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Brother, can you spare a kidney?

By ASK THE RABBI: SHLOMO BRODY

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Is one permitted to donate a kidney to someone with renal failure, and to receive compensation for it?

In my previous column regarding blood and bone marrow donations, we concluded that the majority of legal decisors believe that one does not need to, and might be at times prohibited from, endanger oneself to save another's life. However, certain measures, such as blood or bone marrow donations, which entail minimal endangerment, do not constitute significant threats, and therefore it remains meritorious, and possibly obligatory, to perform such life-saving actions.

Donating a kidney clearly constitutes greater endangerment. Unlike blood or bone marrow, the missing kidney does not regenerate. While a person can function normally with one kidney (hence why the recipient benefits), the donor undertakes the risk of injuring his single kidney in a future accident or from dehydration. (Most kidney donors and recipients, therefore, should not fully fast on Yom Kippur.) Moreover, the procedure is much more invasive and entails a few weeks of outpatient recovery.

Rabbi Isser Unterman contended that the invasiveness of the surgery alone was sufficient to forbid live kidney donations, since he believed that the proscription of battery (*habala*), including self-injury, represents a form of self-endangerment prohibited by Halacha, even for the sake of saving a life (*Shevet Miyehuda* p. 53). Others similarly prohibited renal transplantation in the early 1960s, contending that the level of endangerment for the donor was too great (*Minhat Yitzhak* 6:103).

However, the majority of decisors, including Rabbi Moshe Feinstein, concluded that live kidney donations remain permissible and meritorious, even if the attendant risks prevent Halacha from obligating them (*Igrot Moshe* YD 2:174:4). Today, the level of risk in transplants is similar to other regularly performed surgery involving general anesthesia. Since Halacha (*Shabbat* 129b) generally permits dangers accepted with equanimity by society at large (*shomer peta'im*), donating a kidney would not constitute inappropriate self-endangerment.

While the pain and discomfort remain significant, Rabbi Shlomo Auerbach ruled that temporary severe pain does not mitigate the requirement to save lives (*Nishmat Avraham* YD 157). Moreover, since the life expectancy and general health of successful transplant recipients greatly exceeds those of patients on dialysis, most believe that donating a kidney fulfills the mitzva of saving a life (*pikuah nefesh*), which overrides any prohibitions of self-injury. Nonetheless, because of the risks entailed in the procedure, the vast majority of decisors deemed it meritorious but not compulsory, even as Rabbi Ovadia Yosef intimates that donating might be obligatory (*Yehaveh Da'at* 3:84).

Similarly, many scholars prohibit children or the mentally incompetent from donating, since they cannot reasonably consent to these risks.

In countries where the local government bans organ sales, all agree that Jews would be prohibited from engaging in such activity. The wisdom of such a ban, however, remains a heated debate in Jewish and general ethics.

Jewish law requires, when economically possible, for someone to compensate their savior for the financial losses incurred in the course of their rescue (Kesef Mishna, Rotzeah 1:14). While this allows the donor to recoup medical and nonmedical expenses stemming from the transplant, it does not speak toward the propriety of financial payment for agreeing to the procedure in the first place.

Jewish law allows for the sale of one's hair (Nedarim 65b), but the loss does not entail physical injury. Rabbis Feinstein (Igrot Moshe CM 1:103) and Auerbach (Nishmat Avraham YD 349:3) allowed one to receive money for donating blood, despite the physical intrusion, but this "organ" regenerates and the "transplant" involves minuscule bodily intrusion. Nonetheless, Rabbi Auerbach asserts that since one is permitted to donate an organ to save a life, one may also receive a financial incentive to perform this meritorious act (Nishmat Avraham CM 420:1). Rabbis Ya'acov Ariel (Be'ohela Shel Torah CM 100) and Yisrael Lau (Tehumin 18) similarly contend that humans retain sufficient autonomy over their body to sell these organs, while patients remain entitled to act to save their lives.

Opponents of organ sales, including rabbis Shabtai Rappaport and Moshe Tendler, contend that serious self-injury remains prohibited when performed primarily for financial gain (CM 420:31). They further argue that organ sales will lead to extortion and manipulation that will void the legitimacy of the sale, create further socioeconomic disparities of access to health care and discourage "free" transplants from live donors or cadavers. Proponents retort that this paternalistic approach violates human autonomy, and that government regulation would prevent manipulation while facilitating lifesaving treatments.

Many of these deep ethical quandaries would be avoided by increasing the number of organs donated from cadavers. For those of us who follow the rulings of rabbis Feinstein and Yosef and the Israeli Chief Rabbinate to permit posthumous organ transplants, it remains an imperative to sign a donor card and save the lives of thousands waiting on organ transplant lists.

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