

# Caring for the Terminally Ill: Halachic Approaches to Withholding and Withdrawing of Therapy

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## Introduction

Modern medicine has produced great triumphs over disease. Even for many desperately ill patients, there is now the possibility of extending life and even curing their illnesses. It is commonly thought, however, that these medical advances carry a mixed blessing. On the one hand many critically ill patients who would have previously died, can now be treated and cured to live fruitful lives. But for those who remain incurable even by modern therapy, aggressive treatment sometimes results only in increasing pain before the inevitable death of the patient. This has created a great dilemma. Those physicians involved with the critically ill must decide on a routine basis which treatments are worthwhile and should be given, and which treatments are futile and should be withheld. Because of the suffering that modern, high-technology medicine can cause, a broad consensus has developed based on judicial precedents and ethical analysis that it is acceptable to withhold aggressive treatment of the critically ill, especially when no curative treatment is available and the prognosis is poor. Moreover, when life-sustaining therapy is being used in a terminal patient it is now widely acceptable in Europe and the United States to withdraw such life-sustaining therapy.<sup>1</sup> In daily medical practice today, critically ill patients are routinely disconnected from life support and die as a result of withdrawal of this care.

The practice of withholding and withdrawing of care is nothing short of a revolutionary change in the ethics of medicine. As little as

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<sup>1</sup> American Medical Association, "Withholding or withdrawing life-sustaining medical treatment." *Policy E-2.20*, 1998, [www.ama-assn.org](http://www.ama-assn.org)

thirty years ago, no physician would ever have disconnected a patient from a mechanical respirator. Since then, we have entered a new era of medical practice. Today, patient autonomy has become the guiding principle in medical ethics. A patient now has the fundamental right, and, in many Western countries, full protection of the law, to refuse medical therapy, even if curative. The ethic of autonomy is so strong that it not only allows but mandates the withholding of treatment if the patient so chooses. Taking this argument to its logical conclusion, withdrawal of care is also allowed if the patient so chooses. In fact, it has become an axiom in the medical ethical literature to declare that “there is no moral distinction between withholding and withdrawal.” This is based on the argument that the patient has the right to refuse treatment and it would be illogical and unfair to allow a patient to refuse therapy (withholding) and not grant the same right of refusal once therapy has started (withdrawal).<sup>2</sup> However, even amongst secular ethicists, the moral equivalence of these two concepts is not necessarily accepted. Ethicists recognize that withdrawal of care, if it results in the death of the patient, is killing. On this point they agree with Jewish law (*halacha*). Undaunted, many argue that there is not necessarily anything immoral about killing.<sup>3</sup> Again, this is based on the power that autonomy has as the central pillar of ethics. If the patient wishes to die, to kill him is not at all immoral. Quite to the contrary, from this frame of reference, to deny him death is immoral because it denies him the most fundamental of rights – the right to choose. Childress and Beauchamp state, in the widely accepted textbook, *Principles of Biomedical Ethics*, that “causing a person’s death is wrong because of a harm or loss to the person killed... What makes it wrong, when it is wrong, is that a person is harmed – that is, suffers a setback to interests that the person otherwise would not have experienced. In particular, one is caused the loss of the capacity to plan and choose a future, together with a deprivation of expectable goods... If a person desires death rather than life’s more typical goods and projects, then causing that person’s death at his... autonomous request does not either harm or wrong the person”.<sup>4</sup>

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<sup>2</sup> Beauchamp, TL and Childress, JF, *Principles of Biomedical Ethics*, 4<sup>th</sup> Edition, New York: Oxford University Press, 1994; p. 198.

<sup>3</sup> Brock, DW, “*Death and Dying*”, in *Medical Ethics*, ed Veatch, RM, 2<sup>nd</sup> Edition, Boston: Jones and Bartlett, 1997, p. 376.

<sup>4</sup> Beauchamp, TL and Childress, JF, *ibid*, p. 236.

We may conclude that the statement “there is no moral distinction between withholding and withdrawing” is true only through the lense of autonomy. However, if there are deontological principles competing with autonomy, such as the prohibition of killing, then there may be a large difference between withholding, where the physician is passive, and withdrawing, where, as the prominent ethicist Robert Veatch admits, the physician “enters the nexus of responsibility.”<sup>5</sup>

In Israel, unlike many Western countries, these changes in medical ethics have been much slower to develop. This is undoubtedly due to the *halachic* obligation to preserve life, this being a more important ethical principle in Jewish law than autonomy. Because all life is considered precious, a first assumption of *halacha* is that any medical intervention that can extend life should be used. It is ironic that modern medical innovation has found a far more enthusiastic ally in traditional Jewish law than in modern secular ethics.

Yet, the problem is not so simple, even for the apparent dogmatic perspective of traditional Jewish law. While withdrawal of therapy would never be allowed by a *halachic* ruling, withholding of therapy is a difficult, nuanced problem. Herein, I attempt to clarify the *halachic* position on the withdrawing and withholding of care. I make no claim that the rabbinic view is monolithic. However, for simplicity, the discussion will be limited to an analysis of the most widely accepted modern *halachic* authorities.

### **Withdrawing Therapy**

Rabbinic opinion has always held that any act that hastens the death of a person is considered an act of murder. The rabbinic authorities are extremely clear on this point. It is an axiom of Jewish law that the most severe crimes are the three prohibitions of murder, forbidden sexual relations, and idolatry. These three are unique in that a person is required to sacrifice one’s life rather than transgress them. In distinction, all other prohibitions of the Torah may be transgressed in order to save one’s life. It is noteworthy, that of these three cardinal sins, murder is the most vigorously enforced. The Rambam states, “There is nothing in the Torah so strictly enforced as the crime of murder.”<sup>6</sup> He remarks that a court has

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<sup>5</sup> Veatch, RM, *Death and Dying, and the Biological Revolution*, Revised Edition, New Haven: Yale University, 1989, p. 70.

<sup>6</sup> Rambam, *Mishneh Torah*, Laws of Murder, Chapter 1:4.

the widest latitude to enforce and punish for the crime of murder, even if by the rigorous Torah standards of testimony, he is not found guilty of capital murder. The Rambam rules that the murderer may be jailed and distressed. He explains that other crimes “do not destroy the world, because they are between man and God,” but murder destroys the social fabric of society and one who murders is an “evil person and not all the good deeds that he does in his life can compare to this to save him from his judgment.”<sup>7</sup>

In commenting on the Rambam’s laws of murder, the commentator *Kesef Mishne* clarifies the definition of murder. He states that the death must be caused by a direct, proximate act by another person.<sup>8</sup> The rabbinic authorities specifically state that the previous health of the victim is immaterial to the crime. Rabbi Moshe Isserles (known by the acronym Rema), writes in his gloss on the *Shulchan Aruch*, that any act involving touching or moving a *gosses* (a term referring to a patient in the moribund period before death, which by definition lasts no more than three days) is prohibited because such an act may hasten his death. He continues by stating that if the act does hasten death it is considered murder.<sup>9</sup> The Rambam specifically states that liability for murder is independent of the health of the victim – be he healthy or a *gosses*.<sup>10</sup> Relating this to contemporary medical practice, if a physician withdraws life support and this results in death earlier than it would have otherwise occurred, this is considered proximate cause and would be defined as murder.

Rabbi Moshe Feinstein *zt"l*, known to be the most lenient of the great contemporary *poskim* (*halachic* decisors) in the matter of terminal illness, minces no words about such proactive hastening of death.

[As] the Rema explicitly states, even if the patient is suffering, [if an action is done to hasten his death] there is here the crime of murder and it is absolutely forbidden and he is liable to the punishment for murder... [This is true] even to one who is suffering greatly and [the physician]

<sup>7</sup> Rambam, *Ibid, Ibid*, Chapter 4:9.

<sup>8</sup> *Kesef Mishne*, on the Rambam, *Mishne Torah*, Laws of Murder 2:9-10.

<sup>9</sup> Rema on *Shulchan Aruch*, *Yoreh De'ah*, 339:1.

<sup>10</sup> Rambam, *Mishneh Torah, Ibid*, 2:7.

murders with merciful intent and even if it requested [by the patient].<sup>11</sup>

### Withholding Therapy

The issue of withholding care is a far more complex topic. The question posed is, if therapy can be offered that will lengthen the life of a terminally ill patient, is such therapy mandatory or optional.

In the *Shulchan Aruch*, under the rules of the physician, Rabbi Yosef Karo states unequivocally that if a physician is able to heal a patient and refrains from doing so, this is considered murder.<sup>12</sup> The great modern *posek*, Rabbi Shlomo Zalman Auerbach *zt"l*, said, “Every portion of a life of a man has infinite worth – 70 years of a man has exactly the same value as 30 years, as one year or one hour.” We understand, then, that the remaining life of the *gosses* is as precious as any other person’s, and the hastening of his death is considered murder. Accordingly, this *Shulchan Aruch* seems to teach that the obligation to treat does not distinguish between the terminally ill and one who is less seriously ill. Therefore, in the case of the terminally ill, if we are able to lengthen their life and fail to do so, we should be guilty of murder. Understanding the *Shulchan Aruch* in this way seems to make withholding therapy in the terminally ill prohibited just like withdrawing.

Moreover, the positive commandment to save a life carries extraordinary force in *halacha*. The mandate of “*pikuach nefesh*,” saving a life, is derived from the verse, “You shall observe my decrees and my laws which man will carry out and *will live by them*, I am the Lord.”<sup>13</sup> This commandment supersedes all other commandments, including keeping the laws of Shabbat<sup>14</sup> and fasting on Yom Kippur.<sup>15</sup> Additionally, the *Gemara* specifically states that the mandate to transgress the laws of Shabbat are in force even for a *gosses*.<sup>16</sup> At first glance, therefore, withholding of care in the terminally ill when one can prolong life should be prohibited and the obligation to treat should be in force.

To eliminate any doubt as to the mandate to treat the terminally ill, four leading *poskim* of Israel (Rabbis Shlomo Zalman Auerbach, *zt"l*, Yosef

<sup>11</sup> Feinstein, Rabbi Moshe, *Iggerot Moshe, Choshen Mishpat*, II, 83:1.

<sup>12</sup> Karo, Rabbi Yosef, *Shulchan Aruch, Yoreh De'ah*, 336:1.

<sup>13</sup> Leviticus, 18:5.

<sup>14</sup> Karo, Rabbi Yosef, *Ibid, Orach Chaim*, 329.

<sup>15</sup> Mishna, Tractate *Yoma*, 8:5.

<sup>16</sup> Babylonian Talmud, Tractate *Yoma* 85a.

Shalom Elyashiv *shli'ta*, Shmuel Halevi Wosner *shli'ta*, and S. Y. Nissim Karelitz *shli'ta*) published a proclamation in 1994 stating that life-supporting care is mandatory and there was no *halachic* allowance to withhold life-saving therapy to the terminally ill, "Heaven forbid that the demise of a terminal patient be hastened by withholding nutrients or medical treatment in order to lessen his suffering."<sup>17</sup>

But, alas, the ruling is not so simple. Some of these same *poskim* have ruled that there are exceptions and that there may be instances where withholding may be permissible on a case by case basis.

Rabbi Moshe Feinstein writes that therapy that only prolongs the suffering of an incurable patient should not be given.<sup>18</sup> It is most important to underscore the conditions of his ruling. The patient must be a *chaye sh'ah*, the *halachic* designation for a terminally ill patient where there is a virtual certainty that he is incurable and will soon die.<sup>19</sup> In addition, he must be suffering.

Given the obligation to preserve all life, what are the sources that would allow for a leniency? Rabbi Feinstein's primary source is from the *Gemara*, *Ketubot* 104a. Here, the great Rebbi, Rabbi Yehuda Ha-nasi, is dying and in great distress from an intestinal disease. His students are praying for his recovery in an around the clock vigil. However, he is not dying nor is he getting better. Rebbi's maid appeals to God for either the upper worlds (*i.e.*, for Rebbi to die) or the lower worlds (for the prayers of his students) to prevail. Yet he remains in his state of a suffering terminally ill patient. To disturb their prayer, she then drops a jug from a balcony. With the shock of the noise, the students momentarily stop praying and Rebbi immediately dies. The commentators unanimously consider Rebbi's maid to be a learned woman who acts appropriately. Rabbi Feinstein learns from this event that one need not prolong the life of the suffering terminally ill patient.

On further analysis Rabbi Feinstein's reasoning seems difficult. If we understand that the students' prayers were sustaining his life, then doesn't the interruption constitute withdrawal of care, something that would be expressly forbidden? In answer to this problem,

<sup>17</sup> *Yated Ne'eman*, 29 Kislev 5755 (1994).

<sup>18</sup> Feinstein, Rabbi Moshe, *Ibid*, *Ibid*, 84:1.

<sup>19</sup> There are differing opinions regarding the time frame for the definition of *cha'ye sha'ah*. Rabbi Elyashiv considers that it must be a prognosis of less than three months even with all possible treatments.

commentators consider that the prayer of Rebbi's students cannot be compared to medical therapy. The effects of prayer are purely metaphysical. Physical, life-sustaining therapy cannot be considered analogous. Murder, after all, is a purely physical act. Ceasing to pray cannot be considered murder. If this is the case, and Rabbi Feinstein agrees with this interpretation, how can anything be learned from this *Gemara* regarding practical medical *halacha*?

Rabbi Feinstein brings another support for his leniency and it seems equally problematic. As mentioned above, in the Rema's gloss of *Shulchan Aruch*, he expressly forbids touching a *gosses* lest the death of the *gosses* be hastened. He then mentions a striking exception. If the sound of a woodcutter's chopping wood is interfering with the departure of the soul of the *gosses*, it may be stopped, "because it is an impediment for the departure of the soul." So too, if there is salt on the tongue of the *gosses*, it may be removed for the same reason. Again, this appears to be a difficult source. On the one hand, the noise of the woodcutter and the salt on the tongue appear to be sustaining life so that removing them could be considered withdrawal. In fact, many have commented that neither example can be considered sustaining life in the same way that medical therapy is. If understood that these are not analogous cases to medical therapy, their withdrawal cannot be compared to withdrawing medical therapy. In fact, we are forced to conclude this because the Rema certainly would not have permitted withdrawal of life-sustaining treatment, as he previously forbade any action that hastens the death of a *gosses*. But, if we learn the Rema this way, and the sound of the woodcutter and the salt on the tongue are not considered life-prolonging measures, apparently nothing can be learned from them. In fact, many conclude this.<sup>20,21</sup>

Rabbi Shmuel Wosner in *Shevet ha-Levi* also brings this Rema as a source for a possible leniency on withholding of treatment. He learns a key point from the Rema's ruling. He writes that based on the leniency of the Rema, "we are not concerned for the small lengthening of the life of the *gosses*."<sup>22</sup> Rabbi Wosner implies that only with this premise could the Rema allow for the removal of the impediment to death. If

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<sup>20</sup> Kanevsky, Rabbi Y.Y., *Krinna D'Agrata*, letter 190.

<sup>21</sup> Herschler, Rabbi Moshe, "Obligations on treating patients in life-threatening danger", *Halacha V'refuah*, vol. 3, pp. 37-51.

<sup>22</sup> Wosner, Rabbi Shmuel Halevi, *Shevet ha-Levi*, 6:179.

we were truly concerned for a small lengthening of the life of a *gosses*, we would not care how it was lengthened, be it medical therapy or some metaphysical phenomenon.

So too, can this reasoning apply to *Ketubot* 104a. If we were concerned for the lengthening of the life of Rebbi, any means that would be effective, physical or metaphysical, would be mandated. Since in these cases withdrawal of these “hindrances to departure” are allowed, we must not be concerned for lengthening life at all costs. And so concludes *Iggerot Moshe* and *Shevet ha-Levi* that under certain restricted circumstances, one may *shev ve'al ta'aseh*, refrain from acting, *i.e.*, withhold therapy.

As a postscript to a discussion of this important gloss of the Rema, it is worth emphasizing the fine distinction he makes between the prohibited activity of even touching the *gosses* and the permissible activity of stopping the woodcutting and the removal of the salt. The former, if it were to result in the hastening of death, is murder. The latter, while also hastening death, is permissible. It is this type of subtle, nuanced distinction that is vitally important in *halachic* jurisprudence, while such distinctions could be construed from a consequentialist's viewpoint, as trivial.

Rabbi Wosner brings an additional difficulty with any leniency to withhold therapy. If we are mandated to transgress Shabbat for the sake of a *gosses* because of the mitzvah of *pikuach nefesh*, does this not mandate care for the *gosses*? In other words, are we not duty-bound to treat the *gosses* if we can lengthen his life? He answers by bringing a proof from the *She'vut Yaakov* that this is not necessarily so. Rabbi Wosner notes that the *She'vut Yaakov* is precise with his language saying that one is *permitted* to transgress Shabbat for a *gosses*. He does not write that one is *mandated*. But, asks Rabbi Wosner, if treating a *gosses* is only optional, how can there be a leniency to transgress Shabbat? After all, *pikuach nefesh* is normally considered as conferring an obligation. Rabbi Wosner answers that there is no contradiction. While the *halacha* is indeed like the *She'vut Yaakov* and is not mandatory, it remains permissible to transgress Shabbat for a *gosses*; once one decides to proceed with therapy it becomes permissible to transgress Shabbat under the leniency of *pikuach nefesh*.<sup>23</sup>

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<sup>23</sup> See note 22 *supra*.



Additional difficulties may be raised with the leniency to withhold treatment. The two required preconditions that may allow for such a leniency is terminal illness with suffering. One may ask, if all of life is sacred and of infinite value and there is a mandate to heal, why is suffering a basis for a leniency? Rabbi Feinstein writes that “if a person is suffering with incurable illness and [there is] no way to lessen his suffering, it is the normal way of man that he would choose death over continued suffering. Such is the proper way not to slightly lengthen his life.”<sup>24</sup> He reinforces this idea by adding, “even if the opinion of the patient is not known, it is assumed he would not wish to lengthen his life.” So too, Rabbi Vosner writes, “The Torah surely did not intend to increase the suffering of man.”<sup>25</sup> He quotes the Rambam, who wrote, “The justice of the Torah is not ever vengeful, but merciful, kind, and peaceful always.”

Rabbi Feinstein brings a proof on the force of suffering from the *Gemara*, *Ketubot* 33a. Here the Biblical story of Chananya, Mishael, and Azariah is analyzed. The Babylonian king Nebuchadnezzar forces them to bow down to an idol or be thrown into a furnace. In an act of *kiddush Hashem*, they refuse to bow down, are thrown into the furnace and are saved by a miracle. In the *Gemara*, Rav remarks that if Chananya, Mishael, and Azariah were threatened instead with torture, they would have succumbed and bowed down. Rav’s remark is startling. After all, idolatry is a cardinal sin which a person is mandated to sacrifice his life rather than transgress. Rav’s statement implies that torture is worse than death. While one is mandated to sacrifice his life, he is not so mandated to withstand torture. *Tosafot* solves this difficulty by saying that, one is, in fact, obligated to withstand torture in the face of idolatry, but that the idol before the three prophets did not constitute idolatry, but was merely a statue of Nebuchadnezzar himself. So why did they perform a *kiddush Hashem*? *Tosafot* answers that they were sacrificing their lives in an act of piety, permissible by the Torah, as it could have appeared to the public that bowing to the statue was submitting to idolatry. Nevertheless, the comment of Rav remains intriguing. Torture seems to have a quality worse than death. According to the Ritva and the *Shita Mekubetzet*, while from the point of view of a judicial verdict death is always a more severe punishment, from the viewpoint of a person who can choose death or suffering, the

<sup>24</sup> Feinstein, Rabbi Moshe, *Ibid*, 84:2.

<sup>25</sup> See note 21 *supra*.

latter may be more onerous. In fact, the *Shita Mekubetzet* brings the opinion of Rabbi Eliezer who says that while one is obligated to sacrifice one's life rather than commit idolatry, one is not so obligated to undergo torture. He concludes, however, that the above-quoted *Tosafot* is the *halacha*.<sup>26</sup>

From this discussion it is apparent that suffering carries some force in a *halachic* ruling and one may not be obligated to undergo suffering to fulfill any mitzvah. It is not, however, apparent from this *Gemara* what practical *halacha* can be learned. Surely, we know that if there is chronic suffering in a non-terminally ill patient (*cha'ye olam*), he is obligated to preserve his life and endure suffering. It is only when the life is *cha'ye sha'ah* where there may be a possible leniency. In his responsa, Rabbi Feinstein discussed the subjective feelings of a sick suffering patient and remarks that for a short extension of *cha'ye sha'ah* most patients would not wish to endure suffering. This seems to parallel the commentary of the *Shita Mekubetzet* who stated that to a person suffering may be a greater trial than death. And like the *Shita Mekubetzet*, who ruled that a person's subjective perspective does not influence the *halacha* of transgressing the cardinal prohibition of idolatry, Rabbi Feinstein would not sanction sacrificing *cha'ye olam* for the sake of alleviating suffering. Here, too, it would mean compromising on a very strict *halachic* ruling – the obligation of *pikuach nefesh*. But, he does learn that there could be leniency with *cha'ye sha'ah*. By implication, he understands that the commandment to preserve life may not include the life of the suffering terminally ill.

Similarly, the *Sefer Ha'chasideim* teaches, "One may not yell [in the ear of the *gosses*] at the moment of his departure, for if one does so his soul will return and this will cause great suffering... For he cannot live but a few days and during these days he will suffer pain."<sup>27</sup> Here, there is proof from a *rishon* (a medieval authority, who carries great weight) that if the extension of the life of the *gosses* means accompanying suffering, one should refrain from acting. Suffering here too overrides the small additional life that may be achieved for a *gosses*. The *Sefer Ha'chasideim* seems to argue in the same way we understand *Ketubot* 104a and the Rema, *i.e.*, while not specifically discussing medical treatment, he infers that we are not concerned about extending life of the *gosses* at all costs.

<sup>26</sup> *Shita Mekubetzet*, on Babylonian Talmud, Tractate *Ketubot* 33a.

<sup>27</sup> *Sefer Ha'chasideim*, Section 234.

How can a distinction be made between *cha'ye sha'ah* and *cha'ye olam*, to the extent that the former may allow for such a significant leniency canceling the obligation of preserving life? Have we not learned that all life is of infinite, and, therefore, of equally precious value? The distinction may be learned from the opinion of Rabbi Yosef Shalom Elyashiv. He also learns that there may be specific circumstances that would not mandate life-prolonging treatment of the suffering terminally ill.<sup>28</sup> According to Rabbi Yaakov Weiner of the Jerusalem Center of Research, Rabbi Elyashiv learns the leniency from the *Gemara, Avoda Zarah 27b*. Here, the incidence of the four *matzoraim* (conventionally translated as lepers, this is a misnomer, *tzarat* being the physical affliction directly attributed to transgressing Torah prohibitions), written about in Kings II, Chapter 7, is analyzed. The four men are in the desert starving. They must decide whether to stay in the desert where they will eventually die of starvation or face an uncertain future by entering an enemy camp. There they may be killed instantly or they may be fed, thus saving their lives. The dilemma the *Gemara* highlights is that by entering the camp they are sacrificing some life (whatever *cha'ye sha'ah* they have had by staying in the desert) for the possibility that they may be killed immediately by the enemy. Rashi comments that the life gained by staying in the desert is not a concern, since it is only *cha'ye sha'ah*, against the potential benefit of being fed in the enemy camp. *Tosafot* ask why is there no concern for *cha'ye sha'ah*? After all, in *Yoma 85a* one is mandated to transgress Shabbat in order to save the life of a *gosses*. There we see that there is indeed concern for *cha'ye sha'ah*. Why are we not concerned here? The answer *Tosafot* give is that the ruling in both places is “for the person’s benefit.” In the case in *Yoma*, the person with *cha'ye sha'ah* will surely die in any case, but he will die sooner if nothing is done. So his *cha'ye sha'ah* is important to him. In the case in *Avoda Zarah* by staying in the desert he will surely die while by going into the city he may gain *cha'ye olam*, full life. While the simple meaning of the *Tosafot* is that *cha'ye sha'ah* may be sacrificed if it may mean greater life (*cha'ye olam*), Rabbi Elyashiv wants to learn a more general point. The *Gemara* here teaches that *cha'ye sha'ah* has only relative value and it is based on circumstances. This is, of course, in great distinction from life in general. This

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<sup>28</sup> Abraham, A.S., *Nishmat Avraham, Yoreh De'ah*, 339:2.

*Gemara* shows that sometimes *cha'ye sha'ah* may be sacrificed. While the simple interpretation seems to be that *cha'ye sha'ah* can be sacrificed only in this circumstance that it may allow for greater life (*cha'ye olam*), Rabbi Elyashiv argues that a case can be made for sacrificing *cha'ye sha'ah* in the suffering terminally ill patient. Based on the principle of the *Tosafot*, extending one's *cha'ye sha'ah* is not necessarily for the person's benefit particularly when it is accompanied by suffering.

This line of reasoning seems to open up the possibility that any patient has the right to decide what is for his benefit. What if a patient with a chronic painful but non-terminal illness considers that treatment is not to his benefit? Does he have the *halachic* right to refuse and shorten his life? Here we come across a central difference between *halacha* and secular ethics. In the latter, the principle of personal autonomy dictates what is moral. If a person is suffering and wishes to refuse treatment, even if it means shortening his life, it is entirely permissible. In fact, to reject his wishes is considered immoral. In contrast, Rabbi Elyashiv's leniency of "for the person's benefit" is not meant as a *carte blanche* for honoring patient choice. In Jewish law benefit is an objective construct, and not patient centered. The *halachic* ruling will always mandate treatment if it results in *cha'ye olam* because such living is always considered to be for the patient's benefit, regardless of whether there is suffering.

To summarize the problem of withholding of treatment with the intent of extending the life of the terminally ill, our original problem was that the *Shulchan Aruch* mandates a doctor to treat. Why does this obligation not extend to the terminally ill? In fact, all the major *poskim* take the obligation to heal, even of the terminally ill, as generally binding. Exceptions do exist, but surely only on a case by case basis. Rabbi Wosner voices reluctance in several responsas about learning any general leniency on withholding care. In answer to the rule of the *Shulchan Aruch*, Rabbi Feinstein addresses this question directly and indicates that the mandate to heal applies to one who can be healed. He defines healing by *either* making the terminally ill patient no longer terminal or by relieving suffering. But if neither is possible then there is no substantive healing and there is no obligation. The Israeli *poskim* such as Rabbis Wosner and Elyashiv are more stringent saying that extending life of the *cha'ye sha'ah* is, in fact, mandatory if no added suffering results and the *Shulchan Aruch's* mandate is in force. Only with added suffering brought on by the treatment itself, could a leniency be ruled.

**Postscript – Attaching a timer to a respirator**

There has been considerable discussion in the last few years about the possibility of attaching a patient to a respirator via a timer. In this scenario when the timer is due to expire, an evaluation can be made as to the prognosis of the patient and a decision can be made to renew the timer or to let it expire, thus terminating the function of the respirator and allowing the patient to die. This idea was elaborated upon in *Tzitz Eliezer* published in 1986.<sup>29</sup> It is crucial to note that in the responsa of the *Tzitz Eliezer* the hypothetical case where it may be permissible is when the patient is initially attached to the respirator. Clinically, this would mean when the urgent endotracheal intubation is performed for acute respiratory distress. Rabbi Waldenberg only writes on this particular situation and not when the patient is already on a conventional mechanical respirator. If the patient has been initially attached to a respirator he cannot then be switched to a respirator with an intervening timer. This latter scenario would be clearly prohibited. In discussing this matter with Rabbi Elyashiv, Rabbi Yaakov Weiner reports that from the strict letter of the law such an arrangement would be permissible. His reasoning is if, at the time the timer expires it is clear that the patient is incurable and terminal, and that renewing the timer would add more suffering, there would be no mandate to renew the timer. However, Rabbi Elyashiv decided to condemn the concept of the timer. His rationale was that once permitted it would be easily abused in the form of converting a patient who is on a conventional respirator to one with an intervening timer. In this latter scenario, one has merely succeeded in performing a technological trick of withdrawing care, albeit in a delayed fashion and would be no different than any other withdrawal of care.

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<sup>29</sup> Waldenberg, Rabbi Eliezer, *Tzitz Eliezer*, 13:89.