

# The Halachic Basis of “The Dying Patient Law”\*

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Several biblical and Talmudic stories, as well as principles developed by the medieval authorities and the laws pertaining to moribund patients (*gossesim*), provide the foundation for discussing the attitude of the *halacha* to terminal patients.<sup>1</sup>

## I. Fundamental Values

### A. The Value of Life

Many authorities maintain that although the value of life is indeed holy and lofty, it is nonetheless not an absolute value. They prove this on the basis of other values that supersede the value of life, *e.g.*, the three sins which require death rather than violation, warfare, and martyrdom. There are cases that call for taking a life, *e.g.*, the case of pursuit (*rodef*); capital punishment for major sins; certain cases of suicide; and certain situations involving severe suffering at the end of life, which in clearly defined cases *halachically* permit refraining from any procedure to prolong life.

This *halachic* position allows a balance between the sanctified value of life and other values, *e.g.* preventing suffering in certain well-defined situations (see *infra*).

The *halachic* foundation for this approach is the principle of “removing the impediment (*meisir ha-mone’a*)”, as can be understood from the following sources:

1. We find in Scripture: "...and a time to die" (Eccl. 3:2). What do we learn from this verse? When a person is moribund and his soul is departing, we do not pray that his soul return to him because

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\* See *ASSIA* 69-70, pp. 23-58; *ASSIA* 71-72, pp. 25-39.

<sup>1</sup> See detailed article in Prof. A. Steinberg (ed.) *Encyclopedia of Halacha and Medicine*, second edition, vol. 5, s.v. *note lamut*.

he would in any event be able to live only a few more days in pain.<sup>2</sup>

2. We do not unnecessarily slow a person's death. For example, if a woodchopper was near the house of a moribund patient whose soul could not depart, we remove the woodchopper. We do not place salt on a patient's tongue to prevent him from dying. If he is moribund and says: "I cannot die until I am moved to another location," he is not to be moved.<sup>3</sup>
3. If the soul of a moribund patient cannot depart, it seems to be prohibited to remove the cushion from underneath him so as to speed his death. This is based on the belief that certain feathers in the cushion prolong life.

I have repeatedly protested against the evil practice of removing the cushion, but to no avail. My masters disagree with me, and Rabbi Nathan from Igara wrote that it is permitted.

It is surely prohibited to do anything to delay the death of a moribund patient, *e.g.* to chop wood near him in order to prevent his death or to place salt on his tongue to prevent him from dying.

Actions that remove an indirect impediment to death are permitted. But it is prohibited to do anything to hasten death. Therefore, it is prohibited to move a moribund patient and it is prohibited to put the synagogue keys under his head so that he die quicker because this actively hastens the departure of the soul. It follows that it is permitted to remove anything that blocks the departure of the soul.<sup>4</sup>

<sup>2</sup> Rabbi Yehuda ben Shmuel ha-Chasid, *Sefer ha-Chasidim*, sect. 234 (sect. 318 in Wisnitzki's edition).

<sup>3</sup> *Ibid.*, sect. 723 (sect. 315 in Wisnitzki's edition).

<sup>4</sup> Rabbi Yehoshua Boaz ben Shimshon, *Shiltei Gibborim ad Moed Katan* 16b in the Rif pagination.

4. It is similarly prohibited to hasten the patient's death. For example, if a patient is moribund for a long time and cannot die, it is prohibited to remove the cushion or the pillow from underneath him in the belief that certain feathers prolong life; it is prohibited to move him; and it is prohibited to put the synagogue keys under his head so that he die. But if there is something delaying the departure of the soul, such as the nearby sound of a woodchopper or salt on the patient's tongue, it is permitted to remove the impediment to death because these actions do not actively hasten death.<sup>5</sup>

In accord with this principle, contemporary authorities have written as follows:

1. In my youth, I too heard of the principle that one must do everything possible to prolong the patient's life even if only for a moment. I did not know of an authoritative source for the principle. But it seemed to me that the idea requires further consideration because in the *Shulchan Aruch (Yoreh De'ah 339)* it is made clear that one may remove an impediment to death. Only actively hastening death is prohibited. If so, refraining from action (in a case where active treatment would increase the patient's suffering) would seem to be permitted. On the contrary, active treatment should be avoided in such cases... But it seems that any active treatment that can only momentarily prolong the patient's life without really saving him is comparable to the case of the moribund patient

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<sup>5</sup> Rabbi Moshe Isserles, *Y.D.* 339:1. See detailed discussion of the implications of the adduced examples in *Encyclopedia of Halacha and Medicine*, second edition, vol. 5, s.v. *note lamut*.

- since moribund patients are surely still alive in every sense. All this requires more thought.<sup>6</sup>
2. If a patient cannot, in medical opinion, be cured, cannot survive and cannot even continue in his illness without suffering but can be treated with medicine that will prolong his life and his suffering, he should not be given medicine. Rather, he should be left as he is.<sup>7</sup>
  3. Since the proposed action will not heal the patient and will only prolong his life a little, it is my humble opinion that if his briefly prolonged life will be a life of suffering, the action is prohibited... because reason dictates that removing an impediment to death makes sense when it is done indirectly.

As explained by R. Moshe Isserles (*Y.D.* 339:1 at the end) this is permitted because of the patient's suffering. If it were permitted to take steps to lengthen the patient's life when he is suffering, how could it be proper to remove an impediment to death? On the contrary, we would have to impede the patient's death with whatever means we could.

Rather, it is surely prohibited to employ any means to prolong the patient's life even briefly if he is suffering. The removal of an impediment to death in a moribund patient pertains in a case of suffering... although it is prohibited to do anything actively to hasten his death as is made clear by R. Moshe Isserles (*ibid.*).

Actively hastening death is tantamount to murder... But it is also prohibited to do anything actively to prolong a life of suffering... Physicians' claims that the patient cannot feel

<sup>6</sup> Rabbi Yaakov Yisrael Kanievsky, *Karyana de-Iggerata*, 190.

<sup>7</sup> Rabbi Moshe Feinstein, *Iggerot Moshe*, *Y.D.* 2:174a.

pain should be discounted because they might be able to know....<sup>8</sup>

Other authorities, however, maintain that the value of life is infinite, absolute, indivisible, and incommensurable.<sup>9</sup> According to this opinion, the patient's life must be prolonged in every case, in every situation, and under all conditions even if his life expectancy is very short and even if he is suffering greatly and even if action is taken against his will.

## B. Ownership of one's Body

Two great authorities of the previous century differed on the question of ownership of a person's body. One maintained that no one owns his body.<sup>10</sup> The other maintained that a person's ownership of his body cannot be entirely denied. Rather, a person has partial ownership over his body in partnership with God.<sup>11</sup>

In any event, even according to the latter opinion ownership over one's body does not grant the right to injure it. Everyone agrees that murder is prohibited, even if the victim requests to be killed, because man is not the owner of his body.

The authorities are indeed divided on whether a terminal patient who is suffering greatly has an autonomous right to refuse

<sup>8</sup> *Iggerot Moshe*, Y.D. 2:174c.

<sup>9</sup> See Rabbi Yosef Babad, *Minchat Chinnuch* 34; Rabbi Yechiel Michel Tikochinsky, *Gesher ha-Chayyim* 1:2b, note. 3; Rabbi Yisrael Immanuel Jakobovits, *HaRefuah ve-ha-Yahadut*, 152; Rabbi Eliezer Yehuda Waldenberg, *Tzitz Eliezer* 10:25, ch. 6.

<sup>10</sup> Rabbi Shlomo Yosef Zevin, *le-Or ha-Halacha*, pp. 318 ff.; Rabbi Shlomo Zeven, *Halacha ve-Refuah* 2 (5741), pp. 93 ff.

<sup>11</sup> Rabbi Shaul Yisraeli, *ha-Torah ve-ha-Medina* 5-6 (5713-14), p. 106; Rabbi Shaul Yisraeli, *Amud ha-Yemini*, 16:16 and following. See also Rabbi Efraim Fishel Weinberger, *Resp. Yad Efraim* 14 regarding this controversy. The relevant halachic sources include *Bava Kama* 93a regarding giving permission to be injured; *Sanhedrin* 84b regarding sons phlebotomizing their fathers; Rambam, *Hil. Rotzeach* 1:4 regarding the ransoming of the murderer; Rambam, *Hil. Chovel u-Mazzik* 5:1 regarding injuring one's self; Rabbi David ben Zimra *ad* Rambam *Sanhedrin* 18:6 regarding self-incrimination; Rabbi Sh. Zalman, *Shulchan Aruch, Hil. Nizkei Guf ve-Nefesh* 4 regarding the logic of prohibiting self-injury. See also Rabbi Isaac ben Sheshet, *Resp.* 186 and 484; Rabbi Meir ben Baruch, *Resp.* 39 (in Prague edition); Rabbi Yair Chaim Bachrach, *Resp. Chavvat Yair* 163; Rabbi Arie Leib Ginzburg, *Turei Even, Meg.* 26a; Rabbi Yosef Babad, *Minchat Chinnuch* 48; Rabbi Arie Leib ben Yosef ha-Kohen, *Ketsot ha-Choshen* 246:1; Rabbi Moshe Feinstein, *Iggerot Moshe O.C.* 3:78; Rabbi Efraim Fishel Weinberger, *Resp. Yad Efraim* 14; Rabbi Shilo Refael, *Torah she-Baal Pe* 33 (5752), pp. 74 ff.

treatment to prolong his life (see *infra*). If the patient is incurable and treatment will prolong the patient's suffering, some have written that the patient must be informed and asked whether he wishes to be treated. But if the patient does not wish to continue his life of suffering, treatment should be withheld.

On the other hand, the patient must be informed and asked whether he wants to be treated for if he prefers a life of suffering over death, he is to be treated.<sup>12</sup> Similarly, if the patient is God fearing and lucid, it is preferable to explain to him that one hour of life in this world is worth more than the whole of the next world and that suffering in this world conveys greater merit than immediate death. If, despite all this, he does not want to suffer, his wishes should be respected.<sup>13</sup>

### C. The Attitude to Suffering

All authorities agree that suffering must be minimized.<sup>14</sup> Even convicts subject to the death penalty were given a drug to blunt their clarity of mind and minimize their suffering at death.<sup>15</sup>

Indeed, all authorities agree that in any event there is no room to permit killing a person in order to prevent suffering (see *infra*). However, the authorities are divided on the question of whether preventing ongoing suffering in a terminal patient justifies refraining from life-prolonging treatment or whether the value of life even in such situations is greater than the value of preventing suffering (see *infra*).

Some adduce Talmudic definitions to prove that interminable suffering is worse than death.<sup>16</sup> It follows from these that people prefer death to a life of great suffering and they are permitted to prefer death to interminable suffering. Therefore, in a case of severe suffering it is permitted to reject life-prolonging treatment.<sup>17</sup>

<sup>12</sup> Rabbi Moshe Feinstein, *Iggerot Moshe C.M.* 2:75a.

<sup>13</sup> Rabbi Shlomo Zalman Auerbach, *Resp. Minchat Shlomo* 1:91 (24).

<sup>14</sup> Regarding the significance of these principles from the Jewish point of view, see Prof. A. Steinberg, *Encyclopedia of Halacha and Medicine*, second edition, vol. 4, s.v. *yissurim*.

<sup>15</sup> *Sanhedrin* 43a; Tanchuma, *Pekudei* 2; Rambam, *Sanhedrin* 13:2.

<sup>16</sup> *Ketubot* 33b; *Tosafot*, *ibid.* s.v. *ilmalei*; *Tosafot*, *A.Z.* 3a, s.v. *she-lo*.

<sup>17</sup> Rabbi Moshe Feinstein, *Iggerot Moshe C.M.* 2:74b; Rabbi Avigdor Nebenzahl, *be-Yitzchak Yikkarei*, 57.

In addition, it has been claimed that excessive prolongation of life is not good.<sup>18</sup>

It has been further claimed that the requirement to save a person’s life applies only in those cases where the person saved will benefit from the prolongation of his life. In such a case it is even proper to violate Shabbat to save a life. But in a case where death is to be preferred, there is no requirement to save a life. Therefore, a terminal patient who is suffering greatly need not be saved.<sup>19</sup>

There are several proofs for this approach:

- There are biblical and Talmudic examples of people who prayed that God kill them in order to save them from suffering, *e.g.* Elijah,<sup>20</sup> Jonah,<sup>21</sup> and Choni Ha-me’aggel.<sup>22</sup> These examples imply that it is permitted to pray for death in order to escape great suffering.
- In rabbinic literature there are further examples of Sages who prayed for a merciful death for moribund patients or for patients who had become insane.<sup>23</sup>

The principal example of this is the story of the death of Rabbi Yehuda Ha-nasi whose disciples disagreed with his maidservant. The disciples prayed for prolonging his life despite his suffering; she preferred to pray for his death in order to end his suffering.<sup>24</sup>

In this case the *halacha* is in accord with the maidservant. There are times when one must pray for a merciful death, for example when a patient is suffering greatly and there is no hope of recovery.<sup>25</sup>

<sup>18</sup> Rabbi Shmuel Eliezer Idels *ad* Berachot 47a (*Chiddushei Aggadot*).

<sup>19</sup> Rabbi Zalman N. Goldberg, *Emek Halacha – ASSIA*, pp. 64 ff.; Rabbi Zalman N. Goldberg, *Emek Halacha 2* (5749), pp. 183 ff. See also Rabbi Moshe Zeev Zorger, *va-Yashev Moshe* 1:76; Rabbi M. Weinberger, *Emek Halacha – ASSIA*, pp. 53, ff.; Rabbi Moshe Herschler, *Halacha u-Refuah 2* (5741), pp. 29 ff.

<sup>20</sup> I Kings 19:4.

<sup>21</sup> Jonah 4:3.

<sup>22</sup> *Taan.* 23a.

<sup>23</sup> See *Taan.* 23a; *Bava Metzia* 84a. See also Rabbi Reuven Margoliot, *Nefesh Chaya* 292; Rabbi Eliezer Yehuda Waldenberg, *Resp. Tzitz Eliezer* 18:48 (end). See also Pal. Talm. *Shabbat* 19:2 (end) regarding Rabbi Ada bar Ahava.

<sup>24</sup> *Ketubot* 104a.

<sup>25</sup> Rabbi Nisim ben Reuven of Gironi *ad* *Nedarim* 40a, *s.v. ein*.

- According to the *halacha*, it is wrong to pray for return of a departing soul because the patient can in any event live for only a brief time with great suffering.<sup>26</sup>

However, others maintain that we are obliged to continue every patient's treatment under all circumstances even if he is suffering greatly. This is because the patient has an inherent right to life, even if his life is a life of suffering.<sup>27</sup>

#### D. The obligation to treat everyone

Everyone who is conversant with Torah ideology and fears Heaven knows that there is an absolute obligation to heal and save any person by any means possible. His degree of intelligence and scholarship is irrelevant.<sup>28</sup> Even if he is very old, it is definitely obligatory to heal him by any means possible just as if he were young.<sup>29</sup>

## II. The Definition of Terminal Illness

The *halachic* definition of terminal illness is not entirely clear. It is possible to equate the *halachot* of the terminal patient with those of a patient who has a prognosis of "imminent death" (*Chayei Sha'a*). The Sages, however, nowhere defined "imminent death."

Some maintain that "imminent death" has the same definition as *treifa*. According to this view, anyone who will not survive twelve months is considered to have a prognosis of imminent death whether he is expected to die from the specific disease he is suffering from or from some other disease.<sup>30</sup>

Another authority has written that any patient who is diagnosed as suffering from a condition that we know will be fatal is considered in the category of "imminent death" from the moment of diagnosis regardless of the patient's life expectancy.<sup>31</sup>

<sup>26</sup> Rabbi Yehuda ben Shmuel ha-Chasid, *Sefer ha-Chasidim* 234.

<sup>27</sup> Rabbi Eliezer Yehuda Waldenberg, *Resp. Tzitz Eliezer* 5, *Kunt. Ramat Rachel* 29; *ibid.*, 10:25, ch. 6:5-6 according to Sotah 22b; Rambam, *Sotah* 3:20. See also *Tos. Yom Tov ad Sotah* 1:9.

<sup>28</sup> Rabbi Moshe Feinstein, *Iggerot Moshe C.M.* 2:74a

<sup>29</sup> *Iggerot Moshe C.M.* 2:65g.

<sup>30</sup> Rabbi Shlomo Kluger, *Chochmat Shlomo Y.D.* 155:1; Rabbi Moshe Feinstein, *Iggerot Moshe C.M.* 2:75b.

<sup>31</sup> Rabbi Avraham Isaac ha-Kohen Kook, *Resp. Mishpat Kohen* 144:3.



Another authority has written that the prognosis of “imminent death” is worse than that of the moribund (*gosses*) because not even a small minority of “imminent death” patients survive whereas only a simple majority of moribund patients die.<sup>32</sup>

The decision to refrain from treatment to prolong the life of a terminal patient who is suffering can only be taken after all the physicians agree that there is no hope to save him. In this matter it is wrong to rely on the opinions of a few specialists.<sup>33</sup>

### III. Applications

#### A. Active Killing

Even if undertaken for reasons of mercy and compassion and even if a terminal patient is suffering greatly and even if a lucid patient clearly requests that he be killed, any form of active killing is prohibited. The killer has the status of a murderer and is liable to capital punishment, because there is no difference between killing a healthy person and killing a terminal patient. The death penalty applies even to the killing of a moribund patient because any action that shortens life, even by a moment, is prohibited as shedding blood.<sup>34</sup>

The prohibition of active killing, even in cases of great suffering, is based on a divine decree. It is surely God’s will that some people die a quick and easy death while others die a protracted and painful death. It is possible that those who die an easy death in this world are judged harshly in the next world while

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<sup>32</sup> Rabbi Yisrael Meir ha-Kohen of Radin, *Be’ur Halacha* 329 *s.v. ella*.

<sup>33</sup> Rabbi Moshe Feinstein, *Iggerot Moshe C.M.* 2:74a.

<sup>34</sup> *Shabbat* 151a; *Sanhedrin* 78a; Rambam, *Hil. Rotzeach* 2:7; Rabbi Yehuda ben Shmuel ha-Chasid, *Sefer ha-Chasidim* 315 (Mekitsei Nirdamim ed.); Rabbi Moshe Isserles *ad Y.D.* 339:1; Rabbi Avraham Danzig, *Chochmat Adam* 151:14; Rabbi Yechiel Michel Epstein, *Aruch ha-Shulchan*, *Y.D.* 339:1; Rabbi Moshe Feinstein, *Iggerot Moshe Y.D.* 2:174, 3:140, and *C.M.* 2:73a; Rabbi Eliezer Yehuda Waldenberg, *Resp. Tzitz Eliezer* 5, *Kunt. Ramat Rachel* 29; *ibid.*, 9:47 and 10:25, ch. 6; Rabbi Shmuel Baruch Werner, *Torah she-Baal Pe* 18 (5736), pp. 38 ff.; Rabbi Nisim Telushkin, *Or ha-Mizrach*, *Nissan* 5721, p. 20; Rabbi Simcha ha-Kohen Kook, *Torah she-Baal Pe* 18 (5736), pp. 82 ff.; Rabbi Baruch Pinchas Toledano, *Barkai* 4 (5747), pp. 42 ff.; Rabbi Yisrael Meir Lau, *Resp. Yachel Yisrael* 2:87.

those who die a painful death in this world earn a meritorious place in the next world.<sup>35</sup>

## B. Assisted Suicide

According to Torah law it is prohibited to cause death even indirectly.<sup>36</sup> The physician is therefore prohibited from assisting a terminal patient to commit suicide.

## C. Refraining from life-prolonging treatment; halting life-prolonging treatment

If a terminal patient is suffering greatly, or even undergoing only mental pain, and wishes that his life not be prolonged by any procedure that would increase his suffering, many authorities maintain that it is permitted to refrain from life-prolonging treatment. But there is no prohibition to prolong his life in such a situation.<sup>37</sup>

If a terminal patient is in pain, some even maintain that it is obligatory to refrain from prolonging his life of suffering, and it is prohibited to take any step to prolong the pain of a dying, moribund patient.<sup>38</sup>

<sup>35</sup> Rabbi Chaim David ha-Levi, *Techumin* 2 (5741), pp. 297 ff. See also Rabbi Yaakov Tsvi Meklenburg, *ha-ktav ve-ha-Kabbala ad* Gen. 9:5, who adduced a biblical source opposing euthanasia even if done for the benefit of a patient who is suffering greatly.

<sup>36</sup> Rambam, *Hil. Rotzeach* 2:2, “Anyone who causes a death is guilty of a great sin and liable to the death penalty imposed by Heaven”.

<sup>37</sup> Rabbi Yosef Shalom Eliashiv, quoted in Prof. Avraham S. Avraham, *Nishmat Avraham*, second editon, *Y.D.* vol. 2, 339:2; Rabbi Shlomo Zalman Auerbach, *Resp. Minchat Shlomo* 1:91, sect. 24; Rabbi Dov Moshe Wolner, *ha-Torah ve-ha-Medina* 7-8 (5716-17), pp. 316 ff.; Rabbi Moshe Herschler, *Halacha u-Refuah* 2 (5741), pp. 29 ff.; Rabbi Shlomo Goren, *Meorot* 2 (5740), pp. 28 ff.

<sup>38</sup> Rabbi Ovadia Hadayya, *Resp. Yaskil Avdi*, vol. 7, *Y.D.* 40; Rabbi Moshe Feinstein, *Iggerot Moshe Y.D.* 2:174c; Rabbi Moshe Zeev Zorger, *va-Yashev Moshe* 1:76; Rabbi Shmuel Wosner, *Resp. Shevet ha-Levi* 6:179 (See, however, Rabbi Wosner’s responsum in Prof. A. Steinberg, ed., *Encyclopedia of Halacha and Medicine* 3:19 and *Resp. Shevet ha-Levi* 8:151d, where he tends to say that there is merely no obligation to prolong the life of a suffering, moribund patient. See also *Resp. Shevet ha-Levi* 8:86 and 8:287c.); Rabbi Moshe Halberstamm, *Resp. Divrei Moshe* 95. A similar conclusion follows from Rabbi Yaakov Yisrael Kanievsky, *Karyana de-Iggerata*, 190.

If a terminal patient is totally unconscious and it is unclear whether he is in pain, it has been written that we are obligated to treat him by all means, including resuscitation.<sup>39</sup>

Others have written that even deeply comatose patients are in pain. It is therefore permitted to refrain from prolonging their lives.<sup>40</sup>

Some authorities maintain, that there is no distinction to be drawn between various therapies or between various patient categories. As long as the patient is alive, it is obligatory to continue treatment in every situation, utilizing all available means, in order to prolong life. This is so even if the patient is suffering and even if he wishes to reject treatment.<sup>41</sup>

According to those who maintain that it is correct to refrain from prolonging life in certain conditions, or that is obligatory to do so, several limits and conditions pertain as follows:

1. In principle, it is obligatory to continue those treatments which fulfill the patient's natural needs, *e.g.* food, drink, and oxygen; and those treatments that any other patient would receive to prevent complications, *e.g.* antibiotic treatment for lung inflammation or blood infusion for severe hemorrhage.

These treatments are obligatory even against the patient's will. On the other hand, there is no obligation to take any step intended to treat the patient's underlying

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<sup>39</sup> Rabbi Yosef Shalom Eliashiv, quoted in Prof. Avraham S. Avraham, *Nishmat Avraham*, second edition, *Y.D.* vol. 2, 339:2.

<sup>40</sup> Rabbi Moshe Feinstein, *Iggerot Moshe Y.D.* 2:174c and *C.M.* 2:74a; Rabbi Shlomo Zalman Auerbach, quoted in Prof. Avraham S. Avraham, *Nishmat Avraham*, second edition, *Y.D.* vol. 2, 339:2. When my father was terminally ill, he was being mechanically ventilated due to respiratory insufficiency. In addition, he received dialysis treatment due to acute and complete renal failure, he was hemorrhaging due to DIC, he was absolutely unconscious, and he was receiving an infusion of norepinephrine bitartrate to maintain his blood pressure. Rabbi Shlomo Zalman Auerbach instructed me not to interrupt the infusion as long as any liquid remained in the IV pouch. Rabbi Auerbach ruled not to renew the dopamine after the IV bottle finished and around fifteen minutes after the pouch emptied, my father passed away.

<sup>41</sup> Rabbi Yisrael Immanuel Jakobovits, *ha-Refuah ve-ha-Yahadut*, pp. 146 ff.; Rabbi Eliezer Yehuda Waldenberg, *Resp. Tzitz Eliezer* 5, *Kunt. Ramat Rachel* 25; *ibid.* 9:47, 13:87-89, 14:80-82, 18:62; Rabbi J.D. Bleich, *Judaism and Healing*, ch. 24.

condition or any severe, clearly fatal complication where such step is merely intended to prolong life for a brief time without any possibility of cure while certainly increase pain and suffering. Similarly, there is no obligation to take any such step against the patient's will.

Included in this category are resuscitation, ventilation, surgery, dialysis, chemotherapy, radiation therapy, etc.<sup>42</sup>

### **A published opinion:**

According to Torah law, it is obligatory to treat the patient even if in medical opinion he is terminal. The treatment must include all routine medications and medical procedures needed. Heaven forbid that the patient's relief from suffering be attained through hastening his death by refraining from giving him nourishment or medical treatment!

All the more so is it prohibited to hasten his death by any positive action (even if it is clear that he is about to die, in which case it is prohibited to move him since he is moribund). Following is a list of medical procedures as formulated by senior physicians...

Signed,

Yosef Shalom Eliashiv, Shlomo Zalman Auerbach

Shmuel ha-Levi Wosner, Sh.Y. Nisim Karelitz

These are the medical procedures as formulated by senior physicians: The terminal patient must be provided nourishment and, if needed, nasogastric intubation, gastrostomy, intravenous infusion, injection of insulin, morphine in regulated dosages, antibiotics, and blood transfusion.

2. If the physicians are of the opinion that it is impossible to save the patient despite maximal therapeutic efforts in

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<sup>42</sup> Rabbi Shlomo Zalman Auerbach, *Resp. Minchat Shlomo* 1:91 (24); Rabbi Shlomo Zalman Auerbach quoted in Prof. Avraham S. Avraham, *Nishmat Avraham*, second edition, *Y.D.* vol. 2, 339:4; Rabbi Shlomo Zalman Auerbach, *Halacha u-Refuah* 2 (5741), p. 131; Rabbi Moshe Feinstein, *Iggerot Moshe Y.D.* 2:174 and *C.M.* 2:73a.

an intensive care unit (for example, if the patient exhibits terminal and irreversible insufficiency of at least three vital systems, all the physicians treating him conclude that it is impossible to save him, his death as result of his disease is imminent, and the physicians believe the patient to be suffering), some authorities maintain that it is permitted to refrain, to stop, or to alter diagnostic procedures and various therapies if the patient will not die immediately from these actions, even though they will result in his death from his disease within a few hours and if they are done gradually in a controlled environment with proper follow-up.

But it is in any event prohibited to take any action that will cause the patient's immediate death. Therefore, it is improper to start any new treatment that will prolong the patient's suffering without any hope of saving him. This includes antibiotic treatment and the like, cessation of various tests, such as blood test intended to clarify the patient's condition, as the patient is suffering and these test serve no useful purpose.

There is no need to continue monitoring a patient in such a condition. Therefore, blood pressure, pulse, and oxygenation levels need not be monitored even though instrumentation attached to the patient's body performs these tests automatically.

Palliative treatment should be continued.

Any action that will lead to the immediate death of the patient is prohibited. Even if it is only possible that the action will immediately kill the patient, it is prohibited.

If the physicians maintain that the patient's respiration is wholly dependent on a ventilating machine, it is prohibited to switch it off. If the physicians maintain that stopping a medication like dopamine will lead to an immediate drop in blood pressure and the patient's immediate death, it is prohibited to stop the medication completely.

In the case of a suffering patient, it is permitted to cease or alter treatments gradually when such cessation or

alteration will not immediately kill the patient even though he might die from his illness within a few hours. Careful observation and follow-up are of course required in these situations.

It is therefore permissible to lower the patient's respiration rate as regulated by a ventilating machine until he exhibits spontaneous breathing; it is permissible to lower the O<sub>2</sub> concentration in the patient's blood to 21%, which is the O<sub>2</sub> concentration in the ambient atmosphere. It is permissible to lower dopamine dosage gradually, assuming that no significant change is expected in the patient's blood pressure or that a small, expected decline in blood pressure would not be immediately fatal. It is permissible to cease intravenous infusion of concentrated nutrients and to transfer the alimentation to a nasogastric feeding tube or even to reduce intravenous alimentation to water and sugar. It is permissible to cease prophylactic medications such as heparin or H<sub>2</sub> blockers that are intended to prevent blood clotting or hemorrhaging. And it is permissible to cease insulin therapy that is intended to reduce high sugar levels in the patient's blood. All this is permissible if the patient is suffering.

Similarly, it is permissible to refrain from restarting medical or other therapies such as dialysis that are administered cyclically rather than continuously. It is permissible to refrain from restarting dopamine therapy after the infusion pouch has emptied. And it is permissible to refrain from restarting antibiotic therapy after the infusion pouch has emptied. All this is permissible if the patient is suffering.<sup>43</sup>

The authorities have discussed the following specific matters:

- a. Nutrition and Liquids – According to all the authorities it is prohibited to stop administering nutrients or liquids to hasten the death of a patient suffering from a fatal condition. This is prohibited even when done

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<sup>43</sup> Rabbi Shlomo Zalman Auerbach and Rabbi Shmuel Wosner as outlined by Prof. Avraham Steinberg in *ASSIA* 63-64 (5729), pp. 18-19.

through passive means.<sup>44</sup> Since eating is a natural process and since all humans and animals must eat, denying nutrition is considered murder.<sup>45</sup>

If the patient refuses to eat, it is obligatory to try to explain to him the importance of nutrition. If nonetheless he refuses, some authorities maintain that he should not be forced to eat as long as he is an adult and in possession of his faculties.<sup>46</sup> Others maintain that it is obligatory to feed him even against his will.<sup>47</sup> In any event, if in medical opinion the patient has no chance of survival and he is suffering, it is permissible to cease intravenous administration of concentrated nutrients and to transfer the patient to nasogastric, tubal feeding or to reduce intravenous alimentation to water and sugar.<sup>48</sup>

- b. Oxygen – It is prohibited to cease oxygen therapy in a moribund patient.<sup>49</sup> Some authorities draw this conclusion from the opinion of Maimonides,<sup>50</sup> according to whom walling a person in so that he cannot breathe is a capital offense because it is like strangling him.
- c. Resuscitation and Ventilating Machines – Among the therapeutic procedures that may be stopped for a

<sup>44</sup> Rabbi Shlomo Zalman Auerbach, *Resp. Minchat Shlomo* 1:91 (24); Rabbi Moshe Feinstein, *Iggerot Moshe C.M.* 2:74c; Rabbi Moshe Herschler, *Halacha u-Refuah* 2 (5741), pp. 29 ff.; Rabbi Yitzchak Isaac Liebes, *Resp. Beit Avi C.M.* 153; Rabbi Zalman N. Goldberg, *Emek Halacha – ASSIA*, p. 64; Rabbi Yekutiel Yehudah Greenwald, *Kol Bo Aveilut* 1:21.

<sup>45</sup> As is made clear in *Sanhedrin* 77a and Rambam, *Hil. Rotzeach* 3:10, “If he binds someone and leaves him to starve to death, he is a murderer. And He who demands blood will demand his blood.” A similar conclusion follows from Rabbi Nisim *ad Rif Shavuot* 10 regarding an oath not to sleep for three days.

<sup>46</sup> Rabbi Moshe Feinstein, *Iggerot Moshe*, *ibid.*; Rabbi Shlomo Goren, *HaRefuah* 124:516 (1993).

<sup>47</sup> Rabbi Shlomo Zalman Auerbach, *Resp. Minchat Shlomo*, *ibid.*

<sup>48</sup> Oral communication from Rabbi Shlomo Zalman Auerbach.

<sup>49</sup> Rabbi Moshe Feinstein, *Iggerot Moshe C.M.* 2:73a; Rabbi Shlomo Zalman Auerbach, *Resp. Minchat Shlomo* 1:91 (24); Rabbi Yitzchak Isaac Liebes, *Resp. Beit Avi C.M.* 153.

<sup>50</sup> *Hilchot Rotzeach* 3:1.

moribund patient are resuscitation and artificial ventilation.

Contemporary authorities are divided on the permissibility of switching off a ventilating machine where artificial ventilation of a terminal patient has already been instituted and in medical opinion the patient has no hope of survival. According to some authorities, it is permissible, or even obligatory, to switch off the machine in order to reduce the patient's suffering.<sup>51</sup> They reason that the ventilating machine is artificially impeding the departure of the soul; therefore, it may be switched off. If the therapy was improperly instituted in order to prolong the moribund patient's life, it may be stopped thereby enabling the patient to die.

Most authorities, however, maintain that it is always prohibited to remove a patient from a ventilating machine.<sup>52</sup> Since the ventilating machine is vital and since it is physiological and is attached to the patient, they reason that it is not to be considered as something that is blocking the departure of the soul. Therefore, switching the machine off constitutes actively causing the patient's death even if it had not been obligatory to switch the machine on. Nonetheless, the original switching of the machine on constituted a fulfillment of the divine commandment to treat the patient.

One of the authorities who prohibit switching the machine off maintains that the preferred method is to use a ventilating machine that is regulated by a timer. The timer causes the machine to operate at regular intervals, briefly switching it off from time to time. If

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<sup>51</sup> Rabbi Chaim David ha-Levi, *Techumin* 2 (5741), pp. 297 ff.; Rabbi Chaim David ha-Levi, *Ase Lecha Rav* 5:30; Rabbi Baruch Rabinowitz, *ASSIA* 1 (5736), pp. 197 ff.; Rabbi Baruch Pinchas Toledano, *Barkai* 4 (5747), pp. 42 ff.

<sup>52</sup> Rabbi Moshe Feinstein, *Iggerot Moshe Y.D.* 3:132; Rabbi Shlomo Zalman Auerbach in Avraham Steinberg, *ASSIA* 53-54 (5754), p. 5; Rabbi Yitzchak Isaac Liebes, *Resp. Beit Avi* 153; Rabbi Ben Zion Firer, *Techumin* 7 (5746), pp. 219 f.; Rabbi Yitzchak Yedidya Frankel, *ASSIA* 3 (5743), pp. 463 ff. See also Rabbi Yisrael Meir Lau, *Resp. Yachel Yisrael* 2:87.



the patient is determined to be dead during the time that the machine is switched off, he may be removed from the machine.<sup>53</sup>

Others have written that when the machine is momentarily switched off to administer some treatment such as clearing fluids from the patient’s lungs or to maintain the machine, there is no need to restart the machine if it is clear that the patient is no longer breathing and his condition halachically justifies refraining from any life-prolonging treatment.<sup>54</sup>

If in medical opinion the patient is suffering and has no chance of survival despite maximal therapeutic efforts in an ICU, others permit reducing the respiration rate as regulated by the machine to a level where the patient can breath on his own or lowering the O2 concentration in the patient’s blood to 21%, which is the O2 concentration in the ambient atmosphere.<sup>55</sup>

- d. Medications – Life-prolonging medications intended for terminal illnesses are, according to some authorities, obligatory even though they cannot cure the patient. Ceasing such treatment is tantamount to killing.<sup>56</sup>

Most authorities, however, maintain that such medications should not be administered because they merely prolong the patient’s suffering by delaying his death while providing no benefit, especially if the patient requests that such medications be stopped.<sup>57</sup>

Medications like insulin for diabetics, antibiotics for various infections such as pneumonia or UTI,

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<sup>53</sup> Rabbi Eliezer Y. Waldenberg, *Tzitz Eliezer* 13:89.

<sup>54</sup> Rabbi Moshe Feinstein, *Iggerot Moshe Y.D.* 3:132; Rabbi Zalman N. Goldberg, *Emek Halacha – ASSIA*, pp. 64 ff.

<sup>55</sup> Rabbis Shlomo Zalman Auerbach and Shmuel Vosner, note 43 *supra*.

<sup>56</sup> Rabbi Moshe Herschler, *Halacha u-Refuah* 2 (5741), pp. 29 ff.; Rabbi Baruch Pinchas Toledano, *Barkai* 4 (5747), pp. 42 ff.

<sup>57</sup> Rabbi Moshe Feinstein, *Iggerot Moshe C.M.* 2:74a. See also *Iggerot Moshe C.M.* 2:73e; Rabbi Shlomo Zalman Auerbach, *Resp. Minchat Shlomo* 1:91 (24); Rabbi Yitzchak Isaac Liebes, *Resp. Beit Avi C.M.* 153; Rabbi Moshe David Wolner, *ha-Torah ve-ha-Medina* 7-8 (5715-17), pp. 315 ff.

dopamine for maintaining blood pressure, anti-coagulants, coagulants or hemostatics such as heparin and H2 blockers are administered for conditions other than the one which is causing the patient's death or for resolvable complications. If it is medically clear that there is no hope to save the patient's life and that he is suffering, one authority has written that one should refrain from prolonging the patient's life with these medications.<sup>58</sup>

Other authorities maintain that it is permissible to lower the dosage of these medications gradually so that no significant change will occur in the patient's condition.<sup>59</sup>

Others maintain that therapy of secondary conditions must be continued as long as such therapy is effective even though the patient is suffering from another, terminal disease. Such therapy is required even against the patient's will.<sup>60</sup>

- e. ALS (Amyotrophic Lateral Sclerosis) – This is the most common form of neuromuscular disease. It is an advanced degenerative disease of the musculature of unknown etiology. It causes gradual paralysis of all muscles, including the muscles needed for breathing, except the oculomotor muscles. In the advanced stage of the disease, the patient cannot move any part of his body, even the muscles necessary for breathing. At this point, the patient will die by suffocation unless he is attached to a ventilating machine when, as stated, he will be able to control only his oculomotor muscles.

According to some authorities, it is permissible to refrain from attaching such a patient to a ventilating machine because of the great suffering he will experience during the remainder of his life, especially if

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<sup>58</sup> Rabbi Ovadia Hadayya, *Resp. Yaskil Avdi*, vol. 7, Y.D. 40.

<sup>59</sup> Rabbis Shlomo Zalman Auerbach and Shmuel Vosner, note 43 *supra*.

<sup>60</sup> Rabbi Ovadia Hadayya, *Resp. Yaskil Avdi*, vol. 7, Y.D. 40.

he requested this while he was still healthy.<sup>61</sup> If such a patient is suffering from pneumonia, he should be given oral antibiotics. But if he does not wish to prolong his life, it is not obligatory to administer any intravenous therapy.<sup>62</sup>

It must indeed be emphasized that the decision to refrain from artificial respiration does not mean neglecting the patient. There are therapeutic methods for attenuating the patient's terminal condition. It must similarly be noted that there are less invasive therapeutic methods available to stabilize his condition and at times even improve it. For example, patients with chronic neuromuscular diseases can benefit from various respiratory devices that do not adversely affect their basic quality of life. ALS patients who choose home-based respirators are satisfied with the results. Most therapists, however, report serious difficulties.

It should be noted that there are many other neuromuscular diseases that exhibit increasing difficulty in respiration similar to ALS. When they are old enough to express their will, a number of surveys indicate that children with life-long conditions such as these say they prefer resuscitation and ongoing artificial respiration by various methods.

#### **D. Prolonging Life in Conformance with the Patient's Will**

The patient must be informed of his condition and asked whether he wants to receive lifesaving treatment even though prolonging his life will prolong his suffering. If he prefers a life of suffering over death, he must be treated<sup>63</sup> both on Shabbat and weekdays.

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<sup>61</sup> Rabbis Shlomo Zalman Auerbach and Yosef Shalom Eliashiv quoted in Prof. Avraham S. Avraham, *Nishmat Avraham*, second edition, Y.D. vol. 2, 339:2; Rabbi Yisrael Meir Lau, *Resp. Yachel Yisrael* 2:62.

<sup>62</sup> Rabbi Shlomo Zalman Auerbach, *ibid.* (note 52).

<sup>63</sup> Rabbi Moshe Feinstein, *Iggerot Moshe C.M.* 2:75a.

## E. Analgesics

Analgesic treatment, as with narcotic based medicines, is permissible even if there is a slight chance that they may hasten the terminal patient's death. Since pain and suffering are part of the disease, it is permissible to treat them as with any other aspects of disease despite the dangers that such treatments entail.

This *halachic* position depends on the following conditions: (a) The treatment must be administered for the purpose of alleviating pain, not in order to hasten the patient's death; (b) the physician must be fully conversant with these methods of treatment; (c) if the patient's condition is so severe that a single injection of morphine might arrest his respiration but he is attached to a ventilator, the treatment is still permissible.<sup>64</sup>

Some maintain that administering narcotic medications can even prolong life because reduction of pain and suffering causes the patient to feel better enabling him to eat and drink better.<sup>65</sup>

## F. Transferring therapy to another therapist

If the family objects to the therapist's efforts to treat a patient in a life-threatening condition and the law of the land prohibits the practitioner from violating the family's will and threatens him with loss of his license and his livelihood, he is not obligated to try and revive the patient and he is exempt from the Commandment "thou shalt not stand idly by".<sup>66</sup>

Source: ASSIA – Jewish Medical Ethics,

Vol. VI, No. 2, October 2008, pp. 30-40

<sup>64</sup> Rabbi Sh.Z. Auerbach, quoted in Prof. Avraham's *Nishmat Avraham* (Y.D. 229:4) and Rabbi M. Feinstein (*Iggerot Moshe C.M.* 2:73a) wrote that it is permitted with the condition that no shortening of life occur and that he not be *gosses*; Rabbi Y.I. Liebes (*Resp. Beit Avi C.M.* 153); Rabbi E.Y. Waldenberg (*Resp. Tzitz Eliezer* 13:87 and 14:103); Rabbi J.D. Bleich (*Judaism and Healing* 24). See, however, Rabbi A. Nebenzahl's article (*Assia* 4:260 ff.), according to whom palliative treatment which shortens life is prohibited as an act of murder. He does, however, quote R. Sh.Z. Auerbach who permitted palliative treatment because not every individual injection shortens life. Rather, the series of injections shortens life. See Rabbi I.M Lau's article (*Torah she-ba'al Pe* 25:58 ff.).

<sup>65</sup> Rabbi Y.I. Liebes (*Resp. Beit Avi C.M.* 153); Rabbi E.Y. Waldenberg (*Resp. Tzitz Eliezer* 13:87).

<sup>66</sup> Rabbi E.Y. Waldenberg (*Resp. Tzitz Eliezer* 18:40).