

The Truth About Organ Transplants



Featured News

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A new organization, founded by Orthodox Jews, made the “mistake” of paying for an advertisement in multiple Jewish newspapers, including the secular Forward, seeking a live donor for a kidney to save someone’s life.

Seth Cohen, M.D., waxed indignant against our rabbis and the chareidi community for what he calls their refusal “to endorse halachic procedures to take organs from either normal living or brain-dead people to heal chronically ill patients” (Letters, Forward, October 8). The Forward declined to publish my letter in reply and Rabbi Shafran’s letter, and Rabbi Shafran apparently wrote a column to more broadly address the charges raised by Dr. Cohen (“Punishing People for Their Beliefs,” 5TJT, November 19).

Jeffrey Miller (Letters, 5TJT, December 3), in reply to Rabbi Shafran’s column, argues that “those who would accept an organ but would not donate the same organ are hypocrites.” Mr. Miller then raises the issue of live-donor kidney transplantation. Apparently with regard to someone who is unwilling to donate a kidney, Miller claims that “the halachic principle of lifnei iver . . . would certainly preclude him from accepting a kidney.” He then states that, if Rabbi Shafran would counter that pikuach nefesh takes precedence when accepting an organ, then he must explain why it doesn’t take precedence when [one is] asked to donate as well.”

Allow me to attempt a response, based in part on my recent participation at a session on Thanksgiving Day entitled “Modern Medical Mores and Halacha: Are they truly irreconcilable?” This public session was held at the recent Agudath Israel national conference.

The issues surrounding organ donation are complex, yet in over a dozen years of personal interactions with Israeli chief rabbis and other leading rabbinic authorities of Orthodox Jewish law from across the Orthodox spectrum, I have never encountered a single rabbi who is against organ donation from live donors such as kidney donations. It is simply libelous to assert otherwise.

With regard to “brain dead” patients, there is an ongoing controversy as to whether vital organs may be removed from such individuals, based on definitions of death. This controversy is not limited to Orthodox Jewish circles.

Dr. Cohen claimed that “it is unseemly and cynical to recruit potential donors when there is no theoretical potential for paying the good deed forward.” Does he mean to suggest that the potential recipient of a kidney should be denied a life-saving organ simply because an organization trying to save this person’s life happens to have been founded by Orthodox Jews, an organization that tries to provide organs without respect to whether the recipient is an Orthodox Jew? If so, he is calling for outright discrimination. Organ donation has always been based on medical need, not on discrimination. Organs are not open for barter.

Mr. Miller labels as hypocrites those among us who follow the halachic decisions, on life-and-death matters, of any of the very many halachic authorities, in camps ranging from YU to Eidah Chareidis, who reject “brain death” (either because of the inconvenient fact that a percentage of patients labeled “brain dead” may very well have some remaining brain function, or because of other reasons too complex to summarize here).

They are hypocrites, Mr. Miller argues, because they are morally opposed to donation, and won’t give the organ they then wish to receive. Here, he misunderstands how an Orthodox Jew must deal with a question concerning Jewish law and how he must respond to the answer given to him. The layman has no religious choice but to obey the halachic authority. One is not permitted to go “rabbi hopping” after getting an undesirable answer until he finds some rabbi who will provide the answer he desires. To do that would be the mark of a religious hypocrite. I can assure Mr. Miller that the religious scholars involved in these matters have given much thought to the public policy implications, for many years, including appearances of impropriety, hypocrisy, and worse. Centenarians like Rav Elyashiv were aware of concepts like mip’nei eivah well before some of our parents were born!

In addition, they realize fully that a decision not to permit vital organ removal from a “brain dead” patient may very well result in the death of a critically ill person in immediate need of that organ.

Notwithstanding these pressing concerns, their firm belief that “brain death” does not constitute death from a halachic point of view precludes them from urging followers to donate vital organs, such as heart and lungs, before death. Why? Because while saving a Jewish life is a cardinal principle in Judaism, overriding such laws as Yom Kippur and Shabbos, killing someone to save another is simply not acceptable. Once an organ has been removed, however, these rabbis do not insist that someone who is in desperate need of it refrain from accepting it.

A few years ago there was a stunning halachic decision that achieved international attention, including in the Chinese media. Rav Elyashiv, considered by many to be the foremost halachic authority in the world, forbade his followers from seeking organs in China. Why? There was circumstantial evidence that criminals were being executed within a suspiciously short time of the potential recipient’s

arrival in a Chinese hospital seeking a matching organ. What a coincidence! As soon as the Israeli patient arrived, the doctors “just happened” to have a prisoner, about to be executed, whose organ was a match for the recipient. The executed prisoner’s organs would be immediately taken by an ambulance crew for placement in the recipient’s body.

Given only circumstantial evidence, Rav Elyashiv decided that the shortening of a life, by even a second—even the life of a criminal who himself might be a murderer—is forbidden even to save the life of the most worthy of our brethren. For anyone who knows of this world-famous case to suggest that Orthodox Jews who follow this sage’s rulings favor the lives of Jews over those of non-Jews is outrageous.

A recent internal paper of the Rabbinical Council of America, prepared by its halachah committee in a painstaking process lasting over four years, reportedly determined that there is insufficient halachic evidence to support the notion that the RCA should continue to describe “brain death” as “the criterion” for death and hence for removal of vital organs. That paper, prepared by distinguished rabbis in consultation with such halachic luminaries as Rabbi Hershel Schachter and Rabbi Mordechai Willig, among others, cited many authorities and raised many questions about this topic, in a very erudite discussion.

Yet its conclusions were publicly ridiculed and mocked by some in our community. How sad that some choose to replace a learned, serious discussion of the issues with an ad hominem attack on our own Rabbi Tzvi Flaum and so many others who are true experts in this area.

I find it interesting that learned individuals who were, or should have been, well aware of the Chinese case cited above would nonetheless publicly and falsely mock our leading rabbis in the RCA and, by implication, all rabbis who oppose their viewpoint on brain death.

I invite Dr. Cohen, Mr. Miller, and anyone interested in learning this sugya thoroughly to participate in any of our yarchei kallahs on Jewish medical ethics held around the world multiple times per year since 1997. These have involved the participation of the chief rabbis of Israel and major halachic authorities from around the world. Sit down, as I have, with authorities like Rav Yehoshua Neuwirth, Rav Zalman Nechemiah Goldberg, Rav Yitzchak Zilberstein, Rav Hershel Schachter, Rav Mordechai Willig, Rav Moshe Sternbuch, and many others.

I’ve also learned with Rav Mordechai Eliyahu, zt”l, who explained that the chief rabbinate relied solely on the opinion voiced by two doctors, one of whom was not a neurologist, that “brain death” meant the whole brain was dead (which has been shown in many cases not to be the case), and Rav Aharon Soloveichik, zt”l, who, despite his debilitating stroke, spoke strongly against “brain death” and who told me that his brother, Rav Yosef Ber Soloveitchik, zt”l, never indicated agreement with those in the “brain camp.”

There is clearly much that all serious laymen and rabbis could learn in such venues.

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