

The Ethical Imperative Of Organ Donation

A surgeon asked an Orthodox patient, “Why are your people willing to take organs but not donate them?”

BY KENNETH PRAGER | August 30, 2016, 10:27 pm |

I recently received an office visit from an Orthodox Jewish patient in my pulmonology practice whose life was saved with a lung transplant. There is nothing more satisfying and dramatic than seeing someone who not long ago was suffocating to death from an incurable lung disease return to my office without the need for oxygen, radiating health and life, accompanied by his or her overjoyed family. These rejuvenated patients have been given the gift of life-saving organs from a brain-dead patient whose family allowed the donation.

I must confess, however, that as an Orthodox Jew, my own joy at seeing these patients return from near-death is tempered by a nagging sadness, anger and frustration that some rabbis would never allow one of their own flock, if they were brain-dead, to save lives by becoming an organ donor. This is because these rabbis reject brain death as being inconsistent with halacha, or Jewish law. For them, death is defined halachically as the permanent cessation of one's heartbeat.

Simply put, brain death is when there is death of the entire brain, including the brainstem, usually because of a catastrophic stroke, bleeding in the brain or brain trauma. The patient is totally unconscious and has stopped breathing. Such patients are sustained by a ventilator that breathes for them. Their heart continues to beat. These patients have zero chance of recovery, and the hearts of all such adult patients stop beating despite the respirator within a few hours, days or weeks after brain death is declared. Because such patients are legally dead, removing their organs for transplants is not considered murder: the patients are dead when the organs are removed. According to some rabbis, these patients are alive when the organs are retrieved, and yet they permit observant Jews to benefit from organs retrieved from patients they say have been murdered.

The unwillingness of a significant portion of the Orthodox rabbinate, mostly on the right of the religious spectrum, to accept brain death as halachic death has resulted in some terrible consequences.

First and foremost is the fact that patients in need of organs have died and will continue to die for want of a heart, liver, lungs or kidneys from a brain-dead Jewish patient whose rabbi prohibits organ donation. Up to six patients in need of an organ may die for every brain-dead unrealized organ donor. About 30 Americans die every day while on the waiting list for a transplant. The

rejection of brain death by so many Orthodox rabbis thus has deadly consequences for those — both Jews and non-Jews — in need of organs. Just because those patients who die are anonymous, the tragedy of their preventable deaths is no less painful.

Another consequence of the refusal of much of the Orthodox Jewish community to allow organ donation from brain dead patients is the disgrace it brings to the Jewish community. An Orthodox patient I know was asked gently by the surgeon who performed his life-saving organ transplant: “Why are your people willing to take organs but not donate them?” I know the surgeon in question. He is a decent and empathetic man, but he reflects the feeling of many people in the healthcare field who, for politically correct reasons, are uncomfortable raising these sensitive issues.

Finally, there is something inherently indecent and unfair about allowing others to die for want of life-saving organs that could be donated, but actively pursuing such organs when one’s own life is at risk.

There is a split in the Orthodox rabbinic community as to whether brain death is halachically valid. There are notable halachic decisors on both sides of the question.

Rabbi Professor Avraham Steinberg, a distinguished neurologist and Torah scholar who is the editor of the three-volume “Encyclopedia of Jewish Medical Ethics,” has written a book outlining the issue and concludes that according to halacha, “respiratory brain death” defines the death of a person. This is the position of all current and past chief rabbis of Israel. It is based on the writings of numerous respected poskim [decisors], among them Rabbi Moshe Feinstein (“Respiratory-Brain Death,” published by “Merhavim,” Jerusalem, 2012). Eighty-five percent of the Orthodox rabbis on the website of the Halachic Organ Donor Society (hods.org) accept brain death. However, there are virtually no rabbis from the charedi community on the list of this society that has saved so many lives by encouraging organ donation from Orthodox Jews. And even in the Modern Orthodox world of Yeshiva University and the Rabbinical Council of America there has been an unfortunate but definite trend over time away from the acceptance of brain death.

Throughout history rabbis have weighed the societal consequences of their decisions when considering a halachic issue. The question of brain death is not an academic one. Based on the halachic acceptance or rejection of this concept, people will live or die. In addition, the reputation of Jews among their neighbors is not a trivial consideration. Is it not a chillul Hashem, a desecration of God’s name, for it to be common knowledge in the medical community that most Orthodox Jews will assiduously do what is needed to obtain vital organs from brain-dead patients but will refuse to donate their organs to save the lives of others?

In the Talmud Yerushalmi the story is told of Rabbi Shimon ben Shetach, who went beyond halachic requirements and returned a precious stone discovered on the donkey he purchased from a non-Jew. The Talmud states that he did so because of the importance he ascribed to having a non-Jew say, “Blessed is the God of the Jews.” Compare this to the situation today where because of a halachic stringency, not shared by learned and respected Orthodox poskim, people die for want of vital organs that a brain-dead Orthodox Jew might have donated. One wonders what the righteous Rabbi Shimon would have said about this shameful state of halachic affairs.

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