tissue paper near his nostrils. If the feather or tissue paper does not move, the victim's death is halachically established.

However, it is necessary to examine [his breathing] many times, as I have already explained in a previous responsum [*Yoreh De'ah* II:174, sec. 2]. There I explained the Rambam's reasoning in Laws of Mourning 4:5, where he rules that death is determined on the basis of respiration, "One should wait a little while, for perhaps [the person who appears to have died has simply swooned or fainted." Once [enough] time has passed without respiratory activity, so that there is no longer any hope that he is alive, the person is considered dead—but only if his condition was carefully observed. He must be observed continually, without even the briefest interruption, so that it can be affirmed that he is not breathing at all. Since it is very difficult to maintain a concentrated effort for any significant length of time without the eye wavering, there is always a possibility that sporadic, shallow respiration still continues. Therefore this examination must be repeated several times. If there is no evidence of independent respiration, this is an absolutely reliable sign.

I refer you also to the responsum of the Chasam Sofer [Yoreh De'ah 338] where the principle that death is determined by the absence of spontaneous respiration is explained in great detail.

The preceding discussion refers to a terminally ill patient who is not on a ventilator. Some people, however, do require the aid of a ventilator. The ventilator inflates the lungs even though [the patient] is actually dead.

[Halachically,] breathing of this kind is not regarded as a sign of life. The "breath of life" test requires that the patient breathe on his own. Breathing by means of a machine does not satisfy the halachic definition of respiration, and therefore the patient is considered to be dead so long as the other criteria are met. If no sign of life is apparent to the eye, and [the patient] is absolutely unresponsive to any stimulus, such as a pinprick, [he] is in coma, but it is still forbidden to

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remove the respirator for fear that he may be alive and this will kill him. But when the ventilator is being serviced or the oxygen replaced [if oxygen tanks are used rather than having oxygen piped in], it is possible to observe him for a period of approximately fifteen minutes [while the ventilator is off because the tank is being replaced]. If there is no evidence of independent respiratory activity during this period, it is certain that [the patient] is dead. If [the patient] shows any sign of respiration, he should be reintubated, and the machine allowed to assist him until the point [now referred to as apnea] at which he is totally unable to breathe independently.

The above halachic considerations apply to a patient who is deteriorating from a chronic debilitating disease. In a trauma case, however, such as an automobile accident or a fall from a window, [the victim] may not be breathing because of temporary nerve damage. Moreover, as I have been informed by my son-in-law, barbiturate poisoning can mimic death. In situations of this kind, the patient should be tested by means of the nuclide scan test. If it is determined that the blood circulation does not reach the base of the brain, it is obvious that the brain must have begun to show the physical signs of destruction referred to as lysis. When the brain shows extensive lysis, it is as if the head had been removed from the body or the person decapitated. Therefore, the nuclide scan should be employed as an confirmatory test in cases of traumatic death. Continued dependence on the ventilator should not be relied upon as a basis for declaring the patient dead until after this test has been performed.

[The nuclide scan] will determine whether there is any connection between the brain and the rest of the body. Although [the patient] is not breathing, he should be intubated, even for an extended period, until the nuclide scan can be performed to determine whether there is any connection between the brain and the rest of the body.

Likewise, I accept your suggestion that in all cases it must be determined whether the patient is under the influence of drugs, for the effect of high dosages of certain drugs mimics brain-stem death. [A chromatography test should be done on

a drop of blood to determine whether there are any drugs in the patient's system that could have caused his comatose state.] Only then is it possible to reevaluate the patient to see whether there is any independent respiratory activity. If such activity is detected, even if [the patient] can only breathe with great difficulty—i.e., his breathing is severely labored—he must be considered to be alive until the requirements discussed previously are met. [The requirements are] evidence of brain-stem death as evidenced by total cessation of respiration, and a break in the connection of the brain to the rest of the body as evidenced by the total cessation of all independent respiratory activity.

A New Teshuvah
[Rosh Chodesh Kislev 5746 (Nov. 14, 1985)]

Criteria for Determining Death

[This teshuvah is addressed to Dr. Elliot Bondi, grandson of that great Rav, the Gaon Rav Yosef Breuer, of blessed memory.]

My grandson, Rav Mordechai Tendler, has spoken to me at length about many of the doubts and concerns you have raised because of the New York State appellate court's ruling that brain-stem death should be regarded as an alternative criterion for determining death. [Pulmonary and cardiac criteria of death, when the heart ceases to beat and the patient is no longer breathing, have always been recognized.] The need for a ruling concerning neurological criteria of death arises because of the advent of the ventilator, a machine that allows for a patient to be perfused with oxygen even after brain-stem death has occurred—in other words, when the brain is no longer able to function because of the loss of oxygen to the brain and the subsequent destruction of critical brain cells involved in respiration. My son-in-law, Rav Moshe David Tendler, שליט"א, has explained to me that the judges of the secular court accept the so-called Harvard criteria for

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determining irreversible coma. In my opinion, these criteria are in agreement with the halachah. When they are met, it is as if the patient had been decapitated, for his brain shows actual destruction or lysis. When a patient is neurologically unresponsive to all stimuli and, in addition, has lost the ability to breathe on his own, he is unquestionably dead, as I explain in my responsum in *Iggeros Moshe*, Yoreh De'ah III:132. Under the Harvard criteria, however, it may occur that individual hospitals, or even the country as a whole, will begin to consider as dead individuals who are still alive according to halachic standards. I refer to persons who have suffered cerebral destruction, i.e., destruction of the upper brain, but are responsive to the stimuli involved in the breathing process and, therefore, must be provided with all medical care. If you should be legally required to cease treatment of such a patient, including removing the ventilator, do not personally do anything to hasten the patient's death. This applies even if [abandoning the patient] is inevitable because others will comply with the order if you refuse. Resign from the case if the hospital's regulations require you to remove the ventilator from such a patient.[1] The hospital's administrators can then assign the patient to someone else if they so desire.

We cannot impose our laws on others, and therefore [decisions of this kind pertaining to] non-Jewish patients may be governed by their own laws. With a Jewish patient, however, the obligation to refrain from hastening death affects not only the physician but the entire Jewish community. They must do everything in their power to prevent the hospital from hastening the patient's death. Even a *goses*, i.e., a patient *in extremis* and whose death is uneqivocally imminent, is still halachically alive, and the laws [prohibiting] murder apply to him. I am aware that caring for a patient in a hospital involves significant expense. Nevertheless, even if treatment is futile, a patient must not be subjected to any procedure that would hasten his death. Similarly, any change in treatment that might cause death is prohibited. If you sense that providing greater care to a Jewish patient would be understood as favoritism to the Jew and neglect of the non-Jew, the same rules apply to the non-Jew as well. It is only our reluctance to impose our standards on adherents of another religion that allows us to differentiate between Jew and non-Jew. I end this responsum with my fervent prayers that we shall soon see the fulfillment of the promise of Hashem, "I am the Lord thy healer," upon the advent of Moshiach.

1. In keeping with the legal opinion expressed in the Cruzan case in 1990.

Iggeros Moshe, Choshen Mishpat II:72 [Rosh Chodesh Adar II, 5738 (March 10, 1978)]

Concerning Heart Transplants

[This teshuvah, written on Rosh Chodesh Adar II, 5 March 10 (1978), was addressed to Harav Kalman Kahana, of Chofetz Chaim Kibbutz in Eretz Yisroel, one of the famed *talmidim* of the Chazon Ish. The question concerns a patient referred to in Israel as a *tzemach*, i.e., a person in a persistent vegetative state (p.v.s.). The questioner asked whether a donor organ from this patient might be transplanted into someone in need of a healthy heart. At the time of the writing of this responsum, there was a moratorium on cardiac transplants in the United States because of the unsuccessful results of such operations.]

Regrettably, my physical health caused me to delay answering your question for a few days. However, I did send a short telegram to say that in my opinion [a heart transplant] would involve a double murder, killing the recipient as well as the donor, as I already stated in 1968; see *Iggeros Moshe*, Yoreh De'ah II:174.

It would surely be unwise to engage in extensive analysis, since people may make the mistake of thinking that some way exists to permit this action. I write now to clarify the matter further.

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The information [on which my decision was based] was provided by my son-in-law, Rav Moshe David Tendler, שליט״א, who reviewed the medical journals to date and concluded that there is no basis for assuming that the recipient's condition would be improved [by a transplant]. All the evidence indicates that no [transplant recipient] survives for [even a few] years, and those who survive for less than a year suffer months of intense pain and anguish. In America transplant operations are forbidden, except for one state [California], where one doctor [Dr. Shulman of Sanford University] has been permitted to continue his work, although I do not understand the reason for this.[1]

Many other countries have forbidden heart transplantation on the grounds that it is equivalent to murder [of the donor] and provides no benefit to the recipient. Therefore, I believe that the doctors were not truthful with you when they said that the heart transplant would result in an improvement of the recipient's condition. The donor's status is also in question, for they have not proven that he was dead [when the heart was removed]. The survey of the literature showed that all recipients suffered massive strokes within a few weeks [of the transplant] and died within a few months. Doctors who undertake heart transplants are in violation of the prohibition of murder, since they are unable to demonstrate that the transplantation procedure is successful.

Iggeros Moshe, Choshen Mishpat II:73 [16 Iyyar 5742 (May 9, 1982)]

Short-term Prolongation of Life

[This is a seminal responsum presenting the halachic view on most issues of concern in the care of the critically ill. Addressed to several physicians, it is written in a succinct

1. By attending to the problem of immunological rejection, which others had neglected, Dr. Shulman ultimately proved that successful heart transplants were possible.

style, for the recipients were all physicians, well trained both in medicine and in Torah study. However, for the general Torah community, some background information is of critical importance lest the translation be a source of confusion and of misapplication of the halachic principle discussed therein. To fully understand Rav Feinstein's halachic reasoning, those studying this teshuvah should read the article entitled "Quality and Sanctity of Life in the Talmud and the Midrash" for orientation.[1] Likewise, the article on brain-stem death in halachah, which contains all the background and source material necessary for understanding Rav Feinstein's halachic ruling, is a necessary accompaniment to this teshuvah.][2]

I regret that ill health has delayed my responses to the questions you pose, all of which raise issues of the utmost importance if the care of the critically ill is to be administered in accordance with Torah law.

1. Are there patients who should not be treated so as to prolong their lives for a little while?

This question obviously refers to a terminally ill patient who can live for only several weeks or months, at most. Such patients often should not be treated. The key concern is their quality of life. In cases of intractable pain, we have clear instructions from the account of the death of Rebbe, the compiler of the Mishnah, in Talmud Kesubos 104[a]. The Talmud describes how his students prayed that he would remain alive. His maidservant, seeing the great suffering he was enduring, prayed that the angels above would meet with success [in their prayers for Rebbe's soul to return to Heaven, [so that the rabbis' prayers for his continued life] would not be accepted.

In order to disrupt the rabbis' prayer service, the maidservant knocked down a large urn. This distracted the students,

1. *Tradition*, vol. 28, no. 1 (Fall 1993) pp. 18–27 (co-authored with Dr. Fred Rosner), reprinted below as an appendix.
2. See "Anatomy of a Teshuvah," p. 36f., below.

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