

Statement re Statement re Brain Death

January 18, 2011



This statement appeared in today's *HaModia*:

12 Shevat, 5771
January 17, 2011

Statement from Agudath Israel of America

The recent “Rabbinic Statement Regarding Organ Donation and Brain Death” signed by several score “Orthodox rabbis and *rashei yeshiva*” is decidedly unorthodox in its approach to the halachic process. In fact, it makes a mockery of that process, by asking other rabbis to accept one particular *halachic* view regarding a complex issue pertaining to matters of life and death on the grounds that the times, in the signatories’ estimation, require a certain result.

The statement, signed by congregational and campus rabbis and chaplains, duly acknowledges the *halachic* controversy over “brainstem death” – the diagnosis that a patient’s brainstem has irreversibly ceased functioning. But it goes on to note that forbidding the removal of vital organs from “brain dead” patients – the considered opinion of major *halachic* authorities of past years and the present – would have “critical implications for organ donation.” And so, the statement’s signers “strongly recommend that rabbis who are rendering decisions for their laity on this matter demonstrate a strong predisposition to accept” the alternative view. Or, if their consciences do not allow them to do so, that they at least “refer their laity to rabbis” who have no such reservations.

For anyone, rabbi or layman, to decide that a perceived outcome should determine what *halachic* approach to take is something usually associated with Jewish movements outside of Orthodoxy.

Organ donation can and does save lives. Halachic authorities have ruled that, under certain circumstances and with proper safeguards, it is permissible and indeed laudable to be a live donor, and to bequeath organs after death. But defining death is a crucial *halachic* matter, not one to be “decided” on the basis of what some consider a societal need.

Compounding the statement’s offensive embrace of a *halachic* position based on an extra-*halachic* rationale is its derision of those who take “a restrictive position regarding donating organs and a permissive position regarding receiving organs.” That *halachic* position, held by a majority of major *poskim* today, is derided by the statement as “morally untenable,” and “must thus be unequivocally rejected by Jews at the individual and the communal level.”

No. What must be unequivocally rejected by Jews, at least those who care for the honor of Torah, are attempts to manufacture “*halacha*” to personal specifications and the

disparagement of true *naivemic* authorities.

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189 Responses to *Statement re Statement re Brain Death*

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1. Meir Shinnar on January 19, 2011 at 9:37 pm

Waiting list for organs.

Having been involved in transplants, in general, there is a waiting list for all organs.

However, if there is some unusual feature that makes it harder to match (eg, size), or is not in pristine condition – that would therefore be passed on by many centers, but accepted for someone in more desperate immediate need who can not wait for a better fit – there may not be a waiting list for that particular organ.

Again, when a donor is identified, prospective recipients for all organs are identified by a central agency using an algorithm with a priority scheme – and the programs for the top few on the list are identified to see whether they would accept, or need further testing (which is not always feasible to do). After some time, the programs are given the choice – and the top priority patient whose program accepts the patient gets it. timing of harvesting depends, within a certain time window, on coordinating between the the programs for the different recipients for all the organs- so a different recipient may mean harvesting from the donor is somewhat delayed. The recipient is typically already in the operating room when the donor organs are harvested. This is a close connection between the recipient and the planning of the organ harvesting.

2. Glatt some questions on January 19, 2011 at 10:27 pm

“In a phone interview, [Bush] qualified the study’s most inflammatory line — concerning the unqualified acceptance of receiving organs from brain dead donors while leaving the permissibility of organ donation by those in this state under doubt. This was not a position the committee meant to encourage, Bush explained, but was rather meant as a retroactive statement about what should be done with an available organ.”

So if there is an extra organ lying around, I guess a Jew could take it. But presumably he should not, in any shape or form, be involved in the process of actively procuring an organ by joining a list of people requesting that one be removed.

Trust me, there are no loose kidneys or hearts or lungs lying around.

Now it’s up to Rabbi Bush (and other folks who do not hold by brain stem death) to clearly articulate their position regarding receiving organs, keeping in mind how the transplant process actually works. Will they be consistent and rule that it’s murder to take an organ from a brain dead person (thereby not allowing folks who need them to procure organs), or do they have another explanation as to why it’s OK to receive an organ but not donate one. Inquiring minds want to know...

3. ruvie on January 19, 2011 at 10:27 pm

hirhurim:I don’t recall the paper using the word “unbiased” or anything similar. On what page is it?

pages 0-11

“This Study is Designed to Assist Members of the RCA in the Process of Psak Halacha”...“commissioned its Vaad Halacha to investigate the issues pertaining to organ transplantation and to provide clarity and direction for its members ”

transplantation and to provide clarity and direction for its members.

“it should be known that our inquiry was undertaken with ...to be engaged in an unfettered search for the truth”

“The purpose of this study wasbut to evaluate each opinion on its own merits.”

the rca presented or implied a thorough fair and unbiased view based on merits. if many people – especially medical professionals – believed its an unfair and slanted bias view then they intentionally or unintentionally lied – To convey a false image or impression – and their endpoint – to provide clarity, unfettered search, and evaluate each opinion on its on merits – was not met.

hirhurim: “There is a difference between being untrue and being wrong. You can argue that the RCA paper is wrong. ”

i am not saying they are wrong or stated untruths – conveying a false impression – see above – based on what they wrote and their goals is another form of lying.

4. Joseph Kaplan on January 19, 2011 at 10:35 pm

I have a suggestion. How about BOTH sides stop using the words “lie” or “lying” in this discussion. Adults discussing and debating serious issues shouldn’t sound like kids fighting during recess or, worse, like members of Congress (“you lie”!). It really doesn’t add anything; indeed, it detracts.

5. ruvie on January 19, 2011 at 10:38 pm

the end result of the rca’s paper is that their rabbis will not be viewed as fair and open minded(to science, technology, change in general) arbiters of halacha with responsibility to the community for the outcomes and consequences of their decisions (here on potential moral issues that people have honed in on).

its a fissure that is beginning to widen with a general lack of respect to them and their institution by the educated laity. in the time of the mikdash the gemara relates that even though beit hillel and shammai disagree on many issues -especially kidushin/gittin- they still intermarried and were not – in my understanding- sectarians. i wonder if that will be true in our future generations.

6. ruvie on January 19, 2011 at 10:41 pm

josh kaplan – i apologize i was just trying to clarify what it meant and how someone can use the term in our context.

7. Jon_Brooklyn on January 20, 2011 at 2:41 am

R. Gil: IH’s interpretation of my comment was not where I intended to go with it. My point was, if you held it were moral murder, you’d have a problem with people being pro-BD altogether, with people benefiting from it, etc. If you held it were merely Halakhic murder, that is, murder based on Halakhic principles that do not necessarily correspond to moral principles, then you would say, “those who hold this way Halakhically, well they can’t do anything; those who are mekil can very legitimately harvest organs; and because there’s no moral issue, there’s no reason not to accept the help of those that are mekil.”

The reason I think this formulation is superior to yours (granted it’s your views we’re talking about, but still) is that if it were just a “gray area” then the moral issue is just as unclear as the Halakhic issue, and it would be like saying “well I think tax fraud is stealing, you think it isn’t, would you like to be my accountant?” (If you don’t like that example then use some other.) Obviously, if we have any position on a moral issue, we don’t want to make deals with people that are engaging in the morally questionable

activity – especially murder. But if we have Halakhic positions, then we have a lot more room to agree to disagree about the technical Halakhic arguments, precisely because of *elu v'elu*.

Also (but really, this isn't important to my formulation) it makes very little sense, to me at least, to claim "killing" a brain-dead person is moral murder. Clearly, it makes a lot more sense to call it murder in a Halakhic context.

That's all I was saying.

8. Jerry on January 20, 2011 at 4:51 am

Glatt: Trust me, there are no loose kidneys or hearts or lungs lying around.

This is my point. Thank you very much to all those who assisted in clarifying this matter. The hypothetical scenario to which Gil and others claim their position on receiving/not-donating is restricted does not seem to me to actually exist.

One important point that makes this clear is the distinction between the following two scenarios: a) Ploni has already been killed/murdered, and the only question is what Almoni is now to do with him; b) Ploni has decided that he will accept being killed/murdered, but won't do so until he has coordinated it with Almoni.

The end result may be the same, and both scenarios raise ethical questions, but I think the questions are sharper in the second scenario. And my impression from the comments above is that organ donation (at least from the perspective of the anti-BD side) takes the form of the second scenario.

9. [Robby Berman](#) on January 20, 2011 at 5:59 am

HODS' SECRET IS OUT

1. Alan wrote "The HODS educational pamphlet shows a quote from Rav Moshe Feinstein which is misleading"

The HODS educational pamphlet (page 7) does show a quote from Rav Moshe's teshuva (IM. YD. Vol. II. Siman 174) saying "donating an organ from the dead would constitute a mitzvah... saving a life has priority." I'm not sure what we are guilty of implying. We do not say in the pamphlet that Rav Moshe accepted brain death and in fact we do say in our pamphlet that brain death is debated "among rabbinical authorities with scholars on both sides of the debate."

It is however well known to the public, that Rav Moshe wrote in his responsa and letters that he accepted brain death and most all people who had ever discussed this with him attest to this fact. People have a right to say they find Rav Moshe's teshuvot confusing, unclear, and contradictory and the public can decide for themselves by reading his writings and watching video testimonies on our website (www.hods.org) such as testimonies from Dr. Frank Veith, Dr. Ira Greifer, Rabbi Shabtai Rappaport, etc.

Interestingly enough, I just met a physician (Dr. Aidleman) yesterday in Jerusalem who was present at one of those meetings with Rav Moshe and I interviewed him on camera and the video will go up on HODS site next week.

2. Alan wrote "HODS advert is using a marketing tool known as "social proof". When human beings are unsure of how to act, we look around to see what others are doing... Here's my problem with the way HODS... they haven't told the public the full story. How many of those people checked the box for brain death and how many for cessation of the heartbeat? Until HODS shares that info, they are not informing the public

of the full story & can lead many people to make a potential error of huge potentially huge proportions.”

Alan, if you would have given HODS kaf zchut you might have assumed that perhaps many of the rabbis who have the HODS organ donor have indicated they accept brain death, and the board of HODS felt that to show that information would unduly give the impression that most all rabbis accept brain death. (They might or might not, but we didn't want to mislead people.) The secret is 99% of the rabbis on the HODS site and its advertisements accept and choose the brain death option. Now will you criticize me for sharing that information with the public, criticizing me if I don't share and again if I do share?

3. Dr. Zacharowitz wrote “I have repeatedly invited Berman to sit down with leading halachic authorities to study this topic and engage in the classic give-and-take of halachic discourse, as Rabbi Dr. Steinberg has done with his halachic mentors (all of whom rejected “brain death”). Berman has declined to do so.... Why won't Berman do the same?

Dr. Zacharowitz, I don't recall your invitation to study this topic. If you mean that you once asked me to pay money to sign up for your Yarchei Kallah program that you market to the public, I am not interested in doing so. If you want to invite me for free and if I happen to be in America, I will be happy to consider attending – schedule permitting.

As you can imagine, I am not so eager to do so because I have spent 9 years of my life reading most of the medical and halachic literature and interviewing dozens of rabbis, some of them gedolei Hatorah on this issue and while one can go deeper and deeper into torah – dwelling on the same issue over and over at a certain point chalas [Arabic for enough already]... If you feel there are halachic or medical articles that I would benefit from and you assume I have not read, please feel free to send them to me.

I agree to participate in any debate or discussion with you or anyone on these topics as long as I am not forced to pay money and as long as my schedule allows for it. But I think there are people much smarter and more knowledgeable people than me (e.g. Neurosuregon Noam Stadlan, Dr. Rabbi Avraham Steinberg) that would make for a much better discussion. May I remind you that I am not a rabbi and I am not a doctor.

Dr. Zacharowitz wrote that I gives “such short shrift to the views of those many rabbis opposed to “brain death” and lists Rabbi Moshe Sternbuch among the supporters of “brain death,” a demonstrably false assertion.”

The articles page of the HODS website has any – and every – article ever written against brain death because we believe in showing both sides of the debate. If you are aware of any such articles that are not listed there please send them to me that I may post them.

In addition, I have asked Rabbi Avraham Avraham and many other rabbis who reject brain death to allow me to interview them on camera so we can put them on our videopage and present their side of the debate as we do in our articles section. They have refused. Perhaps you can use your close contact with Talmudic scholars who reject brain death to allow me to interview them. They are given short shrift on our video page, but they choose to be shrifted – we want them there.

Concerning Rav Sternbuch, you will be pleased to know that Rav Sternbuch from the Eidah charedis met with Rav Avraham Steinberg where the former told the latter that he does not hold that a beating heart is a sign of life and he understands Yoma 85a to mean respiration is the key so that if a person cannot breathe on their own and they look dead they are according to him dead. Since a person who is brain dead meets Rav Sternbuch's criteria that is why I include him in that category of people who accept brain death, although perhaps he never used that term. (I was not present at the meeting.)

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Lastly, Dr. Zacharowitz, please refer to me as Robby, Robby Berman, or Mr. Berman. Thank you.

10. [Robby Berman](#) on January 20, 2011 at 6:11 am

HOW MANY HODS RABBIS ACCEPT BRAIN DEATH?

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Lastly, Dr. Zacharowitz, please refer to me as Robby, Robby Berman, or Mr. Berman. Thank you.

11. Hirhurim on January 20, 2011 at 7:29 am

Meir Shinnar: *There is a difference between someone who honestly presents all sides – in an “unfettered search for the truth” – and then concludes that one side is right, and someone who distorts and misrepresents the data on one side.*

I agree, which is why I am troubled by Robby Berman’s consistent refusal to acknowledge that there are conflicting reports about R. Moshe Feinstein’s view. I didn’t see any distortions or misrepresentations in the RCA paper. If you did, I think it would be helpful to everyone for you to compile a list and send it to the RCA.

However, the thrust of the RCA paper (and much of haredi psak) is that the brain death position is just halachically untenable – and that no major posek truly supported brain death.

Perhaps we read different papers. I don't recall any denial of, for example, R. Shaul Yisraeli's position. Merely disagreement with some of his arguments.

Similarly, if one looks at rav Sacks's position, he does not state that there are multiple opinions (elu ve'elu) – but that his bet din does not allow it.

Have we really reached the point where a beis din and chief rabbi cannot pasken for their community?

If a Jewish family which did not have a previous position would call up one of the those opposed to brain death about whether a family member may be a donor, what do you think they would tell them? Elu veelu??

Of course a posek will pasken what he thinks is the halakhah. That is how pesak works, even within an Eilu Va-Eilu framework.

WRT current circumstances, again, you are being disingenuous. yes, we are aware that many people do not follow halacha – but we normally do not base public policy, except in exceptional bediavad circumstances, on using the nondati as a shabbat goy....

You base public policy on the current situation and foreseeable future. Since medical technology changes so quickly, you really shouldn't be looking too far into the future for this. For all we know, organ donations will not need brain dead patients in twenty years.

Of course, one can rephrase the criticism to satisfy your two points – we will take from gentiles and those jews who do not follow us (although, if asked, we will tell these those Jews they are wrong.). Do you think that is any cleaner??

THIS IS KEY! We can rephrase this as: “We will take from Gentiles and almost all Jews.” That is a far cry from what some have been telling the media about this so-called anti-gentile RCA paper.

Jerry: Agreed 100% If someone else chooses to donate his organs after brain death because he accepts the brain death criteria, that's his business. But what you cannot do is RELY on his view simply because it's advantageous to you to do so.

Again, you put me in the awkward position of encouraging my friend to donate organs to anyone but me. How does that make sense?

Another thing that strikes me about some of those on the anti-BD/pro-receiving side is this sense that their side deserves to be inured from the consequences of their decisions. It's become quite common to hear some people demand that their opponents stop pointing out any potential ethical problems with the anti-BD/pro-receiving side, because this will only incite bad feeling, or hatred (“blood libel,” one person said) against the anti-BD/pro-receiving side.

We need to have respectful and responsible dialogue. Hysterics hurt, particularly in this case. On cases of communal welfare, we need to choose our language carefully.

Glatt: I do know that in most cases there is more of a demand for organs than a supply. However, I also know that an organ is not harvested for transplant until a match is identified, which means there is a direct connection between recipient and donor

Correct. Which means that this donor would probably have his organs harvested regardless of any specific patient's decision to reject.

Certainty this is morally and ethically repugnant.

Do you oppose organ donation to people who have to not themselves registered to donate? Why is that any less repugnant? They will take but not give.

MJ: RSZ Auerbach did not allow taking organs in Israel.

12. Hirhurim on January 20, 2011 at 7:40 am

Glatt: My understanding is that the RCA paper was not paskening, just quoting the pesakim of others.

Ruvie: The quotes you brought from the paper about its evaluating arguments on their merits are precisely why you should expect the paper to lean towards one side if it feels it is stronger.

Jon_Brooklyn: Abortion is another gray area where I think we would do better to try to get along rather than demonize each other as murderers.

Jerry: This is my point. Thank you very much to all those who assisted in clarifying this matter. The hypothetical scenario to which Gil and others claim their position on receiving/not-donating is restricted does not seem to me to actually exist.

It's the exact opposite. It's my point. It doesn't matter whether a specific patient accepts or refuses an organ. That organ will be harvested.

However, the case everyone seems to be denigrating – when an organ has been harvested but not yet inserted into a patient – isn't hard to imagine. At the last minute, a patient starts to get religion and asks a rabbi whether he should accept the organ that was harvested from someone whose heart was beating. It probably happened once or twice and the question was raised up the flagpole and entered halakhic discourse.

13. Hirhurim on January 20, 2011 at 7:45 am

Robby Berman: I think your case would be more convincing if it wasn't so one-sided. Everyone else here knows that there are testimonies to the contrary regarding R. Moshe Feinstein's view. We've all seen R. Moshe Sherer's letter and the RCA paper. And we all know that R. Moshe didn't speak English so many of those doctors only heard what a translator said. Who was translating for them?

I've said before that I find this all confusing. I can't deny R. David Feinstein's, R. Tendler's and R. Rapoport's testimonies. Bt when you deny the others, and especially how you deny all the testimonies about Rav Soloveitchik, it's hard to take your arguments at face value.

14. Alan S. on January 20, 2011 at 8:12 am

Robby Berman, I once asked a world class Posek what info he has that is holding him back from seeing things the way RMDT does.

His reply: We are talking about establishing a new definition of the time of death in Halacha based on what RMF held. RMF was an absolute titan. Had he been absolutely clear on this in conversations with numerous students, rabbis, public forums, numerous articles, etc., the world would have had the time to fully understand his take on this matter which truly involves life and death.

As we both know, this was not at all the case. There is so much confusion as to what he honestly held & how he understood this entire matter.

We cannot create a new Halachic criteria for determining the time of death based on anything less than absolute full clarity by a titan such as RMF – and not by oral testimonies from a few people – regardless as to how close to him they were.

We both know that there is a world of dispute over what RMF meant in his few responses on the matter. No one outside of a very small band of people had a chance to clarify this with him.

To try and make the case that HODS can claim to have RMF's full backing is 100% disingenuous.

15. Glatt some questions on January 20, 2011 at 8:37 am

Certainly this is morally and ethically repugnant.

Do you oppose organ donation to people who have to not themselves registered to donate? Why is that any less repugnant? They will take but not give.

It is less repugnant because most folks who don't choose to donate do so out of laziness or psychological factors. They don't make that decision for religious reasons based on their position on brain death as halachic death. It's only the folks who choose not to give for their religious beliefs yet who are willing to accept organs where I would make the argument that it is morally and ethically repugnant.

Do you see the difference, Gil? You can't lump everyone who takes and doesn't give into one big group.

16. J. on January 20, 2011 at 8:45 am

I suppose a lot of the anger here is due to the fact that many people expected the RCA paper to be an impartial review of the literature, pointing out the flaws in both sides, when it is clearly nothing of the sort, rather it takes the approach of a posek who has a firm view and goes through the sources with that view in mind. For example, as has been noted, it does not quote R. Ovadia's opinion at all. It does not mention that the Chasam Sofer's mentioning of pulse was a big chiddush that was only present in secular literature until that time. It does not give any background to Rashi's view (e.g. Dr. Reichman's article) except when it quote Dr. Steinberg, and to attack it with silly arguments; it does not mention that the Rambam and Shulchan Aruch do NOT pasken like Rash. It does not mention the teshuva in Ba'mareh Habazak 7 which more fully explains R. Yisraeli's view. It quotes uncritically the ideas of the poskim who say that breathing is a siman of life; but cardiac activity is the siba, when there are momentous difficulties with it (besides the fact that it cannot have been the intention of Chazal or any of the Rishonim, as anyone with an understanding of medical history will realise). It does not seek to fully understand the Chacham Tzvi's teshuva, which stresses the centrality of the heart in light of its role in RESPIRATION, which is simply factually mistaken (as Ba'mareh Habazak notes). As the Chacham Tzvi says, "the reason life depends on the breathing of the nose is because it is through the nose that the hot air from the heart leaves, and cold air enters to cool the heart. And if there is no heart, there is no breathing". It goes on and on about the logical difficulties with accepting the cessation of spontaneous respiration as death, whilst it neglects to mention a single of the obvious conceptual problems brought up by the cardiopulmonary standard. I could go on and on, but the point is clear.

17. J. on January 20, 2011 at 9:51 am

Sorry – just one more obvious thing which struck me reading the paper. It makes a ganze

ma'ase about the hypothalamus, without once noting Rav Tendler's retort, that the gemara in Chulin 21a which is paskened in the Shulchan Aruch (YD 370) that someone with a broken is considered as if he were decapitated, despite the fact that the hypothalamus would clearly be operational in such a case. See here:

http://books.google.com/books?id=3cl2DBMwAwcC&pg=PA96&lpq=PA96&dq=tendler+hypothalamus&source=bl&ots=OmWr-T8O63&sig=eW1WY1JXFLPnp7JBSgf6pnkggg4&hl=en&ei=0D84Td75MsimhAf56qGpCg&sa=X&oi=book_result&ct=result&resnum=1&ved=0CBIQ6AEwAA#v=onepage&q&f=false

18. J. on January 20, 2011 at 9:53 am

Sorry, should be 'someone with a broken NECK is considered as if he were decapitated'.

19. [Robby Berman](#) on January 20, 2011 at 9:53 am

Allan wrote "To try and make the case that HODS can claim to have RMF's full backing is 100% disingenuous."

Alan, we never made that claim. Why do you set up a straw man? Just to knock it down? We even posted the question and answer where I asked Rov Dovid on video if he thinks Rov Moshe would have approved of getting organ donor cards. Rov Dovid said that he didn't think so but he didn't know.

We did not edit that out. We could have. But we didn't. Why? Because we want to share the truth even if it calls HODS behavior into question. Do we have a bias? Yes. Does my board and 99% of our rabbis accept brain death and support organ donation? Yes. But do we post all halachic articles against brain death on our site? Yes. Do we offer any rabbi who rejects brain death to be interviewed on video for our site? Yes. Cut us a little slack will ya?

Gil wrote (I think it is Gil, I'm still not sure how this blog works): "I think your case would be more convincing if it wasn't so one-sided. Everyone else here knows that there are testimonies to the contrary regarding R. Moshe Feinstein's view. We've all seen R. Moshe Sherer's letter and the RCA paper."

As far as my post on this blog, I thought I was giving a nod to dissenion about Rav Moshe's writings when I wrote 'People have a right to say they find Rav Moshe's teshuvot confusing, unclear, and contradictory...'

And our pamphlet is pretty even-handed and it was even vetted by a high ranking member of the Agudah as being fair and even handed. The only thing he asked me to remove, which I refused, was Rav Moshe's picture and quote. He felt, I guess as some of you do, that putting his picture will give people the impression he would have approved of all we do.

Gil wrote (again I think it's Gil): And we all know that R. Moshe didn't speak English so many of those doctors only heard what a translator said. Who was translating for them?

Gil, your suggestion – which I have heard before – brings a smile to my face. Really! A smile, a giggle and then a laugh. A deep belly laugh. First, Dr. Greifer and Dr Eidleman (the latter who I interviewed yesterday on camera) both told me that they understood Yiddish. They weren't fluent speakers but they grew up in Brooklyn back in the 50's and their parents spoke Yiddish in the house (http://hods.org/English/videos/video_greifer.asp)

Second, your suggestion that Rabbi Tendler purposely mistranslated the conversation and fooled a number of Jewish doctors who understood to some degree Yiddish and 7 medical

students (I imagine since it was Einstein students some were Jewish and frum and possibly spoke Yiddish) who met Rav Moshe a number of times is quite comical. And even though Rav Moshe spoke Yiddish, I imagine he understood English to some degree as well. I think he lived in America for over 50 years. If I was Rabbi Tendler pulling shtick like that he must have been sweating bullets waiting for the shoe to drop. Waiting for either Rav Moshe to catch him mistranslating or the doctors to catch him mistranslating. It would make a funny youtube clip.

Rav Moshe [in Yiddish]: brain death is not death

Rabbi Tendler [in English translating for the doctors sweating a bit on the brow]: Brain death IS death.

Rav Moshe [in Yiddish] I do not support donating the heart.

Rabbi Tendler [in English translating to the doctors] I do support donating the heart.

That would make Rabbi Tendler a masterfully evil genius con artist and everyone else in the room a naive moron. You have to admit Gil, it would be a pretty risky and even stupid thing to do. I mean if you were Rabbi Tendler, I think forging Rav Moshe's signature and fabricating tshuvot would have been enough. If I was rabbi Tendler I would be making these meeting between Rav Moshe and the medical establishment. Kind of risky, kind of stupid, kind of highly unlikely.

Gil, do you think Rabbi Tendler first checked which doctors and which student understood Yiddish and then disinvited them and then he just invited the Yiddishly challenged? Dr. Eidleman told me the meeting with him, Rav Moshe, Rav Tendler, and Dr. Greifer went on for hours. Not ten minutes. Hours, as in more than two. Do you think this is a likely or even possible scenario that Rav Tendler pulled this off?

Your suggestion reminds me of the story with Rov Dovid and how cognitive dissonance will just not let a person – even faced with growing evidence and probability – change his mind. During a debate between Rabbi Tendler and Rabbi Bleich, Rabbi Tendler restated Rav Moshe's position that supported organ donation even of the heart. Rabbi Bleich said Rav Moshe did not hold that position. Rabbi Tendler said Rabbi Dovid Feinstein will corroborate this. Rabbi Bleich said he won't. Rabbi Tendler brought a letter from Rabbi Dovid. Rabbi Bleich said it wasn't clear enough. Rabbi Dovid wrote an addendum that was very clear. Then people said Rov Dovid's signature was forged. And then they said Rav Moshe signature was forged on the Bondi letter. And they said Rav Moshe's tshuvot were forged in Iggrot Moshe (only those that supported brain death of course).

So I said I had enough of this nonsense and I paid for a videographer to go with me and another Rabbi to the Lower East Side to interview Rov Dovid on camera. As you can see from the video, he is very clear. Rav Moshe supported organ donation even of the heart. So when I show that video to people in a certain camp, do you think that convinces them that at least Rov Dovid thinks Rav Moshe supported donation of the heart? Do you know what they tell me? "We saw the video, and it was edited."

I really have had enough. There is nothing more I can do. People are in denial. They are in pain to think that a gadol like Rav Moshe could disagree with their gadol on a life or death issue. I'm done proving myself.

Gil wrote (I think): "how you deny all the testimonies about Rav Soloveitchik, it's hard to take your arguments at face value."

Gil, as far as I know, and please correct me if I'm wrong, the only testimony as to someone hearing Rav Soloveitchik's position on this issue is Rabbi Walfish. All the other testimony are people who say either they can't imagine the Rov holding such a position or that they never heard him state such a position. I hope the qualitative difference between Rabbi Walfish testimony saying he heard the Rov state his opinion and the other

testimonies is clear. If you have someone who said he heard the Rov say he does not accept brain death please let me know so I can put that testimony up on my site either on video or in print.

I going to graciously bow out now. I think I have had enough this he said she said he forged he faked stuff. I wish all of you well on your search for the truth.

20. Noam stadlan on January 20, 2011 at 9:59 am

R Gil writes that he did not see any distortions or misrepresentations in the RCA paper. That is hard to believe since you hosted a paper that pointed out a whole host of these in the medical data and Rabbi Reifman and J have pointed out significant issues in the halachic discussion. Just because Rabbi Bush may have thought that what he wrote was true does not mean it isn't a distortion or misrepresentation. It only means that he was unwilling or unable to recognize it as such. You don't have to repeat the same mistake

21. Hirhurim on January 20, 2011 at 10:07 am

Robby: Your nod to people finding Rav Moshe's position confusing is not the same as acknowledging that some of his leading students and colleagues believe he was opposed to the brain stem death criteria. Again, I am not arguing with Rabbis Feinstein, Tendler and Rapoport. I find it hard to believe they are wrong. But others can testify to the contrary. I don't see that on your website.

Regarding the translation issue, I am not suggesting that R. Tendler mistranslated. That would, I understand, be highly implausible. I am only saying that he has a strong personality and a strong opinion on this subject. It is not at all unlikely that he translated loosely and added his own commentary. If, indeed, the question was as simple as "Is brain death considered death?" You can't translate a direct answer to that loosely. But if the conversation dealt with complex topics of Talmud and medicine, I can easily see him expanding and clarifying. The question is simply what did the doctors actually hear?

What do you mean about Rav Soloveitchik? His grandsons and some of his talmidim discussed the issue with him and report that he held it was a big safek and therefore BSD criteria cannot be relied upon.

22. Hirhurim on January 20, 2011 at 10:10 am

Dr. Stadlan: I am not qualified to determine whether you are correct that R. Asher Bush distorted medical facts in the paper. I asked someone who is and he disagrees with your evaluation. He says that the medical literature is full of debates on these subjects and one cannot pick one side and say that anyone who quotes the other side is misrepresenting and distorting.

Again, I have no insight or opinion on this. I just thought it would be worthwhile to ask a doctor who is familiar with the subject and is not on the board of HODS.

23. MDJ on January 20, 2011 at 10:39 am

But Gil, that is precisely the point. The RCA paper essentially presented one side of the matter even though there is medical literature on both sides (Actually, that is just l'shitascha. The medical literature is about as one sided towards brain death as the RCA paper is against it.)

24. Joseph Kaplan on January 20, 2011 at 10:40 am

"Dr. Stadlan: I am not qualified to determine whether you are correct that R. Asher Bush

distorted medical facts in the paper. I asked someone who is and he disagrees with your evaluation. He says that the medical literature is full of debates on these subjects and one cannot pick one side and say that anyone who quotes the other side is misrepresenting and distorting.”

But isn't that the point. Even if there is a debate on certain medical issues, the supposedly “informational” paper picked one side of the medical debate and did not present both sides of the debate.

25. Shalom Spira on January 20, 2011 at 11:38 am

I agree with Robert Berman. Being born in 1978, I obviously never met RMF, so I'm talking way out of line here, but I think we should assume that RMF ruled brain death=death, as per Tosafot to Yevamot 77a that we accept the testimony of a talmid chakham, so long as the talmid chakham does not possess a conflict of interest. I do not think that either RDF or RMDT possess a conflict of interest, so their testimony as to what they heard from RMF must be accepted as true and authoritative.

RJDB accidentally misunderstood RMF. RJDB is a tzaddik gammur and he truly meant well, but in his enthusiasm to press his case, he accidentally misconstrued RMF. In fact, in the summer of 2004, I spoke to RJDB about his book Benetivot Hahalakhah III (which contains his Hebrew responsa on brain death). RJDB told me (these are his exact words) “I'm sure you found it chock-full of errors”. So it is not me – puny ignorant S. Spira – who is chas vishalom claiming that RJDB erred. RJDB admits it himself (in the noble tradition of Mosheh Rabbeinu who admitted he had momentarily erred, and when corrected by his brother was not embarrassed to so confess, as per the gemara in Zevachim 101b).

At the same time, R. Student is correct that we are forbidden to apply RMF's pesak halakhah in practice, because it is solidly counterbalanced by RSZA who realized that a brain dead patient is doubtfully dead, doubtfully alive. We have demonstrated, in fact, that the RMF vs. RSZA confrontation reflects a centuries'-old controversy regarding physiological cause-and-effect reflected in the Pesach cow lactation dispute. Thus, in effect, despite RJDB's mistaken understanding, the Halakhah follows RJDB (as a matter of safek piku'ach nefesh) that the brain dead patient should be treated as a live patient.

Accordingly, one may submit that everything the RCA has decided regarding brain death was correct, following the canons of decision-making of the Oral Torah. How so? When the RCA first voted in 1991 to accept brain death as death, the only information it possessed was RMF's opinion. Therefore, like the townspeople of Rabbi Eliezer in Shabbat 130a who followed Rabbi Eliezer's pesak halakhah to desecrate Shabbat for makhsherei milah, and who were greatly rewarded from Heaven for doing so, the RCA was absolutely correct to follow RMF and rule that brain death is death.

Soon after the RCA vote, however, RSZA issued a series of responsa cogently overturning RMF's pesak halakhah, and demonstrating that brain death is only doubtfully death. Therefore, like the townspeople of Rabbi Eliezer who – when they realized that Rabbi Akiva cogently disputed Rabbi Eliezer – had to stop desecrating Shabbat for makhsherei milah, so too the RCA became obligated to reverse its previous stance on brain death. Therefore, I congratulate R. Asher Bush for overturning the RCA's previous position with his 110-page position paper. There may be details that might be improved in the paper (-most importantly, S. Spira's name should be expunged from the paper, as S. Spira has no merit to be cited alongside genuine authorities like RMDT and RJDB), but basically the paper appears entirely correct that a brain dead patient is doubtfully alive.

The only finding that could now reverse the RCA paper would be a face-to-face

conference or all the Gedolim on the definition of death. Indeed, RSZA explicitly recognizes such a stipulation, as quoted in Shulchan Shelomoh, Erkei Refu'ah II, p. 32:

“There is a position that HaGa’on Rabbi Moshe Feinstein zatzal retracted what he had ruled that in order to determine death we need the lack of all three signs [respiration, motion, circulation] ruled by the Chatam Sofer, but this is not found in his written responsa. And since there is no definition like this of brain-stem death in Sha”s, we cannot innovate a definition like this in our era, and only when the Sanhedrin will arise will it be in their power to establish whether brain-stem death is death or not, and until then it is forbidden to remove from him [i.e. from the brain-stem dead patient] his heart or any other organ so long as his heart beats within him. Even in a case where the entire brain, including the brain-stem does not function at all, which is called ‘brain death’, so long as the heart of the donor beats it is our opinion that there is no permission to remove even one of his organs, and there is in this [a suspicion*] of bloodshed. And until the Gedolei Hador will decide that this patient is called dead, one is obligated to continue to feed him [intravenously] and to treat him like any unconscious patient, and if one must do so by desecrating Shabbat, one must also do so. However it is understood that resuscitation should not be performed [-according to RSZA’s opinion, which is contested by RJDB**]”

{S. Spira’s two footnotes on the above responsum of RSZA:

* = Robert Berman correctly points out, in his debate with R. Tzvi Flaum on the HODS website, that RSZA’s responsum is missing a word, and that the word “suspicion” should be added here, since RSZA is saying that a brain dead patient is doubtfully dead and doubtfully alive.

** = RSZA’s assumption that resuscitation should not be performed in a brain dead patient is consistent with RSZA’s general approach to treating the gossess. However, that approach is analyzed and cogently contested by RJDB in Benetivot Hahalakhah III, pp. 161-178.}

Regarding the story of Eli Hakohen, RSZA will say that when Eli Hakohen fell from the chair, all his brain cells – including the hypothalamus – died. The lomdut behind the dispute of whether to include the hypothalamus is explained in the “Brain Death in the News” forum, comment on Dec. 8, at 3:24 p.m., seventh paragraph.

26. Alan S. on January 20, 2011 at 11:43 am

Robby Berman, regarding Rav Soloveitchik, I was at the OU conference this past Sunday. At the end of Rav Schachter’s shiur on the meaning of a Heter, one shul rabbi asked him to publicly comment on the current mess over this issue.

While I cannot recall every nuance of what he said, suffice it to say that he did not believe the BSD camp had sufficient Halachic basis for stating with certainty that BSD can meet the Halachic criteria for death. (I’m sure you know that he holds that already though.)

He then commented on Rav Soloveitchik’s position on the matter. He said that one of RYBS’s talmidim was with him in Boston when the Rav was asked about this. At this point in RYBS’s life, he was more comfortable speaking in Yiddish & responded that he cannot understand how someone can Pasken with such certainty that BSD constitutes death according to Halacha – as there just is not enough relevant info on the topic in Shas and Poskim to absolutely determine a question like this with such huge ramifications of life and death.

RYBS was then nervous that the talmid didn’t understand his Yiddish, so he repeated the same thoughts in English.

Rav Schachter did not name the talmid who was there.

This was said publicly at the OU conference.

27. IH on January 20, 2011 at 12:04 pm

Observation: At the end of the day, the machloket on BSD as dependent on the “Gedolim” no longer with us, seems to be hostage to “I heard...”. And, with no disrespect to Rav Shachter it is now “I heard from someone who heard” as relayed by Alan S.

This seems a path fraught with problems...

28. J. on January 20, 2011 at 12:13 pm

Also, the approach relayed in the name of Rav Soloveichik is intrinsically problematic. Basically, the guys who made the laws didn't know all this stuff, so we're stuck with what they said, and because we can never know for sure what they would say about recent developments, we'd better do nothing. There isn't the biggest of jumps from here to the Steipler's opposition to Dor Yeshorim style testing because 'lo nahagu ba avoteinu'. What happens in 200 years time when everything is super complicated and even more difficult to find explicit precedents for in Shas? Give up? Stay at home all day? Aren't we supposed to try our hardest to apply the Torah to contemporary abilities and go with that?

29. Hirhurim on January 20, 2011 at 12:18 pm

Rav Soloveitchik's grandsons heard it directly from him. That important fact is in the RCA paper but not on the HODS website. R. Marc Angel also has it in writing from R. Ahron Soloveichik and R. Isadore Twersky (brother and son-in-law) in Rav Soloveitchik's name. I don't think that letter is on the HODS website although I could be mistaken. Since R. Marc Angel is on the organization's rabbinic board, perhaps they posted the letter and I just can't find it.

30. Shalom Spira on January 20, 2011 at 12:33 pm

R' J., thank you for important insights and excellent questions.

In response to the pivotal philosophical questions you raise, I will answer that Orthodox Judaism professes that the laws all originate from HKB”H in His Oral Torah. The Sages of the Talmud are the torch-bearers, the exponents and the champions of that Oral Torah. [As the Talmud Berakhot 5a states, 15 lines from top: the mishnah and gemara were all revealed to Mosheh Rabbeinu at Mount Sinai.]

Now, the Sages of the Talmud knew about circulation of some sort, and hence the gemara in Kiddushin 24b regarding “yavshah gappah” (if the wing of the avian sacrifice has withered due to lack of circulation) – a key point to RHS's lecture in 1988. [-But I hasten to add that since, in 1988, it was not yet realized that RSZA supported RHS, the RCA was still correct the way it voted in 1991 (even though the RCA was contradicting RHS). I am sure RHS will not be offended to humbly acknowledge that, in the '80s and '90s, RSZA was his superior.] The Sages of the Talmud likewise knew that when circulation ceases, the body will eventually decompose, and hence the gemara in Niddah 69b about uncertainty in diagnosing death until the body decomposes.

There are, however, sfekot in two forms: (a) whether circulation that is bereft from respiration within the past few minutes is legally regarded as a manifestation of the last breath taken, paralleling the Pesach cow lactation question, and (b) what happened to Eli Hakohen. These are unresolved issues that Acharonim have debated for centuries.

And thus the life of the brain dead patient is in a state of doubt. And when we are in doubt regarding someone's life, we champion the possibility that he may be alive, and we desecrate Shabbat to save him, as per the mishnah in Yoma 83a.

31. Alan S. on January 20, 2011 at 12:41 pm

J & IH, I think this situation is unique for 2 reasons:

1) The stakes are absolutely huge

2) The discussion began when the now deceased titans were still living and involved in the conversation. As such, it's very important to know what they honestly said – especially when there are people using those names and personalities to promote their positions today.

32. IH on January 20, 2011 at 12:44 pm

From my perspective, we have reached the points of diminishing returns in this debate. Those of us actively commenting have staked out our positions and we are now largely repeating ourselves.

Rabbi Student, there is one issue where I still am not clear that I fully understand your position. I would appreciate a straightforward yes/no (with whatever caveats you feel necessary) answer to:

Plainly speaking: do you believe it acceptable for an Orthodox Jew to believe that a theoretical restrictive psak on donating organs which simultaneously is permissive regarding receiving organs can be questioned on ex-halachic moral grounds?

[To be clear: I am not interested in debating your straightforward response, once posted. Thanks.]

33. Hirhurim on January 20, 2011 at 12:48 pm

IH: Yes, I believe a *posek* can question the views of another posek on meta-halakhic/moral grounds. Those of us who are not poskim need to be respectful.

34. IH on January 20, 2011 at 1:20 pm

Alan S: I understand, but that doesn't change the fact that it is a path fraught with problems. I am sure that all the 1st generation "I heard"s are the honest memories of the person involved; but, no one (no matter how great) is immune from the limitations of human memory. By the time of the 2nd generation "I heard from someone who heard" we are in the realm of what the British call Chinese Whispers.

This is particularly an issue where there is a written record, but the honest memories of a talmid or child or friend are given as evidence that the written word should not be taken at face value.

It seems evident that neither side of this debate will prove beyond a doubt what RMF, RSZA or RYBS really believed at the peak of their powers. In other words, this will not be decided strictly by halachic process, but by meta-halacha and (possibly ex-halachic) moral beliefs. For some this will be a form of "daas Torah" and for others it will be rationalist.

The problem, as illustrated in the RCA brouhaha, is when one side tries to delegitimize the other side. I am hopeful that some lessons have been learned and an addendum is

issued by the va ad HaIacna.

35. IH on January 20, 2011 at 1:24 pm

To amend the penultimate sentence as less editorial: “when one side is perceived to delegitimize the other side”.

36. Noam stadlan on January 20, 2011 at 1:32 pm

R. Gil, If there is a physician who thinks that what I posted is inaccurate or wrong, I request that they state specifically what they think is in error. They can certainly contact me privately.

37. Noam stadlan on January 20, 2011 at 1:39 pm

R. Spira. They did NOT know about circulation. You are reading dr Harvey into the Gemara Please read the history of medicine. In fact there is a claim that the Chatam Sofer was actually the first to claim that absence of circulation, as interpreted as blood flowing in the arteries, was a criteria for death. Up until then the heart was thought to be an organ of respiration.

38. Shalom Spira on January 20, 2011 at 1:55 pm

R' IH,

Thank you for your important insights. But where is there any doubt in RSZA's position? It seems to me that we have established that RSZA ruled that a brain dead patient is doubtfully dead, doubtfully alive, and that RSZA added that this conclusion can only be reversed by a consensus of Gedolei Hador.

Well, R' IH, you are in fact correct that RSZA's position requires further elaboration. Thank you and yi'yasher kochakha for bringing it to our attention. Although not yet mentioned in our discussions under the auspices of our Rosh Yeshiva R. Student, there is in fact a contradiction in the accounts of RSZA, as follows. At 31:20-33:20 into his Hebrew-language HODS interview, HaRav HaGa'on R. Avraham Steinberg states that RSZA held that a functioning hypothalamus in an otherwise brain-dead patient is not a sign of life. This is seemingly contradicted by Shulchan Shelomoh, Erkei Refu'ah II, pp. 27, 29-31, 49-50, where RSZA rules that a functioning hypothalamus in an otherwise brain-dead patient is considered a potential sign of life. [R. Steinberg's testimony is also seemingly contradicted by Contemporary Halakhic Problems IV, pp. 348-349, where RJDB reports that RSZA ruled that a functioning hypothalamus is considered a potential sign of life. R. Steinberg's testimony is also seemingly contradicted by RMDT in “Responsa of Rav Moshe Feinstein: Care of the Critically Ill”, pp. 96-97, who reports that RSZA ruled that a functioning hypothalamus is considered a potential sign of life.

On Friday, July 2, 2010, in Lake Placid, New York, I enjoyed the awesome privilege to meet HaRav HaGa'on R. Steinberg. I was also holding in my hand a copy of the Shulchan Shelomoh, and I respectfully presented it to R. Steinberg. After reading the text, R. Steinberg graciously and righteously acknowledged that Shulchan Shelomoh is accurate, and that RSZA held that a functioning hypothalamus is potentially a sign of life.

Thus, I believe RSZA's position has now been clarified.

39. Noam stadlan on January 20, 2011 at 2:14 pm

R. Spira, as I pointed out previously, there are plenty of patients where the hypothalamus is not working. If one feels that a nonfunctioning hypothalamus is necessary for a particular set of criteria, it can be tested for

particular set of criteria, it can be tested for.