

Difficult Donations

Will new legislation make it easier for bereaved Orthodox families to donate their loved ones' organs?

Netty C. Gross

NOBODY KNOWS HOW LONG IT WAS UNTIL someone noticed her. When they did, on that fatal day in late February, Halleli Nechama Walfish, aged 18 months, was unconscious with a cord attached to a play device wrapped lethally around her neck. It happened in the toddler's preschool in the West Bank settlement of Tekoa, seven kilometers south of Bethlehem.

Halleli's father, Shlomo, a rabbinical student, grew up in the settlement. Her mother, Aviyah, is a university student, with an eye toward becoming an art therapist. They are both in their twenties and live a modern Orthodox lifestyle. Halleli was their first and only child.

The nursery teacher found the asphyxiated child and tried to resuscitate her. The school alerted Aviyah, who was doing errands in Jerusalem, and Shlomo, who was studying at the yeshiva on the settlement. Assisted by a local paramedic, he, too, tried to revive her. She was then sped by ambulance to the Shaare Zedek Medical Center in Jerusalem. Placed on a ventilator, she never awoke and was declared brain dead three weeks later. Sholom played his guitar at the toddler's pediatric intensive care unit bedside in the vain hope of stirring a reaction.

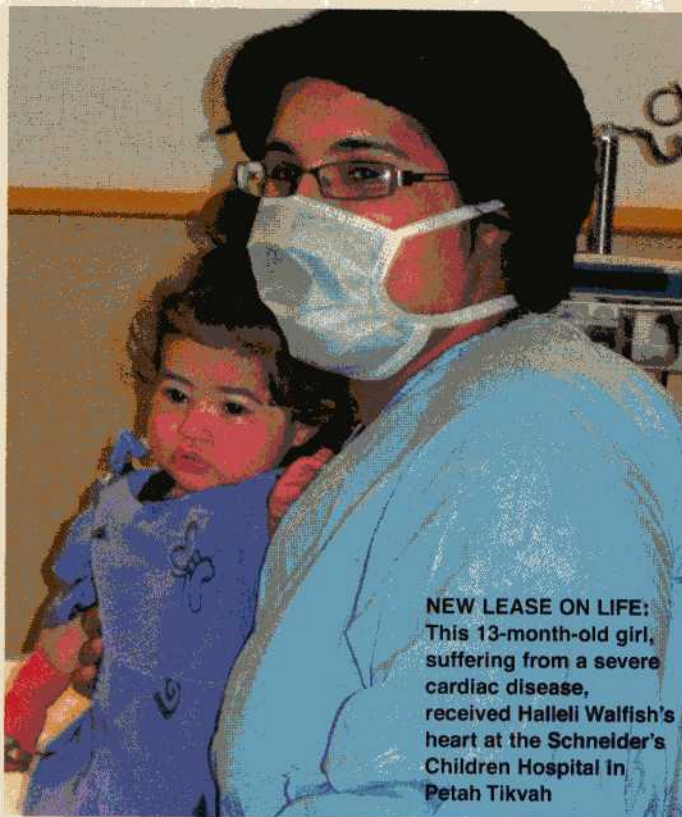
With the support and advice of their families, doctors and rabbis who entered the tragic picture – and after making up their own minds – Shlomo and Aviyah accepted the brain death diagnosis as proof of the termination of life and decided to donate her vital organs, giving four desperately ill children a new lease on life.

Transported on the evening of March 20 by special ambulance to Schneider's Children Hospital in Petah Tikvah, Halleli was removed from life support and a marathon organ transplantation got under way. Her heart was given to a 13-month-old girl, suffering from cardiac muscle disease, Israel's youngest heart transplant patient ever, and her liver went to an 18-month-old girl who had been en route to the airport with her parents for treatment in a Miami, Florida, hospital when they got the call from the hospital here.

Halleli's kidneys were harvested and transplanted into two children, ages 3 and 7, by coincidence both Arab citizens of Israel, suffering from kidney disease. Halleli was buried in Tekoa the next day.

Days later, the families of two young people who died unexpectedly – a soldier from Holon who perished when a friend's gun misfired and killed him and the sudden death from a lethal virus of an 18-year-old woman from Kfar Saba – also donated their organs for transplantation.

BUT GETTING ORGANS FOR TRANSPLANTS IN ISRAEL is not usually as easy as all that. Israel has a low instance of organ donorship and Israelis frequently travel overseas to undergo



NEW LEASE ON LIFE: This 13-month-old girl, suffering from a severe cardiac disease, received Halleli Walfish's heart at the Schneider's Children Hospital in Petah Tikvah

COURTESY SCHNEIDER CHILDREN'S HOSPITAL

transplants which cost millions; others die waiting for organs. Experts say a main reason for the acute organ shortage in Israel has been the lack of a coherent policy on transplants, which is fueled by religious and cultural reluctance in determining the moment of death, and a long-term dispute between doctors and rabbis on related issues.

Halleli's donations and the late-March events coincided with the passage of the new law on brain and respiratory death, initiated by Knesset Member Otniel Schneller (Kadima), which may help overcome the shortage of organs. The legislation is designed to regulate organ donations in compliance with Jewish religious law and to mitigate Orthodox opposition to the determination of brain death as actual death (a situation which is medically preferable for transplants over cardiac death, which *haredim* insist is actual death). The private bill had broad support, including that of the modern-Orthodox camp and, surprisingly, even the ultra-Orthodox Shas Sephardi party whose spiritual guru, Rabbi Ovadia Yosef, has long objected to "automatic transplantation" in the case of a brain death determination. Schneller was also able to overcome the 20-year dispute between the Chief Rabbinate and the Israel Medical Association over who had jurisdiction to determine death, doctors or rabbis, by devising an extraordinary dialogue process.

The legislation passed by 38 votes to 17, on March 24, 2008. The law goes into effect on May 1. Leading the opposition was Ashkenazi ultra-Orthodox United Torah Judaism (UTJ), which voted against the legislation. That camp's decision-makers and interpreters of Jewish religious law have argued (and continue to do so) that brain death is not death. MK Moshe Gafni (UTJ) told the Knesset on the day the law was passed: "A brain dead person is a living being." There were disagreements within UTJ. Knesset Member Avraham Ravitz, a colleague of Gafni's, who suffered from kidney disease for many years and received a kidney donation from a son in recent years, supports the new law.

But the ultra-Orthodox are split along the Sephardi-Ashkenazi divide. Shas Knesset Member Haim Amsellem told reporters that the new law was "historic" because it issues "a clear statement of the rabbis that the end of brain activity is death," and with that determination confirmed, transplanting the deceased's organs becomes a positive religious commandment.

Schneller, 56, tells The Report that his involvement with the determination of brain death and organ transplants began over a year and a half ago, somewhat by chance. Walking to Sabbath services in the synagogue of the West Bank settlement of Ma'ale Mikhmesh where he lives, Schneller encountered a man in his forties who was in dire need of a new liver, which was unavailable. "He was yellow and dying," he recalls.

A liver was eventually located, the man underwent a transplant and he survived. But Schneller had become aware of the burgeoning crisis and decided to work on new legislation. Schneller said that he found "very stiff resistance" among much of the Israeli public to donate organs of loved ones that contrasts starkly with the "tremendous need and suffering." Schneller also observes that some modern-Orthodox and secular Israelis are resistant to organ donations and attributes this to the heretofore "lack of clarity" on the religious Jewish view of organ donations. "When it comes to death rituals, people become superstitious," he says.

An Orthodox Jew, Schneller realized that the first immediate problem was to circumvent Rabbi Yosef's objection to "automatic transplantation" procedures in the event of brain death. "He wanted the family to have the right to ask a rabbi," Schneller says. The second problem, he notes, was avoiding the long dispute between the Chief Rabbinate and the Israel Medical Association (IMA) regarding jurisdiction over the determination of death. "This was a very sensitive issue. Doctors refused to be subject to religious supervision," while rabbis countered that by keeping them out of the process, people might be transgressing the commandment "thou shall not murder." Schneller says his act "is a balance between two world views."

The new law's innovation is that it has found a way acceptable to both physicians and rabbis to determine brain death and the absence of breathing, ending the argument over who has the last say. Earlier this year, the Chief Rabbinate and the IMA reached an agreement on how to determine the moment of death, allowing the Knesset Health and Labor/Social Affairs committees to shape the bill for its final (third) Knesset reading. The law provides for brain death and the cessation of breathing to be determined by two authorized doctors, graduates of a short course to be devised by a newly created steering committee on which a mix of professionals, including rabbis, serve.

The committee to determine death, as stipulated by the law, will consist of three IMA-backed physicians; three Chief Rabbinate-recommended rabbis (one of whom must also be a physician); a medical ethicist; a philosopher, and a lawyer conversant in relevant matters and recommended by the Supreme Court. Of the last three participants, at least one must also be a physician, while another must be a non-Jewish member of another faith. Additionally, a series of confirmatory brain tests must be performed. Families still have the final say, however, whether to disconnect a loved one from a ventilator.

Schneller's law also prohibits Israelis from purchasing organs in Israel and abroad; sets a three-year jail term for anyone brokering in organs and

provides compensation to individuals who donate one of their kidneys to a relative.

Opponents of the law were particularly shrill. Besides Gafni's Knesset statement, the law was decried as "bloodshed" and even "murder" by followers of Rabbi Yosef Shalom Eliashiv, the sage of the Lithuanian non-hasidic yeshiva world, (and Gafni's spiritual mentor) who argues that cessation of cardiac rather than brain activity, which often comes first, determines death.

"Thou shall not murder" screamed posters plastered on the walls of ultra-Orthodox Jerusalem communities with Eliashiv's opinion, alongside posters citing a similar 1991 decision, said to be authored by the Jerusalem-born dean of Litvak sages, Rabbi Shlomo Zalman Auerbach (1910-1995), whose son Ezriel, also a rabbi, is a son-in-law of Eliashiv, and whose funeral was said to be attended by close to half a million people.

Supporters of the bill feared that the Sephardi rabbis might backtrack in the wake of Elyashiv's disapproval. And in a widely quoted lecture in early April, just days after the law's passage, Sephardi Chief Rabbi Shlomo Amar seemed to do just that, despite the Chief Rabbinate's earlier endorsement. Amar said the new law was not blanket permission to donate organs in case of brain death, and that each case had to be brought before him on an individual basis. But Schneller says media reports that Amar was backtracking were false and that Amar agreed to publish a letter in support of the determination of brain death as death, while reiterating that each case must be "assessed individually and be reviewed by a knowledgeable rabbi" – which, Schneller notes, is consistent with the new law.

Yet he also acknowledges that Amar was and remains under "enormous pressure" from hard-line Ashkenazi ultra-Orthodox rabbis who demand that he dissociate himself from the new legislation. A spokesman for Shas says the party's position "has not changed" and Rabbi Yosef's office would not respond to questions from The Report.

As for the objections by the Ashkenazim, Schneller believes they will dissipate. In his opinion, the Ashkenazi ultra-Orthodox position is not logical because an "unconscious heart attack victim can be resuscitated sometimes," which is not the case for a brain dead person. He believes that in time the law's foes will "come around and accept it" and he hopes that the new law is "the first step" in educating the public to understand that donating organs is a *mitzvah* (a righteous deed) but just how effective the new law will be without the support of Elyashiv is unclear.

HALLELI'S PATERNAL GRANDFATHER, RABBI AVI Walfish, 57, and his then-newlywed wife Ruthie moved here from New York in 1973 and raised six children in Tekoa. Shlomo is the couple's fifth child. Walfish, an ordained Orthodox rabbi who also holds a doctorate in Talmudic studies, is the son of Rabbi Binyamin Walfish who headed the (Orthodox) Rabbinical Council of America in the early 1990s before he immigrated to Israel with his wife. When the senior Walfish headed the RCA, it recognized brain stem death but that decision is now under threat by conservative elements in the RCA.

In an early-April interview, Rabbi Avi Walfish told The Report that he has no quarrel with Amar's comments which were made after the new law was passed but finds the Ashkenazi ultra-Orthodox stance "trou-



LIFESAVER: Transplant donor Halleli Walfish

COURTESY WALFISH FAMILY

bling.” He resents what he refers to as the ultra-Orthodox “lockstep” mentality and, without elaborating, accuses the contemporary ultra-Orthodox leadership of “falsifying” halakhic opinions of deceased sages on a number of difficult issues, including organ donations.

Walfish is not only confident that his family took the correct “moral, religious and ethical” course of action, he is irritated by the dispute. His granddaughter, he plainly states, was “tragically clinically brain dead” and in transplanting four of her vital organs, his daughter-in-law and son courageously saved four young lives. “Alongside the acute pain suffered by the entire family, we draw some degree of hope “from the lifesaving transplantations,” he says somberly.

Noting that Halleli’s kidneys were given to Arab children, since the list for organ receipt is based solely on medical considerations, he says, emphatically: “Politics has no role here. We are all human beings.”

Since December 1967, when South African cardiac surgeon Dr. Christiaan Barnard placed a new heart in the chest of Cape Town grocer Louis Washkansky, a Jewish immigrant from Lithuania, transplants have been becoming increasingly successful, driving up the demand for more organ donations – and lengthening the waiting time for the lifesaving donation.

In recent years, “medical tourists” from Israel and other Western countries, with severe shortages in organ donations, have traveled to China to undergo transplants of organs controversially harvested from executed criminals, a practice that reportedly continues, even though in 2006 China passed a law outlawing trafficking in organs.

Though there is a universal shortage of organ donations, there are even fewer donors in countries like Israel where religious or tribal taboos prevail, says Tamar Ashkenazi of the Israel Transplant Center. Muslims, for example, believe a body must be buried whole and Chinese have a cultural and religious taboo

against donating organs of deceased family members. Ashkenazi tells *The Report* that Israel is nearly at the bottom of the list of the percentage of individuals willing to become organ donors or allow their deceased relatives to do so. For example, only 8 percent of the general population are signatories to donor cards, whereas in Western countries the signatories to equivalent cards comprise 30 to 40 percent.

Some 55 percent of Israeli families approached to donate the organs of a brain-dead family member decline to do so. In 2007, 145 families were approached to donate organs but only 61 consented, resulting in some 230 transplants. Half declined to donate organs for religious reasons surrounding establishing death; others cited the common cultural-religious belief that a Jew must be buried whole. And while organ donations and transplants have been legal in Israel for decades, and run according to a series of guidelines developed by the Ministry of Health, confusion reigned on related issues.

“Obviously, some clear legislation was needed,” says Shaare Zedek Medical Center director-general Professor Yonatan Halevy, who served for six years (2000-2006) as voluntary chairman of the Israel Transplant Center. A modern-Orthodox Jew himself, Halevy confirms that faith-based issues have complicated organ donations in Israel – although in one instance, they have made them clearer and easier. After the Adi card (as Israeli donor cards are known) added the option of making potential donations conditional on the say-so of a clergyman (Halevy hoped

Muslims would also sign on), thousands of religious soldiers in the joint military-yeshiva *hesder* program signed the cards. The debate over a wider problem – determining brain death in a manner acceptable to physicians and rabbis – began in earnest in 1997, recalls Halevy, surrounding heart transplants. Medical authorities refused to allow rabbis to act in a supervisory role; rabbis said that doctors could not be allowed to determine death. “It remains to be seen” how effective the new law will be in generating new organ donations, says Halevy.

RABBI WALFISH REMEMBERS HALLELI (HE HAS SIX other grandchildren) as a “happy and easy going child who loved to eat.” He says that the device which caused the accident consisted of a child-height curtain which, when pulled open, revealed a mirror. Once she was in Shaare Zedek’s pediatric intensive care unit, the family sought and received guidance from doctors and rabbis, including the hospital’s pediatric neurologist Prof. Avraham Steinberg, who is also a prominent medical ethicist and rabbi, and former Sephardi chief rabbi Mordechai Eliyahu, a dominant rabbinic authority for many in the religious-nationalist Zionist community.

He says doctors administered four brain tests at an early stage, three of which showed no activity from the start, while the other, known as the Trans-Cranial Doppler, indicated faint activity. The last test, says Walfish, “kept us in the hospital for three weeks.” He says Steinberg concluded that the TCD measurement is more accurate for victims of head trauma rather than victims of asphyxiation and finally, using other test results, Steinberg and Eliyahu agreed that the child was no longer halakhically alive and “there was no hope.”

Walfish says that all the family members, including the child’s parents, whom he described as grief-stricken but strong, and grandparents, independently and privately were “having thoughts about the possibility” of Halleli being brain dead and a candidate for organ-donor status. As the prognosis became increasingly grim, they started to discuss it among themselves. Walfish says the hospital’s transplant coordinator only approached the family with the request that they donate her organs after Halleli was determined to be brain dead. By then, he says, the family had made up its mind “to do it anyway.”

Rabbi Walfish says he has been surprised to learn that many Jews wrongly believe the body must be buried whole in order to satisfy the requirements for participation in the afterlife. As a devout man who believes, he says, in a literal interpretation of the prophecies and resurrection of the dead, which will take place in the afterlife, he’s puzzled by this oft-stated objection to organ donation. “If so, that eliminates the Six Million, the burnt victims of the Spanish Inquisition,” and basically anybody who died years ago of natural causes and whose bodies decomposed over the years, he says. Addressing those primal fears, Walfish says he prefers other rabbinical interpretations that the Heavens “will restore anew.”

In the meantime Walfish monitors the progress of his late granddaughter’s organ recipients (according to Schneider spokeswoman Riva Shaked, all are doing “as well as can be expected”) and has paid condolence calls to other recent donor families, an experience he describes as “meaningful.” He hopes that the courage displayed by his son and daughter-in-law and others, as well as the new law, will bolster organ donations in Israel and among Jews around the world, “in our lifetimes.” ●



ETHICS: Grandfather Avi Walfish believes the family took the correct 'moral, religious and ethical' course of action

ESTERAN ALTEMAN