RESOURCE PACKET

Lecture on Brain-Stem Death
&
Organ Donation in Jewish Law

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Historically, death was not particularly difficult to define from either a legal or halachic standpoint. Generally, all vital systems of the body—respiratory, neurological and circulatory—would fail at the same time and none of these functions could be prolonged without the maintenance of the others. Today, with major technological advances in life support, particularly the development of respirators and heart-lung machines, it is entirely possible to keep some bodily systems “functioning” long after others have ceased. Since we no longer face the inevitable simultaneity of systemic failures, it has become necessary to define with greater precision and specificity which physiological systems are indicators of life and which (if any) are not, especially in light of the scarcity of medical resources and the pressing need for organs for transplantation purposes. In recent years, the concept of “neurological death” commonly called “brain death,” “whole brain death” or “brain-stem death” (and, sometimes, inaccurately-termed “cerebral death”) has gained increasing acceptance within the medical profession and among the vast majority of state legislatures and courts in the United States. Whether this standard comports with halachah is a matter of great controversy among rabbinic authorities. The purpose of this article is not to take sides nor in any way resolve the halachic debate. Its purpose is more modest. This article will attempt to explain to the general reader: (1) what is “brain death” and how it is clinically determined; (2) some (not all) of the major sources on whether it is an acceptable criterion of death from the standpoint of halachah; (3) the viewpoints of contemporary authorities and (4) the halachic and legal ramifications of one view or the other.

What Is “Brain Death” And How Is It Diagnosed?

The concept of total “brain death” as an alternative to the older definition of irreversible circulatory-respiratory failure was first introduced in a 1968 report authored by a special committee of the Harvard Medical School3 and was later adopted, with some modifications, by the President’s Commission for the Study of Ethical Problems in Medicine and Biomedical Research, as a recommendation for state legislatures and courts. The “brain death” standard was also employed in the model legislation, known as the Uniform Determination of Death Act, which has been enacted by a large number of jurisdictions and the standard has been endorsed by the influential American Bar Association. While New York is one of the few jurisdictions that does not have a “brain death” statute, it has adopted the identical rule through the binding decisions of its highest court.

The rapid, and near universal, acceptance of neurological criteria of death is probably attributable to three factors. First, moving the time of death to an earlier point facilitates organ transplants, and indeed makes such transplants possible. Organs, especially the heart and liver, are suitable for transplantation only if they are removed at a time when blood is still circulating. Once cardiac arrest stops circulation, rapid tissue degeneration makes the organ unsuitable for such use. Given the increasing success of these operations and the relative uselessness (from a secular standpoint) of sustaining “brain dead” patients on respirators...
tors, there is a natural temptation to redefine death so that organs become available to serve higher ends. It is no coincidence that the movement toward acceptance of "brain death" coincided with the development of cyclosporine and other anti-rejection drugs.

Additional considerations involve triage and allocation of scarce medical resources. It is extraordinarily expensive (in terms of equipment and labor) to maintain patients on respirators and other life support and using these resources for "brain dead" patients prevents their deployment for those who stand a better chance of recovery. Yet a third impetus towards redefinition is an understandable desire to spare families the agony and anguish of watching a loved one experience a protracted death.

For whatever reason, the current definition of "death" is now a composite one: death is deemed to occur when there is either irreversible cessation of circulatory and respiratory functions (the "old" definition) or irreversible cessation of all functions of the entire brain including the brainstem. The principal utility of this second standard permits declaring as dead a comatose, ventilator-dependent patient, incapable of spontaneous respiration but whose heart is still beating due to the provision of oxygen via an artificial breathing apparatus.

At the outset, two points must be made absolutely clear. First, contrary to the misperceptions of many lay people, "brain death" is not synonymous with merely being comatose or unresponsive to stimuli. Indeed, even a flat EEG (electroencephalogram) does not indicate brainstem destruction. The human brain consists of three basic anatomic regions: (1) the cerebrum; (2) the cerebellum; and (3) the brainstem consisting of the medulla, the pons, and the medulla, which extends downwards to become the spinal cord. The cerebrum controls memory, consciousness, and higher mental functioning. The cerebellum controls various muscle functions while the brainstem controls respiration and various reflexes (e.g., swallow and gag). A patient may be in a deep coma and nonresponsive to most external stimuli but still very much alive. At most, such patients may have a dysfunctional cerebrum but, by virtue of the brainstem remaining intact, are capable of spontaneous respiration and heartbeat. Indeed, the most famous of these cases, Karen Ann Quinlan, was able to live off a respirator for almost a decade. While such persons may be popularly referred to as brain dead, they are more accurately described as being in a persistent vegetative state (PVS) and are very much alive under both secular and Jewish law. Removal of organs from such a donor would indisputably be homicide. This is even more true for the phenomenon known as being "locked-in" where the patient is fully conscious but unable to respond.

A second point to keep in mind is the relationship among respiration, circulation, and the brain. The heart, like any organ, or indeed cell, needs oxygen to survive and without oxygen will simply stop beating. Respiration, in turn, is controlled by the vagus nerve whose nucleus is located in the medulla of the brainstem. The primary stimulant for the operation of the heart is the presence of excess carbon dioxide in the blood. When stimulated, the heart causes the diaphragm and chest muscles to expand, allowing the lungs to fill with air. Spontaneous respiratory activity can therefore not continue once there is brainstem destruction or dysfunction. The heart, on the other hand, is not controlled by the brain but is autonomous. It is obvious, of course, that unless the patient is hooked up to a breathing apparatus, destruction of the brainstem will inevitably lead to cardiac cessation not because of any direct control the brainstem exercises over the heart but simply because the heart muscle is deprived of oxygen. Where, however, the patient's intake of oxygen is being artificially maintained, the heart may continue to beat and blood circulate for a considerable time after total brain-stem destruction. The time lag between brain death and circulatory death is on the average only two to ten days, though there is at least one case on record where a woman's heart continued to beat for 63 days after a diagnosis of brain death. Indeed, she delivered a live baby through a Caesarean section. It is this crucial gap between cessation of spontaneous respiration and cessation of heart beat that defines the parameters of the phenomenon called "brain-stem death."

The steps taken in a clinical diagnosis of "brain death" vary from medical center to medical center and those differences may have significant halachic repercussions but will typically involve the following: (1) a determination that the patient is in a deep coma and is profoundly unresponsive to external stimuli; (2) absence of elicitable brainstem reflexes such as swallowing, gag, cough, sigh, hiccup, corneal, and vestibulo-ocular (ear); (3) absence of spontaneous respiration as determined by an apnea test; and (4) performance of tests for evoked potentials testing the brainstem's responsiveness to a variety of external stimuli. These tests are to be repeated between 6-24 hours later to insure irreversibility — with life support supplied for the interim — and a specific cause for brain dysfunction must be identified before the patient.

6. A good description of the scientific aspects of brain death can be found in 24 Tradition 1, 8-14 (Summer 1988) (Dr. Jakobovitz's annotations to the Chief Rabbinet's ruling) and in Kelsen, "Determining the Time of Death-Medical Aspects," 17 Journal of Halachah and Contemporary Society 7-13 (Spring 1989).


8. Much of this information was derived from the articles cited in note 6 and a communication of Rabbi Moshe Tendler to the members of the RCA dated Summer 1991.

9. Apnea testing takes many forms. One standard test may involve providing the patient with 100% oxygen for 20-30 minutes through the respiratory and then shutting off the machine, thereby allowing the carbon dioxide in the blood to rise but at the same time allowing for passive gaseous diffusion of oxygen through the tubes of the machine or through a tube inserted directly into the trachea. This allows the CO2 in the blood to rise, enabling a test of the respiratory response without depriving the patient of necessary oxygen in the interim. While a normally-functioning brainstem would induce respiration at a fairly low pressure of CO2, a diagnosis of death will not be confirmed until the CO2 pressure is considerably above the normal triggering point but nevertheless fails to elicit a respiratory response.

10. Note that a flat EEG (electroencephalogram) is not a necessary condition for a brain death diagnosis. A flat EEG does not in any event insure brainstem death but at best, indicates only absence of (perceptible) upper brain activity. Conversely, even in patients with a brain death diagnosis, sporadic, minimal EEG activity has occasionally been found. The Harvard criteria regard a flat EEG as helpful and confirmatory but not essential to a brain death diagnosis.

11. Compare letter of Rabbi Tendler printed in
will be declared dead. An additional test that is sometimes employed (when other clinical tests are deemed inconclusive) is radionuclide cerebral angiography [nucleide or radioisotope scanning]. A harmless radioactive dye is injected into the patient's bloodstream, typically through the intravenous tubing already in place. In brain dead patients, scanning will reveal an abrupt cutoff of circulation below the base of the brain with no visible fluid draining away. While many observers have described this test as nearly 100% accurate, others have claimed the brain stem circulation, especially in the medulla, is not well-visualized and absolute absence of blood flow to this region cannot be diagnosed with certainty. Note that a patient who is brain dead may theoretically continue to have muscle spasms or twitchings or even sit up. Whether this so-called Lazarus Reflex is an indicator of life will be discussed in due course; what is undisputed is that such movements are coordinated not from the brain but solely from the spinal cord. It should also be noted that there are several instances of clinically brain dead patients carrying live babies to term. Again, this may or may not be significant.

Is Brain-Death An Acceptable Halachic Criterion Of Death?

This question breaks down into two distinct issues. First, is irreversible dysfunction of the entire brain a valid criterion of death? Second, even if the answer is yes, are the medical tests currently utilized in establishing such a condition halachically valid indicators of its presence? One could easily subscribe to “whole brain” death as a concept and yet reject the particular diagnostic tools employed.

There are anumber of halachic sources that are relevant to the question of “brain death,” the most important being the Mishnah in Oholot 1:6, the Talmud in Yoma 85a, passages in Teshuvot Chatam Sofer and Teshuvot Chacham Tzvi, and various pronouncements of R. Moshe Feinstein in his Igrot Moshe. This is not the forum for a detailed examination of these sources other than to note that a number of them are equivocal and subject to a variety of interpretations.

Briefly stated, the Mishnah in Oholot establishes the dual propositions that, first, physical decapitation of an animal is a conclusive indicator of death and second, some degree of subsequent movement is not incompatible with a finding of death provided that such movement qualifies as spastic in nature (pirchus be’alm) like the twitching of the “severed tail of a lizard.” The Talmud in Yoma 85a, dealing with a person trapped under a building, rules that a determination of respiratory failure establishes death without the need to continue to uncover the debris to check heartbeat. Proponents of “brain death” argue that a dysfunctional brain-stem is equivalent to a decapitated one, (physiological decapitation), that destruction of the brain stem inevitably means inability to spontaneously respiration (meeting the criterion in Yoma) and that subsequent “movement,” whether the Lazarus Reflex or the heartbeat, falls into the category of pirchus since such movement is not coordinated from a “central root and point of origin.” i.e., the brain.

The counter-arguments are: first, physiological dysfunction is not the equivalent of anatomical decapitation. The only phenomenon short of actual decapitation that might similarly qualify is a total liquefaction (lysis) of the brain, something that probably does not occur until well after cardiac arrest. Second, according to Rashi in Yoma, cessation of respiration is a conclusive indicator of death only when the person is “comparable to a dead man who does not move his limbs.” While certain forms of postmortem movement may be characterized as merely spasmodic and would not qualify as “movement,” the rhythmic coordinated beating of a heart and the maintenance of a circulatory system can hardly be characterized as pirchus since such heartbeat is life-sustaining and identical to that in an normally functioning individual. Reference is also made to the teshuvot of Chatam Sofer and Chacham Tzvi who both write that it is only the cessation of respiration and pulse (heartbeat) that allows for a determination of death and the Gemara in Yoma merely creates a presumption that upon cessation of respiration and an appropriate waiting time, one is permitted to assume that heartbeat has stopped as well. Since this assumption is obviously not true in the case of “brain death” patients hooked up to respirators whose heartbeats are monitored, such patients may not be declared as dead.

The position of R. Moshe Feinstein, whose psak could well have been definitive at least in the United States, is unfortunately a matter of some controversy. His son-in-law, Rabbi Dr. Moshe Tendler, a Rosh Yeshiva in Reits and Professor of Biology, Yeshiva College, has vigorously argued that Rabbi Feinstein supported a total “brain death” standard based on the concept of decapitation in Mishnah Oholot. His position finds strong support in Igrot Moshe, Yoreh Deah III no. 152 which seems to validate nucleide scanning as a valid determinant of death. This is also the understanding of the Israeli Chief Rabbinate, R. David Feinstein, (who admits, however, to having no inside information on the topic) and R. Shabtai Rappaport, the editor of R. Moshe’s responsa.

Others, however, have interpreted his teshuvot very differently, pointing out that R. Moshe reiterated twice (indeed, in one instance two years after the “nucleide scanning” reference) that removal of an organ for transplantation was murder of the donor. (R. Tendler’s re-referenced to the accuracy of any of those studies; I simply point them out for the edification of the reader.

12. See the sources in the medical literature cited by Bleich, supra note 7, at 62 n.5 (at 135, n.5 in the book).
13. See Teshuvot Chatam Sofer, Yoreh Deah no. 338; Teshuvot Chacham Tzvi, no. 77; and Igrot Moshe, Yoreh Deah II, nos. 164, 174; Yoreh Deah III, no. 132; Choshen Mishpat II, nos. 72, 73.
15. See, for example, Rabbi Tendler’s letter in...
sponse: Both of those *teshuvot* refer to comatose patients in a persistent vegetative state who are capable of spontaneous respiration and are very much alive and not to those who are respiratory-dependent. They also cite R. Moshe's express opposition to proposed "brain death" legislation in New York unless it contained a "religious exemption."^{18} (R. Tendler's response: Although R. Moshe accepted the concept of "brain death," his support of an exemption was simply to accommodate the views of other religious Jews who disagree). Finally, they note that in the very *teshuvah* upholding the use of angiographic scanning, R. Moshe approvingly cites *Teshuvot Chatam Sofer*, Y.D. no. 338 (who insists on absence of *dofeik*; pulse, and indeed states that one is dead only if there is an inability to breathe and no other sign of life is recognizable with them (*Vegan lo nikiirim besham inyeni chiyot acharim*). Their conclusion: R. Moshe merely validated nucleic scanning as a criterion to verify one determinant of death, i.e., absence of respiration, but did not maintain that it alone was sufficient.^{19} This author certainly lacks both the competence and the authority to resolve this dispute but presents it to the reader so that he may see why this area has been so fraught with unresolved controversy.

**Contemporary Views**

The following is a cataloging of the major schools of thought among contemporary *poskim* and *rabanim* on the brain death issue and some of the recent events connected with this question.

1. As noted, Rabbi Dr. Moshe Tendler, has been the most vigorous advocate for the halachic acceptability of brain death criteria. In his capacity as chairman of the RCA's Biomedical Ethics Committee, Rabbi Tendler spearheaded the preparation of a health-care proxy form that, among other innovations, would authorize the removal of vital organs from a respirator dependent, brain dead patient for transplantation purposes. Although the form was approved by the RCA's central administration, its provisions on brain death were opposed by a majority of the RCA's own *Yad Halachot* (Rabbis Rivkin, Schachter, Wagner and Willig).^{20}

2. The Israeli Chief Rabbinate Council, in an order dated Cheshvan 5747, has also approved the use of "brain death" criteria in authorizing Hadassah Hospital to perform heart transplants but on a somewhat different theory than Rabbi Tendler. Positioning that cessation of independent respiration was the only criterion of death (based on *Yoma* 85 and somewhat in explicitely also citing *Chatam Sofer*, Y.D. no. 338), the Rabbinate ruled that brain death was confirmatory of irreversible cessation of respiration. Theoretically, this would allow for a standard far less exacting than clinical brain death, perhaps nothing more than failure of an apexa test. Indeed, Dr. Steinberg, the principal medical consultant to the Rabbinate, dismissed any requirement of nucleic scanning since destruction of the brain's respiratory center may be conclusively verified without such test.^{21} Since defining "death" exclusively in terms of inability to spontaneously resipire would lead to the absurdity that even a fully-conscious, functioning potio patient in an iron lung is dead, a subsequent communication from R. Shaul Yisraeli, a member of the Chief Rabbinate Council, qualified the Rabbinate's ruling by imposing, as an additional requirement, that the "patient be like a stone without movement,"^{22} (but apparently maintaining that heartbeat does not qualify as such movement). It is probable, though not certain, that R. Tendler's test of "physiological depection" and the Rabbinate's newly formulated test of "respiratory failure coupled with profound nonresponsiveness" amount to the same thing though the Rabbinate has not refracted from its noninsistence on nucleic scanning.

3. Rabbi J. David Bleich, Rosh Kollel at Yeshiva University and author of many papers and a recently published book on the subject, has stated that anything short of total liquefication (lysis) of the brain cannot constitute the equivalent of depeification. He further maintains, relying on Rashi in *Yoma*, the *Chatam Sofer*, and the *Chacham Tivi*, that even total lysis would be insufficient in the presence of cardiac activity but dismissed the matter as being only of theoretical importance since cessation of heartbeat inevitably occurs prior to total lysis. He also asserts that his position is not based on stringency in case of doubt but rather on the certainty that the brain dead patient is still alive, a certainty that could be relied upon even to be lenient, e.g., a Cohen may enter a "brain dead" patient's room without violating the prohibition of *tunrat met*.

4. Rabbi Aaron Soloveichik, Rosh Yeshiva of Brisk and RIETS, has gone slightly further than Rabbi Bleich. Even if the heart has stopped and the patient is no longer breathing, the patient is alive if there is some detectable electrical activity in the brain.^{23} It has been noted, however, that there is no recorded instance of this phenomenon occurring.

5. Rabbi Hershel Schachter, Rosh Yeshiva and Rosh Kollel of RIETS, has taken a more cautious view. Conceding that the concept of "brain death" may find support in the decisions of R. Moshe, he concludes that such a patient should be in the category of *tafeik chai*, *tafeik met* (doubtful life). While removal of organs would be prohibited as possible murder, one would also have to be stringent in treating the patient as *met*, e.g., a Cohen would not be allowed to enter the patient's room.^{24}

6. Most contemporary *poskim* in Eretz Yisrael (other than the Chief Rabbinate) have unequivocally repudiated the concept of death based on neurological or respiratory criteria.^{25} Of special significance are recent letters^{26} signed by R. Shlomo Zalman Auerbach and R. Yosef Elyashiv, widely acknowledged as the leading *poskim* in Eretz Yisrael, (if not

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(5728) and Chosen Mishpat II, no. 72 (5738). The *teshuvah* in *Yoreh Deah* III, no. 153 cited in support of brain death criteria was authored in 5738.

18. Written statement of 8 Shevat 5737.

19. It should be noted, however, that the *teshuvah* concerning nucleic scanning was addressed to R. Tendler for his own guidance, merely entitling his understanding of the responsa to great weight.

20. The current status of the original RCA proxy is unclear. In light of the negative push of Rabbis Auerbach and Elyashiv, Rabbi Marc Angel, the President of the RCA, circulated a cover letter to the membership cautioning that the proxy form should not be used until the individual raf has thoroughly studied the issue and consulted experts in the field. Rabbi Tendler has similarly stated that at least portions of the proxy form were merely a first draft to be circulated to rabanim.

21. Dr. Steinberg's paper, originally prepared to assist the Chief Rabbinate in their deliberations, appears in *Or Hamizrach* (5748).


23. His views may be found in 17 Journal Of Halacha at 41-50 (Spring 1985).

24. Rabbi Schachter's intermediate position may be found in the same journal at pp. 32-40.

25. These include R. Elazar Schach, Rosh Yeshiva of Ponoves; R. Yisroel Weiss, recently deceased Rav of the Baka Chabad; R. Yisroel Kula, Chief Rabbi of Jerusalem; R. Eliezer Waldenberg, author of Tezis Eizees; R. Nisim Karelitz, Chief Rabbi of Ramat Aharon; R. Shmuel Wosner, Rabbi of *Zichron Meir*; and R. Noam Gesteiner.

neshomah — that one life may not be set aside to ensure another life — applies with full force even where the life to be terminated is of short duration and seems to lack meaning or purpose and even where the potential recipient has excellent chances for full recovery and long life. If, on the other hand, the donor is dead, the harvesting of organs to save another life becomes a mitzvah of the highest order. In light of the overwhelming opposition to the "brain death" concept, caution and a stance of shev y'al taassah (passivity) appears to be the most prudent course. How the "brain death" problem will play out in other areas such asinheritance, capacity of a wife to contract a new marriage, or the need for chilulah if a man dies leaving a brain dead child will have to await further clarification.

There are, however, two other points that need to be considered. The argument is occasionally made that halachah rejects the concept of "brain" or "respiratory" death, Orthodox Jews would be unable to receive harvested organs on the grounds that the recipient would be an accessory to a murder. As others have noted, this conclusion does not follow. To the extent the organ in question would have been removed for transplantation whether or not this specific recipient consents, i.e., there is a waiting list of several people, the Orthodox recipient is not considered to be a causative factor (gerem) in the termination of a life. There is no general principle in halachah that prohibits the use of objects obtained through sinful means. It is true that if, because of tissue typing and the like, the organ is suitable for only one recipient and if that recipient declines the transplant, the organ will not be harvested, an Orthodox recipient may indeed be compelled to decline. But this is rarely, if ever, the case.

A second point: as noted, "brain death" is the legal definition of death in the vast majority of the United States. New York is the only state that requires medical personnel to make a reasonable effort to notify family members before a determination of death and to make "reasonable accommodation" for the patient's religious beliefs. In all other jurisdictions, doctors would be empowered unilaterally to disconnect a patient from life-support mechanisms once that patient meets the legal definition of death. Hospital personnel may or may not defer to the wishes of the family but there is no duty on their part to do so or even to ascertain what those wishes are.

Perhaps one point of consensus that may emerge in an area otherwise fraught with acrimonious controversy would be the desirability of enacting "religious accommodations" exceptions nationwide. After all, even the proponents of a "brain death" standard understand that others, in all honesty and conscience, may hold a different halachic view, one which they should not be compelled to violate. Hopefully, our community will be responsive to such an effort.

**Conclusion**

"You preserve the soul within me and You will in the future take it from me" (Daily Prayers). Only God who is the source of all life can take life away. We are enjoined to cherish and nurture life as long as it is present, no matter how fleeting or ephemeral. Yet it is precisely because each moment of life is so precious that God has imposed on man the awesome responsibility of defining the moment of death, the point after which the needs of the dead may, and indeed must, be subordinated to those of the currently living. No one has ever seen a neshamah leave a body and it is the unequivocal task of our gedolim and poskim to tell us when this occurs. May Hakadosh Baruch Hu grant them the insight to truly make our Torah a Torah Chayim.

Rabbi Breitowitz is the Rabbi of the Woodside Synagogue in Silver Spring, Maryland and Assistant Professor of Law at the University of Maryland Law School. He is the author of a forthcoming book, The Plight of the Agunah: A Study in Halachah, Contract and the First Amendments.

Letter reaffirming this stance was issued during the Asseet Yemel Teshuvah 5732. 27. See comments of H. Soloveichik, cited in note 22.
28. According to a recently published article in the Journal Of The American Medical Association (Jan. 1992), the demand for hearts, kidneys, and lungs far exceeds the available supply.
30. Of course, even in New York, only "reasonable accommodation" is required and one can well imagineierge considerations forcing patients off respirators prematurely.
31. Moreover, even where doctors defer to the family's wishes, insurance companies may refuse to pay the costs of sustaining what is legally regarded as a cadaver. This is likely not to be a problem in New York since the regulatory duty of "reasonable accommodation" prevents a determination of brain death.

JEWISH ACTION
Contributions, Ed. Ehud Apanier (Keter Jerusalem '87).

In closing, let it be said that no separations have been cast on the integrity of the gaon and tzaddik R. Gershon Hanoch of Radzin on his 100th yahrzeit. No personal attack was intended either by Rabbi Herzog z’il (apologizes to the Bal ha-Tekhelet’s nephew, R. Yakirah Leinzer z’il, in Hadarom, Eli 5750, pp. 12-16) or Dr. Zickerman shevyeh in revealing the true chemical composition of the Radzinger techaelet, namely Prussian blue. Both have reiterated time and time again that the rebe was evidently deceived by a chemist. To R. Gershon Hanoch’s eternal credit is the techaelet of having reopened the sha’ar hatzizit.

Rabbi Bezalel Naor
Spring Valley, NY

BRAIN-STEM DEATH

To The Editor:

Your attempt to present a definitive, unbiased summation of the controversy surrounding the halachic validity of Brain-stem Death (B.S.D.) is commendable. However, there are several errors in Rav Breitowitz’s presentation that must be corrected.

I. He should have removed any doubt concerning Rav Moshe’s opinion. He cites “strong support” for my position but fails to mention that:

a) For almost a decade, during his lifetime, I articulated Reb Moshe’s opinion that B.S.D. is halachically valid and no one challenged me during all that time.

b) The letter sent to the New York State Legislature over Reb Moshe’s signature which was drafted by Rabbi Moshe Shenker of the Agudath Israel, unequivocally affirms the halachic validity of B.S.D.

II. The Lazarus Reflex is cited as proof that a B.S.D. patient is not really dead. Yet the Lazarus Reflex occurs in guillotined prisoners who are surely dead and is so cited in the teshuva of the Chazon Zvi...to quote the Chazon Zvi, "renuah lechud, y’chaim lechud." It can only be a spinal reflex, if the patient is decapitated!

III. a) It is not "Rav Tendler’s response" that the Teshuva 146, refers to cerebral death, not B.S.D. Rav Moshe said it clearly. The patient is one who shevyehol, lishkom, cannot breathe without a ventilator.

b) I did not deduce Reb Moshe’s opinion from analysis of his writings. I reported it as maaseh ray —what he said, wrote, and ruled in the numerous cases referred to him for halachic psak.

c) The requirement of “respiratory failure” in the responsa of the Chief Rabbanite

and standards for “physiological decapitation” are identical and not based “on somewhat different theories.”

IV. Rav Breitowitz is in error when he rejects Rav Angel’s statement that if B.S.D. is not halachically valid, a Jew cannot receive a vital organ transplant. The fact that there are others, who are ready and willing to remove these organs in no way mitigates the act of murder. (Rambam Hilchot Resha'it 2:1 and 4:6). If ten “lit men” are hired to kill someone, the one who murders him is the murderer and is put to death despite the readiness of the nine to do likewise. Indeed it is in opposition to the thrice repeated ruling of Rav Shlomo Zalman Auerbach shlitat that if it is forbidden to remove the heart it is forbidden to accept the donation.

V. The halachic rulings of Rav Auerbach are most astigmic. After issuing the blanket psak against heart transplants in Av 5751 which was published in The Jewish Observer, he wrote two letters concerning heart transplants in Tefet and Shevat 5752. In these letters he implicitly accepted the concept of B.S.D. and expressed concern over the need to inject a radioscopist affirming B.S.D. by blood flow study. Fearing that this is tantamount to (hazara’os gesos) removing the patient who is in extremis. No objection was voiced to declaring a heart-beating patient dead if B.S.D. is affirmed.

In a most recent letter (Adar II 5752) he restates his position and insists that the heart not be removed until it has completely ceased its contractions. Yet he acknowledges an experiment done at his behest, in which a pregnant sheep was decapitated (an incontrovertible state of halachic death) and then a live lamb was delivered by caesarean section. During many hours the decapitated sheep’s heart maintained normal beat, without loss of blood pressure. Rav Auerbach cited this experiment to retract his statement that ability to give birth to a live fetus is proof that the animal is not dead. He clearly admitted that the presence of the ventilator enables a dead animal to give birth to a live lamb. Surely this same logic and proof holds for the beating heart when on a respirator: A beating heart is not a sign of life, if there is total cessation of all brain function, as in a B.S.D. patient. Indeed in a decapitated prisoner, the heart continues to beat for some time, yet the uncontested halachic ruling is that he is dead.

In addition, Rav Auerbach has ruled that:

1. A ventilator can be removed from a patient in extremis (goseis) to permit him to die, since it is considered hazara’os moneah, not euthanasia.

2. He ruled in his actual case at Hadassah Hospital (Shevat 5750) that a pregnant B.S.D. patient may be subjected to a caesarean section, although her heart was surely beating, in order to save her fetus. A B.S.D. patient can with his heart, two lungs and liver save the life of four people! We must await further clarification of the position of this great posek...

I am indebted to Jewish Action for their attempt to prepare a level field so that all can see the majesty of Torah as it impacts on our society.

Rabbi Moshe David Tendler
Monsey, NY

Rabbi Breitowitz Responds:

Since I am in no sense an advocate of the anti-B.S.D. position, I will not attempt to refute each individual proof that Rabbi Tendler proffers nor do I desire to be caught in cross-fire that, to a large degree, is directed towards other targets. Nowhere in my article, for example, did I ever cite the Lazarus reflex as proof "that a B.S.D. patient is not really dead." I simply noted the reflex as a factor that "may or may not be significant." The pages of this magazine are also not the most appropriate forum for intricate textual analysis of technical halachic points. Nevertheless, some clarifying comments may be helpful.

I. The Position of R. Moshe Feinstein

A. The Teshuvah: The point of my article was that the written record of R. Moshe’s teshuva, standing alone, does not furnish unequivocal evidence that he in fact supported a B.S.D. standard. This is not to deny the possibility that he may have done so, but merely to state that one cannot definitively infer such a conclusion from his writings. I had previously cited Iggerot Moshe, Y.D. III, no. 132 which validates the use of nuclide scanning in connection with a determination of death as "strong support" for Rabbi Tendler’s position. A close reading of the teshuvah, however, reveals that this conclusion is somewhat equivocal. The first mention of nuclide scanning appears in the third paragraph of the teshuvah, dealing with victims of automobile accidents or falls. Here, R. Moshe concludes that even persons who apparently are incapable of spontaneous respiration (ventilator-dependent) and have no other signs of life should not be declared dead until nuclide scanning verifies lack of circulation to the brain. Nowhere does teshuvah 132 utilize nuclide scanning (which, at best, demonstrates B.S.D.) as a sufficient criterion of death. It comes into play only if there are no other signs of life. Whether heartbeat and circulation of blood (which B.S.D. patients on respirators absolutely have) constitute such "signs of life" is precisely the controversy at hand. This interpretation of Y.D. III, no. 132 is not my own.

Rabbi Tendler himself has acknowledged that the teshuvah may be susceptible to multiple interpretation. As quoted in the addendum to the recently published fourth volume of Dr. Abraham’s Mekimi Avrokam, both R. Yosef Elyashiv and R. Shlomo Zalman

JEWISH ACTION
Auerbach interpret R. Moshe's validation of nuclide scanning as an additional chumra (stringency) to be employed only after the patient has met all the other signs of death: lack of spontaneous respiration, pulse (heat-beat), and no spasmodic movements/reactions. It must be realized however, that those who strongly oppose the notion of B.S.D. do not purport to disagree with R. Moshe; rather, in their view R. Moshe himself never necessarily upheld B.S.D. They regard their negative pe'ak as entirely consistent with Y.D. III, no. 132. R. Elyashiv states this as being "explicit" in the teshuvah; R. Auerbach states this as a possibility; R. Aaron Soloveitchek also construes R. Moshe's opinion in this manner. Note too that R. Moshe in that very teshuvah cites Chaza to Sofer Y.D. 338 who explicitly enumerates lack of pulse as well as respiration as a necessary prerequisite for a determination of death. Again, as noted in my article, this restrictive interpretation finds additional support in a teshuvah written two years after Y.D. III, 132 where R. Moshe reiterates that removal of a heart constitutes murder of a donor. See H.M. II, no. 72. Since under American law hearts are not removed until the patient has been diagnosed as brain dead, this too suggests that B.S.D. is not equivalent to halachic death. (I would note, however, that H.M. II, 72 makes no mention of nuclide scanning and it is perhaps arguable that R. Moshe was concerned that doctors would act precipitously in removing an organ without a definite B.S.D. diagnosis but that once such a diagnosis could be made, removal of the heart would indeed be permitted. At best, however, this is ambiguous.)

B. Maaseh rav: Rabbi Tendler asserts that he did not "deduce R. Moshe's opinion from an analysis of his writings but reported it as maaseh rav - what he said, wrote, and ruled in the numbered cases referred to him for halachic pe'ak." I am not in a position to question R. Tendler's claim; certainly as one who was very much in close contact with R. Moshe, particularly in matters of medical halachic, his views are entitled to great weight and respect. What I would like to know, however, is whether R. Moshe actually permitted the removal of an organ from a B.S.D. patient or merely allowed Orthodox Jews to receive heart or liver transplants. If the maaseh rav is limited to the letter, it tells us nothing regarding the halachic status of a B.S.D. patient since even if each patient is halachically-alive, the recipient would arguably be allowed to benefit from the organ once it was removed. See II, below. At most, such maaseh rav would simply indicate that R. Moshe no longer regarded transplants as murder of the recipient. I refer the reader again to the new edition of Nishmat Avraham, comments Y.D. 259.

C. The Miller Letter: Rabbi Tendler also notes the fact that for almost a decade, he articulated R. Moshe's opinion "that B.S.D. is halachically valid and no one challenged [him] during all that time." Again, I cannot fully address the substance of this contention since the principle of sheiti'kah ke'kodosh (silence is tantamount to admission) may not be determinative in matters of pe'ak halachic. Rabbi Tendler is correct, however, that the full text of R. Moshe's 1976 letter to Assemblyman Miller, in opposition to proposed time of death legislation, is highly illuminating. The letter was drafted by Rabbi Moshe Sherer of Agudath Israel and went out with R. Moshe's signature. The letter first explicitly states:

"The sole criterion of death is the total cessation of spontaneous respiration."

This sentence alone does seem on its face to un-equivocally affirm that B.S.D. (or even something less than B.S.D.) is halachic death. It is a significant piece of evidence to support Rabbi Tendler's construction that should have been included in my original article and I apologize for that omission. Nevertheless, even here, the next sentence appears to immediately modify the implication of the preceding one:

"In a patient presenting the clinical picture of death, i.e., no signs of life such as movement or response to stimuli, the total cessation of independent respiration is an absolute proof that death has occurred."  

In other words, absence of respiration is a necessary confirmation of death only when coupled with absence of other vital signs. Arguably, heartbeat and circulation may be precisely the type of vital sign that prevents absence of breathing from being determinative.

II. The Views of R. Shlomo Zalman Auerbach

A. The Letters: At the time of the writing of my article, the only pronouncements from R. Shlomo Zalman that I had seen were the brief communications of 18 Menachem Av 5751, and Aseret Yemay Teishuvah 5752, where he and R. Elyashiv both stated, without any explanation, that removal of organs from a donor whose heart is beating and whose entire brain, including the brain stem, is not functioning at all is prohibited and involves the taking of life. Since then, R. Auerbach has issued various teshuvot in Tzetz, Adar, and Nisan of this year. While these later teshuvot eliminate some of the uncertainty surrounding the earlier pronouncements, they also indicate that no significant retraction from the earlier pe'ak has occurred. Indeed, in a letter dated Iyar 5752, both R. Auerbach and R. Elyashiv explicitly reaffirmed their earlier stance, again in summary fashion.

In a letter dated 6 Nisan 5752, however, R. Auerbach does offer some significant elaboration of his position. He states that even after all tests have been performed - including tests involving circulation of the blood to the brain - and the doctors have definitely determined that the entire brain including the brain stem is dead, as long as the patient is attached to a respirator and the heart is beating, the patient is classified as a softek geosel (a doubtful case of a halachically alive person whose death is imminent). As such, it is even prohibited to move the geosel and certainly prohibited (possibly) murder him by removal of the heart.

R. Shlomo Zalman does permit under these circumstances (a definitive diagnosis of brain stem death) shutting off the respirator. If no respiration or heartbeat is detectable for a period of thirty seconds, the patient may then be halachically declared dead and his organs harvested. Significantly, while it had long been thought that such a waiting period would make transplants impossible (because of rapid deterioration of the heart muscle), a number of transplant surgeons have recently indicated that even after a 30-second delay, transplantsations are still feasible though they lose their optimal effectiveness. In essence, R. Auerbach's pe'ak paves the way for the legitimation of heart and liver transplants even according to those views that do not accept B.S.D. as definitive halachic death.

B. The Sheep Experiment: A word should also be said about the sheep experiment. The Talmud in Aruch posits that a fetus cannot survive its mother's death. Since B.S.D. patients can carry babies to term, it was thought that this alone was conclusive proof that B.S.D. patients were halachically alive. To test this hypothesis, an experiment was performed at R. Auerbach's request, whereby a pregnant sheep was decapitated and hoisted up to a respirator. Heartbeat and blood pressure were maintained and a live lamb was successfully delivered by cesarean section. Since it is undisputed that under these circumstances, the mother sheep was dead, (decapitation results in death according to all authorities), the Talmud's ruling that the life of the fetus establishes vitality of the mother does not apply when the mother's vital functions can be mechanically maintained. At best, however, this merely negates what would otherwise have been an incontestible proof that the B.S.D. patient must be alive. Not being able to prove that B.S.D. equals life is not the same as proving B.S.D. is death. Thus, even after the experiment, we are still left with the possibility of softek geosel as R. Auerbach concludes.

C. The Cesarean Birth: It has also been reported that R. Auerbach permitted the performance of a cesarean on a B.S.D. patient although, if the patient is a geosel, such a procedure would undoubtedly constitute forbidden movement that is tantamount to murder. Although this pe'ak was widely circulated in R. Auerbach's name, in his most recent letter of 6 Nisan he states that he never issued such a pe'ak nor was he even asked.

III. If B.S.D. is not acceptable as halachic death and the removal of a vital
organ is either certain or doubtful murder, could an Orthodox Jew receive a heart or liver transplant? Here, I depart from my reportorial style and stated that, in view of the fact that there were many more demerits for organs than supply and if the Orthodox Jew would refuse a transplant, the organ in all likelihood would be removed anyway, acquiescence to an organ transplant could in no sense be considered a causative factor in a homicide. As noted in my article, this was not my chiddush, but was also the position taken by Rabbi Aaron Soloveitchik as well as Rabbi Bieich and it seemed L'anytav daat to possess considerable merit.

Rabbi Tendler questions this analysis by citing the example of ten kit men, where the one who actually does the killing is culpable despite the readiness of the nine to do likewise. The analogy, however, is inapt. Obviously, if one actively commits a maaseh retechich (act of murder), one cannot assert as a defense that it would have been done by someone else anyway. The recipient of an organ, however, is not a roteach. It is the doctor who is the roteach. One who places his name on a list to receive a transplant is at worst only a gorein rettechik — an indirect cause. And while it is true that even a gerem rettechik is forbidden, the existence of alternative recipients means that any given recipient cannot ever be characterized as a gorein.

Rabbi Tendler is correct, however, that R. Shlomo Zalman has indeed rejected this line of reasoning and has ruled that in Israel, where a majority of those in need are Jewish, not only is it prohibited to remove a heart but it is prohibited to enlist as a potential recipient as well. In the letter of 28 Adar II, 5752, R. Auerbach distinguishes between recipients in Israel, where most of the transplant surgeons, donors, and potential recipients are Jewish and outside of Israel, where most are non-Jewish. Where both the donor and the surgeon are, or can be presumed to be, non-Jewish, even R. Auerbach permits the Orthodox Jew to receive the transplant although the removal of the organ by the surgeon was a prohibited act of homicide. In result, if not analysis, the conclusion stated in my article remains unchanged, at least for recipients in the United States.

IV. B.S.D. and the Israeli Chief Rabbi: "Respiratory failure" and "physiological decapitation" are indeed somewhat different theories. First, as originally formulated, the Rabbi's ruling did not mention any requirement of "absence of movement." As such, a patient in an iron lung could conceivably have been declared dead although fully conscious, communicative, and capable of mental functioning of the highest order. This is far short of anything even remotely approaching brain death. Second, even after the clarification that its ruling applied only if in addition to lack of respiration, there must be total absence of movement, the Rabbinate did not require nucleic scanning; g pane testing alone could conclusively demonstrate irreversible destruction of the respiratory centers of the brain and would be sufficient to establish death. By contrast, a full-blown determination of "brain death" would require considerably more. In any case, I was certainly not positing that these standards are diametrically opposed but are simply "based on somewhat different theories," as in fact they are.

Rabbi Tendler and I are in agreement that there are a number of points in all these poskim that still need further clarification: the distinction between Israel and chutz l'aretz, between donors who are Jewish and those who are not Jewish, the relevance of the donor's religious affiliation, whether R. Shlomo Zalman's dispensation to shu cut off the respirator is limited to B.S.D. patients or applicable to other types of terminal or even PVS (persistent vegetative state) situations, how the ruling applies to other forms of treatment and sustenance (e.g., hydration and nutrition), what are the implications of a state of sofeik geshish for other areas of Jewish law (inheritance etc.), the heter for performing a life-threatening caesarean on a B.S.D. patient if, after all, such patient is at least a sofeik chas; and whether indeed there is such a heter at all. We have not yet heard the last word on this difficult subject. Fortunately, our poskim will offer us the necessary guidance to approach these delicate matters of life and death in accordance with the dictates of the Torah and the will of Hakadosh Boruch Hu.

FOOTNOTES:

1. Rabbi Tendler also cites Y.D. II, 146. That teshuvah indeed states that a patient yachshul tishom — that is capable of breathing independently cannot be declared dead merely on the basis of a lack of cerebral functioning. The language, however, does not establish the converse — that inability to require spontaneously necessarily is equivalent to death. In any event, the language of yachshul tishom does not appear in teshuvah 132.

2. It should be noted that while this position rejects B.S.D. as a definitive halachic definition of death, the poskim equally rejects Rabbi Bieich's position that such patients are unquestionably alive. R. Auerbach thus joins those groups of authorities that treat the matter as one of sofeik (dilemma) where a stance of passivity must be adopted.

3. This aspect of R. Auerbach's pekik is somewhat problematical. If there is any chance at all that a B.S.D. patient may be halachically alive, what justification could there be for shunting the respirator and killing the patient? There are two possibilities: (1) R. Auerbach regards removal of a respirator as a passive withholding of life-sustaining treatment (hasarat hamoozeh) which Reem in Y.D. 339 permits in the case of a geseis (in this sense he differs with R. Moshe who regarded shunting a respirator as an act of prohibited intervention); (2) a patient whose heartbeat and circulation is maintained only because of mechanical respiration is in fact already dead. We need to shut off the respirator, however, to verify that fact. Shunting of the respirator does not therefore result in the patient's death but unwillingly to rely on any of the existing tests — including gasea and nucleic scanning — to confirm this fact.

4. D. Eliahu apparently does accept the non-gorein argument but again limits it to non-Jewish donors.

5. It is not entirely clear what the basis for the distinction is. If one were to accept the non-gorein argument, it should follow that receiving the organ should be permitted even in Israel, whether or not the donor is Jewish. In prohibiting placing one's name on a list, R. Auerbach apparently maintains either that: (1) if the heart is removed because of A, A is indeed characterized as a gorein rettechik even if B would have made the same request; (2) alternatively, if A is not a gorein rettechik, he transgresses the prohibition of lifesh even (causing another to commit a sin) by causing the subject to commit murder. All of these considerations apply equally to Jews of non-Jewish. The distinction is apparently premised on the fact that where all the recipients are Jews subject to the laws of the Torah, no one individual Jew can legitimately take the position that he is committing no sin since others will sin if he doesn't. See Mishna L'melech Ch. 4, Halchot Malvech U'Loved; according to this explanation, however, the only relevant factor would be the identities of the other recipients, not the identities of the donors. R. Auerbach seems to require that both the donors and a majority of the recipients be non-Jewish. This point needs further clarification.

6. The letter of 6 Nisan indicates that the dispensation does not apply to other cases of geseis but does not explain why. This supports my conclusion in note 3 that the pekik is not predicated on basarat moresh.
lama shita shin simion
ryi hakhaton kislim
conu kohok

ךי

ר"וי" חمدر חוסני דעה" ר"ד, ש"א, ב"ד, פ"א, א"כ, עבירה של המدرك
רבע, תבונת מיתח" ר"א, ב"ר, ו"א, עבירה של המدرك.

השם הכהן הנבון מבריק והוקרן המגיד, והמקים המל.splice מצ"ן, הוא מספר אותו
תחדש.

הנה כדר בחדש ממריח, מרבדי ממבריק ודליבי" שירב ל"ב א"ב, ובכין בברך בכמה
מספדיהם גותם חדשים של אחת ר"ד, והם הממקים המלsplice מצ"ן.

זירק ובריכר, וקיבלו במבריק.

למען, כשם ששמם המבריק, וברך המדרוק, והשם הכהן הנבון מבריק
ה-committee ד"ל חمدر חוסני, א"כ, ב"ד, פ"א, א"כ, עבירה של המגיד,
ףבע, א"כ, ב"ד, פ"א, א"כ, עבירה של המגיד ק"ל, והם הממקים המלsplice מצ"ן.

ברכה, והשם הכהן הנבון מבריק וברך המדרוק.

ארז מ. פינשטיין

* מכתב שמור הנסיך, ד"ר בוצ'יו, נ démarche אחריע"ב לשוחח בנידוח
מכות הינו אל היה דעי רק למסירת, על עטורת הלתולשם הנ télécharg
בצורה פוגעת. המכתב המכתבسد ברי היד בת"ס ו"א, עבירה של המגיד,
של הורכיב מדריך.

המכתב הוקף במלואו לע"ב גודל שücüט סילף ואיה היחידה והגייה.
משה פינישטי

ר"מ מחמד ירושלים
כנא' ציון

בעה

ר"ה כנס זהב"ה

למען ויידעו יבשכד ותודר"ד ר"א. וס. ברני סלעם"א, בנו של חיים גברא, הנגוסannie יוחנן בריהא וצ"ל, ביכריה שלום ובחרה וכס"א.

יאתרשלו,

הנה כנפי, והרי במרדך שגנילר שלשה"א, ידבר לי יראיתך בברכת ממסיקות. והחקירות שנقوانين משלי ידיד, מענה את השפכיום והרשיםת כן ציריך, לקלקל "מיתת רוח" כניבור מית.

למען, כי בשמשתך מותני, זרוב הנגוסannie מותר"ד משלי ודר שגנילר שלשה"א, העוכהות כי יככל הנגידים שמנמק לני. הנה החרזים "החניכים" והחרזים "הרימונים" שמשש משה כ"קת רצא"י של חלול, שמתו הבר, ר"ל, ממש מצול.

והנה,تشלח עדיש יוכלו לשתות כמות ימינו, מ"ש וכל זמי שומיא להחללו את נימה ושמו, עצמהות, חשב כלみな, וכבדיויה מחותביה וא"ת"כ" ר"א, מימי"ל. בנכדיה שליה הבית והביה, ואינו מערין, וחיתה להחית מביתיב בן וחיל שלידינו חייו, מחייהו והריף ושמשת יבנה, חלה חליקה נבלנס, כ"קת עבורה והגרות, שחרי בלעדה, יש עזרו וffset יצור,яемוundiי.

ישמשי עצמה מטעימות חלולה, יישאר עד בית ווליום צורים.✏️

אצל בקיעה שלח חלה ייחר, ומקים תרומתו ע"ה שאר ייזדום. שלושה כל כביכולות

לערעון, כי שיד מיצר למות ימס, שוויי יבר והגשמות, בגא המצלב ויחיינו

ורטים לברזים יצורה, כ"לת שלמה בת ליזתיי ובראם גנים, מניייך כר

לערעון, וכפי נדמיין של ארבדתי ועיין.

ואו יהי 아이, נמי מחיים כר לערעון ובגARDS.

אוסים בברכה שלשה בקורים כיויי במלוא של "אני ה" רופא"-component בחתה משיח.

דריך,

כש פינישטי
Rabbi Moshe Feinstein
Yeshivat Tiferet Yerushalayim
455 FDR Drive
New York, NY 10002

Rosh Chodesh Kislev 5745

To my dear friend Dr. S.S. Bondi, grandson of the great Rabbi Yosef Breuer,

My grandson, Rabbi Mordechai Tendler, has spoken with me at great length regarding several of your uncertainties and inquiries as a result of the recent ruling by NY State that accepts Brain Death as the definition of death.

In fact, the way I heard it from my son-in-law, Rav Moshe Dovid Tendler, the courts merely accepted the definition as described by the “Harvard Criteria,” which is acceptable by the Jewish Law, which is that the patient’s brain is “separated (from the body)”. meaning the brain is in a state of decay.

Now, even though the heart is capable of pumping for several more days, nevertheless, as long as the patient is unable to breathe on his own, he is considered dead, as I have explained in my responsum in Iggerot Moshe Y.D. III, 132.

In a case of any hospital, or State, which considers a (halachically) live patient to be dead, and the doctor treating the patient will be required to direct the staff to remove the patient from the ventilator, even though here, according to Jewish Law, the doctor’s status is considered, [in Jewish Law terminology] as “standing on the same side of the river [as the perpetrator requesting the assistance],” since even without him, there are other doctors who will be commanded to do this, nevertheless it is preferred that he dismiss himself from the patient’s care, and let it remain in the hands of the hospital to direct [their staff] as they wish.
In the case of Jewish patient, the doctor as well as other Jews, are obligated to do everything in their power to save the patient, even if only to extend his life by several days and despite the fact that he is considered a dying patient. And even if this requires the doctor to spend a great personal fortune to fund the ventilator and other treatments he is obligated to do so, within the halachic definitions of the imperative of extending momentary life. And if a situation of ‘enmity’ could occur [concerning a gentile patient] then they are obligated to do the same for gentiles as well.

I will conclude with the blessing that we may fully experience the fulfillment of the verse “Ani Hashem Rof’echa” - I am God, your Healer, with the coming of the Messiah.

Regards,
Moshe Feinstein
כבר חבטתי שמיה שכחתי ואת אומרי Wohnung וב”ו המגלה יברד חלמ. בר״מ וסו תחם ויהו וمشاكل את המקור אוחזר את שמו חפץوقع והוא בעית
והוא פרשים迫不及-hide מנהל ושית שכחתי את אומרי Wohnungי hel רם פינטו
שושב ואמור את ה затור הלוחות כלпущен שליהEARאומר וتضינו תשובה ואמור את איצהר ואותי בן המכתש מבלוריו איגרת ואשת
להזריך ל׳לחתוב אתורה.

כדני רם פינטו

בימת ה’יהל מנואיר
לetheless ההבריאים והוא שכחدمات את אומרים ובשומע והוא שחרב פרשים המאוחר
שובת וואז שמחה רוח ובננה ואפשיור חלופי

וד פינטו
[15]
Dovid Feinstein

Determining Death with a Beating Heart – Opinion of “Iggrot Moshe.”
November 26, 1992

I have already written that what our master, my father, my teacher [Rabbi Moshe Feinstein] wrote in Yore Deah III:132 is authentic and no one should question it, for it is not a forgery and this was his opinion. Some of these details I actually heard from him myself and what I wrote in a letter on Tuesday, Parshat Shmot, 5750 [1990, shown below] I have not rescinded and it is unnecessary to repeat this over and over each time some person claims that this is not an authentic response, or that this letter [of 1990] is false. I ask all that see this letter not to require of me to write others. (i.e., more letters)

Dovid Feinstein

Same day as above in New York
For further clarification: If he lies like a dead person and there is no movement, even if the heart is beating, since he cannot breathe [irreversibly] he is completely dead. This is added to the above to make it clearer.

Dovid Feinstein.

[Translated by Robert J. Berman]

“In Igros Moshe (Yoreh Deah, vol. 3, siman 132) he [Rabbi Moshe Feinstein] wrote that a dead person is one who isn’t breathing, but one - to whom [autonomous*] breathing can be restored by a machine - is not dead. And these words, besides having seen in writing, I have heard from him verbally. But in that responsa he adds that there is more in establishing and knowing [the time of] death, and presumably he means to say, not breathing anymore because the connection between the brain and the body has been broken, see there in the paragraph which begins: “But.” This, I did not hear from him verbally, but it is written truthfully, and there is no reason to doubt it. On this issue I have come to sign, on Tuesday, parshas Shemos, the year 5750.

Dovid Feinstein

* This was clarified in person by Rabbi Dovid Feinstein to Robert Berman and Rabbi Yossie Newfield in New York, August 2, 2004.
TRANSCRIPTION OF VIDEO

Rabbi Dovid Feinstein:
My father's position was very simply that the stopping of breathing is—the point of—that's death. It doesn't matter if the heart is functioning or it doesn’t function. As long as he stops breathing he's considered dead. That's the way he explained the Gemara in Yoma, that's the way he said they always did in Europe when the Chayru Kadisha would test if a person is dead or not. He always used to test his breathing and nothing else. I'll repeat again the same thing: If the breathing has stopped, then he's considered dead. And that's it, nothing else.

Interviewer:
Even if the heart's still beating...

Rabbi Dovid Feinstein:
Right.

Interviewer:
Right.

Rabbi Dovid Feinstein:
And anything else is, not a criterion, that's all. Now if all these guidelines go with those guidelines, he would agree with it and if it doesn’t, he doesn’t agree with it.

But I'd understand, though, I mean once the person is dead and someone's available to give the organ, why not?

Interviewer:
Right. Do you think Rav Moshe would have encouraged people to sign organ donor cards?

Rabbi Dovid Feinstein:
I doubt it, but I don’t know.

Interviewer:
In your opinion, what’s the reason that Rav Moshe's opinion on brain death is so shrouded in—into mystery, or is it many different sides on how to understand Rav Moshe?

Rabbi Dovid Feinstein:
There's only one way. I don't think anybody argues that point. It's very simple. Cessation of breathing. I don't think anybody ever said differently.

Interviewer:
Right but when Rabbi Mordechai Tendler wrote up the Health Care Proxy for the RCA, when Rabbi Moshe Tendler wrote up the Health Care Proxy, many people came out that were saying not necessarily he is, that he has a real understanding of Rav Moshe. Many people were saying, were voicing that opinion.

Rabbi Dovid Feinstein:
It never changed. It depends how you want to word it. If I tell you cessation of breathing, and you say, oh, that's brain death, is that. I don't agree with that. I don't know anything about brain death. Quote me correctly. That's all, nothing else. And that's the whole argument against Rabbi Tendler.

Interviewer:
Cessation of breathing as brain death.

Rabbi Dovid Feinstein:
Yeah, fine. He might be 100% right. I'm not even disputing the point. But what's the difference. He could say, this brain death cannot breath and therefore he's considered dead. That's the way it should be worded. He was very meticulous that his words should not be changed. Quote him as is. He cannot breath. Nothing else.

Interviewer:
So it was just due to the wording . . .

Rabbi Dovid Feinstein:
That's it. So I'm saying so, that was the dispute, the original dispute, there were people disputed to Rabbi Tendler's opinion that brain death is stopping of breathing. That's all. And if he's 100% right, so one's going to argue with him.

Interviewer:
So... so, you're saying, in your opinion, if we could—if it's proven medically, what Rabbi Tendler's saying, that that would definitely be Rav Moshe's opinion.

Rabbi Dovid Feinstein:
Right, a hundred percent.

**Interviewer:**
But you're not sure that it has been proven, you're saying.

**Rabbi David Feinstein:**
I don't—I have no idea. I'm not saying I'm sure, I'm not sure. It's not my field. I don't know. My father ZTL's position of what constitutes death is when a person cannot breathe on his own. It doesn't matter if his heart is working or is not working.

**Interviewer:**
Would it then be your opinion that Rav Moshe then would encourage organ donation in that situation?

**Rabbi David Feinstein:**
One has nothing to do with the other. If you're talking about here's a patient available for a heart transplant, fine. He would definitely encourage it. If you're talking about putting it into the place—into the, ah, tank or whatever you want to call it, I doubt if he would agree with it. I can't vouch for it, but I doubt it. I think my whole purpose here is just to verify the position of—stopping of breathing. And I think, ah, my services are ended.

**Interviewer:**
Thank you very, very much. I appreciate it.
שלמה משה עמאר
רבה המדינה ורב הראשי לישראל

נתן פ,’’ג, כא, כ”ג, סקיי תשע”ו

[19]
[ON THE STATIONARY OF THE SEPHARDIC CHIEF RABBI’S OFFICE]

Shlomo Moshe Amar
Rishon LeZion Chief Rabbi of Israel

17TH Adar II, 5768 [March 24th, 2008]

Rabbinic Ruling
In our meeting today in the presence of Rav Ovadia Yosef, Professor Rabbi Avraham Steinberg and Professor Rabbi Yigal Shafran gave a detailed overview and summary concerning the establishment of death vis-a-vis brain death, which included various clarifications.

Rav Ovadia Yosef ruled that death is established upon death of the brain, including the brain-stem, and irreversible cessation of [autonomous] respiration [even if the heart is still beating]. But only on the condition that this determination [of brain death] be done by trustworthy people that include a committee of Torah scholars that are experts in this area [of medicine and halacha surrounding brain death], that they will check that all the appropriate steps were taken to make this determination.

At the same time, Rav Ovadia ruled that families who reject brain death as halachic death have the right to request that the ventilator not be removed and that no organs be recovered for transplantation. His instructions should be followed punctiliously.

Signed by,

Rav Shlomo Amar
Rav Ovadia Yosef
פורים, אבדרה שבנוברב

otle מותו מותי-שמתי - רעות הגרים ישב

1. בפיגורת שעורכה ביבנה על החרב ענוביה ישבו שלוש ימים. בפסח (2013), בנו כבוד של שמש, בין והחרב ענובית, שחיתת החרב. מערכה שהחרב שהרה, אל מי, וענתה לחרב ישבו.

2. החרב ענובית ישבו על מערכה החרב וענתה Attribution מותי-שמתי, שבקלת שלוש ימים.

3. מערכה שאינה ונשרו ושמית.

4. מערכה ישבו ישבו ישבו חלולא החרב וענתה Attribution מותי-שמתי, שבקלת שלוש ימים.

5. מערכה ישבו ישבו ישבו חלולא החרב וענתה Attribution מותי-שמתי, שבקלת שלוש ימים.

לדברות נוספים ובלשונות על המותי-שמתי, שבקלת שלוש ימים.

[21]
The [Knesset] Law of Brain-Respiratory Death – The Opinion of Rav Ovadiah Yosef

1) At the meeting that took place in the house of Rav Ovadiah Yosef, on the 17th of Adar II, 5768 (March 24th, 2008), in the presence of Rav Shlomo Amar, [the author] Rabbi Dr. Avraham Steinberg, Rabbi Yigal Shafran, and Minister Eli Yishai, I explained to Rav Yosef the main points of the proposed bill “Establishing Brain-Respiratory Death” that is to be voted upon in the Knesset for the 2nd and 3rd reading. [The bill was subsequently passed]

2) Rav Ovadiah Yosef inquired as to the opinion of Rav [Shlomo] Auerbach on the subject of brain death. I explained his position. Rav Yosef was bewildered as to why he [Rav Auerbach] felt the need to require the death of every brain cell, as it would be enough that the person is not breathing and that his brain [as an organism] is dead.

3) I showed Rav Yosef the handwritten letter of Rav Dovid Feinstein concerning the opinion of Rav Moshe Feinstein on the subject.

I informed Rav Yosef of my meeting in the home of Rav Shalom Yosef Elyashiv together with Member of Knesset Moshe Gafni. Rav Yosef wondered why Rav Elyashiv does not accept brain-respiratory death since according to the Talmud Yoma [85.] death is determined by [cessation] of [autonomous] breathing and not the [lack of] heartbeat. (Rav Yosef, however, did agree to add an addendum to the law to accommodate families that do not accept brain death according to halacha allowing them to request [and receive] further ventilation until cessation of heartbeat. But he [Rav Yosef] was surprised that the Degel Hatorah party representatives were instructed to vote against the law but allow the law to pass [by not causing the government to fall], because Rav Yosef felt one must decide one way or the other.)

4) Rav Yosef ruled vehemently that brain-respiratory death is death according to halacha, and he instructed Minister Eli Yishai that all Shas members of Knesset need to vote in support of this law.

5) Minister Yishai requested to receive in writing the ruling of Rav Yosef out of concern for criticism and doubt [lit: disturbances and posters criticizing their decision], but Rav Yosef said there is no concern about these things and said that his opinion should be widely disseminated.

[Two days after the meeting described above] On the 19th of Adar II, 5768 (March 26, 2008) Rav Amar asked Rav Yosef about a specific case of organ donation from an 18 year old woman (Chana Choev) who was brain dead from Meningococcal Meningitis (I was closely involved [with the case] and I reviewed the protocol [that they were properly followed] for determining her brain death and the TCD [Trans-cranial Doppler test results] that were done confirming her brain death). Rav Ovadiah Yosef permitted the removal of her critical organs to save the lives of other people who were in danger of dying.

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1 On the morning of the vote on this law in the second and third reading [in the Knesset].
Ruling of the Chief Rabbinate of Israel
Organ Donation

The Council of the Chief Rabbinate of Israel met this day, the first day of the month of Cheshvan on 5747 (1986), and unanimously affirmed the following recommendations by the Committee of Transplantation as follows:

1. The Chief Rabbinate was requested by the Ministry of Health to determine its Halachic position concerning heart transplantation in Israel. To that end, the Chief Rabbinate appointed a joint committee of Rabbis and physicians who studied the halachic and medical issues in depth. The committee consulted with renowned physicians in the field of transplantation from Hadassah Hospital and Shaare Zedek Hospital, both located in Jerusalem.

2. In the early years of heart transplantation (17 years ago), both Rabbi Moshe Feinstein and the Chief Rabbi of Israel, Rabbi Unterman forbade heart transplants and ruled it to be a double murder: that of the donor and that of the recipient. In the past decade there has been a fundamental change concerning the medical facts that concern heart transplantation as follows:
   a. The successes of heart transplants among recipients now reach 80% (that live at least one year) and 70% that live up to 5 years.
   b. It is now possible to reliably determine that the cessation of breathing of the donor is final and irreversible.
   c. Testimony has been brought before us that Rabbi Moshe Feinstein, in his later years, permitted heart transplants in America. We are also aware that many great Rabbis now recommend to heart patients to undergo the procedure.

3. Since this question concerns life and death, we are obligated to take a clear decisive halachic position such as that “Yikov Hadin et HaBar - The law will cut through the mountain.”

4. Relying upon the Talmud Yoma (85A) and the ruling of the Chatam Sofer (Yoreh Deah, 338) death is determined by irreversible cessation of breathing. (See Responsa “Igrot Moshe,” Chelek 3, 132). Therefore, concerning a donor it should be ascertained that the cessation of breathing is irreversible. This can be determined by proof of complete brain destruction, including the brain-stem which controls autonomous breathing.

5. It is accepted in the medical establishment, that in order to determine irreversible cessation of breathing (as outlined in paragraph 4) there ought to be 5 met conditions:
   a. Knowledge of the cause of injury.
   b. Complete cessation of natural breathing.
   c. Detailed clinical proof that the brain-stem is destroyed.
   d. Objective proof of the destruction of brain-stem though scientific tests, such as the BAER.
   e. Proof that complete cessation of breathing, and inactivity of the brain-stem, have continued for 12 hours - all the while the patient being cared for properly.

6. After investigating the criteria for establishing death, as was suggested by physicians in Hadassah Hospital in Jerusalem on 8th of Tamuz 5745 and given to the Chief Rabbinate on 5th of Tishrei 5747, we find that it is acceptable according to Halacha - if the objective clinical test BAER was performed on the brain-stem.

7. In light of everything that has been said above, the Chief Rabbinate of Israel is prepared to allow heart transplants (from accident victims) in the Hadassah medical center in Jerusalem based on the following conditions:
   a. Establishment of the all the conditions for determining death of the donor as mentioned above.
   b. Participation of a representative of the Chief Rabbinate of Israel as a full member in the medical team that determines the death of the donor.
   c. The representative will be chosen by the Ministry of Health from among a list that will be supplied to the Ministry of Health by the Chief Rabbinate of Israel once a year.
   d. Permission was given in advance by the donor, or alternatively by his/her family, to donate the heart.
   e. Establishment of a Review Committee under the aegis of the Ministry of Health but with participation of the Chief Rabbinate of Israel to oversee all heart transplants.
   f. The Ministry of Health will establish national regulations according to the above protocol.

8. Until the acceptance of all the specific conditions as outlined in Paragraph 7, there will be no permission for heart transplants in Israel.

9. If there will be acceptance of all the specific conditions as outlined in Paragraph 7, then a Review Committee of the Chief Rabbinate will be established to verify full compliance of the conditions as stated above.

Appendix (not included here):
   a. Criteria to determine brain-death by recommendation of Hadassah Hospital Jerusalem.
   b. Protocol for implementing a BABR exam.
הרבנות הארץ לישראל

תונון המלך על תחילה מועצת הרבנות הראבנית

בנימין הכהן

נמעט חתם ר' חיים בן נון, יריב מצות תמימים, וباشر את התkładים

ותד הרמטולוגיה ברקע:

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הרבנות הארץ(ERR)
הכר דלה נוחי ונדיברג שלום א"א בראשית לא"ה הנשה והנשמה.

"אורי הרשים"יו
אליעזרי גזרה לא"ה
למעמודי חללי
ישראלolahחרת
בלחי מוסרותшеמה
שאת כל זמנו
הדריש לא"ה.
דרדרות

הערכה על ההשכלה

השכלה היא יסוד לחיים. היא מאפשרת אתיכולת לנהל חיים עצמאיים ולהבין לעולם במעיונ

השכלה היא יסוד לחיים. היא מאפשרת אתיכולת לנהל חיים עצמאיים ולהבין לעולם בהיותו מכוסה מה Coroutine

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כתחילה, על פי המסורת, נשבע להיות מהולך ומרצחי עד לפני הימים.עד היום, עם כל ה moda של העבר, חיה תחילה, ומענה ידידות מהר הבית, ולאחר מכן מתה.כי היא נשבה בביות, בתו של ואן דר בו, הצייד של הים הש المشاركة, והייתה לא ידידות מהר בית. כי ואן דר בו, הצייד של הים השمشاركة, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר הבית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר לבית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות מהר בית, ומענה ידידות ה...


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Jewish Medical Ethics: Monetary Compensation for Donating Kidneys

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Key words: ethics, Jewish, organ donation

Abstract

The Israel Health Ministry is preparing legislation that would allow a person to receive monetary compensation in exchange for donating a kidney. This decision is controversial, since the risks and benefits of organ donation should be carefully weighed. The present study discusses the ethical implications of monetary compensation for organ donation, with a focus on Jewish ethics.

Siegell-Izakovich [1] recently reported that the Israeli Health Ministry is preparing legislation - the first of its kind - that would allow a person to receive monetary compensation in exchange for donating a kidney for a lifesaving transplant. Such a policy would be in contrast with both existing international professional ethics and major Christian and Islamic religious ethics, although medical ethicists like Veatch [2] have recently revisited the issue, arguing for accepting financial incentives for organ procurement, and McCarrick and Darragh [3] have provided a short introduction to the range of recent opinions expressed on this issue. In any event, the Israeli bill - which designated the money not as payment for sale but as compensation to the donor for his or her time, discomfort, inconvenience, and recovery - is fully consistent with traditional Jewish law and ethics, as we have outlined elsewhere [4].

In 2000, the Consensus Statement on the Live Organ Donor [5] reported that "direct financial compensation for an organ from a living donor remains controversial and illegal in the United States" and took note of the position of the Transplantation Society that "organs and tissue should be given without commercial consideration or commercial profit." This position reflected not only the view of the medical community, but that of the overall Christian and Islamic community as well.

The United States Conference of Catholic Bishops [6] held that "The transplantation of organs from living donors is morally permissible . . . (but) the freedom of the prospective donor must be respected, and economic advantages should not accrue to the donor." Likewise, Catholic theologians Ashley and O'Rourke [7] state, "If society is to live in a humane manner, generosity and charity, rather than monetary gain and greed, must serve as the basis for donation of functioning organs." Bishop Dimitrios of Xanthos (personal communication, 29 October 2001) reports, "The Greek Orthodox Church accepts the possibility of any kind of transplant, if it is not a commercial transaction. Only philanthropy is a proper motive for giving and receiving organs. Otherwise it commodifies human organs and thus deprives the action of ethical quality." The Church of Scotland [8] "totally endorses the moral judgment of the British Parliament in passing a Bill which makes it a criminal offence to buy, sell, or advertise human organs ... if the tissue or organ to be donated is the gift of God and if the imperative of the Gospel is to love our neighbor unconditionally, then donation must be made freely on the grounds of need, not conditionally on the grounds of creed, or lucratively on the grounds of greed." Breidenthal (personal communication, 1 December 2001) reports that in the Episcopal tradition, "to sell a kidney to a needy recipient is better than selling one's body as a sexual object, because the purpose of the sale is better. But the selling remains morally wrong - indeed, it may even be more wrong, since the need of the sick person is an example of what God (who alone 'owns' our bodies) intends us to use our bodies for, namely, to glorify God and serve our neighbor."

Badawi [9] reports that in 1996 a council of scholars from all the major Muslim Schools of Law in Great Britain concluded that "Human organs should be donated and not sold. It is prohibited to receive a price for an organ." Al-Munajjid [10] reported that the Islamic Fiqh Council (Majma' al-Fiqh al-Islami) issued a fatwa (religious ruling) which states that, "It is not permitted to trade in human organs under any circumstances. But the question of whether the beneficiary may spend money to obtain an organ he needs, or to show his appreciation, is a matter which is still under scholarly debate."
In general, all these positions share the ethical objections outlined by Dosaarto [11] to a system under which the state would regulate organ purchase from voluntary kidney vendors. (The state would not be concerned with the motivation of the vendor, but would check that the donor is competent and fully informed.) First, he argued, vital human organs would become market commodities, thereby compromising society's attitude towards individual human dignity. Second, the medical profession as a whole would have compromised its deontologic commitment that all individuals have value beyond price by adopting a utilitarian ethic that maximizes the good for the largest number. Third, such a system would allow society to accept the premise that poverty and desperation can be the basis for desperate, irreversible, one-time-only self-sacrificial acts, provided that the individuals claim to know the implications of their actions. Fourth, it ignores the strength of communal opinion, which insists on limits to personal autonomy for reasons other than physical harm to others. Fifth, it is an affront to those who see society as being based on transcendent values in which each human being has a sanctity, however hard it is to define what that means.

Halakhah (Jewish Law) certainly has no principled objection to any of these arguments, but it nevertheless comes to a different conclusion. In reaching a specific halakhic judgment, authorities often have to balance competing values and precedents. As Lichtenstein [12] notes, "A sensitive posek (halakhic decisor) recognizes both the gravity of the personal circumstances and the seriousness of the halakhic factors . . . . He might stretch the halakhic limits of leniency where serious domestic tragedy looms, or hold firm to the strict interpretation of the law when, as he reads the situation, the pressure for leniency stems from frivolous attitudes and reflects a debased moral compass."

Among the considerations that the posek must take into account is the effect that a particular decision might have on society as a whole. Thus, for example, the Talmud [13] records that each Friday afternoon Rabbi Huna would send someone to the market to buy up all vegetables unsold before the onset of the Sabbath in order that the farmers not give up on selling produce and thereby leave the community without vegetables. But despite the fact that the Bible and Talmud have a concrete and robust concern for charity on the private as well as public level, Rabbi Huna would throw the produce in the river rather than distribute it to the poor. He reasoned that such charity would have had negative societal impact, as the poor would begin to rely on these gifts rather than provide for themselves. The imperative for charity must be balanced against the realistic needs of a healthy community.

Halakhah acknowledges limits to personal autonomy for reasons other than physical harm to others. It assumes transcendent values in which each human body has a sanctity by virtue of it having housed a being created in God's image, and demands subservience to halakhic obligations and responsibilities, including the prohibition to gratuitously harm one's own body. Another basic principal is the biblical command [14] "Do not stand idly by the blood of your neighbor," which obligates a person to save another who is in danger.

The Talmud [15] records an argument regarding the responsi-

ability of two travelers in the desert who are in danger of death. One has only enough water for himself and the other has none. Let them share the water and both die, says Rabbi Ben-Petora; however, normative Halakhah accepts the view of Rabbi Akiva that he who has the water should keep it for himself. He reasoned that the Bible (Lev. 25:36) commands that "Your brother shall live with you," indicating that your life takes precedence. The obligation to save another does not extend to sacrificing one's own life.

While Halakhah surely concerns itself with the motivation underlying religious observance, it generally adopts the position that the religious value of a mitzvah (a good deed) is not obviated by the absence or diminution of proper motivation. Of course, the deed acquires greater religious value as the virtuousness of the intention increases. But inadequate motivation does not undermine the inherent ethical value of the act itself, or provide an exemption to the obligation to perform a particular mitzvah.

**Live organ donations**

In the sixteenth century, Ibn Zimra (known by the acronym Radbaz) [16] took up the question of a ruler who had threatened to kill one person if another did not allow the amputation of a non-essential organ. Radbaz, quoting Proverbs 3:17 that "[the Torah's] ways are ways of pleasantness," rules that the Halakhah could not possibly demand the amputation of a limb even to save another person. Nonetheless, it is a most "pious act" to do so voluntarily, provided it does not endanger one's own life. If, however, the procedure actually endangers the volunteer, the donor is dismissed as a "pious fool" for doing a dangerous thing. This is the dominant opinion in halakhic literature.

On this basis, Weiss [17], one of Jerusalem's late senior poskim, held that live kidney donations are forbidden, because they constitute too dangerous an enterprise for the donor. However, Yosef [18], former Chief Rabbi of Israel and senior contemporary posek, indicated that that ruling was based on the medical information available at that time. Now that medical authorities maintain that the risk for the donor is reasonable, such donations are permissible. Goren [19], late Chief Rabbi of Israel, likewise maintains that this medical judgment determines the permissibility of the donation. The current normative halakhic position is that such donations constitute a most pious act.

Goren writes that donation of a kidney in consideration of financial reward does not change its positive characteristic. His reasoning is based on the Halakhah concerning the obligation to not stand idly by your neighbor's blood. One is obligated to save someone in mortal danger even if it involves financial loss. However, if the rescued person has the financial means, the "good samaritan" can recover his expenses, despite the fact that he was obligated to act, and such financial considerations do not affect the religious quality of his act. "We have no halakhic basis on which to prohibit one from donating a kidney in consideration of financial gain," he wrote. "(As much as this reflects an agreement between the donor and recipient.)"

Abraham [20], expressing the view of Aurbach, another of Jerusalem's late senior poskim, writes that one cannot say that a person who contributes his kidney in consideration of financial gain

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is doing something contemptible rather than praiseworthy. The vendor/donor has no obligation to contribute an organ and, if he
nevertheless does so, it remains most commendable even if his primary purpose was not wanting altruistically to save a life but
rather to obtain finances to pay off his debt or obtain medical
services for himself or his family members. But, adds Abraham,
what does that say of a society that allows a person to reach such a
desperate state that he must sell an organ to get out of financial
debt or obtain necessary medical services. Shafman [21], director
of the Jerusalem Rabbinate's Department of Halakha and Medicine,
similarly notes, "Selling organs does involve an ethical problem,
but it is one that relates to the general society and not to the individual
buyer or seller. How did society reach a point where people are
willing to sell their organs? This is a question of society's ethics, but
it involves no technical halakhic prohibition."

Lau [22], former Chief Rabbi of Israel, sees a different ethical
issue in allowing the sale of organs, namely that the organs might
eventually become available only to the rich. But with regard to the
question of financial consideration for donating one's organs, he
sees no ethical issue at all. A person who is injured by another is
allowed to collect not only for his medical expenses and lost
income, but also for pain and suffering. One who volunteers to be
injured in order to save another does not forfeit similar compensation.
It is true that poor people are at a disadvantage in competing
for limited resources, but that is true for a wide range of medical
issues. Any possible underground exploitative industry in organ
sales, he adds, should be prevented by appropriate governmental
supervision.

**Discussion**

All these halakhic authorities reject out of hand the notion that
payment for a kidney donation deprives the action of ethical quality.
They agree that a donation motivated by generosity and charity,
rather than monetary gain and greed, is a most "pious act," but they
deny that this is the only ethical basis for donation of functioning
organs.

Auerbach's position — that one's donation remains most
commendable even if his primary purpose was not wanting
altruistically to save a life but rather to obtain finances to pay off
his debt or obtain medical services for himself or his family
members — coincides with Dossetter's "indirect altruism." An
impoveryished father, in Dossetter's example, wants to help his
seriously ill daughter. If she had renal failure, he would gladly
donate his kidney with no thought of financial compensation.
However, she does not have renal failure but a white-cell
malignancy that requires expensive treatment. The father sells his
kidney to obtain the money to pay for her medical treatment.
Dossetter sees this as morally acceptable, despite his objection to
allowing the sale of kidneys, but objects to allowing it for pragmatic
reasons.

It is difficult, though, to separate indirect altruism from non-
altruistic financial gain. Dossetter quotes the case of an impover-
ished Indian widow with two unmarried daughters for whom it is
essential that she have a dowry. The sale of her kidney allowed her
to provide dowries that enabled them to marry. In a society in which
spinsters may lead a sorry and dangerous existence, this was a life-
fulfilling, altruistic act. However, this logic would move most kidney
sales into the category of indirect altruism, as few healthy
impoverished donors intend to use the money obtained capriciously.

Willkerson [23] has argued that the commodification argument
against organ sale is not persuasive. The poskim, however, avoid the
issue of commodification by framing the payment as the "fine"
imposed on someone who commits a bodily assault on another,
which includes payment for pain and suffering in addition to
medical expenses and lost income.

In general, these poskim concur with the arguments put forth by
Radicliffe-Richards and her colleagues [24]. There is a possibility of
exploitation of potential donors/vendors, but it is the responsibility
of governments to protect such individuals by regulation, as they
now do in many other areas. Rich people will have opportunities for
medical care unavailable to poor people, but that is the reality in
many areas of medical care throughout the world. It might reflect
poorly on a society that it allows a person to reach such a desperate
state that he must sell an organ to get out of financial debt or
obtain necessary medical services; but outlawing such sales will not
correct the underlying social inequities. Interestingly, the proposed
Israeli protocol, as reported by Friedlaender [25], gives poorer
patients an equal opportunity to receive unrelated donor kidney
transplants by having the Israeli National Transplant Center, and
not the recipient, pay the donor.

**Conclusion**

While non-altruistic sale of kidneys might be theoretically ethical,
ultimately its ethical status is inextricably connected to solving a
series of pragmatic issues, such as creating a system that insures
that potential vendors/donors are properly informed and not
exploited. Without such arrangements, ethical non-altruistic kidney
donations remain but a theoretical possibility.

Exactly what specific social safeguards beyond informed consent
must be instituted are not spelled out by these halakhists, but
presumably they would mirror those created by secular legislatures
in areas such as adoption, surrogacy, or even employment. These
would include control and supervision of medical screening and
support of the donors to ensure that their health is not permanently
endangered; protection of minors and incompetents; and regulation
of payments so that they reasonably reflect compensation for
pain and suffering. It remains to be seen whether the pending
Israeli legislation will accomplish these goals. In this respect,
Shafman sees an internal contradiction in principle between
allowing payment for surrogacy, for example, and outlawing the
sale of organs, both of which involve a person taking payment for the
"use" of their body.

In the meanwhile, a practical immediate solution lies in the
direction of increased cadaver donations. In this respect, it is worth
noting the halakhic ruling given in 1978 by Goren [19]: "When there
is a deathly ill patient waiting for a kidney transplant and there is a
cadaver whose kidney is an appropriate match for transplantation,
it is a mitzvah and obligation for the family of the deceased to allow
the transplant, as this is a matter of saving a life and 'not standing
by the blood of your neighbor.'"
References


13. Ta'arui 20b.


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Organ Donation & Brain Death in Halacha
Halachic Organ Donor Society
www.hods.org

THE NEED
- 100,000 Americans and 1,000 Israelis waiting for organs
- Every year 7,000 Americans and 100 Israelis die "on the list"
- Israel was thrown out of European Network of Organ Sharing
- Israelis and Jews are arrested every year for buying and selling organs
- Jews have a bad name internationally on the issue of organ donation
- In 2001, only 3% of Israelis had organ donor cards while in America it was more than 45%
- In 2011, only 17% of New Yorkers have cards while the country average is 45%
- In 2001, only three Orthodox rabbis had organ donor cards

REASONS JEWS DON'T DONATE
[Mnemonic is SETH] (but I don't recommend going in that order)
- Emotionally Difficult to Donate (same for non-Jews)
- Halachic Prohibitions (3) Concerning Corpse
- Superstitions (2) Scaring Jews Not to Donate
- Timing of the Donation: At Brain-Stem Death

Halachic Prohibitions
About a Corpse
1. Issur Nivul Hamet
2. Issur Hana'at Hamet
3. Issue Halanat Hamet

PIKUACH NEFESH OVERRIDES THESE COMMANDMENTS
that is the why Rabbi Yechezkel Landau (known by his magnum opus the Nodah B'yehuda) writes we can do autopsies if the results will most likely help us save someone else's life ("choleh lefanecha")
Emotions

Emotionally it is difficult however...

- consider that if your loved-one needed an organ you would want someone else to ‘get over’ the emotional inhibition and donate their organ

- Rav Moshe Feinstein writes (I.M. Y.D. V.III, Siman 174) “...though it is the nature of people to be very distressed over their deceased (loved one)... nevertheless, there is a mitzraah not to be overly distressed [about donation] in order to save a life with the organ of the deceased.”

SUPERSTITIONS

1. **AYIN HARAH**
   1. The rationalist understanding is that the term ayin harah is simply a metaphor for jealousy (see Rav Shlomo Aviner's video at www.hods.org)
   2. If you really believed in it you should not sign a ketubah, life insurance, health insurance, flood insurance, theft insurance, etc.
   3. If ayin harah really worked, there would be plenty of organs to go around because there are thousands of people with organ donor cards.

SUPERSTITIONS

2. **Belief that you need to be buried with your organs in order to be resurrected**
   1. No source
   2. Counter-factual as all organs (and even bones) eventually decompose
   3. Seems unfair to Jews incinerated in the Holocaust and blown up in their tanks
   4. Insulting to God as if he is almighty he can resurrect you anyway

- **Jewish Ossuaries**
  1. Century BCE – 1st Century CE
  2. During Second Temple period, Jews were buried in ossuaries (stone coffins) containing only the chest, even the high priest could not be...
Timing of Donation

- Most organs are taken from “Brain-Stem Dead” patients/corpses.
- If you view brain-stem death to be death, you can donate, but if not, then you can’t.
- Even though a person is brain-stem dead (aka Whole Brain Dead) it is possible to keep the heart still beating with the help of a ventilator.

What is Brain Stem Death?

- Watch this 7 minute film

Anatomy
- The Brain, by and large, consists of brain-stem and cortex

Terms
- Life-Support Machine: Avoid using, inaccurate and implies a football could be alive
- Respirator: Avoid using it, implies spontaneous human respiration
- Ventillator: Accurate, a machine that vents air in and out
- Coma: Cortex is not working, not dead, might wake up
- Persistent Vegetative State (PVS): aka “Vegetable” Long term coma, most likely never wake up, but still alive
- Brain Death: everybody shows around this term to mean different things, avoid it
- Brain-Stem Death: (aka Whole Brain Death) both brain-stem and cortex are dead

Talmudic Sources

- Mishna Ohalot Chapter 1, Mishna 8 (in Rambam Mishna 7)
  “Decapitation is Death” and the logic is that a person who is brain dead is as if he is decapitated.

- Talmud Yoma 85a a person who looks dead, unconscious, doesn’t respond and can’t breathe on his own, is dead.
  Others think this statement only applies if the heart has already stopped breathing.

HODS Accomplishments

- Israel went from 3% to 12%
- Israelis dying on waiting list went from 120 a year to 80 a year
- Went from 2 rabbis to 183 rabbis with organ donor cards
- HODS responsible for at least 200 life-saving transplants that were not otherwise going to happen
ACTION LIST

1. Email your family asking them what they think
2. Email your rabbi asking him what he thinks
3. Consider getting an organ donor card at www.hods.org
4. Learn more by watching videos at www.hods.org
# Brain Death

**Anatomy and Physiology**

Joel S. Cohen, M.D.
Associate Professor of Clinical Neurology
Albert Einstein College of Medicine

# Historical Perspective

Prior to the advent of mechanical respiration, death was defined as the cessation of circulation and breathing.

## Historical Perspective

- 1959 *Coma de'passe* Mollaret and Goujon
- 1968 *Irreversible Coma/Brain Death* Harvard Medical School Ad Hoc Committee
- 1981 Uniform Determination of Death Act - President's Commission for the Study of Ethical Problems in Medicine
- 1994 American Academy of Neurology Guidelines for the determination of Brain Death
- 2005 NYS Guidelines for Determining Brain Death

## Brain Death Current Consensus

- Absent Cerebral Function
- Absent Brainstem Function
- Apnea
Cerebral Cortex

- Cognition
- Voluntary Movement
- Sensation

Brain Stem

To Spinal Cord
Brain Stem

**Midbrain**

- Cranial Nerve III
  - pupillary function
  - eye movement

**Pons**

- Cranial Nerves IV, V, VI
  - conjugate eye movement
  - corneal reflex

Brain Stem

**Medulla**

- Cranial Nerves IX, X
  - Pharyngeal (Gag) Reflex
  - Tracheal (Cough) Reflex
- Respiration

Reticular Activating System

- Receives multiple sensory inputs
- Mediates wakefulness
### Causes of Brain Death

<table>
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<tr>
<th>Normal</th>
<th>Cerebral Anoxia</th>
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<tbody>
<tr>
<td>Normal</td>
<td>Cerebral Hemorrhage</td>
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<tr>
<td>Normal</td>
<td>Subarachnoid Hemorrhage</td>
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<tr>
<td>Normal</td>
<td>Trauma</td>
</tr>
</tbody>
</table>
Causes of Brain Death

| Normal | Meningitis |

Mechanism of Cerebral Death

- Neuronal Injury
- Neuronal Swelling
- Decreased Intracranial Blood Flow
- Increased Intracranial Pressure
- ICP > MAP is incompatible with life

Conditions Distinct From Brain Death

- Persistent Vegetative State
- Locked-in Syndrome
- Minimally Responsive State

Persistent Vegetative State

- Normal Sleep-Wake Cycles
- No Response to Environmental Stimuli
- Diffuse Brain Injury with Preservation of Brain Stem Function
**Locked-in Syndrome**

**Ventral Pontine Infarct**
- Complete Paralysis
- Preserved Consciousness
- Preserved Eye Movement

**Minimally Responsive State**
Static Encephalopathy
- Diffuse or Multi-Focal Brain Injury
- Preserved Brain Stem Function
- Variable Interaction with Environmental Stimuli

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**Brain Death Neurological Examination**

Clinical Prerequisites:
- Known Irreversible Cause
- Exclusion of Potentially Reversible Conditions
  - Drug Intoxication or Poisoning
  - Electrolyte or Acid-Base Imbalance
  - Endocrine Disturbances
- Core Body temperature > 32°C

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**Brain Death Neurological Examination**

- Coma
- Absent Brain Stem Reflexes
- Apnea
**Coma**

- No Response to Noxious Stimuli
  - Nail Bed Pressure
  - Sternal Rüt
  - Supra-Orbital Ridge Pressure

**Absence of Brain Stem Reflexes**

- Pupillary Reflex
- Eye Movements
- Facial Sensation and Motor Response
- Pharyngeal (Gag) Reflex
- Tracheal (Cough) Reflex

**Pupillary Reflex**

Pupils dilated with no constriction to bright light

**Eye Movements**

Occulo-Cephalic Response
"Doll's Eyes Maneuver"
Eye Movements

Facial Sensation and Motor Response
- Corneal Reflex
- Jaw Reflex
- Grimace to Supraorbital or Temporo-Mandibular Pressure

Apnea Testing

Prerequisites
- Core Body Temperature > 32° C
- Systolic Blood Pressure ≥ 90 mm Hg
- Normal Electrolytes
- Normal PCO2

Apnea Testing
1. Pre-Oxygenation
   - 100% Oxygen via Tracheal Cannula
   - PO2 = 200 mm Hg
2. Monitor PCO2 and PO2 with pulse oximetry
3. Disconnect Ventilator
4. Observe for Respiratory Movement until PCO2 = 60 mm Hg
5. Discontinue Testing if BP < 90, PO2 saturation decreases, or cardiac dysrhythmia observed
Confounding Clinical Conditions

- Facial Trauma
- Pupillary Abnormalities
- CNS Sedatives or Neuromuscular Blockers
- Hepatic Failure
- Pulmonary Disease

Observations Compatible with Brain Death

- Sweating, Blushing
- Deep Tendon Reflexes
- Spontaneous Spinal Reflexes - Triple Flexion
- Babinski Sign

Confirmatory Testing

Recommended when the proximate cause of coma is not known or when confounding clinical conditions limit the clinical examination

Confirmatory Testing

<table>
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<tr>
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<td><strong>Technetium-99 Isotope Brain Scan</strong></td>
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Confirmatory Testing

Somatosensory Evoked Potentials

Concern for man and his fate must always form the chief interest of all technical endeavors. Never forget this in the midst of your diagrams and equations.

Albert Einstein
VIDEO on Brain-Stem Death

Visit http://hods.org/english/h-issues/YouTube_video%20pages/Animation.asp