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US rabbis avoid clear stance on brain-stem death

By JONAH MANDEL
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UK Chief Rabbi and London Beth Din also issue statement implying brain-stem death does not meet 'Halachic criterion' for organ donation.

After recently publishing a highly controversial study that reversed a long-time policy of accepting brain-stem death as halachic death so as to facilitate organ donations, the Rabbinical Council of America on Friday issued a clarification that in effect shied away from taking a position on the topic, instead allowing each rabbi to determine his stance "in this extraordinarily difficult and important area of Jewish law."

A few months ago, the RCA disseminated a 110-page study penned by its Halacha Committee (Va'ad Halacha) which dealt with "the halachic and medical issues relating to organ transplantation... and the determination of death in Halacha."

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The team of rabbis, led by Rabbi Asher Bush, attempted to disprove the scientific and halachic grounds for the RCA's stance on those issues, as developed for the organization in the early 1990s by Rabbi Dr.

Moshe D. Tendler, a biology professor and Jewish medical ethics expert at Yeshiva University, and rosh yeshiva at its Rabbi Isaac Elchanan Theological Seminary.

Based on his scientific expertise and the halachic rulings of leading rabbis, including that of his father-in-law, Rabbi Moshe Feinstein, one of the greatest adjudicators of the 20th century, Tendler determined that brain-stem death constituted halachic death.

This is also the stance of Israel's Chief Rabbinate, as it ruled in 1986.

In its Friday announcement signed by Rabbi Moshe Kletenik, president and Rabbi Shmuel Goldin, first vice president, the RCA explained its "unusual step" of issuing clarifications due to the "strong reactions from many quarters" the recent release of the Va'ad Halacha's study engendered.

"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 announcement read. "The study disseminated by the Va'ad Halacha was the product of many years of exploration by that committee and was meant to serve as an informational guide to our membership."

The announcement states 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. 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."

Hence, the "RCA maintains that its membership is best served by allowing each Rabbi to determine for himself, based upon his own study, consultation with halachic authorities and his own conscience, which halachic position he will adopt in this extraordinarily difficult and important area of Jewish law."

The RCA clarification, however, was far from satisfying the critics of its recent Va'ad Halacha paper, and stems from the fact that for unknown reasons, the organization, which serves nearly 1,000 Orthodox rabbis, primarily in North America, "went ahead and let individuals who are not knowledgeable about the topic" write the new report, Tendler told The Jerusalem Post on Sunday.

The newfound direction of the RCA "had to be some kind of decision," Tendler said, noting that the inaccuracies in the recent Va'ad Halacha paper had to be intentional, "since it is not possible to make those errors."

"In the text itself, they referred to those who correctly support brain stem death as a halachically approved indicia of death in derogatory terms," he said of the report's authors.

"Their attempt to restate opinions of the supporters, such as Feinstein and the [Israeli] Chief Rabbinate can only have been an intentional effort to retract what was the standard of the RCA ... and a violation of what has always been the RCA policy of supporting the Chief Rabbinate," he continued.

The mystery of why the RCA sought to change its stance on brain-stem death remains unsolved, Tendler said.

"What is needed is not a clarification of the RCA position, but a simple apology," he said.

Tendler reiterated the danger to human lives such a stance could pose, as it would prevent Jews from donating life-saving organs. He mentioned the recent case of soccer star Avi Cohen, whose family decided to not donate his organs even though he had signed an ADI organ donor card, reportedly due to comments made to the late man's son by a former soccer player who turned haredi and his rabbi – that they would be murdering his father if they donated his organs.

"The sense of tragedy on Avi Cohen is that an individual," Tendler said of the unidentified rabbi, "decided that he could be an adjudicator on the lives of seven-eight people," who might have been able to receive Cohen's organs, "and decided that they can die, because he wanted to support a minority opinion on this issue."

Cohen's wife and son denied that they had refused to donate the organs because of pressures from any rabbi, but sources in the know insist that the family had planned to donate the organs before their encounter with the religious elements.

Robert Berman of the Halachic Organ Donor Society also slammed the recent RCA paper that "contains medical mistakes, citation errors, historical distortions of piskei halacha, and morally reprehensible halachic positions," and in a Friday statement said that the new clarification was not enough.

"The RCA needs to retract the document, fix its flaws, and reissue it. That would be the right thing to do," he said.

In related news, the Chief Rabbi of the UK Lord Jonathan Sacks and the London Beth Din recently issued a statement rejecting brain-stem death as meeting the halachic definition of death.

"There is a view that brainstem death is an acceptable Halachic criterion in the determination of death. This is the view of some Poskim," they wrote. "However it is the considered opinion of the London Beth Din, in line with most Poskim, worldwide, that in Halacha cardio-respiratory death is definitive.

"Hence, in view of this, and of the significant Halachic issues relating to the procedure of the donation process itself, we believe that it is imperative that a competent Halachic authority should be consulted by families who find themselves involved in such discussions," the statement reads.

Sacks and the Beth Din note that they "are already in consultation with the UK medical profession about the possibility of devising a method whereby the number of organs donated by Jews can be increased in accordance with Halacha..."

“At this point, however, since the National Registry system is not set up to accommodate Halachic requirements, donor cards (even those purporting to be Halachic) are unacceptable.”

Berman slammed Sacks’s “declaration that encourages Jews not to donate organs upon brain death but not forbid Jews from taking organs from gentiles who are brain dead” as being “morally reprehensible.”

“Are the lives of gentiles in the UK worth less than those of Jews? If Rabbi Sacks thinks a Jew who is brain dead is alive, is not a gentile who is brain dead similarly alive?,” he demanded on Friday.

“It is curious that Rabbi Sacks discourages people from getting organ-donor cards that ‘purport’ to be halachic when Rabbi Nachum Rabinovitch, the person who gave Rabbi Sacks his smicha [rabbinic ordination], has just such a card from the Halachic Organ Donor Society,” Berman noted.



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