

RCA Backs Off Stand On Brain Death For Transplants

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Critics see move as jeopardizing lives of Orthodox Jews; internal study cites 'rabbinic confusion' on issue.

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In a move termed by one leading critic "an act of anti-Semitism" that may cause the medical community to deny organ transplants to Orthodox Jews, the central body of Modern Orthodox rabbis in the U.S. is backing away from using brain death as the indicator of death.

The move is significant because vital organs can be transplanted from people declared brain dead, but they are not viable if doctors have to wait for the heart and breathing to stop.

Some rabbis have expressed concern that if brain death is no longer the consensus of the definition of death, according to a reading of a new Rabbinical Council of America report, Orthodox Jews may be denied organ transplants by the medical community since they would not be willing to be donors.

They were reacting to an internal study distributed to the RCA's 1,000 members that dealt with the halachic [Jewish law] issues of determining death and organ transplantation.




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The 110-page study, which was prepared by a committee of seven rabbis over the last four years, does not take an explicit position on which definition of death to accept. The committee, chaired by Rabbi Asher Bush, included Rabbi Kenneth Auman of Brooklyn and Rabbi Tzvi Flaum, the dean of students at Lander College for Women in Manhattan. The latter two did not return calls for comment.

The report presented the opinion of a majority of halachic poskim [decisors], who say that death is defined by the cessation of

breathing and heart beats, and the minority who say brain death represents death.

Rabbi Hershel Billet, a former president of the RCA and spiritual leader of the Young Israel of Woodmere, said he believes the Orthodox community in the diaspora should "embrace the minority opinion because that is the only way the community will be able to donate vital organs and also receive vital organs." And since the majority of halachic authorities and doctors in Israel accept the brain death criteria, it should be supported because "Israel must have a serious organ donation possibility in order to save lives."

Rabbi Billet said he believes the committee acted in a "very serious, sincere, scholarly and responsible" way in researching the subject. And he rejected any suggestion that its study was "an attempt to curry favor with any other faction of the Orthodox community."

Rabbi Moshe Kletenik of Seattle, president of the RCA, said it was designed only as an "educational tool to empower the local rabbi in assisting congregants in dealing with these issues."

"We are cognizant of the fact that there are different views on these complex issues, and the RCA is not taking a position," he said.

In 1991, however, the RCA developed a health care proxy that clearly stated that "brain death" was the halachically accepted criterion of death. It was written by Rabbi Moshe Tendler and was adopted by the executive committee of the RCA.

Shortly thereafter, a majority of the RCA's Vaad Halacha issued rulings that the committee said caused "confusion and even ill-will."

Since then, the committee found, "science continues to learn more and progress," and it said this must be considered in making halachic determinations. It said also that there has been "significant confusion" regarding the rulings of "a number of the greatest rabbis" of the previous generation that the committee sought to clear up. And it said it was offering a "clear and objective reading of existing rabbinic literature."

Rabbi Kletenik said the committee's decision not to adopt a definition of death was in keeping with the RCA's move in recent years.

"Brain death was the position taken many years ago, but over the last several years that has changed," he said. "When we published our new health care proxy [about a year ago], it was clear we are not taking a position."

Rabbi Tendler said the committee's report was "written with an agenda, which was to confuse the issue and push the point that brain death is not acceptable, despite the fact that the Chief Rabbinate [in Israel] approved it and Reb [Moshe] Feinstein approved it."

Rabbi Tendler is the son-in-law of the late Rabbi Feinstein, a leading halachic posek (decisor) of his generation.

"Their final conclusion is that a Jew who is in need of a heart transplant can receive a heart from a brain-dead patient but he can't donate his heart if he is brain dead," he said. "Such a ruling defames Judaism and exposes every Jew to the hatred of non-Jews. It is saying that a Jew can take a vital organ from a non-Jew even though Jews consider him still alive — that his life doesn't count. How could you justify such a ruling?"

Rabbi Tendler added that some sections of the committee's study displayed a "stupidity that comes from people who don't have the slightest idea of medical protocols. ... [This] is an opinion that has to be rejected as anti-Jewish; it is an act of anti-Semitism."

Robby Berman, founder and director of the Halachic Organ Donor Society here, which encourages organ donations from Jews to the general public, said the committee's report "clearly has an agenda."

"It is not an objective review but rather transparently goes to great lengths to try to discredit any and all medical and halachic acceptance of brain death," he said.

To counter the comments of more than a dozen renowned rabbis who accept brain death and support organ donations, Berman said the committee "attempts to discredit their opinion in various ways," such as saying they voiced a different opinion in private or later changed his mind or that his signed written opinion was forged.

Such was case with Rabbi Binyamin Walfish, former executive vice president of the RCA. The study said that in late 1983 or early 1984, Rabbi Walfish reported that he had met with Rabbi Joseph Soloveitchek, whose work helped to shape Modern Orthodoxy in America, and that Rabbi Soloveitchik had accepted the "brain death" criteria.

"The Rav [Soloveitchik] was not actively involved in public affairs at that late date in his life," the study said, but went on to note that Rabbi Soloveitchik's brother, Ahron, as well as other close relatives, said Rabbi Soloveitchik never would have accepted

the "brain death" criteria.

Asked about that, Rabbi Walfish, who was reached by phone in Jerusalem, insisted that he had in fact spoken with Rabbi Soloveitchik about the issue. He recalled that he had earlier spoken with Rabbi Tendler about a new test that could conclusively determine the brain stem had died.

"My words to him were that Rabbi Tendler says this test is foolproof," Rabbi Walfish recalled. "He said that in these things Rabbi Tendler knows what he is talking about, and I approve it."

Rabbi Walfish added that he had not read the study and did not know where the committee gathered the refuting statements.

"They didn't ask me about it, so how can they refute what I said when they didn't ask me what I said?" he said.

Berman said he found also that the study "omits pertinent medical evidence that supports the neurological criteria of death that was given to [it] by Dr. Noam Stadlan, a neurosurgeon, months before publication, and it also omits critical rabbinic testimonials..."

Stadlan, who is also an assistant professor in the Division of Neurosurgery at Rush University in Chicago, told The Jewish Week that he too found the study "very clearly skewed."

"It gives reasons for a one-sided analysis of halacha, but not a reason for presenting one side of the medical data," he said. "It totally ignores the other side. There have been thousands of patients reported in the medical literature who have been declared brain dead, and not a single patient has ever recovered any function or started to breathe after fulfilling the appropriate brain-death criteria. ..."

"The data supporting the concept of 'brain death' is in fact quite good," he continued, adding, "In an era of transplants and artificial organs, it is not enough to decide on criteria for death. It is necessary to identify which parts of the body and which functions need to be present in order for the person to be considered alive. If a collection of tissue is no longer a human being, it doesn't matter if circulation is present or not."

Asked about the committee's assertion that there have been many medical advances in recent years that must be taken into consideration, Stadlan replied: "A lot of the basic ideas are the same. ... There have been changes, but the underlying assumptions are still the same."

Rabbi Yosef Adler of Teaneck, N.J., said that although the "preponderance of the evidence" presented in the study was against the brain-death definition, he believes the committee did not have an agenda but rather presented an "objective study."

Asked if he is concerned the medical community will reject transplants to Orthodox Jews if the brain-death definition is no longer accepted, Rabbi Adler replied: "It's beyond my control. If that's their perception, there is nothing I can do to change it."

He added that as one who endorses brain death and is a "card-carrying member of organ transplantation," he would hope the medical community realizes that Orthodox Jews are not monolithic on this issue.

Rabbi Avi Shafran, a spokesman for the fervently Orthodox Agudath Israel of America, said in an e-mail that his organization sides with the judgment of "major halachic decisors" who have ruled that "merely 'brain dead' human beings ... are still alive."

"And so, while saving another's life is a most weighty imperative, Jewish religious law, or halacha, does not permit one life to be taken to save the life of another — no matter how diminished the 'quality' of the life of the former, no matter how great the potential of the life of the latter," Rabbi Shafran wrote. "And halacha forbids any action that might hasten death, including the death of a person in extremis."

Asked whether such a position might create anti-Semitism and prevent Orthodox Jews from receiving organ transplants, Rabbi Shafran replied: "I can't say whether being logical here may lead to anti-Semitism. But fear of Jew-hatred, even when warranted, cannot be the only factor in Jewish decisions. Were it so, we'd have to abandon much of the Torah, God forbid."

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