

An Introduction to Organ Transplantation

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The program for this afternoon calls for an intensive discussion of organ transplantation. It is the responsibility of the moderator to introduce this topic, and since this is a conference on ethics and halacha, let me pose a few questions to you to set the stage.¹

We will not discuss here the theological problems relating to organ transplantation, and I will distinguish theological from halachic. If God ordained that a person should die from kidney failure at thirty-five years of age, who are we as doctors to give this person a new kidney so he can live another five, ten or even twenty years? Are we interfering with the Divine Will? That is a theological issue which is not up for discussion this afternoon. Other areas that relate to organ transplants which we will not be discussing are: who lives, who dies, who chooses, who selects, who can afford a transplant, who cannot afford a transplant? In Stanford, California, if one wants a heart transplant by Dr. Shumway's team, one must pay in advance \$125,000 to be registered as a patient. Even then, one may or may not get a heart transplant. That is a social issue of the allocation of scarce resources, namely money and organs, both of which are scarce – an issue which we will not be discussing this afternoon.

Finally, there are philosophical issues relating to organ transplants, especially heart transplants. René Descartes, the famous French philosopher, said: "*Je pense, donc je suis*" (I think, therefore I am). If I have someone else's heart in me, who am I? Am I myself or am I the other person who donated the heart? These questions we will leave for the philosophers.

We will concentrate on the halachic and moral aspects of organ transplants, primarily heart and kidney transplants. Let me pose a few questions to set the stage for the distinguished panel of speakers, from whom you will hear in a few moments. Let us begin

1. F. Rosner, *Modern Medicine and Jewish Ethics*, Ktav and Yeshiva University Press, 1991, 2nd edition, pp. 279-299.

with heart transplants. In order to perform a heart transplant, one has to remove the old heart before putting in the new one as there is not enough room in the chest for two hearts. So what does one do with the old heart? Does one throw it away? Should one burn it or incinerate it or bury it? There is a whole chapter in *Yoreh De'ah* that deals with which organs require burial and which do not. This is one halachic question.

A second question is: What happens after the organ transplant recipient dies? He received a new kidney, a new heart, a new liver, and ten years later he dies. Does one have to remove that organ and give it back to the donor? In other words: who has property rights over that organ? Does it become an integral part of the recipient, or does it still belong to the donor?

Still another halachic question involves the priorities in choosing a recipient. There are thousands of people waiting for a kidney transplant. When one kidney becomes available, who gets it? How does one decide? Who does the deciding? How does the halacha approach this question? There are many more halachic issues in organ transplantation. A person who is dying of organ failure is very ill, yet wounding oneself is prohibited in Jewish law. Why is a patient allowed to endanger himself by undergoing a heart or a liver transplant? The patient may not survive the surgery. What are the halachic guidelines?

What is the status of a patient undergoing a heart transplant after the old heart is taken out but before the new one has been put in? Is he dead or alive? During that time the patient has no heart, and one cannot live without a heart. In other words, is that person a *treifah* (non-viable), or is he technically a *nevelah* (a corpse)? Such a patient is perfused by a heart-lung machine. If he is considered as a corpse, then his wife may remarry. When he receives the new heart, the woman has two husbands, and we have a problem. All these are halachic questions revolving around the recipient.

There are also many halachic issues revolving around the donor. There is the issue of *nivvul ha-met* (desecration of the dead). May one desecrate a cadaver to take its organs? This is a Biblical prohibition. There is also *issur hana'ah min ha-met* ("the prohibition of deriving benefit from the dead"), and the organ recipient is certainly deriving benefit from the dead. There is also the problem of *kvurat ha-met* (burial of the dead). We Jews bury our dear ones promptly, but, in order to carry out an organ

transplant, one has to postpone the burial by at least hours, if not days, to prepare the operating room, the surgical team, etc. There is even a question one rabbi raised: When should the family begin *avelut* (mourning)? Although mourning begins at the time of the *kvurah* (burial of the deceased), that may be true only when the whole body is buried. If the heart or the kidneys or the lungs of the deceased are now functioning, alive and well in somebody else, the whole body has not yet been buried. Can the family begin to observe the seven day mourning period (*shivah*)?

Further halachic questions about organ transplants: Does one need permission from the deceased or the family in order to remove an organ? In American law, one of course needs written informed consent. But since halachically we are not masters over our own bodies, is permission required? Perhaps there is in Judaism not only an individual obligation to save someone else's life (*ha-matsil nefesh achat mi-yisra'el ke'illu matsil olam maleh*), but a communal obligation requiring that, in order to save lives, we take organs from anybody who dies even without their permission.

In our session today we shall not discuss the issue of brain transplants. This is no longer science fiction. In several centers in Mexico and South America, fetal brain and fetal adrenal tissue is now being transplanted into the brains of patients with Parkinson's and Alzheimer's diseases with claims of some success. One rabbi has written an article on this very subject and asked what is the halacha regarding a man who received the brain of a woman, or a woman who received the brain of a man. Would this woman be required to put on *tefillin* (phylacteries) every morning? What would happen if one transplanted the brain of a child into an adult? This adult might now be *patur mi-kol ha-mitsvot* (absolved of all commandments) because he is like a child.

Transplanting sex organs is already a reality. A *teshuvah* (responsum) by Rabbi Kamelhaar, dated about 1928, deals with an ovarian transplant. A woman had been infertile for ten years, and rather than being required to divorce her husband, she underwent an ovarian transplant, and one year later gave birth. They asked Rav Kamelhaar: Is the donor of the ovary considered to be the baby's mother, or the woman who bore it? A very serious question! He answered with Solomonic wisdom: the baby belongs to the woman who bore it; though barren for ten years, it is possible that her own ovary produced the egg in the eleventh year of her marriage.

About two years ago Dr. Silber, a urologist, transplanted a testicle from a fertile donor into the donor's sterile, identical twin, who subsequently had a son. Whom does that son belong to? Who is responsible for the *brit milah* (circumcision)? And who for the *pidyon ha-ben* (redemption of the firstborn)? And if the donor later has his own son, does he have to do a *pidyon ha-ben* too? But he already has a firstborn! Or is it only the first born of the mother who requires a *pidyon ha-ben*?

Our first speaker is Professor Arye Durst, a native of Poland who immigrated to Israel two years before the State was founded and graduated from the Hebrew University Medical School. His postdoctoral specialty training in surgery and organ transplantation was carried out in Colorado under Dr. Thomas Starzl, probably the most famous transplantation surgeon in the world. Professor Durst is currently the chairman of the Department of Surgery at the Hadassah Medical Center and professor of Surgery at the Hebrew University Medical School. He has received numerous honors, is past president of the Israel Surgical Society and past governor of the American College of Surgeons.

The next speaker is Professor Shimon Glick. He is a native of New Jersey, graduated from the Downstate Medical Center in New York, and received his specialty training in Internal Medicine at Yale University in New Haven, Connecticut, and at the Mount Sinai Hospital in New York City. He subsequently was a research fellow in endocrinology and metabolism in the laboratory of Drs. Berson and Yalow, where he and Dr. Jesse Roth developed the immunoassay, for which Professor Yalow was awarded the Nobel prize. Before immigrating to Israel in 1974, he was the director of the Department of Medicine at the Coney Island Hospital in New York. He was a founder of Ben-Gurion University's new method of medical instruction, training general practitioners rather than specialists. He headed the University's Faculty of Health Sciences and was subsequently appointed dean of the Medical School. He now heads the Center for Medical Education at Ben-Gurion University.

Our distinguished guest and *posek*, the senior member of the Chief Rabbinate Council of Israel, Rabbi Shaul Israeli will present us with halachic answers to specific questions concerning organ transplantation.

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