



Rabbi's Organ Donation Controversy Resurfaces: INN Review

by David Lev

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(Israelnationalnews.com) The recent death of a soccer star in Israel has revived focus on a long-standing rabbinical dispute regarding when death occurs – when the heart ceases functioning, or when the part of the brain controlling breathing does-and whether it does.

And as a result of the revived discussion on the issue, attention has focused on a paper issued last year by the Rabbinical Council of America, the largest body of Orthodox rabbis in the United States, which substantially revised its official position on the issue.

Most Orthodox rabbis are not against organ donations per se, they fear declaring a person dead prematurely and transplanting his vital organs as a result, an act tantamount to murder. The question thus revolves around what is considered "death", primarily in the case of heart transplants.

INN brings the reader a review of how the issue has been approached in recent years to explain the controversy, without, of course, entering into the halakhic parameters involved.

At the end of December, 54 year old Avi Cohen, an Israeli soccer star who had played in England's top league, passed away after suffering substantial injuries when he crashed his motorcycle several weeks earlier. Cohen, who was not observant, had signed an organ donation card that would have allowed doctors to remove his organs for transplant purposes. After the accident, Cohen slipped into a coma, and was connected to a respirator, which kept his body's physical functions going – although doctors could not detect any brain activity, including that of the brain stem which controls respiration.

Doctors planned to "pull the plug" and allow Cohen to die, and to remove his organs as planned. However, after some discussion, Cohen's family decided not to allow the removal of the organs, despite the accident victim's apparent wishes. Under Israeli law, the family has the last word on whether or not to allow organ donations.

According to rumors published in the Israeli media, a friend of Avi's who had adopted a Hareidi lifestyle influenced the family not to allow the donations, in line with a halachic decision by Rabbi Shalom Yosef Elyashiv, considered the leader of the Lithuanian Hareidi yeshiva world, opposing organ donations. According to that ruling, Cohen could still be considered to be alive, since his heart was still beating, and it could not be known in advance if his heart would be able to function without the respirator. If it could, then removing Cohen's vital organs would be nothing short of murdering him.

In contrast, Israel's Chief Rabbinate accepts irreversible brain-death, particularly brain-stem death, as a criteria for deciding if a person has passed away when the person's heart is still beating because he is on a respirator. In that case, heart stoppage cannot be the criterion for determining death as the heart can continue beating indefinitely for mechanical reasons, but medical research claims can never beat again independently. The basic halakhic definition of death as being cessation of breathing could not include the possibility of a respirator, the result of recent medical advances, so that this was a breakthrough decision.

The issue has been inaccurately portrayed as one of Hareidi rabbis versus "modern" Rabbis, but one of the main supporters – indeed, one of the architects – of the Rabbinate's acceptance of the brain-death criteria is Rabbi Ovadya Yosef, who is himself Hareidi. Rabbi Yosef's view is also held by current Sephardic Chief Rabbi Shlomo Amar.

The RCA itself had for years also accepted brain stem death as the indicator of when a person has passed away - since at least 1991, based on the views of Rabbi Dr. Moshe Tendler, son in law of the late Rabbi Moshe Feinstein, the latter accepted by most Orthodox Jews as the senior halachic decisor in the U.S. According to Rabbi Tendler, Rabbi Feinstein also approved that view, and supporters of the brain death view say that "the Rav," Rabbi Yosef Soloveitchek, accepted it as well. Despite some controversy, it was accepted as the RCA's official view.

Last year, however, the RCA issued a new study that specifically did not endorse the brain-death view – in effect leaving the decision on whether or not to accept it up to individual rabbis.

In the wake of the Cohen case, the RCA issued a clarification several weeks ago. "The RCA takes no official position as an organization on the issue of whether or not brain-stem death meets the halachic criteria of death," the organizations said in a statement. "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. 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."

The London Beit Din, headed by UK Chief Rabbi Jonathan Sacks, qualified its view, saying that "despite a view that brain-stem death is an acceptable Halakhic criterion in the determination of death, the considered opinion of the London Beth Din is that in Halakha cardio-respiratory death is definitive. At this point, since the National Registry system is not set up to accommodate Halakhic requirements, donor cards, even those purporting to be Halakhic, are unacceptable."

In response to the RCA position, Rabbi Tendler was quoted as saying that the new RCA 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 approved it and Reb [Moshe] Feinstein approved it." As a result, he said, doctors might begin banning Orthodox Jews from receiving transplants, because of their adoption of a philosophy that bans them from contributing to the "organ pool." The decision, Rabbi Tendler said, displayed a "stupidity that comes from people who don't have the slightest idea of medical protocols. ... it is an opinion that has to be rejected as anti-Jewish; it is an act of anti-Semitism."

For his part, Rabbi Eitan Eisman, head of the Noam school system in Israel and former director of the office of the late Rabbi Avraham Shapira, who was Chief Ashkenazic Rabbi between 1983 and 1993 and Rosh Yeshiva of Mercaz Harav, cannot understand what the fuss is all about. "This is not a new issue, and the Chief Rabbinate said many years ago that brain death was a sufficient criteria for declaring when a person has passed away. No one of them has changed his mind, and as far as I know there has been no new groundbreaking research in this area."

The late Rabbi Shapira and Rabbi Mordechai Eliyahu, as well as eminent halakhic sage, the late Rabbi Shaul Yisraeli, were on the committee and backed the decision. They mandated an objective religious doctor or rabbi be present at the patient's side when the decision is made.

As director of Rabbi Shapira's office, Rabbi Eisman said, he was intimately familiar with many of the cases and questions on organ transplants that came up during the tenure of Rabbi Shapira as Chief Rabbi, and that the issues were clear then as well. "Rabbi Shapira, and all the chief rabbis and the rabbinates, accepted brain death as the proper criteria. Other rabbis, like Rav Elyashiv, did not accept it, and this was well-known then as well." He recalled Rabbi Shapira making the decision and immediately contacting the medical profession, explaining that every minute's delay might cause someone awaiting a transplant to die.

He personally witnessed a number of instances, he said, in which Rabbi Elyashiv and Rabbi Shlomo Zalman Auerbach, another Hareidi decisor who opposed the brain-death criteria, referred questions to the Chief Rabbi's office. "They did not want to rule on the matter themselves, so they sent the question on to us, knowing what the answer would be." In this way, he said, many lives were saved, due to the organs that were donated by families whose members had suffered brain-death.

Regarding membership in Adi, the organization that encourages individuals to pledge their organs after death, and similar efforts to encourage organ donations, Rabbi Eisman says that "as long as the criteria do not contradict halakha, there is no reason not to be involved in these efforts."

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