

## Pushback From Some Orthodox Rabbis On Brain-Death Ruling



[Rabbi Dov Linzer, left, RCA's Rabbi Shmuel Goldin.](#)

Major players uphold former ruling; RCA seeks to clarify its non-position; UK rabbinate rejects brain-death criteria.

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A panel of Conservative rabbis, faced with two well-founded conflicting positions of Jewish law regarding same-sex commitment ceremonies, ruled in 2006 that both were valid opinions.

Faced with two well-founded positions of Jewish law on when death occurs for the purpose of organ donations, the country's major Modern Orthodox rabbinic group has similarly ruled that both brain-stem death and the cessation of heartbeat are valid opinions.

In both cases, the two movements left it to their fellow clergy members to determine for themselves which opinion to follow.

Until a few months ago, Modern Orthodox Jews had for years accepted brain death as the criteria for death. But a paper commissioned by the Rabbinical Council of America and circulated internally late last year raised questions about that definition. Without taking a position, it also cited experts of Jewish law who said the definition should be the cessation of heartbeat and breathing.

In circulating the paper, offering up both points of view, the RCA said it had decided not to take a position on the issue, backing away from its previous endorsement of brain death. But because of "strong reactions from many quarters," the RCA last week took what it described as an "unusual step" of issuing a clarification to

reiterate that it was “taking no official position as an organization on the issue of whether or not brain stem death meets the halachic [Jewish law] criteria of death.”

“It is true that many halachic authorities of our day, including Rav Hershel Schachter, Rav Mordechai Willig, Rav J. David Bleich and others maintain that brain stem death does not satisfy the halachic criteria for the determination of death,” the new statement said. “It is also true, however, that many other halachic authorities, including Rav Gedalia Schwartz, Rav Moshe Tendler, and the Chief Rabbinate of Israel maintain that brain stem death does qualify for the determination of death in Jewish law.”

Rabbi Tendler, a biology professor and Jewish medical ethics expert at Yeshiva University in addition to being a rosh yeshiva there, criticized the RCA for its report, which he said was intentionally biased against the brain-death position.

“What is needed is not a clarification of the RCA position, but a simple apology,” he told The Jerusalem Post this week.

In a setback for adherents of the brain-death position, which the Israeli Chief Rabbinate adopted in 1986, the chief rabbi of the United Kingdom, Jonathan Sacks, and the London Beth Din (rabbinic court) issued a joint statement last week stating that only “cardio-respiratory death” is the halachically acceptable criteria for death.

The office of the chief rabbi did not respond to e-mail requests for an interview.

The sense that rabbinic authorities were moving away from the long-accepted brain-death criteria prompted Rabbi Dov Linzer, head of school and dean of Yeshivat Chovevei Torah Rabbinical School in the Bronx, to [draft and post a statement](#) for signatures supporting the brain-death position.

The statement termed as “morally untenable” the notion that one could both adopt the cardiac definition of death and at the same time accept organ donations, based on the possibility of a person willing to be a donor recipient but not willing to be a donor.

“Such an approach is also highly damaging to the State of Israel, both internally and in regards to its relationship with the larger world, and to the Jewish people as a whole,” the statement said. “This approach must thus be unequivocally rejected by Jews at the individual and the communal level.”

Rabbi Linzer said he developed the website in the belief that most “rabbis in the field and in communities who deal with this issue hold with the definition of brain death, or refer people to those who hold that view.

“We felt the impression had been created that the dominant position rejects brain death and that only a small minority holds with it,” he added. “Even some of those who support brain death refer to it as a minority position. But that is not true either with regard to major [rabbinic] figures here or in Israel.”

Because of the “misperception” that brain death is not the accepted criteria for death, Rabbi Linzer said, “Jews have been disinclined to sign up as organ donors. Often it is not about halacha, but simply [the belief] that Jews don’t do this. We have not prioritized the fact that it is a mitzvah to be an organ donor.”

By Tuesday afternoon, nearly 100 Orthodox rabbis had signed on to the statement, which asserted that “all Jews should be encouraged to sign organ donor cards.”

Among the body parts that can be donated after cardiac death are the eyes and skin.

RCA Vice President Rabbi Shmuel Goldin said that time will tell which ruling will become accepted in the end.

“The process of halacha in the Orthodox community will unfold through the decisors of a generation studying the law and determining in a considered fashion what the law will be,” he said. “When we have a situation like this, when there is such a split in that process, what will happen is that over time the law will be decided both by that continued discussion and by the individual rabbis’ adoption of the position they will take within their community. If over time a large majority of that group take one position over the other, that will push the halacha for future generations.”

Rabbi Goldin, who is slated to assume the RCA presidency in May, said he personally has counseled that brain death meets the halachic criteria for death. But he said he respects the views of those who disagree.

“Everyone seems to view the fact that the RCA is not taking a position as a sign of weakness,” he said. “But it is a sign of the strength of the process — we have renowned authorities on both sides of the issue. If the split were not so clear, it would be easier for us to have a position.”

Robby Berman, founder and director of the Halachic Organ Donor Society, which encourages Jews to become organ donors, issued a statement expressing “disappointment” with the internal study but saying he was “very encouraged” by the RCA statement.

“It confirms acknowledgement that brain death is accepted by major” halachic authorities, he said.

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