

Leading Chareidi Rabbonim Oppose Brain Death Law



March 27, 2008



Rabbi Yosef Sholom Elyashiv has expressed his opposition to the new Brain Death Law, which was introduced to facilitate organ donor availability [reported [HERE \(http://www.theyeshivaworld.com/article.php?p=15958\)](http://www.theyeshivaworld.com/article.php?p=15958) on YWN]. The bill defines brain death as declared by two physicians, following specialized testing to determine profound brain stem death.

Rav Elyashiv is reported to have stated that even a seriously ill patient whose brain has ceased functioning is still alive according to Torah Law as long as his heart beats and removal of such a person's organs would be shefichas domim.

Posters have already appeared in Yerushalayim, in Meah Shearim, calling to "Stop the murders" in reference to the new law.

(Yechiel Spira - YWN Israel)

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38 Comments »

1. The Rav has spoken! Thats it. No questions anymore.

Comment by ImustShteig — March 27, 2008 @ 1:37 am

2. There is a machloches l'shem shamiyim amongst the Gedolim regarding when a person is called dead. It will be interesting to see how this plays out. I remind everybody to be mechabed the Gedolim from both sides of this issue.

Comment by Softwords — March 27, 2008 @ 2:42 am

3. Softwords, who are the gedolim that take the opposite position that you refer to?

Comment by Joseph — March 27, 2008 @ 7:23 am

4. Joseph, AFAIR, Rav Moshe Feinstein ZT"L many many years ago wrote that total cessation of blood flow to/from the brain stem is sufficient to determine Halachic death.

If the bill in question leaves the decision totally to doctors without Rabbinic input and veto-power, then the bill is not worth beans.

Comment by ChaimAharon — March 27, 2008 @ 7:45 am

5. Harav Ovadya Yosef also Paskened that Braindeath is Halachic death

Comment by Kollleleit — March 27, 2008 @ 7:49 am

6. Chaim, unfortunately "AFAIR" just won't cut it.

And worse, if the bill becomes law doctors may murder patients. So it is worse than "beans."

Comment by Joseph — March 27, 2008 @ 8:03 am

7. Speaking on Galei Tzahal (Army Radio) on Tuesday morning, Degel HaTorah MK Rabbi Avraham Ravitz stated the law does not bring anything new to the organ donor arena, explaining it could have been passed 20 years ago if the medical community would have been willing to consult with leading Torah authorities.

Rav Ravitz, who maintains close ties with Rav Yosef Sholom Elyashiv Shlita, stated that he too has an Adi Organ Donor card. AFTER THIS NEW ANNOUNCEMENT, WILL HE NOW THROW OUT HIS CARD?

Comment by appleguy — March 27, 2008 @ 8:06 am

8. My understanding from the previous article was that there is a clause that requires family and/or Rabbinical author to authorize any actions with a brain dead patient.

Joseph - As of now I am only aware of Rav Ovadya Yosef, shlita but I assume he is not alone.

This is a tough topic and hard to decide. I'm glad that I'm not the one that's gotta make the decision!

Comment by Softwords — March 27, 2008 @ 9:15 am

9. I'm not a doctor, but I thought that the heart cannot continue beating on its own when there is complete brain stem death. To all doctors

and scientists who post on this forum - please enlighten us. Thank you.

Comment by Velvel — March 27, 2008 @ 9:25 am

10. I don't understand why there should even be a question as to Rav Elyashiv's p'sak AFTER the article posted yesterday regarding:

Oklahoma City, OK - Man Declared Brain Dead Wakes Up After Hearing Doctors Say He Is Dead

Oklahoma City, OK - Four months after he was declared brain dead and doctors were about to remove his organs for transplant, Zach Dunlap says he feels "pretty good."

Dunlap was pronounced dead in Wichita Falls, Texas, after he was injured in an all-terrain vehicle accident. His family approved having his organs harvested.

His father, Doug, said he saw the results of the brain scan. -> "There was no activity at all, no blood flow at all."

Comment by PloniAlmoni — March 27, 2008 @ 9:29 am

11. I found it amazing that a news report came out within 24 hours of the law passing in Israel. It was about a man who was declared brain dead — his own father saw the brain scan with no blood flow, no hot spots, and the guy woke up a while later and is basically back to normal....

Comment by kollelman — March 27, 2008 @ 10:10 am

12. "As of now I am only aware of Rav Ovadya Yosef, shlita but I assume he is not alone."

Rabbi Dr. Moshe D. Tendler, the leading posek for medical halachah in the United States, has long endorsed brain death as the halachic criterion and reports that his father-in-law, Rabbi Moshe Feinstein z'tz'l, also did so before he died. Others disagree (including some of his colleagues at Yeshiva University), but Rabbi Dr. Tendler's torah is probably what most practicing orthodox physicians follow today regarding medical matters, at least in the US.

Comment by charliehall — March 27, 2008 @ 10:46 am

13. Rav Moshe also said that heart transplants are murder on two accounts— the donor and the recipient.

To remove a heart for a transplant, the heart must still be alive and beating... hence, taking one means you are killing the person al pi halacha.

Comment by LayoM33 — March 27, 2008 @ 11:00 am

14. To velvel,

The brain stem does impact your breathing and heart beat, problem is with all the new technology involved doctors can upkeep certain organs while the others are completely dead.

So that's where the problem lies. One can be "brain dead" but on machinery (mechanical ventilation) that allows his heart to pump... so is he really dead?

Comment by LayoM33 — March 27, 2008 @ 11:08 am

15. I think there is confusion regarding Reb Moshe's position. Some cite him as allowing brain death to be the criteria. However, from what I could tell of his teshuvos, it seems he uses it lechumra, i.e., you need absence of breathing in addition to a negative reading on the EEG, but would not allow brain death alone.

On the other hand, somebody said in Reb Moshe that brain death has a din of hutaz harosh, where there is no possibility of recovery, but I don't know if Reb Moshe says that inside.

In addition, I don't know how one could rely on a machine, as there are always errors or malfunctions possible. One can put the electrodes on wrong, or not set the dial right, or the machine could just be broken. In addition, there is a lot of science we don't know, and can one rely on probability (ruva dleisa kaman) that nobody survives in such and such a state, when ein holchin bpikuach nefesh achar harov. Hard to equate a machine's negative reading with hutaz harosh.

Just some thoughts. I was surprised that Rav Ravitz thought brain death was so poshut.

Comment by Pashuteh Yid — March 27, 2008 @ 11:09 am

16. #13, Heart transplants are a different inyan. Maybe it is still usable a few seconds after death, as far as the donor. Second as far as recipient, science has come a long way since Reb Moshe said that. I personally know a father of a Rosh Kollel who had a transplant after multiple severe heart attacks 10 years ago or more, and is doing very well.

Comment by Pashuteh Yid — March 27, 2008 @ 11:12 am

17. Dear Yeshiva World

I happen to think that you have an important website. At times my sarcasm is a bit sharp. I do not fault you for not publishing my notes. But on this subject my note was serious and right on the money. I hope you will reconsider. To oppose the policy that the Rabbanut and other Rabbonim agreed upon in Israel this week endangers the lives of Frum Jews who are in need of transplants. I kid you not when I tell you that Organ centers have begun limiting organs to Frum Jews because they are under the impression that we take organs but do not give them. This decision by Rav Elyashiv must be reconsidered

Editors Response: Your previous comments were not approved. The reason is that you are questioning the Psak of the Posek Hador. We will not allow that here. Should you have any questions regarding the Psak, we suggest you pay him a visit and discuss it with him.

Please let us know his response.

Comment by daat toirah — March 27, 2008 @ 12:08 pm

18. I believe Rav Ravitz is the recipient of a kidney transplant, so that may explain his sensitivity to the issue and why he carries an Adi card. The Charedi position puts the community in a difficult moral position. I believe that Charedim will accept organ transplants but will refuse to donate. The justification is that once the donor has been "killed", why let his organs go to waste. Better yet if he donor is a gentile... I don't see how this position can be justified by any moral standard.

Comment by naftali — March 27, 2008 @ 12:09 pm

19. Dear Editor

Again this is not a frivolous comment. Access to Rav Elyashiv is not easy. It is hard to get past the gatekeepers. Furthermore, Rav Elyashiv sometimes answers based on the information he is given. He is not always given objective facts. This was never the case with Rav Shlomo Zalman ZT"L. I was a ben bayis there and his responses were always based on the real facts

Comment by daat toirah — March 27, 2008 @ 12:35 pm

20. #13 & #16:

A heart can be excised from a donor body and transferred to the recipient even once it has stopped beating on condition that it is not damaged.

In 1959 Dr Norman Shumway was able to transplant a heart from one dog to another. He induced hypothermia in the donor dog, removed the heart (it had obviously now stopped beating) chilled it further to prevent damage from lack of oxygen during the procedure and then transplanted it into the recipient dog's body. The heart was then warmed and shocked back to life. The recipient dog recovered well (although it was put down a week later so that the results of the procedure could be examined in a post mortem).

Schumway proved that hypothermia was a valid tool in enabling heart transplants. You do not have "a few seconds" to perform the transplant in, you can take hours.

R' Moshe said that Dr Chris Barnard committed double murder for a different reason. In 1967 Dr Barnard used an accident victim as his donor. The heart was healthy but the patient's vital organs were beginning to fail. He felt that had he waited for the heart to stop beating of its own accord before he began the procedure of excising her heart the heart would have been damaged and no longer viable. (He had tried to perform the surgery on a previous occasion with another donor and had waited until cessation of a heart beat but the transplant was unsuccessful and the recipient also died in the operating theater).

Dr Barnard killed Ms. Darvall so that he could transplant her heart into Mr Louis Washkansky.

The operation was a success but in the end Washkansky also died of pneumonia, brought on by the administration of drugs used to suppress his immune system so that his body would not reject his new heart.

Dr Barnard in effect murdered Washkansky not because he had cut out his old heart, but because he had performed surgery on a man while not sure that he could save him. The surgery was performed so that he could get the credit and fame of having performed the world's first heart transplant, but at the time Barnard did not have the knowledge required to tread the fine line between rejection and pneumonia.

The story surrounding the race to be the first to perform a heart transplant is a fascinating one. It is the story of some cautious doctors who although being at the cutting edge of medicine, took every step with great hesitation and always tested the ground beneath them before taking that step, as well as amazing surgeons who cared little for their patients once the procedure itself was over and were willing to take risks with other people's lives (Denton Cooley for example who performed thousands of heart transplants but lost many of his patients post op).

One gets an insight into the Mishna at the end of Meseches Kiddushin that says that "Tov shebeRofim leGehenom"...

Comment by thabo — March 27, 2008 @ 1:29 pm

21. #20 Thabo, that is an interesting post. It shows how the middah of gaivah distorts one's thinking and activities.

I once heard a pshat in that gemara, possibly the Maharsha who says tov sheberofim lgehenom means when a doctor considers himself tov sheberofim, and doesn't consult with other doctors.

Comment by Pashuteh Yid — March 27, 2008 @ 1:58 pm

22. There is an organization- HOD- halachic organ donor.

at the bottom of their application you have a choice as to which Psak you hold by - There are 2 Different Piskei Din. Stop the Machloikes and everyone should do what there Rav says.

Comment by simba — March 27, 2008 @ 2:58 pm

23. "Tov" in gematria is 17. A doctor who only believes in 17 of the Shmenoa Esrey - by leaving out "Refaanu Hashem" - is one who we refer to as Tov S'berofim.

Comment by NeveAliza — March 27, 2008 @ 4:26 pm

24. I believe that the ADI Halchic organ donor card has a section in which you can designate a specific Rav to be consulted prior to any organs being taken for donation. Assuming you have a Rav whom you follow on all issues, this seems to be a reasonable approach.

an Israeli Yid

Comment by IsraeliYid — March 27, 2008 @ 4:40 pm

25. Kidney transplants are not at issue here- the reason being that we b'h have 2 kidneys & function with one if needed. Therefore most kidney donations are from live donors. Other transplants can be done with a piece of an organ & both pieces regenerate. However heart, lung & corneal transplants cannot be done unless from a brain dead donor. It is really easy to second guess the gedolei yisroel & say why you know better. However if you really did- we would be asking you shailos instead of them. This is a public blog- please don't cause any chilulei hashem that make us look divisive and petty.

Comment by frumnurse — March 27, 2008 @ 4:53 pm

26. In general, I believe in milchamta shel torah, and do not think it is disrespectful nor see any reason why we can't see the sources that the gedolim use nor ask questions on their sevaros. This pertains to many of the topics on YW.

Remember the story of Rebbe Yochanan and Resh Lakish where after Resh Lakish passed away, Rebbe Yochana was very depressed because he had no chavrusa. So they found him somebody, and he started learning with him and got even more depressed. He said you are not like Resh Lakish. Everything I say, you say yes to. When I learned with Resh Lakish, everything I said he would ask me 12 kashyas on, and I would give him 24 answers, umemailah ravcha shmaytsa.

The gedolim are great because they say the best sevaros and have the most bekius (and the main thing is of course, their tzidkus). They are not gedolim because they are unable to answer and therefore need to be shielded. When we debate a topic it is lhagdil torah ulhaadirah.

Even when one brings up an issue that he feels a psak is too difficult for the public, that is still a legitimate question. Look in Kesuvos where one tanna argues with Rebbe Akiva and says bou unetzveach al Akiva ben Yosef, and Rashi adds shemarbeh mamzerim byisroel chinam. Rashi felt that the hardship of the psak is itself a sevara against rebbe akiva, and for the more lenient side.

I think the gedolim will be more than happy that we are discussing their words rather than arguing over who wore the fanciest suit in shul last week.

Comment by Pashuteh Yid — March 27, 2008 @ 6:20 pm

27. Pashuteh, True you may question and inquire **about** a psak of the Gedolim, but you (as non Daas Torah) cannot dispute it.

Comment by Joseph — March 27, 2008 @ 8:52 pm

28. Joseph,

If there is more than one Svara and there are Gedolim on each side of an issue, I do not see anything wrong with "holding" of one side rather than the other. This does not in any way, shape, or form challenge the Gadlus of the Gadol on the "other side"; it is rather part of "Eilu V'Eilu Divrei Elokim Chaim".

an Israeli Yid

Comment by IsraeliYid — March 27, 2008 @ 9:34 pm

29. If you click here, you can see and hear Reb Dovid Feinstein state Reb Moshe's position, which is that it all depends on whether or not the patient is breathing:

<http://www.hods.org/video/html/FeinsteinFull.php>

Comment by brumfin — March 27, 2008 @ 9:41 pm

30. Israeli-Yid,

I was not referring to "choosing" an opinion, but rather stating that one should not come up with their own 'idea' in opposition to Daas Torah.

That being said, one still should not choose a position on an issue-by-issue basis, but rather accept upon oneself a Rav whose opinions he always accepts — agree with it or not.

Comment by Joseph — March 28, 2008 @ 12:59 am

31. #22 Simba

>>There is an organization- HOD- halachic organ donor. at the bottom of their application you have a choice as to which Psak you hold by - There are 2 Different Piskei Din. Stop the Machloikes and everyone should do what there Rav says.

Comment by matzahlocaol101 — March 28, 2008 @ 4:20 am

32. Joseph,

I don't think you'd disagree with the premise that one can have an halachic "idea" that is in contrast to Rabbanim on a theoretical level (for the purpose of learning, if no other), though one of course has to be mevatel one's da'as to the chachamim when it comes to the Halacha L'ma'ase practical application.

As to choosing a Rav - you are absolutely correct that one should not go Rav-hopping for Piskei Halacha. I have personally chosen my Rav (who, from earlier exchanges we've had, I know your Rav does not agree with on many issues), whom I follow whether or not I understand his reasoning (though I will often ask him how he came up with his Psak).

an Israeli Yid

Comment by IsraeliYid — March 28, 2008 @ 9:34 am

33. First of all, it is not okay to trash the opinions of the gedoilay and/or poskey hador.

I personally remember, the Satmar Rovs ZY'U, and Harav Moishe, ZT'L, had a machlockes on a particular halacha, and between them the words got a bit strong. In a discussion someone made a light comment in front of the Satmar Rov that was only a tiny bit disrespectful about R Moshe. The Satmar Rov stood up from his chair, and chastized the speaker with his soft sweet voice, basically telling him that no one should dare to speak with anything but kovod when speaking about R Moshe. He said, "HaRav HaGuon, R Moshe Feinstein, shlita, is one of the most important poskey an gedoilai hador, how dare anyone be poigaia in his kovod." He sat down upset.

Though he may have strongly disagreed with one of R Moshe's psaks, did not mean he did not show maximum kovod for him, as well as for his opinions.

They had a few inyunim where they differed, but always with respect.

Saying that a rov should "reconsider" his psak because XXXXXXXXXX, some reason in our minds is very lacking in respect.

All that being said, I will mention another point touched upon already.

First of all, let me state that I do not have the chutzpa to offer any halacha opinions. Only thoughts.

Have any of you read the book "COMA" though it is an older fiction book, it brings up many points we need to understand and keep in mind.

Though I do believe that the surgeons are well intended, the fees for transplants are very high, and they MAY interfere with the judgement of these fine people.

When a patient under a doctor's care is in very critical condition, and he is an organ donor, and there is a potential recipient in the hospital, there are numerous things tugging on the doctors's feelings and conscience.

1) This man is going to die soon anyway, if we harvest his organs now we can save a life (now they are thinking pikuach nefesh of the other person, neglecting the saving of this person)

Comment by DM — March 28, 2008 @ 11:25 am

34. "In general, I believe in milchamta shel torah, and do not think it is disrespectful nor see any reason why we can't see the sources that the gedolim use nor ask questions on their sevaros. This pertains to many of the topics on YW."

— Pashuteh Yid (#26)

I agree with you that part of milchamta shel torah is to try to understand the reasoning of our poskim when they pasken.

However — I know you agree with this but I just wanted to spell it out — it must be limited to trying to understand their psak and not trying to decide if we agree with them or not. In other words we must accept the psak whether we understand it or not, and the attempt to understand is simply for the sake of Limud HaTorah.

Also, I think the place for that discussion is in the Beis Medrash and not on a website where people may see a svara and say, oh that makes more sense to me than what Rav Elyashiv said, so I'm not going to listen to Rav Elyashiv.

Comment by charlie brown — March 28, 2008 @ 11:45 am

35. #27, Joseph, I happen not to be a Rov, so you are correct, but since we generally don't know who people are here, I don't think labeling other posters here as automatically not having daas torah is correct. How would anybody know the background of another poster? Maybe some are big talmidei chachomim.

I was not questioning Reb Elyashiv, and above, as you can see, I was defending his side. I was only saying that I didn't think YW should censor a question from another poster.

In addition, daas torah is a gradual process, not an overnite thing. One needs to learn his whole life, and the more he learns, the greater his torah knowledge becomes. Nobody certifies people as having daas torah. Ren Moshe was quoted once as saying that people ask somebody a shaila, if they are satisfied with the answer and reasoning, they come back and ask again. They also recommend to somebody else. This is how one becomes known as a posek.

We accept the emes from wherever it comes. It should be almost self-evident that one is hearing great words by the words themselves, not by the label. Not so much different than chess or music lhavdil, where one sees the gadlus of a great violin player by the sound of his playing, or the greatness of a chess player by the brilliance of a chess move and his ability to anticipate 10 moves ahead.

We are not a pope religion. Gedolim share with us the reasons behind their piskei halacha. We believe they are anavim, and will not get insulted if somebody asks kashyas, unless they are lekanter. Reb Elyashiv seems apolitical and an ish emes, although I never met him, I get that sense. A poster who is concerned by a shortage of organ donors, has a legitimate question. However, the answer is also legitimate that ein dochin nefesh mipnei nefesh. To cut him off is, I believe, not the right way. Rather we explain why Reb Elyashiv said what he said.

Comment by Pashuteh Yid — March 28, 2008 @ 11:48 am

36. First of all, it is not okay to trash the opinions of the gedoilay and/or poskey hador.

I personally remember, the Satmar Rovs ZY'U, and Harav Moishe, ZT'L, had a machlockes on a particular halacha, and between them the words got a bit strong. In a discussion someone made a light comment in front of the Satmar Rov that was only a tiny bit disrespectful about R Moshe. The Satmar Rov stood up from his chair, and chastised the speaker with his soft sweet voice, basically telling him thay no one should dare to speak with anything but kovod when speaking about R Moshe. He said, "HaRav HaGuon, R Moshe Feinstein, shlita, is one of the most important poskey an gedoilai hador, how dare anyone be poigaia in his kovod." He sat down upset.

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Though I do believe that the surgeons are well intended, the fees for transplants are very high, and they MAY interfere with the judgment of these fine people.

When a patient under a doctor's care is in very critical condition, and he is an organ donor, and there is a potential recipient in the hospital,

there are numerous things tugging on the doctors' feelings and conscience.

- 1) This man is going to die soon anyway, if we harvest his organs now we can save a life (now they are thinking pikuach nefesh of the other person, neglecting the saving of this person)
- 2) Many a doctor, in fact many people worldwide, including, probably many of us, seem to feel that a young man's life, maybe a father of 6 small children, is in some way more important to save than an elderly man who is "barely alive anyway"
- 3) Transplant surgery does have a higher success rate if the donor is still breathing and heart beating at the time of harvesting, and it is a shame to wait until it is too late.
- 4) (hopefully subconsciously) If we lose the opportunity to harvest this patient's organs, we will not be able to transplant and lose some major fees

the above turn into the following:

"If I fail to harvest this person's organs, it is like I am killing that young man who needs his XXXX. How can I become a murderer just to follow this guy's rabbi, etc.,"

The above was told to me once by a FRUM SURGEON, who also said to me, "I know this is wrong thinking. I know that one minute more of life, even for the terminally ill man in a coma, is life, and needs to be preserved at all costs. I should NEVER think of robbing this man of one minute of life with the thought of maybe saving another. I know better. But, my G-d, that gives the Yaitzer Hora a really strong argument"

He recognized these feelings, and was horrified that he had them, for he knew it was wrong. But he explained to me that is he, a frum man, thought and felt the above, what are the non-frum surgeons thinking and feeling.

He told me it is VERY EASY for the doctors to manipulate brain death.

In fact, he told me, it may be a good idea for anyone in these days to tell the doctors that they are NOT donors under any circumstances! this to stop the temptation. Hopefully a close family member can be there, to advise the doctors otherwise, showing a living will, upon his petira.

Yes, this could mean losing some opportunities, but it could prevent being a rotzeiach.

All the above are just some thoughts to keep in mind. I certainly, just like many of us, can debate both sides of this issue.

That is why Hashem gave us Poskim.

And, in this issue, where a mistake can mean being guilty of murder, we MAY need to listen to the more chomur opinions, not make light of them.

Comment by DM — March 28, 2008 @ 11:50 am

37. So we all agree, and are good friends. Wishing everybody a good shabbos. BTW, DM, why have you not responded to my recent posts on the other thread about the shalosh shevuos (titled Hezbollah Threats). I am interested in hearing what the other viewpoint is.

Comment by Pashuteh Yid — March 28, 2008 @ 1:47 pm

38. How does one explain to a goy or non-believer that we cannot take an organ from a brain-dead person, but accept one to save one's life? A Jew may not donate but how can he accept? under which circumstances is it all right?

Comment by Proud of KAJ-WH TIDE — March 30, 2008 @ 3:17 pm

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