

**Rabbi Dr. Moses Tendler spoke on**

# **"The Ethics of Organ Donations"**

**Monday, December 4, 1995 at 7:45 pm**

Oolie Conference Center  
Aidekman Campus  
Whippany, New Jersey  
901 Route 10 East (Just east of Route 287)

Minimum Contribution: \$10.00 per person (all proceeds donated to the [Alisa Flatow](#) Memorial Scholarship Fund; students with school ID admitted free)

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Rabbi Tendler is the son-in-law of the late Rav Moshe Feinstein, and is a recognized authority in the Orthodox Jewish community. He is a Professor of Talmud \*and\* of Biology at Yeshiva University.

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Below is the text of notes taken by Dr. Mark Grebenau, who was in attendance.

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[Note: These are notes which I took during the lecture, and later expanded upon; any errors are the responsibility of the transcriber; I have added my own comments in brackets. This should not be taken as the basis for a decision by an individual: a rabbinic authority should be consulted.]

Ignorance remains as the greatest barrier to more organ donation by Jews; 10 die each day for want of an organ. Unfortunately, even amongst the irreligious, religious fervor comes out when confronting death. Ignorance of the actual halacha (religious law) is the greatest enemy of organ donation.

There is an obligation to provide an organ, providing there is no risk to the donor. Just as one has no right to refuse life-saving therapy, one has no right to withhold vital tissue, if life is at stake. Halacha does not obligate donation from a live person if there is risk (although it remains a praiseworthy thing to do); likewise, a living person is not permitted to make a donation at all, if donation is in itself life-threatening. Accordingly, some organs can only come from a dead donor who still has "vitality." Living donor's life comes first; thus, there are still problems with liver and lung lobe donation; for procedures like kidney and bone marrow, voluntary uncoerced consent must be obtained, free from family sanctions. If there is a matched kidney or bone marrow donor, the means to obtain such consent is to tell the potential donor, and don't tell the family; if s/he refuses, then the family can be told that the person was not a match, and this avoids repercussions.

The issue of motivation - can a donor be paid? Others (e.g., doctors and hospitals) do not provide services free; this is, in some countries, a matter of debate - "commodification" of tissues. Does this payment destroy the sanctity of human life? Currently, tissues like blood, sperm, and ova are paid for! The future might involve the financially well off, but physically sick, buying organs from the needy who are physically well. [My impression: this is a moral issue, but not a halachic one]

Cadaveric donation boils down to a question of brain stem death: medullary brain contains the breath control area, and defines neurologic death. Old definition was thought to be cardio/pulmonary death: but CPR contradicts this narrow definition, since it is effective, and is obviously not resurrection. Cardio-pulmonary status must prevail long enough for the brain to die

obviously not resurrection. Cardio-pulmonary stasis must prevail long enough for the brain to die. Brain is very sensitive to anoxia - structural changes occur within seconds. Accordingly, death ALWAYS meant brain death - it was simply defined in terms of cardiopulmonary activity before more sophisticated means of determination were available. The brain cannot be dead and body alive: "brain death" is thus an unfortunate misnomer, and "life support" should properly be called "physiologic support". The Talmud confirms that decapitation is the same as death, even if movement continues, and brain stem death constitutes physiologic decapitation.

Rabbi Moshe Feinstein (Rabbi Dr. Tendler's father-in-law, and a recognized authority in Halacha of the last generation) objected to the term "brain death;" Rabbi Tendler noted that there is pressure now to change the definition from that of the Presidential Commission - "...cessation of all function, including brain stem..." - which is consistent with the halacha, to cerebral death with a FUNCTIONING brain stem, which is not acceptable.

Determination of brain stem death: check cranial nerves, plus apnea testing. By setting the respirator to detect respiratory effort, it can be determined whether the brain stem is functioning without requiring disconnection. In addition, one can hyperoxygenate the donor with 100% oxygen for 20 minutes; then place on passive oxygen (without the respirator) and stop the test when CO2 concentration in the blood hits 60 mmHg; this is an adequate test of apnea without causing risk to the potential donor (if s/he is actually alive) or damaging the organs. One other test: brain scan negative twice in 24 hours. No mistake has been made using these techniques - 30,000 cases in Sweden were accurately determined to have brain stem death with no exception. In those determined to have died, heart invariably stopped within 5 days.

Issue of mutilation (nivul ha-mes): Torah does not require one to do something painful (e.g., emotionally painful to the family of the donor) . But how can saving a life be painful? Pikuach nefesh (preservation of life) takes precedent. This is not nivul ha-mes: it is, in fact, a unique way in which a person can do a mitzvah (literally, "commandment"; more popularly, "good deed") after one is dead!!

How can a religious Jew become an organ donor? Simply add a line to the form on the back of the driver's license: "...with approval of my rabbi." Attach name and address of the rabbi (at least one), and also include the number of the bioethics commission of the Rabbinical Council of America (RCA): 212-807-7888. Or, utilize the Health Care Proxy Form (available from the RCA). [Rabbi Tendler dramatized this by pulling out his own donor card, which lists his son - a physician - as a person to be consulted in case of his demise]

In answer to questions from the audience:

1. What is the Biblical source for organ donation? Three verses: "And you shall surely heal" (Exodus 21:19) "And you shall restore (a lost object, which surely includes health)" (Exodus 23:4) "You shall not stand on the blood of your fellow" (Leviticus 19:16)
2. Is cornea donation permitted? Yes; blindness is equated to death in the Talmud.
3. How about xenotransplantation? Man is not permitted to cause needless pain to animals, but man is given dominion over them. And if they cannot be eaten, what other use is there for pigs other than to make footballs? [Rabbi Tendler was being humorous, but the message was clear - there is no halachic problem with xenotransplantation from any species]
4. What if there is not enough time to consult a rabbi (per the consent form)? The organ should be used! If life is at stake, a person who delays in order to ask a question is party to the death of a human, which is forbidden.

The following article was available at the lecture:

Berkowitz, Adena K., "Jews and Organ Donation: All Take and No Give?" MOMENT - The Jewish Magazine for the 90's, August 1995, p. 32.

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Many thanks to Dr. Grebenau for providing these notes to TransWeb!