Halacha defining death

Jewish Medical Ethics: The Brain Death Controversy in Jewish Law

by Rabbi Yitzchok A. Breitowitz,

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The issues that need to be decided under Jewish Law.

1. Is irreversible dysfunction of the entire brain a valid criterion of death under Jewish Law?
   a. If No, then, such a person is alive.
   b. If Yes, the following issue must be decided:

2. Are the medical tests currently utilized in establishing such a condition valid indicators of its presence under Jewish Law?
   a. Which Tests?
   b. Are the tests being utilized in the patient’s facility tests that qualify under Jewish law?
Mishnah Oholot 1:6

A person does not defile [as a corpse] until he dies. Even he is cut up or even if he is about to die, he [still] makes levirate marriage obligatory and exempts from levirate marriage, ... If their heads have been cut off, even though they are moving convulsively, they are unclean, like a lizard's tail, which moves convulsively.

Under Jewish Law......
• Does irreversible dysfunction of the entire brain qualify as ‘decapitation’?
• What defines ‘convulsive movement like a lizard’s tail’?
  ➢ Unpredictable random body or limb movement?
  ➢ Artificial heartbeat?
  ➢ Lazarus reflex?
The Rabbis taught: If a person is buried under a collapsed building, until what point does one check to clarify whether the victim is still alive? Until what point is he allowed to continue clearing the debris? They said: One clears until the victim’s nose. If there is no sign of life, i.e., if he is not breathing, he is certainly dead. And some say: One clears until the victim’s heart to check for a heartbeat.
The Main controversy in Jewish law – a question of interpretation:

The Mishnah in Oholot 1:6 declares dual propositions:

1. A decapitated person as dead and
2. Subsequent convulsions after decapitation are not indicative of life

The Issue:
Is a dysfunctional brain-stem is equivalent to a decapitated one (physiological decapitation)?
Is subsequent "movement," whether the Lazarus Reflex or the heartbeat, falls into category of pirchus?

Proponents of "brain death" argue
1. A dysfunctional brain-stem is equivalent to a decapitated one (physiological decapitation),
2. Destruction of the brain-stem inevitably means inability to spontaneously respire (meeting the criterion in Yoma).
3. Subsequent "movement," whether the Lazarus Reflex or the heartbeat, falls into category of pirchus since such movement is not coordinated from a "central root and point of origin,"14 ie., the brain.
The counter – arguments are:

1. Physiological dysfunction is not the equivalent of anatomical decapitation.

2. The only phenomenon short of actual decapitation that might similarly qualify is total liquefaction (lysis) of the brain, something that probably does not occur until well after cardiac arrest.

3. The rhythmic coordinated beating of the heart and the maintenance of a circulatory system can hardly be characterized as pirchus (random uncontrolled reflexive movement) since such a heartbeat is life-sustaining and identical to that in a normally functioning individual.

4. Chatam Sofer and Chacham Tzvi who both write that it is only the cessation of respiration and pulse (heartbeat) allow for a determination of death.

5. The Talmud in Yoma merely creates a presumption that upon cessation of respiration and an appropriate waiting time, one is permitted to assume that heartbeat has stopped as well. Since this assumption is obviously not true in the case of "brain dead" patients hooked up to respirators whose heartbeats are monitored, such patients may not be declared as dead.
Moshe Feinstein or Moses Feinstein (Hebrew: משה פײַנשטיין; March 3, 1895 – March 23, 1986) was an Orthodox rabbi, scholar, and posek (authority on halakha—Jewish law), regarded by many as the de facto supreme halakhic authority for observant Jews in North America.

Moshe David Tendler (born August 7, 1926) is an American rabbi, professor of biology and expert in medical ethics. Moshe David Tendler received his B.A. degree from New York University (NYU) in 1947, and a Master’s degree in 1950. He was ordained at Rabbi Isaac Elchanan Theological Seminary in 1949, and earned a Ph.D. in microbiology from Columbia University in 1957. He is the rabbi of the Community Synagogue of Monsey, New York. He is a senior Rosh Yeshiva at Yeshiva University’s RIETS and the Rabbi Isaac and Bella Tendler Professor of Jewish Medical Ethics and Professor of Biology at Yeshiva College. He is noted as an expert on Jewish medical ethics and their relationship to Halakha.

Judah David Bleich (born August 24, 1936, Tarrytown, New York) is an authority on Jewish law and ethics, including Jewish medical ethics. He is rabbi of Cong. B’nei Jehuda. He is a professor of Talmud (rosh yeshiva) at the Rabbi Isaac Elchanan Theological Seminary, an affiliate of Yeshiva University, as well as head of its postgraduate institute for the study of Talmudic jurisprudence and family law. At Yeshiva University, he holds the Herbert and Florence Tenzer Chair in Jewish Law and Ethics and also teaches at the Cardozo Law School. He is married to Dr. Judith Bleich, a historian of 19th-century European Jewry. Bleich brings an Orthodox perspective to governmental deliberations on bioethics. For example, in 1988 he served on the NIH Human Fetal Tissue Transplantation Research Panel and testified before Congress on the Pain Relief Promotion Act. In 1984, New York’s Mario Cuomo appointed Bleich to the Governor’s Commission on Life and the Law.

Brain Death - Yes

Brain Death - No
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Evidence has been brought before us that even Rabbi Moshe Feinstein, in later years, permitted heart transplant procedures in the United States. Similarly, we are aware of leading Rabbis who have actually advised cardiac patients to undergo heart transplantation.

3. Since this inquiry [literally] involves life and death decisions, it behooves us to formulate the halakhic position clearly and with confidence, in spite of the enormous difficulties.

4. Based upon the talmudic principles of Yoma 85a, 12 and [ruled accordingly in Responsum] Hataam Sofer in Yoreh De'ah no. 338, the halakha holds that death occurs with cessation of respiration. (See also Responsum Iggeret Moshe, Yoreh De'ah III, no. 132.) Therefore one must confirm that respiration has ceased completely and irreversibly. This can be established by confirmation of destruction of the entire brain, including the brain stem which is the pivotal activator of independent respiration in humans.

5. It is accepted in medical circles that such confirmation (as mentioned in paragraph 4) requires five conditions:

a. Definite knowledge of the etiology of the brain damage.

b. Complete cessation of natural respiration.

c. Detailed clinical verification of brain stem destruction.

d. Objective and established scientific tests of brain stem destruction, such as BAER.

6. Evidence of complete cessation of respiration and of absent brain stem function for at least 12 hours, in spite of continued standard intensive care.

7. After considering the proposals for establishing death according to the guidelines of the medical staff of Hadassah Hospital in Jerusalem dated 8 Tamuz, 5745, and submitted to the Chief Rabbinic on 5 Tishri, 5747, we find that these can be halakhically acceptable provided that we add a scientific objective test (BAER) of the brain stem.

8. Until the conditions specified in paragraph 7 are accepted there shall be no sanction of heart transplants in Israel.

9. When permission is granted, upon satisfaction of the conditions specified in paragraph 7, the Chief Rabbi will establish a review committee to ensure full compliance with the conditions of the sanction.
Applying Mishpat and Tzedaka

Bresheet 18
18 seeing that Abraham shall surely become a great and mighty nation, and all the nations of the earth shall be blessed in him?

19 For I have known him, to the end that he may command his children and his household after him, that they may keep the way of the LORD, to do righteousness and justice; to the end that the LORD may bring upon Abraham that which He hath spoken of him.'

Yesayahu 1
17 Learn to do well; seek justice, relieve the oppressed, fight for the fatherless, plead for the widow. {S}

Yesayahu 51
1 Hearken to Me, ye that follow after righteousness, ye that seek the LORD; look unto the rock whence ye were hewn, and to the hole of the pit whence ye were digged.

2 Look unto Abraham your father, and unto Sarah that bore you; for when he was but one I called him, and I blessed him, and made him many.