# Brain Death is Not the Final Word

BY LEON ZACHAROWICZ, MD

The front-page article in last week's edition of *The Jewish Star* highlighted a Bronx conference on organ donation and brain death, and noted that the Halachic Organ Donation Society (HODS) is now a "strategic partner" of the New York Organ Donor Network (NYODN). It stated that rabbis who complete this seminar will "receive official recognition from the HOD Society and NYODN recognizing them as official rabbinic consultants for the transplant community." The implications of this certification remain unclear. In this same article, HODS founder Robby Berman claimed, "Ultimately this will facilitate donations and save lives."

Yet, if brain death does not fully meet the time-honored halachic criteria for death, some of the acts integral to organ donation will also end lives: the lives of the donors!

The article also contains the following provocative statement by a prominent rabbi: "Unfortunately, our Rabbanim are not coming out strongly enough to let (people) understand that just as it's an obligation to wear tzitzit and make kiddush, it is also an obligation to save a human life."

If this rabbi was referring to donation from brain-dead individuals, this argument is a strawman, and it's time to knock it down.

No one denies that the saving of a life is one of the greatest of all mitzvot, or commandments. Indeed, there are thousands of Jews actively involved in the saving of lives in our community alone, every single day — including those valiant members of Hatzolah, physicians, nurses, and myriad other paid professionals and volunteers who act under the ethical guidance of our community rabbis, including Rabbi Dovid Weinberger, halachic authority of our local Hatzolah.

Yet, for the large majority of Orthodox rabbis across the spectrum of Orthodox Jewish belief, including world-renowned scholars, and leaders of our religious community, such as the distinguished Rabbi Tzvi Flaum, brain death is not considered halachic death, and the removal of organs from such a person constitutes an act akin to murder.

Even for those relatively few scholars of note who agree that brain death constitutes halachic death, what actually occurs in the hospital setting may be very different than what should occur. Physicians under all sorts of pressures, and under no halachic supervision whatsoever, may very well cut corners and declare someone dead before even the brain death criteria have been achieved. Furthermore, the criteria have changed over the years to eliminate, in many instances, confirmatory tests.

The Halachic Organ Donor Society proclaims itself to be orthodox and indeed halachic — yet its board of directors contains only one person with rabbinic ordination, Rabbi Dr. Eddie Reichman, a practicing physician. I cannot recall a situation such as the current one, wherein an Orthodox organization whose leaders are primarily not rabbis is apparently trying to change the behavior of masses of believing Jews on the basis of an appeal not to any of the leading rabbinic authorities but rather to attendees at a seminar. This seminar, which offers inducements to attendees, is sponsored in part by NYODN, a non-Jewish, federally mandated organization, whose avowed aim is solely to increase organ donation from the Jewish community and other ethnic communities.

When Rabbi Shlomo Zalman Auerbach, of blessed memory, was asked questions about this same topic, he spent many hours poring over the Gemara and responsa, and discussing nuances with leading physicians and colleagues. Although he seemed initially in favor of defining brain death as halachic death, subsequently Rabbi Auerbach — like many other halachic authorities, living and dead — maintained that in a brain-dead patient, only with cessation of heart beat can death be defined.

The reasons for his final halachic position, issued shortly before his death, and co-signed by other leading scholars, are beyond the scope of a newspaper article. Indeed, at least one of the topics that was to be highlighted in this public seminar is a topic whose sensitivity is such that scholars such as Rav Yosef Ber Soloveitchik, of blessed memory, would undoubtedly have said it was not for public discussion.

Interestingly, neurologists with whom I have spoken about the origins of the notion of brain death have told me that this classification came about for prognostic reasons and to enable transplantation. That is to say, the reasoning went as follows: in patients who are brain dead, the prognosis for "significant" recovery is essentially nil, so why not use their organs to benefit others?

Indeed, even pro-brain death proponents, such as my neurology colleague and former teacher, the renowned ethicist, Rabbi Dr. Avraham Steinberg, have noted that the definition of brain death as defining death is somewhat arbitrary.

Due to the complexity of this situation, Jewish academic and halachic journals have seen many articles, including recently, on brain death and its implications. Leading scholars at Yeshiva University, such as Rabbi Herschel Schachter and Rabbi J. David Bleich, and virtually all scholars in the haredi sector, do not accept brain death as meeting the criteria for death from a Jewish viewpoint.

The venue for such a complex decision is clearly not a seminar of physicians and like-minded rabbis, but rather the time-honored process by which halacha is decided: via the give-and-take of halachic responsa, in the rabbinic courts, and via meetings with world-renowned sages. Students of Jewish law, and all believing Jews, who engage in this process then follow the sages' directives, no matter how unpleasant, inconvenient, or retrograde they might seem. Indeed, since 1998, I have helped run just such sessions, in Israel and throughout the world — with the participation of the chief rabbis of Israel and many world-renowned halachic authorities - and Rabbi Reichman himself participated in one of them (www.j-c-r.org, click on 'yarchei kallah').

As a practicing neurologist, I am pained, perhaps even more than the rabbi who criticized his colleagues for "not coming out strongly enough," by the discrepancy between secular ethics and the viewpoint of most physicians on the one hand, and on the other hand the halachic opinion of so many of our leading sages. I recall leaving my house shortly after my older son's bris, some 15 years ago, to travel to Manhattan for a conference, featuring the renowned neurologist Prof. Fred Plum, Rabbi Flaum, and others, on this very topic.

The apparent struggle that all observant Jews face is whether to follow our leading sages even if, as Rashi notes, when they say "left" it appears to us to be clearly the opposite — whether in community kashrus disputes involving Cornish hens or in international disputes involving truly life-or-death decisions such as the definition of death.

But, for most believing Jews, that is not really a struggle.

*Dr. Zacharowicz, a board certified neurologist with an office in Hewlett, is co-founder of the annual, international Yarchei Kallah Seminar on Jewish medical ethics (www.j-c-r.org).*