
❧ EUTHANASIA & PATIENT AUTONOMY ❧

Advances in modern medicine have revolutionized the ability to treat patients and prolong life, but have simultaneously led to challenging dilemmas in cases of patients dependent on life support equipment. Some live on in a state of terminal illness, comatose or even in a “Persistent Vegetative State” – sometimes for years.

Consequently, whereas in the past people would die with limited medical intervention, modern technology has changed the face of medical care and the process of dying. How to manage end of life care is a growing concern across the globe – one that crosses legal, moral, and religious lines. The use of living wills stipulating euthanasia (when the life-shortening procedure or withholding of treatment is done by another party such as a physician) and physician-assisted suicide (when the patient takes his life, guided by the physician) have become increasingly sought-after options in the end of life decision-making process.

Although prohibited in most countries worldwide, as of 2013, euthanasia is legal in Belgium, Holland and Luxembourg and physician-assisted suicide is legal in Belgium, Germany, Holland, Luxembourg, Switzerland, and the US states of Oregon, Vermont, and Washington. It is therefore critical to understand the Jewish ethical and legal perspectives to navigate end of life care situations. This shiur will explore Jewish views on the value of life, the treatment of terminally ill patients, euthanasia and patient autonomy.

As such, we will seek answers to the following questions:

- ❧ Is there a precedent in the Torah addressing euthanasia?
- ❧ Do people have the right to end their own lives or the lives of others who are in pain?
- ❧ Are doctors entitled to decide when and when not to treat patients?
- ❧ Is there a difference between passive forms of euthanasia, such as withholding medical treatment, and proactive means such as pulling the plug of a respirator or issuing a lethal injection?
- ❧ Are there any conditions under which Jewish Law would sanction euthanasia?
- ❧ Do people have the right to end their own lives? May one decline treatment that could prolong his life?

CLASS OUTLINE:

- Section I. Active Euthanasia – Mercy or Murder?
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Note: This shiur it is not intended as a source of practical *halachic* (legal) rulings. For matters of *halachah* (practical details of Jewish law), please consult a qualified *posek* (rabbi).

SECTION I: ACTIVE EUTHANASIA – MERCY OR MURDER?

Active euthanasia is when a physician facilitates the death of a terminally ill patient either by means of administering lethal medication or by withdrawing life-sustaining treatment. This can be based either on his or her independent medical opinion, or on the acquiescence and wishes of the patient or his family. This process is also known as “mercy killing” or “death with dignity.”

In a highly controversial case in 2005, the Florida State Legislature ordered the removal of the feeding tube of Terri Schiavo who was in a persistent vegetative state. She was neither brain dead nor terminally ill, but could not “meaningfully interact” with others.

If you were asked to participate in the Florida State Legislature vote, what would you rule and why?

One argument for allowing active euthanasia goes like this:

Membership of the species Homo sapiens is not a reason for giving a human being worse treatment than a member of a different species. Yet in respect of euthanasia, this needs to be said. We do not doubt that it is right to shoot badly injured or sick animals if they are in pain and their chances of recovery are negligible. To “allow nature to take its course,” withholding treatment but refusing to kill, would obviously be wrong. It is only our misplaced respect for the doctrine of the sanctity of human life that prevents us from seeing that what it is obviously wrong to do to a horse, it is equally wrong to do to a disabled infant. (Peter Singer, Practical Ethics, p. 213)

Do you agree with Singer’s logic?

What does Judaism say about euthanasia and physician-assisted suicide?

It is important to recognize that the Jewish approach to end-of-life issues is nuanced and complex. The general approach of Jewish Law to medical ethics is to strictly oppose all forms of active euthanasia. Minority opinions that allow exceptions to this rule in certain situations (such as during times of religious persecution and torture) only highlight the general rule that Judaism rarely allows any action that will actively shorten the life of a human being.

We can derive the traditional Jewish approach from a number of mitzvot and the Jewish values that they are based upon. Among these are the value of human life and the extent to which we must go to preserve it, the prohibition against all forms of murder, the guidelines for the treatment of the terminally ill, and the requirement to heal and save lives. All these factors militate against any active measures taken to shorten the human life.

Before we explore these ethical considerations, we will first examine a case of suicide and euthanasia found in the Bible itself.

PART A. BIBLICAL EUTHANASIA: THE CASE OF KING SHA’UL (SAUL) AND THE AMALEKITE

1. Shmuel/Samuel I 31:4-5 – Sha’ul fell on his sword in order to avoid falling into the hands of his enemies.

And Sha’ul said to his arms-bearer, “Unsheathe your sword and stab me with it, lest these uncircumcised people stab me and make a mockery of me.” His arms-bearer refused, for he was afraid to do so. So Sha’ul took the sword and fell upon it. And his arms-bearer saw that Sha’ul had died, and then he also fell upon his sword and died with him.

וַיֹּאמֶר שְׂאוּל לְנִשְׂא כְלָיו שְׁלַף חֶרֶבְךָ וּדְקַרְנִי בָּהּ
כִּי יָבֹאוּ הָעֲרֵלִים הָאֵלֶּה וּדְקַרְנִי וְהִתְעַלְלּוּ בִּי וְלֹא
אֲבֵה נִשְׂא כְלָיו כִּי יִרְא מְאֹד וְיִקַּח שְׂאוּל אֶת הַחֶרֶב
וַיִּפֹּל עָלֶיהָ: וַיִּרְא נִשְׂא כְלָיו כִּי מֵת שְׂאוּל וַיִּפֹּל גַּם
הוּא עַל חֶרְבוֹ וַיָּמָת עִמּוֹ:

Suicide is generally forbidden by the Torah. The Rambam (Maimonides in Rotze’ach 2:2-3) notes the prohibition as follows: “But a person who hires a murderer to kill a colleague...and a

person who commits suicide are all considered to be shedders of blood; the sin of bloodshed is upon their hands.” The injunction is derived from the verse in Bereishit (Genesis) 9:5: “Of the blood of your own lives I will demand an account.”

Yet, the question of whether or not Sha’ul and the arms-bearer acted within or without the bounds of Jewish law is not so simple.

Some authorities understand that King Sha’ul feared he would be tortured and humiliated by the enemy, and that it would demoralize the Jewish army and demean the honor of the Jewish people. This is suggested as justification for the act of suicide. Others raise the possibility that King Sha’ul was afraid that he would be forced to perform idolatrous acts.

Both interpretations recognize specific circumstances as justifying the act of taking one’s own life. The following sources likewise illustrate specific, exceptional circumstances that justify an act of suicide.

2. **Talmud Bavli, Gittin 57B – Four hundred children commit suicide after the destruction of the second Temple, and the Talmud declares their action laudable.**

It once happened that four hundred boys and girls were abducted to be abused (Rashi: the boys for sodomy and the girls for harems). When they realized why they were taken, they asked: “If we drown in the sea, will we attain life in the World to Come?” The greatest among them replied [that they would indeed be granted life in the World to Come based on the verse in Tehillim (Psalms) 68:23]...After the children heard his answer, they all jumped and fell into the sea.

מעשה בד' מאות ילדים וילדות שנשבו לקלון, הרגישו בעצמן למה הן מתבקשים, אמרו: אם אנו טובעין בים אנו באין לחיי העולם הבא? דרש להן הגדול שבהן: אמר ה' מבשן אשיב אשיב ממצולות ים (תהלים סח:כג), מבשן אשיב - מבין שיני אריה אשיב, ממצולות ים - אלו שטובעין בים; כיון ששמעו ילדות כך, קפצו כולן ונפלו לתוך הים.

3. **Tosafot, Gittin 57B – Suicide may be justified if one might be tortured or forced into transgression.**

As for the statement in Avodah Zarah 18a, “It is better for He Who gave the soul to take it than for one to injure himself,” in this case they were afraid of torture [and being forced to sin].

קפצו כולן ונפלו לתוך הים - והא דאמר במס' ע"ז (דף יח.) מוטב שיטלנה מי שנתנה ואל יחבל בעצמו הכא יראים היו מיסורין.

The Besamim Rosh argues for another justification of suicide, deriving from the case of King Sha’ul that if death is immediate and inevitable (a terminal situation), and one is suffering from unbearable pain or expects such pain to occur, one may commit suicide.

This position is rejected by almost all *poskim* (rabbinic legal authorities), but not all. Rabbi

Menashe Klein, author of *Responsa Mishneh Halachot* (7:287), argues that while one may not speed up the death of a *goses* (a dying person – see section D below), this might apply specifically to death by natural causes. He cites several precedents from *halachic* literature, including the Talmud, where hastening the death of a dying person was permitted. These were cases when someone was being killed (the moribund situation was brought on by a human being), and Rabbi Klein posits that it is a *mitzvah* to do whatever possible to decrease the suffering of a dying person, including hastening death.

The following is one source that suggests this idea.

4. **Avodah Zarah 18a – The executioner who expedited Rabbi Chanina ben Teradion's death is welcomed to the World to Come.**

[The Romans] found Rabbi Chanina ben Teradion sitting and learning Torah, gathering the community, and carrying a Torah scroll on his chest. They seized him, wrapped him in a Torah scroll, surrounded him with bundles of grapevines, and lit him on fire. They also soaked sponges of wool in water and placed them near his heart, so that he would not die quickly.

His students said to him: "Master, what do you see?" He said to them: "The scroll is burning, and the letters are flying away." [They said]: "Open your mouth, so that the flames will enter it!" He said to them: "It is better for He Who gave me my soul to do it than for me to injure myself."

The executioner then said to him, "Rabbi, if I raise the flame and take away the tufts of wool from over your heart, will you bring me to life in the World to Come?" "Yes," he replied. "Then swear unto me," [he urged]. He swore unto him. He thereupon raised the flame and removed the tufts of wool from over his heart, and his soul departed speedily. The executioner then jumped and threw himself into the fire. And a heavenly voice exclaimed: "Rabbi Chanina ben Teradion and the executioner have been assigned to the World to Come."

הוציאוהו לרבי חנינא בן תרדיון שהיה יושב ועור סק בתורה ומקהיל קהלות ברבים וס"ת מונח לו בחיקו. הביאוהו וכרכוהו בס"ת, והקיפוהו בחביי לי זמורות והציתו בהן את האור, והביאו ספוגין של צמר ושראום במים והניחום על לבו, כדי שלא תצא נשמתו מהרה...

אמרו לו תלמידיו: רבי, מה אתה רואה? אמר להן: גליון נשרפין ואותיות פורחות. אף אתה פתח פיקך ותכנס [בך] האש! אמר להן: מוטב שיטלנה מי שנתנה ואל יחבל הוא בעצמו.

אמר לו קלצטונירי: רבי, אם אני מרבה בשלהבת ונוטל ספוגין של צמר מעל לבך, אתה מביאני לחיי העולם הבא? אמר לו: הן. השבע לי! נשבע לו. מיד הרבה בשלהבת ונטל ספוגין של צמר מעל לבו, יצאה נשמתו במהרה. אף הוא קפץ ונפל לתוך האור. יצאה בת קול ואמרה: רבי חנינא בן תרדיון וקלצטונירי מזומנים הן לחיי העולם הבא.

We find in the above source that Rabbi Chanina was unwilling to speed up his own death, but he was content for somebody else to do so, and that the executioner who did so was rewarded

for his actions. [See also below, Section II, Part A, for a possible distinction between speeding up death by removing an obstacle to a person's demise, and doing so by means of a positive action.]

By contrast, the following source, which returns to the death of Sha'ul, shows that killing a person who is dying, even an unnatural death, can be a heinous crime.

5. **Shmuel II 1:5-14 – When David hears of Sha'ul's death, he executes Sha'ul's executioner.**

And David said to the youth who told him (about King Sha'ul's death), "How did you know that Sha'ul and his son Jonathan died?" And the youth who told him said, "I chanced to be on Mt. Gilboa, and behold, Sha'ul was leaning on his spear, and behold, the chariots and the leaders of the cavalry had overtaken him. And he turned around behind him, and he saw me and called to me, and I said, 'Here I am.' And he said to me, 'Who are you?' And I said to him, 'I am an Amalekite.' And he said to me, 'Stand over me now, and put me to death, for a shudder has seized me, for as long as my life is within me.'

"And I stood over him and put him to death, for I knew that he would not live after his fall, and I took the crown which was on his head and the armlet which was on his arm, and I have brought them here to my lord."

And David took hold of his clothes and rent them, and likewise all the men who were with him. And they lamented and wept and fasted until evening, for Sha'ul, and for Jonathan his son, and for the people of the Lord, and for the House of Israel, for they had fallen by the sword.

And David said to the youth who told him, "From where are you?" And he said, "I am the son of an Amalekite stranger." And David said to him, "How did you not fear to stretch forth your hand to destroy the Lord's anointed?" And David called one of the youths and said, "Approach and strike

ויאמר דוד אל הנער המגיד לו איך ידעת כי מת שאול ויהונתן בנו: ויאמר הנער המגיד לו נקרא נקריתי בהר הגלבע והנה שאול נשען על חניתו והנה הרכב ובעלי הפרשים הדבקהו: ויפן אחריו ויראני ויקרא אלי ואמר הנני: ויאמר לי מי אתה ואמר אליו עמלקי אנכי: ויאמר אלי עמד נא עלי ומתתני כי אחזני השבץ כי כל עוד נפשי בי:

ואעמד עליו ואמתתהו כי ידעתי כי לא יהיה אחרי נפלו ואקח הנזר אשר על ראשו ואצעדה אשר על זרעו ואביאם אל אדני הנה:

ויחזק דוד בבגדיו ויקרעם וגם כל האנשים אשר אתו: ויספרו ויבכו ויצמו עד הערב על שאול ועל יהונתן בנו ועל עם יקוק ועל בית ישראל כי נפלו בחרב:

ויאמר דוד אל הנער המגיד לו אי מזה אתה ויאמר בן איש גר עמלקי אנכי: ויאמר אליו דוד איך לא יראת לשלח ידך לשחת את משיח יקוק: ויקרא דוד לאחד מהנערים ויאמר גש פגע בו ויכהו וימת: ויאמר אליו דוד דמך על ראשך כי פיך ענה בך לאמר אנכי מתתי את משיח יקוק.

him!” – and he struck him and he died. And David said to him, “Your blood be upon your head, for your mouth has testified against you, saying, “I have slain the Lord’s anointed.”

Sha’ul was already dying and asked to be put out of his misery. Yet, killing him was still considered murder. It is possible, however, that the severity of the case is due to the specific circumstances of killing the “Lord’s anointed,” while mercy killing in other scenarios may not be forbidden (see Hakesav V’hakaballa on Bereishit 9:5).

In the sections below we will explore why the general Jewish attitude condemns active euthanasia in all but the most exceptional cases.

PART B. THE VALUE OF HUMAN LIFE

The first point to consider is that Judaism takes a clear stand on the intrinsic value of human life.

1. **Mishnah Sanhedrin 4:5 – The sanctity of the life of every human.**

Man was created alone [whereas other creatures were created in groups], to teach that whoever destroys a single person is considered as if he has destroyed an entire world; and whoever saves a single life is regarded as having saved an entire world.

נברא אדם יחידי ללמדך שכל המאבד נפש אחת מעלה עליו הכתוב כאילו איבד עולם מלא, וכל המקיים נפש אחת מעלה עליו הכתוב כאילו קיים עולם מלא.

Judaism so highly values life that the preservation of life takes precedence even over the fulfillment of Torah mitzvos – with the exception of three: not to murder, worship idols or engage in prohibited sexual relationships. An example of this is violating Shabbat for the sake of saving a life.

2. **Vayikra (Leviticus) 18:5 and Talmud, Yoma 85a-b – The same God who commands us to keep the Shabbat, commands us to desecrate the Shabbat to save a life.**

And you shall keep My decrees and laws, which man shall carry out and by which he shall live – I am God.

Talmud:

From where do we learn that saving a life takes precedence over keeping the Shabbat [i.e. that we override Shabbat observance to

וְשָׁמַרְתֶּם אֶת חֻקֹּתַי וְאֶת מִשְׁפָּטַי אֲשֶׁר יַעֲשֶׂה אִתְּם הָאֱלֹהִים וְחַי בָּהֶם אֲנִי ה'.

יומא פה

מניין לפקוח נפש שדוחה את השבת? ... "וְחַי בָּהֶם", ולא שימות בהם.

save a life]?

For the verse states, "by which he shall live," and not by which he shall die.

The following sources indicate the supreme value of saving lives; even if there is only a possibility of saving a life, we violate Shabbat.

3. **Rabbi Yosef Karo, Shulchan Aruch, Orach Chaim 329:3-4 – Even if successfully saving the victim is doubtful, we still violate Shabbat to save him.**

If a person is caught under falling rocks, and we don't know if he is alive or dead, or whether he is actually under these rocks or not, we still violate Shabbat in trying to rescue him. This is true even if there are many doubts in the matter.

Even if we find the victim fatally wounded, and he can only live a few moments, we still continue with all rescue attempts.

מי שנפלה עליו מפולת, ספק חי ספק מת, ספק הוא שם ספק אינו שם, מפקחין עליו אע"פ שיש בו כמה ספיקות.

אפילו מצאנו מרוצץ, שאינו יכול לחיות אלא לפי שעה, מפקחין...

4. **Ibid. 328:10 – Even if the doctors are unsure whether a certain treatment will help a patient in a life-threatening situation, we still override Shabbat observance to attempt the treatment.**

If doctors say that a certain illness is life-threatening, even if it is an external wound, we violate the Shabbat for the patient.

If one doctor says a certain treatment is necessary for this illness, and another doctor says it is not necessary, we violate Shabbat to save the patient's life.

כל חולי שהרופאים אומרים שהוא סכנה, אע"פ שהוא על הבשר מבחוץ, מחללין עליו את השבת;

ואם רופא אחד אומר: צריך, ורופא אחד אומר: אינו צריך, מחללין.

5. **Rabbi Yisrael Meir Kagan (The Chofetz Chaim), Be'or Halachah 329, s.v. *elah* – Even if the victim is near death from a pre-existing condition, we still violate Shabbat to save him.**

We violate Shabbat to rescue even a young child who is fatally wounded...so too if the victim is deaf or mentally handicapped... even if the victim is a gosess [i.e. someone

אפילו קטן מרוצץ נמי מחללין...וכמו כן הוא הדין חרש ושוטה ... ודע עוד דהוא הדין גוסס נמי מחללין עליו בפקוח הגל, או אם רופא אומר שסממנים אלו יועילו לו להאריך רגעי חייו ...

in his death throes before the accident occurred] we violate Shabbat to rescue him, or to prepare him medicine if a doctor says this will increase his lifespan – even momentarily.

6. **Rabbi Shlomo Zalman Auerbach Minchat Shlomo 1:91:24 – We have no way of measuring the great value of life.**

Regarding the matter of “life,” we have no means of measuring its worth and importance, not even from the standpoint of Torah and mitzvot. We must violate Shabbat even for an elderly, ill man – even if he is completely insane and deaf and cannot perform a single mitzvah, his life is a massive load and burden upon his family and causes them to be distracted from Torah and mitzvot and adds to their troubles...Even in such a case, the greatest among Israel are commanded to strive and be involved in his healing and violate Shabbat to save him.

כי הענין של “חיים” אין לנו שום קנה - מידה כמה למדוד את יוקרם וחשיבותם אפילו לא בתורה ומצוות, שהרי מחללין את השבת גם על זקן חולה מוכה שחין אע”פ שהוא חרש ושוטה גמור, ואינו יכול לעשות שום מצוה וחיייו הם רק למשא וסבל גדול על משפחתו וגורם להם ביטול תורה ומצוות, ונוסף לצערם הגדול הרי הם אזלי ומדלדלי, אפילו הכי מצוה בגדולי ישראל להש-תדל ולעסוק בהצלתו ולחלל עליו את השבת.

Based on the above rulings, we see how the Torah ascribes immeasurable value to each human life, independent on how we might perceive that person’s quality of life.

PART C. THE PROHIBITION AGAINST MURDER

The prohibition to take a human life without justification is one of the bastions of Judaism and is included in the Ten Commandments. The Sages comment that even before Sinai, Adam and his descendants were given this commandment.

1. **Shemot (Exodus) 20:13 – The prohibition against murder in the Ten Commandments.**

You shall not murder.

לא תרצח.

2. **Bereishit 9:6 – The prohibition against murder was given to all mankind.**

One who spills the blood of man, through

שִׁפְךָ דַם הָאָדָם בָּאָדָם דָּמוֹ יִשְׁפָּךְ כִּי בְצַלְם אֱלֹהִים

man his blood shall be spilled, for in the image of God did He make man.

עֲשֵׂה אֶת הָאָדָם:

This verse prohibiting murder is one of the Seven Universal (Noahide) Laws commanded by God to all mankind (Sanhedrin 56b; see also below, Section 2, Part B).

For purposes of our discussion of euthanasia, we distinguish in the next two sources between direct murder and indirect murder.

3. **Rambam, Hilchot Rotzeiach U'Shemirat Hanefesh (The Laws of Murder and Life Preservation) 2:1-2 – Direct murder is subject to the death penalty in a human court, but indirect murder is subject to punishment by the Heavenly Court.**

A person who murders another...is subject to death by a human court.

But one who hires an assassin to murder another person, or sends his servant to do so, or binds up his fellow and leaves him in front of a lion or the like, and the animal kills him – and even somebody who kills himself – each of these is considered to have spilled blood, and is guilty of murder. [However, since it is indirect murder] he is liable to death at the hands of the Heavenly Court, but he is not put to death by a human court.

כל ההורג חברו בידו... הרי זה נהרג בבית דין.

אבל השוכר הורג להרוג את חברו, או ששלח עבדיו והרגוהו, או שכפת חברו והניחו לפני הארי וכיוצא בו והרגתו החיה, וכן ההורג את עצמו, כל אחד מאלו שופך דמים הוא, ועון הריגה בידו, וחייב מיתה לשמים ואין בהן מיתת בית דין.

In the following source, the Rambam gives other examples of indirect murder.

4. **Ibid 3:10 – Other examples of indirect murder**

One who ties up his fellow and leaves him to starve to death, or in a place where the cold or heat will kill him, or if one puts a barrel over him [leading to asphyxiation], or loosens ceiling plaster to fall on him, or causes a snake to bite him, or entices a dog or snake to attack him – in all these cases even though a human court does not put him to death, he is considered a murderer and the One who demands an account of blood will seek his blood.

הכופת את חברו והניחו ברעב עד שמת, או שכפתו והניחו במקום שסוף הצנה או החמה לבוא לשם ובאה והמיתתו, או שכפה עליו גיגית, או שפרע עליו את המעזיבה, או שהשיך בו את הנחש, ואין צריך לומר אם שסה בו כלב או נחש, בכל אלו אין בית דין ממיתין אותו, והרי הוא רוצח ודורש דמים דורש ממנו דם.

Although an act of indirect murder is not punishable by a court of law, it is still fully prohibited as murder, and the offender is liable to punishment by God.

5. **Immanuel Jakobovits, “Medical Experimentation on Humans in Jewish Law,” in J. David Bleich and Fred Rosner (eds.), Jewish Bioethics, p. 379 – Because of the great value that Judaism places on life, all acts of murder are seen as equal.**

The value of human life is infinite and beyond measure, so that any part of life – even if only an hour or a second – is of precisely the same worth as seventy years of it, just as any fraction of infinity, being indivisible, remains infinite. Accordingly, to kill a sick, elderly patient approaching death constitutes exactly the same crime of murder as to kill a young, healthy person who may still have many decades to live. For the same reason, one life is worth as much as a thousand or a million lives – infinity is not increased by multiplying it. This explains the unconditional Jewish opposition to deliberate euthanasia as well as to the surrender of one hostage in order to save the others if the whole group is otherwise threatened with death.

PART D. TREATMENT OF THE TERMINALLY ILL

Jewish law sets up guidelines for the treatment of a terminally ill patient, known in halachah as a *gosess*. A *gosess* is one who is in the state prior to death, whose breathing and symptoms are characteristic of those in their final moments of life. According to the Talmud, most people die within seventy-two hours of the onset of this state (Remah, Yoreh Deah 339:2). The Torah asserts that life is precious even until the last breath. Therefore, shortening the life of a *gosess* is just as punishable by death as the murder of a healthy person.

1. **Rambam Hilchot Rotzeiach U'Shemirat Hanefesh 2:7- Is killing someone on the verge of death considered murder?**

Somebody who kills a healthy person, a sick person approaching death, or even a *gosess* – is put to death.

אחד ההורג את הבריא או את החולה הנזקק למות, ואפילו הרג את הגוסס נהרג עליו.

2. **Rabbi Yosef Karo, Shulchan Aruch: Yoreh Deah 339:1 – A person nearing death is considered alive in all respects. One may not close his eyes nor do anything which hastens his death, nor prepare for his burial.**

A *gosess* is like a living person in every respect. We may not tie his jaw [to close his mouth], nor anoint him, nor wash him [in preparation for burial], nor block his

הגוסס, הרי הוא כחי לכל דבריו. אין קושרין לחייו, ואין סכין אותו, ואין מדיחין אותו, ואין פורקין את נקביו, ואין שומטין הכר מתחתיו,

orifices, nor remove the pillow from under his head.

We may not place him on sand, clay or earth [which is cool, in order to preserve the body]...

We do not announce his imminent death... We do not close the eyes of the gosess until his soul has actually departed – and one who does so while he is dying is a murderer.

We do not tear our garments [as a sign of mourning], nor remove our shoes, nor eulogize him, nor bring a coffin to the house until the person is actually dead.

ואין נותנין אותו על גבי חול, ולא על גבי חרסית
ולא על גבי אדמה ...

ואין משמיעין עליו עיירות ... ואין מעמציין עיניו
עד שתצא נפשו. וכל המעמץ עם יציאת הנפש,
ה"ז שופך דמים.

ואין קורעין ולא חולצין ולא מספידין עליו, ולא
מכניסין עמו ארון לבית, עד שימות.

A person nearing death is considered alive in all respects. Because of his precarious situation, one may not close his eyes or even touch him, since this may hasten his death – just as touching a flickering candle flame might extinguish it (Rambam, Laws of Mourning 4:5).

PART E. HEALING AND SAVING LIVES

The role of a doctor is becoming increasing complex these days. Torah sources have always seen the purpose of doctors as healing and saving lives. In spite of the belief that all that befalls us is God's will, and therefore for the best, it is wrong to assume that doctors have no right to get involved in healing the sick. On the contrary, doctors have permission and even an obligation to heal:

1. **Shemot 21:19; Talmud, Bava Kamma 85a with Commentary of Rashi – The Torah, in requiring a damager to pay medical bills, implies that doctors have permission to heal.**

"He shall cause him to be thoroughly healed" (Shemot 21:19) – we derive from here that the Torah has given doctors license to heal.

Rashi: We do not fault the doctor by claiming he had no right to interfere with God's plan that the person be sick.

ורפא ירפא (שמות כ"א, י"ט) - מכאן שניתן
רשות לרופא לרפאות.

רש"י: ולא אמרינן רחמנא מחי ואיהו מסי.

At the same time, perhaps the artificial extension of a terminally ill person's life by means of medicine and machines goes beyond this principle, and is considered an interference with God's plans. Jewish legal authorities question this logic:

2. **Rabbi Yitzchak Breitowitz, The Right to Die: a Halachic Approach, from www.jlaw.com**

Judaism rejects the notion that the utilization of advanced technology to sustain life is somehow an interference with God's will. Technology and scientific advancement are not man-made but are in themselves gifts of Divine revelation to be used for the benefit of mankind. Thus, the dichotomy that some religions posit between "natural" and "unnatural" ways of treating illness is essentially foreign to Jewish thinking.

Yet, the Torah's mandate to doctors is not a blanket and all-encompassing mandate. Physician assisted suicide is never permitted. The mere fact that a person functions as a physician (or in any other role) does not endow him with permission to perform acts that are otherwise forbidden, such as hastening the death of a fellow human being.

Elsewhere, the Talmud goes further than just granting permission to doctors, declaring that it is even a mitzvah to heal.

3. **Talmud Sanhedrin 73a – From the commandment to restore a lost object we can derive the mitzvah to restore the health of someone who is ill.**

From where do we know that if somebody has "lost" his physical well being [one is obligated to help him]? The Torah states, "and you shall return it to him" (Devarim/Deuteronomy 22:2).

אבדת גופו מניין - תלמוד לומר לומר והשבתו לו.

Just as we are commanded to restore a lost possession to its owner, we are charged – all the more so – with the responsibility to restore a person's health (See Rambam, Commentary to Mishnah, Nedarim 4:4). Furthermore, everyone – not just a doctor – is obligated to try to save those in danger.

4. **Vayikra 19:16 with Commentary of Rashi – It is prohibited to remain passive when one is able to save someone in mortal danger.**

Do not stand idly by your fellow's blood, I am God.

Rashi: *Do not stand by idly* – when you see your fellow in danger of death, and you are able to save him. For example, if you see him drowning in a river, or wild animals or robbers threatening him.

לא תעמד על דם רעהו אני ה':

רש"י: לא תעמד על דם רעהו - לראות במיתתו ואתה יכול להצילו, כגון טובע בנהר, וחיה או לס-טים באים עליו:

5. **Rabbi Yosef Karo Shulchan Aruch Yoreh Deah 336:1- The license to heal is a mitzvah, and failure to do so is equivalent to shedding blood.**

The Torah has given license to the doctor to heal; it is a mitzvah [to do so], and is included in the concept of saving lives. If he withholds [treatment], it is considered as though he has shed blood.

נתנה התורה רשות לרופא לרפאות. ומצוה היא.
ובכלל פיקוח נפש הוא. ואם מונע עצמו, הרי זה
שופך דמים.

KEY THEMES OF SECTION I

- ⌘ Active euthanasia is the act of killing another person in the final stages of death in order to relieve suffering. In the past it may have been conducted by sword or gunshot. Today, doctors are confronted with the “humane” option of administering injections to assist in the suicide of their patients.
- ⌘ Mercy killing is considered murder. This point is possibly illustrated in the story of King Sha’ul’s demise. It is likewise forbidden for a person to take his own life, even if he is in a state of suffering.
- ⌘ There are a number of mitzvot and Jewish values that contribute to the general opposition to any form of active euthanasia:
 - The prohibition against suicide.
 - The prohibition against indirect forms of murder.
 - The care that must be afforded a patient in his last living moments.
 - The intrinsic value of human life and the extent to which we must go to preserve it.
 - The positive injunctions to save lives and heal the sick.

SECTION II. PASSIVE EUTHANASIA: EXTENDING LIFE VS. PROLONGING DEATH

At the forefront of the fight to extend life, physicians at times find themselves confronted with the question of when to terminate medical care after all hope of recovery is lost. Under which conditions is a doctor permitted to stop treating a patient?

The following is a description of a relatively common situation, taken from an essay by Sir Gustav Nossal, an eminent Australian medical researcher:

An old lady of 83 has been admitted [to a nursing home for the aged] because her increasing degree of mental confusion has made it impossible for her to stay in her

own home, and there is no one willing and able to look after her. Over three years, her condition deteriorates. She loses the ability to speak, requires to be fed, and becomes incontinent. Finally, she cannot sit in an armchair any longer, and is confined permanently to bed. One day, she contracts pneumonia.

In a patient who was enjoying a reasonable quality of life, pneumonia would be routinely treated with antibiotics. Should this patient be given antibiotics? Nossal continues:

The relatives are contacted, and the matron of the nursing home tells them that she and the doctor she uses most frequently have worked out a loose arrangement for cases of this type. With advanced senile dementia, they treat the first three infections with antibiotics, and after that, mindful of the adage that “pneumonia is the old person’s friend,” they let nature take its course. The matron emphasizes that if the relatives desire, all infections can be vigorously treated. The relatives agree with the rule of thumb. The patient dies of a urinary tract infection six months later.

After citing the case, Peter Singer concludes: “This patient died when she did as a result of a deliberate omission. Many people would think that this omission was well-justified...” (Peter Singer, *Practical Ethics*, p. 207)

Should her doctor have prescribed antibiotics?

A key distinction made in Jewish law forms the basis for all discussions of end-of-life treatment decisions: the difference between treatment that extends life, and treatment that prolongs the process of death. We are charged with extending a person’s life, and not with prolonging his death.

While this may sound like a straightforward proposition, it is in fact far from it. What components of a terminal patient’s needs are considered crucial to life-support, and which are considered impediments to death?

PART A. REMOVING OBSTACLES TO DEATH: MEDICAL TREATMENT, NUTRITION, AND LIFE SUPPORT

In certain cases, it is permitted to remove an obstacle that is preventing a dying person from dying. The following extract from the Shulchan Aruch suggests the distinction:

1. Rema (Rabbi Moshe Isserles), Shulchan Aruch, Yoreh Deah 339:1- May one take steps to expedite the death of a terminally ill patient in his death throes?

It is forbidden to speed a person’s death. For example, for someone who has been a gosess for an extended period of time, and whose soul seemingly cannot depart, it is forbidden to remove the pillow or sheet from under him...or to move him from his place. Similarly it is forbidden to place the

וכן אסור לגרום למת שימות מהרה, כגון מי שהוא גוסס זמן ארוך ולא יוכל להפרד, אסור להשמש הכר והכסת מתחתיו ... וכן לא יזיזו ממקומו. וכן אסור לשום מפתחות ב”ה תחת ראשו, כדי שיפרד.

synagogue keys under his head in order to cause his soul to depart [practices rooted in Jewish mystical traditions].

However, if there is anything preventing the soul's departure, such as a knocking sound (like that of a woodchopper), or a grain of salt on his tongue, it is permitted to halt or remove these things, for such does not constitute a positive act at all, but rather it is a removal of obstacles.

אבל אם יש שם דבר שגורם עכוב יציאת הנפש, כגון שיש סמוך לאותו בית קול דופק כגון חוטב עצים או שיש מלח על לשונו ואלו מעכבים יציאת הנפש, מותר להסירו משם, דאין בזה מעשה כלל, אלא שמסיר המונע.

i. MEDICAL TREATMENT

Is withholding or withdrawing life-extending medical treatment of a terminally ill patient equivalent to removing an obstacle in the way of his death?

A litmus test for this issue is the following question: Is it permitted to sustain the life of a suffering and terminally ill patient for the sake of retrieving organs from his body to transplant into someone else? Rabbi Moshe Feinstein addressed this issue:

2. **Rabbi Moshe Feinstein, Igrot Moshe, Yoreh Deah Vol. II, no. 174:3 – It is correct to withhold medical treatment under certain circumstances.**

In a case where doctors wish to sustain the life of a person from whom they wish to extract an organ for donation, and the person would otherwise not live without this medical intervention, in my humble opinion it is forbidden to prolong a life of suffering...It is reasonable to assume that this is why it is permitted to remove an obstacle to the departure of a person's soul when doing so does not involve a positive act, as the Rema rules in Yoreh Deah 339:1, meaning that the reason this is permitted is because of suffering.

Were it permitted to employ means of prolonging a person's life even temporarily where it would entail suffering, how could [the Rema] permit the removal of obstacles to the soul's departure? Just the opposite would be true: One would be obligated to provide these items to prevent the soul's

ובדבר שעושין הרופאים לקיים את מי שרוצים ליטול ממנו איזה אבר שיחיה אף שלא היה ראוי כבר לחיות ע"י אמצעים מלאכותיים עד שיהיה מוכן להשתיל בחולה, נראה לע"ד דכיון שאינו לרפאותו אלא להאריך חייו איזה שעה אם חיי השעה שיחיה ע"י האמצעים של הרופאים יהיה ביסורים אסור ... דמסתבר דזהו הטעם שמותר להסיר דבר המעכב יציאת הנפש כשאין בזה מעשה כדאיתא ברמ"א (יו"ד) סימן של"ט סוף סעיף א' שהוא משום היסורים.

ואם היה מותר לעשות אמצעים להאריך חיי שעה אף כשהיו לו יסורין איך היה שייך להתיר להסיר דבר המעכב יציאת הנפש הא אדרבה היו צריכין להביא הדברים שמעכבים יציאת הנפש דהא ע"ז יחיה מעט יותר.

departure since that would prolong the person's life.

Clearly, therefore, it is forbidden to employ means of prolonging a person's life temporarily if it will entail suffering... However, if prolonging his life will not entail suffering on the part of the patient, it is forbidden to disrupt treatment...

אלא ודאי דאסור לעשות אמצעים להאריך חיי
שעה באופן שיהיה ביסורים, ... וגם אם האמת
שלא יהיה לו יסורין הרי יהיה אסור להפסיק
הרפואה ...

ii. NUTRITION

Is basic food and hydration a form of medication that can be withheld under the same conditions that other forms of medical care might be terminated? In England, for example, nourishment is defined as “treatment” rather than as staple and ordinary needs. How does Jewish law look at it?

When it comes to basic necessities like food and water, there is a consensus that such provisions should still be supplied even in the case of suffering, terminally ill patients.

3. **Rabbi Moshe Feinstein, Igrot Moshe, Choshen Mishpat, Vol. II, no. 74:3 – Basic necessities must always be supplied.**

It is obvious that one is required to feed [the terminally ill patient] with things that will neither harm him nor worsen his condition, for they surely provide him with at least some degree of strength, even if neither he nor his attendants realize it. This cannot be compared at all to treatment with medicine, and the reason this is so should be obvious: food is a natural staple that everyone needs for the vitality of body and mind – even animals need it.

פשוט שצריך להאכילו דברים שאין מזיקין ואין
מקלקלין דודאי מחזיקין כחו מעט אף שהחולה
בעצמו אינו מרגיש ואף העומדין ומשמשין אותו
אין מרגישין ול"ד כלל לעניני סמי רפואה, והטעם
פשוט שהאכילה הוא דבר טבעי שמוכרחין לא-
כול להחזיק החיות ושכל אדם ואף בע"ח בעלמא
מוכרחין לזה.

iii. LIFE SUPPORT

Based on the distinction between natural and artificial life support (food cannot be withheld, but medical intervention can be), what about respiration? We all need to breathe, but some patients are unable to breathe on their own without the support of artificial respiration. Should life support be considered natural survival or an artificial impediment to death?

4. **Rabbi Avraham Steinberg, M.D., Encyclopedia of Jewish Medical Ethics, Vol. III, p. 1058 – There is a difference of opinion in regard to the nature of artificial respiration.**

- It is forbidden to disconnect oxygen from a terminally ill patient.
- It is permitted to withhold CPR and attachment of a patient to a respirator in the case of terminal illness. There are differences of opinion among rabbinic authorities regarding the situation in which the patient is already attached to a respirator – is it permitted to withdraw him from the machine if physicians believe that the situation is hopeless?
 - Some rabbis rule that it is not only permitted but required in order to relieve suffering. Their reasoning is that the respirator constitutes an impediment to dying and therefore may be removed.
 - Most rabbis (including Rabbi Moshe Feinstein and Rabbi Eliezer Waldenberg) rule that it is never permitted to disconnect a patient from a respirator. Their reasoning is that a respirator is maintaining life and is not preventing the soul from departing.

Thus, the consensus is that while a suffering, terminally ill patient need not be hooked up to artificial respiration, once in such a state the respirator may not be removed. Nevertheless, there is at least one dissenting opinion, as noted by the former Sefardi Chief Rabbi of Tel Aviv, who rules that it is actually forbidden to prolong a suffering patient's life by use of a respirator.

5. **Rabbi Chaim David HaLevi, “Disconnecting a Terminal Patient From an Artificial Respirator,” Crossroads (Zomet): Halacha and the Modern World, Vol. I 1987, pp. 147-155 – Artificial respiration may be disconnected.**

The case of the salt which may be removed from the tongue of the patient is the closest parallel in the sources to the case of the artificial respirator. The permissibility of removing the salt is uncontested in the sources. The reason, as explained above, is that it is a case of removing an impediment to death rather than a case of actually hastening death. The salt was apparently under his tongue in an attempt to save or prolong his life, but now, when all efforts have failed and it is only adding to the patient's agony, it is permitted to remove it. The artificial respirator is an exact parallel to this. When the patient was brought to the hospital in a critical state, he was immediately attached to the machine in an attempt to save his life. Now, when the doctors have determined that nothing can be done for him, and the respirator is artificially prolonging his life, it follows that it is permitted to detach the patient from the machine. In my opinion, doctors are not permitted to continue to prolong life by use of the respirator in such a case.

As noted, the consensus is that one may not detach a living patient from a respirator sustaining his life. If in the course of treatment, the respirator is inadvertently removed, the decision

whether to re-connect it is made based on the patient's current medical situation.

We may summarize the halachic approach to the withholding of treatment to a terminally ill patient as follows:

6. **Rabbi Yitzchak Breitowitz, “The Right to Die: A Halachic Approach,” from www.jlaw.com – To be a candidate for passive euthanasia, a patient must be terminally ill, suffering, and wanting to die.**

Most rabbinical authorities (Rabbi Moshe Feinstein, for one) have sanctioned the patient's right to decline treatment provided a number of very specific conditions were met.

First, the patient must be in a terminal condition – that is, whether the treatment is employed or not, *the patient is not expected to live beyond a year*.

Second, the patient suffers excruciating pain and suffering.

Third, the patient has indicated that he or she desires not to be treated. In the event the patient is incompetent or unable to communicate his decision, next-of-kin may make such a decision based exclusively on what they feel the patient would have wanted (Note: This is not based on what they would have wanted if they would have been the patient but rather what this particular patient would actually desire).

Fourth, assuming the above three conditions are met, the patient may decline surgery, chemotherapy, and painful invasive treatments but may not decline food, water, or oxygen (which are the normal sustainers of life, the withdrawal of which may be tantamount to murder or suicide). Antibiotics may also fall under the “food” category because they are generally a noninvasive, non-painful procedure. There is also some question whether tube feeding falls in the category of “food” or in the category of “surgery.” Most decisors would place it in the former but emphasize that even if the patient is halachically-obligated to take artificial nutrition, he should not be force-fed or physically-restrained.

In no event may the patient or the physician take any affirmative step that would hasten death. Active euthanasia, regardless of motive, is morally and halachically equivalent to murder. On the other hand, halachah views both the goals and methods of hospice in a sympathetic light.

It should be noted that the criteria for suffering are not clearly defined, especially in the case of a patient in a coma. There is a fundamental dispute among contemporary authorities in Jewish law as to whether we can assume that suffering continues even after a patient becomes unconscious. Are people who were in a state of suffering prior to the onset of a coma still suffering in comatose? Rav Moshe Feinstein and Rav Shlomo Zalman Aurbach agreed that a patient continues to suffer even after becoming comatose, and therefore one may continue to withhold certain therapies. On the other hand, Rav Yosef Shalom Elyashiv held that once the patient is comatose, he no longer suffers and treatment must be reinstituted. (See further Rabbi Akiva Tatz, *Dangerous Disease and Dangerous Therapy in Jewish Medical Ethics*, p. 108.)

PART B. DISSENTING OPINIONS – PROLONGING LIFE AT ALL COSTS

It would be a misrepresentation of the complexity of Jewish law to conclude that all contemporary rabbis agree with the above criteria for withholding treatment. There is a strong dissenting view among Jewish legal authorities maintaining that any withholding of treatment, for any reason, is forbidden.

1. **Fred Rosner, M.D., “Jewish Perspectives on Death and Dying,” ASSIA – Jewish Medical Ethics, Vol. II, no. 1, January 1991, pp. 38-45 – What is an impediment to death, and what is a sustainer of life?**

[A]ll the Jewish sources refer to a gosess who is an individual in whom death is expected to be imminent, three days or less in rabbinic references. Thus, passive euthanasia in a patient who may yet live for weeks or months may not necessarily be condoned. Furthermore, in the case of an incurably ill person in severe pain, agony, or distress, the removal of an impediment which hinders his soul's departure, although permitted in Jewish law, may not be analogous to the withholding of medical therapy that is perhaps sustaining the patient's life albeit unnaturally. The impediments spoken of in the Code of Jewish Law, whether far removed from the patient as exemplified by the noise of wood chopping, or in physical contact with him such as the case of salt on the patient's tongue, do not constitute any part of the therapeutic armamentarium employed in the medical management of this patient. For this reason, these impediments may be removed. However, the discontinuation of instrumentation and machinery which is specifically designed and utilized in the treatment of incurably ill patients might only be permitted if one is certain that in doing so one is shortening the act of dying and not interrupting life. Yet who can make the fine distinction between prolonging life and prolonging the act of dying?

2. **Steven H. Resnicoff, Physician-Assisted Suicide under Jewish Law, from jlaw.com – Argumentation of Rabbi Feinstein's Approach**

First, of course, the [Rabbi Moshe] Feinstein approach is squarely at odds with the many authorities who believe that medical intervention is required even to save the life of a gosess. Second, how much pain would the terminal patient have to be experiencing in order to be compared to a gosess? Third, how short a period of time must the terminally ill patient have to live before she is compared to a gosess? Fourth, how confidently can a person quantify her pain or predict when she will expire?

Moreover, is it really persuasive to argue that the fact one can pray for death means that one can refuse treatment? Those who disagree with [Rabbi Moshe] Feinstein's position, for instance, argue that while one is alive, one has the duty to perform commandments, including the commandment to prolong one's life. Praying for death is not inconsistent with fulfillment of this duty.

3. **“The Torah’s view of continuing life support: Rabbi Elyashiv weighs in on Euthanasia,”** by www.israelnationalnews.com, Arutz Sheva, January 10, 2002 – **A leading rabbi in Israel opposes all forms of passive euthanasia.**

Rabbi Yosef Shalom Elyashiv, regarded as one of the leading rabbinical authorities in the world, has weighed in on the recent controversy surrounding the ending of life support for the terminally ill. According to the comments of Rabbi Elyashiv, which were published in yesterday’s Yated Ne’eman newspaper, it is forbidden to remove life support from a terminally ill patient. The letter comes in response to a decision by a Tel Aviv court to allow a petition submitted in the name of a terminally ill patient to be removed from life support. The religious press has given particular attention to the response of the Attorney General Elyakim Rubinstein, which voiced no objection to the petition, but rather only asked to receive medical testimony supporting the petition.

Rabbi Elyashiv referred to a previous halachic decision by several leading rabbis, including himself, which stated that “it is forbidden to accelerate the death of a terminally ill patient, G-d forbid, for such an act is like lending one’s hand to murder.” More specifically, the halachic decision referred to euthanasia for reasons of “mercy” by stating that one may not accelerate the death of a terminally ill patient, “in order to ease his suffering, by halting the supply of food or medicine and certainly not by an active intervention.”

PART C. PERSISTENT VEGETATIVE STATE (PVS)

One of the most difficult ethical dilemmas involved in euthanasia concerns patients who are in a persistent vegetative state. PVS is defined by Dorland’s Medical Dictionary as “a condition of profound nonresponsiveness in the wakeful state caused by brain damage at any level and characterized by a nonfunctioning cerebral cortex, absence of response to the external environment, akinesia, mutism, and inability to signal.”

The following famous case of euthanasia in the US concerned a PVS patient:

1. **Daniel Eisenberg, MD, “Should Terri Schiavo Live or Die,”** www.jewishmedicalethics.com, 2003 – **The Terri Schiavo case raises an important issue of what represents a terminal illness.**

What is a terminal illness?

It is important to note that Jewish law clearly distinguishes between terminal illness and progressively debilitating illness (a distinction that is often ignored in secular ethics discussions).

An incurable illness which will likely result in the death of the patient within one year is considered terminal with respect to Jewish law. A patient with such an illness or condition is called a “*chayay sha’ah*” – one whose life is “timed” or “time-limited.” One

who is expected to survive beyond a year is considered a “*chayay olam*” – one whose life is considered “eternal” in the sense that their life expectancy is presumed indefinite and not limited.

Thus, in halacha, persistent vegetative state and Alzheimer’s disease are *not* terminal conditions, per se, despite the fact that they are progressive, irreversible and inevitably result in death. Halacha insists that patients with these illnesses deserve the same full range of treatment that is made available to any other patient. They are not “terminal” (until the very end stages of their illnesses) and must be aggressively treated without regard to the apparent “futility” of their lives.

The Case of Terri Schiavo

Let us take the example of Terri Schiavo. She is not brain dead, nor is she terminally ill. She is brain damaged and remains in what appears to be a persistent vegetative state. All of her bodily functions are essentially normal, but she lacks the ability to “meaningfully” interact with the outside world (although her parents claim that she does minimally respond to their presence and to outside stimuli).

Her impairment is cognitive, and Judaism does not recognize any less of a right to treatment for one cognitively impaired than one mentally astute.

It is a denial of the Jewish ideal of the fundamental value of life that drives the forces that wish to remove Terri Schiavo’s feeding tube. While Judaism does recognize quality of life in certain circumstances (such as the incurable terminally ill patient in intractable pain mentioned above), the Torah does not sanction euthanasia in any situation. To remove the feeding tube from a patient whose only impairment is cognitive is simply murder.

We must ask ourselves when we view images of cognitively impaired patients such as Terri Schiavo whether the pain that we feel is Terri’s or whether it is our own. While we may suffer watching movies of the severely brain damaged, it is our own thoughts of the horror of a life without cognition that drives us to project that pain onto the victim who may not be suffering at all.

From all that has been written above, the Jewish attitude to someone in a PVS should be very clear. Someone in a PVS is not in immediate danger of dying, nor to the best of our knowledge are they suffering. As such, the case of someone in a PVS is not a candidate for any form of euthanasia.

2. Rabbi Avraham Steinberg, M.D., *Encyclopedia of Jewish Medical Ethics*, Vol. III, pp. 1060-1 – Someone in a PVS is still alive.

If a person is in a state of PVS, it is clearly prohibited to kill him and it is forbidden to take his organs for transplant until he dies. Such a person is considered alive... Moreover, such a patient is not defined as terminally ill nor as a goses, because life expectancy may be long...Therefore, some rabbis (including Rabbis Y. Zilberstein and

E. Waldenberg) rule that one is required to treat such a patient as one would treat any other patient irrespective of his level of consciousness, cognition, or understanding... Occasionally, people categorized as in a PVS state return to consciousness and awareness. However, if it appears that he is suffering, some rabbis (including Rabbi Moshe Feinstein) permit the withholding of further life-extending therapy.

KEY THEMES OF SECTION II

- ⌘ **Passive euthanasia is the act of letting the terminally ill die without attempting to prolong their life. This can include withholding or ceasing medical treatment that could temporarily prolong the patient's life.**
- ⌘ **There are generally three criteria for a person to be considered a candidate for passive euthanasia under Jewish law:**
 - **The patient must be terminally ill without hope of recovery.**
 - **The patient must be suffering physical or emotional anguish.**
 - **The patient must be known to prefer death to treatment.**
- ⌘ **Some prominent authorities disagree with these criteria and prohibit any form of passive euthanasia.**
- ⌘ **While some prominent Jewish authorities have permitted withholding of medical treatment provided the above criteria exist, a patient in such a condition must still be provided the basic non-medical staples necessary to sustain life, such as nutrition, hydration, and oxygen.**
- ⌘ **Someone in a persistent vegetative state is not a candidate for the cessation of treatment or any form of passive euthanasia.**

SECTION III. PATIENT AUTONOMY – TO WHOM DOES YOUR BODY BELONG?

“I believe there are people who are healthy and mentally competent enough to decide on suicide. People who are not depressed. Everyone has a right for suicide, because a person has a right to determine what will or will not be done to his body. There’s no place for people to turn today who really want to commit suicide. Teenagers, and the elderly especially, have nowhere to turn. But when they come to me, they will obey what I say because they know they’re talking to an honest doctor.” (Sarah Sullivan quoting Jack Kevorkian in “Kervorkian: The Rube Goldberg of Death,” Cornerstone Magazine, Vol. XXVI, Issue 113 [1997], p. 18)

In the debate about euthanasia a legal and ethical distinction is often made between treatment

administered by the physician versus treatment only facilitated by the physician but actually administered by the patient him or herself, such a sedative medication and the like. In such cases where the physician's role is only indirect, a different sort of question is at play: Do we have the right to hasten our own death?

Judaism places great emphasis on free choice and personal autonomy, particularly the right to decide how and where to use one's resources. Still, within this freedom there are clear guidelines regarding the use of one's own physical body. It may come as a startling contrast to current trends of thought, but Judaism maintains that we do not actually have the final say about what we do with our bodies. We are responsible to maintain our health and not to cause harm to our bodies. Even after death, we are not always free to do as we see fit with our bodies.

In this section we will examine how the Jewish perspective on personal autonomy impacts on questions of euthanasia.

PART A. DAMAGING ONESELF

1. Vayikra (Leviticus) 19:28 – The prohibition against maiming oneself.

Do not make gashes in your flesh [as a sign of mourning] for the dead; and do not place a tattoo upon yourselves – I am God.

וְשָׂרֵט לְנֶפֶשׁ לֹא תִתְּנוּ בְּבָשְׂרְכֶם וּכְתָבָת קַעֲקַע לֹא
תִתְּנוּ בְּכֶם אֲנִי ה'.

2. Talmud Bava Kama 91a – It is prohibited to cause injury to oneself in any manner.

A person does not have permission to injure himself.

אין אדם רשאי לחבל בעצמו.

The Talmud likewise writes that a person does not have the power of self-incrimination when the punishment is corporal or capital. Rabbi David ibn Zimra (Radbaz to Rambam, Hilchot Sanhedrin 18:6) explains the reason to be precisely this: man does not own his body and therefore has no right to submit it to physical punishment or death.

3. Rabbi David ibn Zimra, Commentary of Radbaz to Rambam, Hilchot Sanhedrin 18:6 – Since one's life is not one's own, a Jewish court will not accept self-incriminating testimony that would obligate a litigant in corporal or capital punishment.

It is possible to offer a reason (why a Jewish court will not accept self-incriminating evidence in capital and corporal cases), and that is because the life of a person is not his own property. Rather, it belongs to God, as

ואפשר לתת קצת טעם לפי שאין נפשו של אדם
קניינו אלא קנין הקב"ה שנאמר הנפשות לי הנה
(יחזקאל י"ח) הילכך לא תועיל הודאתו בדבר
שאינו שלו ומלקות פלגו דמיתה הוא אבל ממונו
הוא שלו ומש"ה אמרינן הודאת בעל דין כמאה

the verse says, "All the souls are mine" (Yechezkel/Ezekiel 18). As such, a defendant's admittance is inadmissible insofar as it concerns that which is not his own (this includes corporal punishment which is considered a partial death). As concerns a person's money, it is his, and therefore we apply the rule that "the admittance of a litigant is as valid as a hundred witnesses." But just as one may not take his own life, so too he may not testify against himself concerning a transgression for which he would be liable to the death penalty: His life is not his own!

עדים דמי וכי היכי דאין אדם רשאי להרוג את עצמו כן אין אדם רשאי להודות על עצמו שעשה עבירה שחייב עליה מיתה לפי שאין נפשו קניינו.

For this reason, too, a person has no right to decide what will be done with his body after he dies.

4. **Rabbi Moshe Feinstein, Igrot Moshe Yoreh Deah 3:140 – A person is not the owner of his own body. Therefore he does not have the right to instruct doctors to perform an autopsy or medical research with it.**

As to the question posed from the Office of the President in Washington regarding the use of the organs of a corpse for medical purposes, as commanded in that person's will:

In summary, the answer according to Torah law which the Sages received one from another back to Moses our teacher, which he in turn received at Mount Sinai, is that no person has ownership over his own body to the extent that he can instruct others to use his body [after death] or any part thereof. This is true of any purpose, even medical research.

How much more is this true of his children and relatives – they *certainly* have no ownership of his body.

בדבר שנשאל מוואשינגטאן מלשכת הנשיא (אפיס של הפרעזידענט) בדבר שמוש באברים של המת על פי צוואתו לצורך רפואה,

הנני משיב בקצרה כי על פי דין התורה שקבלו חז"ל איש מפי איש עד משה רבינו ע"ה שקבלנו מסיני אין שום אדם בעלים על גופו לצוות שי עשו בגופו ואפילו רק באבר אחד מאבריו שום דבר אף לא לצורכי השגת ידיעה לעניני רפואה,

וכל שכן שבניו וקרוביו אינם בעלים על זה.

5. **Rabbi J. David Bleich, “The Obligation to Heal in the Jewish Tradition,” in J. David Bleich and Fred Rosner (ed.), *Jewish Bioethics*, p. 19 – Man has responsibility for his body, not ownership of it.**

Man does not possess absolute title to his life or to his body; title to human life is vested in the Creator, and man is but the steward of the life which he has been privileged to receive. Man is charged with preserving, dignifying and hallowing that life. He is obligated to seek food and sustenance in order to safeguard the life he has been granted; when falling victim to illness or disease he is obligated to seek a cure in order to sustain life. Never is he called upon to determine whether life is worth living – this is a question over which God remains sole arbiter.

PART B. REFUSING TREATMENT

We have seen that man does not have ownership of his body to decide when and how his life will end. Rather, we have a Divinely-ordained responsibility to seek the preservation of our physical existence.

To what extent must we go to discharge this obligation? Are there no limits to the amount of medical treatment that we must submit ourselves to in an attempt to stay alive? May we at some point refuse treatment just as a doctor may determine at some point to withhold life-sustaining measures?

1. **Rabbi Zev Schostak, “Is There Patient Autonomy in Halachah?” *ASSIA – Jewish Medical Ethics*, Vol. II, no. 2, May 1995, pp. 22-27**

While the sources for patient autonomy may be a subject of debate, the rights of Jewish patients to determine the course of their medical treatment are well documented in Talmud, codes, and responsa. Our sages recognized long ago that one has an obligation to protect his health, based on the Torah imperative – “Only watch yourself, surely watch your soul...” (Deut. 4:9) which Maimonides and others say refers to safeguarding one’s health. Indeed, it has been suggested that one who “watches” his health is treated in halachah as a bailee (*shomer*), who must make every effort to protect the article he is given from loss or damage. Since the Torah enjoins one to safeguard his body and physicians have been granted the authority to heal, it follows that one may seek medical treatment from a recognized physician and, of course, pray for his health.

Carrying the analogy further, when the obligation of watching the article becomes onerous, in cases where the burden far exceeds the benefit, where the costs of sophisticated life support systems or experimental treatments are almost prohibitive, the patient may not be required to avail himself of these measures.

[For example,] Rabbi Shlomo Zalman Auerbach rules that a terminal cancer patient whose disease has metastasized may refuse extraordinary treatment, such as radiation

or chemotherapy. Similarly, a diabetic whose leg was amputated as a result of his illness may refuse the amputation of his other leg, even though gangrene has set in and he will die imminently without the operation. In both these instances, the medical procedure will not reverse the underlying condition, and the patient may therefore refuse it. (Cited by Dr. A.S. Abraham in Halachah Urefuah 2:189.) See also Igrot Moshe, Choshen Mishpat, 2:74.

PART C. SUBMITTING TO LIFE-THREATENING PROCEDURES

Looking at one's body as a responsibility rather than an object of ownership opens many avenues for discussion about the extent and parameters of our obligation to maintain good health. Does the obligation to tend to the body entrusted to us by God mean that we must do all that is possible to extend our lives? That is, would it be permitted to undergo risky procedures that, if unsuccessful, would shorten one's life? Or should one submit to a risky procedure if there is a chance of recovery?

The Talmud discusses the principle of this issue in the context of defining what services are permitted to receive from non-Jewish idolaters. Such people, the likes of which we rarely encounter today, were suspected of sexual immorality and murder (see Meiri to Avodah Zarah 27a). May one risk one's life to be treated by a doctor who himself might be a murderer?

1. **Talmud, Avodah Zara 27b – One may submit to a risky medical procedure that may result in the hastening of death.**

If it is doubtful whether or not a patient may die due to his current condition, one may not submit to be healed by (a non-Jewish idolater). But if the patient will certainly die due to his current condition, one may submit to be healed by him.

Even if he'll certainly die – what about the momentary life he stands to lose (the idolater will kill him immediately, whereas he could have lived another day or two – Rashi)? We are not concerned about (the potential loss of) momentary life.

ספק חי ספק מת - אין מתרפאין מהן, ודאי מת - מתרפאין מהן.

מת, האיכא חיי שעה (רש"י - שהעובד כוכבים ממהר להמיתו ושמא יום או יומים יחיה!) לחיי שעה לא חיישינן.

When it comes to violating Shabbat to save a life, the chance of saving even momentary life takes precedent. This implies that “we are concerned about momentary life.” Yet, the general rule is that we opt for whichever decision is to the overall benefit of the patient (see commentary of Tosafot to the Talmud above).

The principle set out above can be applied to cases of risky surgery today.

2. **Rabbi Moshe Feinstein, Igrot Moshe, Yoreh Deah 2:58 – It is permitted to submit to potentially life-threatening, risky procedures even when the chance of success is minimal.**

It is permitted for a patient who would certainly die without surgery to submit to surgery with small chance of success, even if unsuccessful surgery will cause him to die sooner. The reason for this is that we are not concerned about momentary life, since the possibility that he will be cured and live as normal is in his benefit.

מותר לחולה שבלא הניתוח ודאי ימות לעשות הניתוח אף שהוא ספק רחוק שיתרפא ואם לא יתרפא מזה ימות קודם, משום שלא חיישין לחיי שעה כיון שהוא לטובתו דשמא יתרפא מזה ויחיה כראוי.

KEY THEMES OF SECTION III

- ∞ To whom does one's body belong? Deciding who owns the body will determine if we have the right to damage it. The Jewish position is that a person does not own his own body – it is “on loan” to him from his Creator for the duration of his life.
- ∞ Since we do not own our body, we may not damage it or purposefully injure it in any way. Even after death, a person does not have the right to leave instructions that his body be used for medical research.
- ∞ Our responsibility to maintain our physical health has limitations, in that in certain cases the right of patients to refuse treatment or submit to potentially life-threatening treatment is recognized.

CLASS SUMMARY:

IS THERE A PRECEDENT IN THE TORAH ADDRESSING EUTHANASIA?

Although modern medical practices didn't exist in the ancient world, the ethical issues raised by euthanasia were clearly present. We can learn the traditional Jewish attitude toward mercy killing from David's treatment of the boy who killed the dying King Sha'ul. David's executing the boy demonstrates the negative view of euthanasia – though there is room to emphasize the fact that the “anointed of Hashem” was involved. Euthanasia is also found in Talmud's discussion of the death of Rabbi Chanina ben Teradion.

DO PEOPLE HAVE THE RIGHT TO END THEIR OWN LIVES OR THE LIVES OF OTHERS WHO ARE IN PAIN?

Pain and suffering are certainly factors to consider in the treatment of the terminally ill. Jewish sources recognize the value in relieving pain, but they do not see it as sufficient justification for actively ending one's life or that of another. Where suffering does make a difference, in conjunction with other factors, is in the choice to withhold medical treatment of a patient who clearly has no hope of recovery.

ARE DOCTORS ENTITLED TO DECIDE WHEN AND WHEN NOT TO TREAT PATIENTS?

Doctors are obligated to treat patients to the best of their abilities and refusal to do so can be akin to murder. However, under certain circumstances the doctor may be entitled to withhold treatment where such treatment will not cure but only prolong the death process.

IS THERE A DIFFERENCE BETWEEN PASSIVE FORMS OF EUTHANASIA, SUCH AS WITHHOLDING MEDICAL TREATMENT, AND PROACTIVE MEANS SUCH AS PULLING THE PLUG OF A RESPIRATOR OR ISSUING A LETHAL INJECTION?

Halachah recognizes the clear distinction between active euthanasia, or even the facilitating of a patient's suicide, and passively letting nature take its course by withholding life-prolonging treatment that has no curative hope. Nevertheless, while pulling the plug is never justified, in certain circumstance the plug need not be reconnected or even attached in the first place. These matters are widely disputed among authorities, and each question must be weighed carefully, based on its individual circumstances.

ARE THERE ANY CONDITIONS UNDER WHICH JEWISH LAW WOULD SANCTION EUTHANASIA?

As outlined above, medical treatment may be withheld – i.e. passive euthanasia – in cases where the patient is suffering, has a terminal illness, and has expressed the wish to die (or that information is known to his health care proxy). Withholding basic necessities like oxygen and food are never justifiable.

DO PEOPLE HAVE THE RIGHT TO END THEIR OWN LIVES? MAY ONE DECLINE TREATMENT THAT COULD PROLONG HIS LIFE?

Jewish Law does not recognize personal ownership of the body; it is rather placed in our charge to guard. Therefore, a person has no right to take his own life or even submit his body to needless physical pain. However, one may choose either to forgo medical treatment that would only prolong his suffering or, on the other hand, to submit to risky medical procedures that might end up shortening his life if unsuccessful.

RECOMMENDED ADDITIONAL RESOURCES

www.procon.org, entry: Euthanasia – General articles on both sides of the euthanasia debate

www.jlaw.com – Articles on Jewish Law as related to medical practice by J. David Bleich, Fred Rosner, Abraham S. Abraham, and Steven Resnicoff

www.medethics.org.il – Articles on Jewish Medical Ethics by Yitzchak Breitowitz, Daniel Eisenberg, and Steven Resnicoff

Rabbi Akiva Tatz, Dangerous Disease and Dangerous Therapy in Jewish Medical Ethics, pp. 102-134, 218-270

Rabbi Avraham Steinberg, M.D., Encyclopedia of Jewish Medical Ethics, Entry: Terminally Ill

Peter Singer, Practical Ethics, Chapter 7 – The “ethical” basis in support of euthanasia.

Jewish Bioethics by Fred Rosner and J. David Bleich (ed.), Chapters 15-21

HYPOTHETICAL CASE TO CONSIDER:

A 75-year-old suffers multi-organ failure. The physicians have declared that there is no hope for recovery. His blood pressure is sustained by a dopamine drip. If the drip were to stop, the patient would likely die within hours.

Questions to ponder

- Is this patient “terminally ill?”
- May the patient’s dopamine drip be turned off?
- Does it matter if the patient is experiencing great pain?
- Is there a difference between the drip being turned off and it not being refilled after running out?