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Treatment of Terminally Ill Patients According to Jewish Law

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A central tenet of Jewish law and tradition is the sanctity of all human life. The commandment to observe the Sabbath and almost all other religious laws may be violated to protect or save a life and even to extend life for a brief period of time. There is thus a widespread perception that *halakha*, Jewish law, mandates that all measures be taken to extend a dying person's life regardless of financial cost, emotional burden to the family, and prolonged suffering of the patient. This is the perception both within much of the Orthodox Jewish community and among medical health professionals. In truth the well-established and majority position of the authorities of Jewish law is that, in the case of a terminally ill patient, particularly one in pain, such life-extending measures are not mandated and they may even be forbidden.

This article provides an overview of the sometimes competing principles that come into play in such cases and the range of rabbinic opinions in these matters. We will look at: (a) the duty to heal and patient autonomy; (b) the sanctity of life, the duty to alleviate suffering, and the balance between the two; (c) withholding as opposed to withdrawing treatment; and (d) feeding tubes and treatment of secondary conditions.

A few brief comments about the nature of *halakha*. Jewish law derives from the Talmud—a voluminous collection of the rulings, discussions and debates of the rabbis from 100 BCE to 500 CE—and its medieval commentators. The final law is often a matter of debate, hinging on which passages are seen to be authoritative and how to interpret and apply them. Unlike secular law, there is almost no new legislation in *halakha*. All law has to be based on rulings and principles already articulated in the Talmud and its commentators. This proves to be particularly challenging in the area of medical *halakha*, inasmuch as many of the most pressing issues today were not imaginable even a century ago. Questions about such topics as surrogate motherhood, the moment of death, and use of feeding tubes, respirators, and the like were never addressed in the Talmud. Some of the knottiest questions come down to the translation of these ancient texts and applying their abstract principles to the concrete realities of today.

The Duty to Heal and Patient Autonomy

Jewish law recognizes a Biblically derived duty to heal the sick and to preserve life. When a life is at risk, even when the risk is small, this duty is so great that it overrides religious prohibitions. This is true even when the life cannot be saved but only extended for a brief period of time [1].

This duty to preserve life applies to all those who can offer aid and even to the patient herself. A person's life is not seen as his to dispose of as he wishes but as having intrinsic sanctity or, to put it in religious terms, as belonging fully or partly to God. Not only suicide, but also any form of self-injury, is prohibited [2-4].

This raises important questions about the permissibility according to Jewish law of a patient's refusing life-saving treatments, given that the key consideration is not that of self-determination but of the duty—of the doctor and the patient—to protect life. Nevertheless, Rabbi Moshe Feinstein, the preeminent halakhic authority of the twentieth century, among others, allows for a significant role for patient autonomy. He rules that, when the treatment entails even a small element of risk, the patient has the right to refuse it, even if such risks are minimal compared to the risk of forgoing the treatment [5].

Rabbi Feinstein goes further to state that, even when a curative treatment entails no risk, if forcing such a treatment will cause the patient to become highly distressed then it should not be administered. It can be assumed that forcing treatment in such a case will only serve to worsen the patient's condition. This is not applicable when the patient is unconscious, even if he or she had expressed wishes beforehand. In that case, the treatment will be administered.

The Sanctity of Life and Alleviating Suffering

In addition to a duty to preserve life, Jewish law also recognizes a duty to alleviate suffering. The Talmud states that extreme suffering can be a fate worse than death [6-8]. The question then becomes how one is to balance the duty to preserve life when it conflicts with the duty to alleviate suffering. Inasmuch as suffering is always the subjective experience of the person herself, all authorities agree that a terminally ill patient can choose to tolerate suffering and to take interventions that will extend life. But in a case in which she would prefer a quick death or we cannot know his desires, what is the proper course of action? Should the duty to preserve life take priority and demand that life-extending treatments be administered, or should the duty to alleviate suffering take priority and demand that no intervention, save those to alleviate pain, be taken?

A small number of rabbinic authorities assert that the duty to protect life is paramount in all situations. They require that any and all life-extending measures be taken [9, 10]. Contrary to popular misconception, this is only a minority opinion. The majority of decisors, including the most authoritative and influential ones of the last half century, rule that one should allow natural death to take its course, and that one is not required [11-13], and according to some even forbidden [14-16], to intervene in such a case. As evidence of this, these decisors cite the Talmudic story of Rabbi Judah the Patriarch, who was dying in great pain. His students prayed for his life to be extended while his maidservant interrupted their prayers so that his soul could pass and his suffering could end. The Talmud's sympathies are with the maidservant [17, 18].

Another relevant source is *Sefer Hasidim*, a pietistic-halakhic work written by Rabbi Yehudah haHasid ("the pious one") at the end of the thirteenth century in Germany. He writes as follows:

> We do not cry out for a moribund person at the moment of the departing of the soul, lest his soul return and he will then suffer affliction. "There is a time to die" (Eccl. 3:2).What is the meaning of this? It is to teach that when a person is moribund and his soul is departing, we do not pray that his soul return to him because he would in any event be able to live only a few more days, and those days would be in pain [19].

In the case of an unconscious terminally ill patient, some authorities rule that, since suffering is not a factor, life-extending measures must be taken [20]. Others disagree, asserting that we must assume the patient is experiencing pain even subconsciously and we may not use life-extending measures [21, 22, 23].

While this issue has been framed in terms of balancing the obligation to prolong life against the obligation to alleviate suffering, we will see in the next section that it may also be framed as the difference between prolonging life and postponing death. Suffering aside, Jewish law may mandate that we do not obstruct a natural death from running its course. This is an additional reason to allow or require noninterference in the case of an unconscious terminally ill patient [24].

Withholding versus Withdrawing

The position that one need not or is actually forbidden to administer life-prolonging treatment for a terminally ill patient is limited to the passive nonadministration of treatment. To actively shorten a life, either directly or indirectly, is strictly forbidden regardless of the life expectancy, mental state, or capacities of the patient [14, 25-28]. Euthanasia is considered murder, and assisted suicide is indirect murder.

None of this would seem to be relevant to the question of withdrawing treatment. From the medical perspective there is no difference between withdrawing a treatment and choosing not to administer it in the first place [29-31]. Some have argued, however, that, from the perspective of Jewish law, the withdrawing of certain treatments is tantamount to actively hastening death. A key text in this regard is another passage from *Sefer Hasidim*:

> We do not act to postpone a person's death. For example, if a person was moribund and a woodchopper was near that house and the soul could not depart (because of the sound of the chopping of the wood), we remove the woodchopper from that area. We [also] do not place salt on a patient's tongue to prevent him from dying. [However,] if he is moribund and says: "I cannot die until I am moved to another location," he is not to be moved [32].

This text has been the subject of heated debate [33-39], with authorities attempting to clearly delineate the difference between removing the woodchopper, which is required as it will allow for his death to proceed according to natural course, and moving the person to allow her to die, which is forbidden. The key principle, however, is clear: one may not hasten a death (the case of moving the patient), but one must not obstruct a natural death from taking place (the cases of not placing the salt on the tongue and of removing the woodchopper).

On the basis of this distinction, many authorities have ruled that, while withholding life-prolonging treatment from a terminally ill patient would be permitted, withdrawing treatment that would lead immediately to the patient's death would be forbidden since this would constitute an active hastening of death. This ruling would be moot in many cases, inasmuch as most treatments once started have to be readministered on a regular basis. The choice could thus be made to not readminister the treatment which would constitute withholding rather than withdrawing treatment.

The case of a ventilator, however, is different since without intervention this treatment will continue unabated. Moreover, a ventilator takes over a vital function of the body and can be considered to become integrated into the person's physiological functions. Thus, according to many decisors, once a person is put on a ventilator he or she cannot be taken off, as doing so would constitute hastening death [40, 41]. This creates tremendous challenges for the medical team and the family by closing off options after ventilation has begun and making the decision to put a person on a ventilator that much more difficult, since there will be no going back from that decision. However, this position is not unanimous; a number of decisors have ruled that there is no substantive difference between not administering ventilation and discontinuing it once begun [42-44]. In either case, the ventilator is obstructing nature from taking its course. According to this position, removal of a ventilating machine is considered to be allowing a natural death to occur and is permitted.

Finally, in the case of a terminally ill patient, most authorities would allow the cessation or gradual altering of a treatment when such actions would not lead to the immediate death of the patient, even though death may occur within a few hours. This would not be considered hastening death, merely the cessation of a therapy [45].

Feeding Tubes and Secondary Conditions

The U.S. Supreme Court, in *Cruzan v. Director, Missouri Department of Health*, ruled that nutrition and hydration were no different than any other medical intervention and could be withdrawn from a patient [46]. This position is generally rejected in Jewish law; most authorities deem the withholding of nutrition even by forgoing insertion of a percutaneous endoscopic gastrostomy (PEG) tube to be a form of starvation [12, 47]. If the patient refuses such interventions and they would have to be physically forced upon him, some rule that such treatment should be withheld. Others insist that this treatment be administered against the patient's will [12]. In cases of a terminally ill and suffering patient, these latter authorities would

allow the administration of concentrated nutrients to be replaced with that of sugar and water [41] so as not to overly prolong the dying process.

There are some authorities who rule against this majority position. According to them, feeding tubes are medical interventions and may be withheld from a dying patient in pain, in particular when their insertion is of questionable medical value and may increase the patient's suffering [48].

Like the insertion of feeding tubes, treatments of conditions unrelated to the underlying illness and treatments for the sake of preventing complications are therapies that, according to many authorities, cannot be withheld from a terminally ill patient. These therapies would fall under the normal duty of care, as the secondary conditions themselves are treatable [49-51]. Other authorities disagree, ruling that such treatments need not be administered since they only serve to prolong the suffering of a terminally ill patient [52, 53].

Conclusion

The mandate to alleviate suffering and to allow death to take its natural course allows and may even require that no life-prolonging interventions be made. Whether such passive nonintervention allows for the withdrawal of treatment, in particular taking a patient off a ventilator or not administering feeding tubes, is a matter of some debate. The widespread perception that Jewish law unequivocally demands that all measures be taken to prolong the life of a dying patient is incorrect. According to most authorities, the sanctity of human life and the duty to protect that life does not translate into a duty to prolong suffering for a terminally ill patient for whom there is no hope of a cure.

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