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**Non-Halakhic Considerations Regarding
the Treatment of the
Terminally Ill Patient**

Amy B. Bigman

Thesis submitted in partial fulfillment of the
requirements for Ordination

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Referee: Dr. Mark Washofsky

DIGEST

This thesis seeks to answer a question which is of great importance today: "Do *poskim* consider any factors outside of the traditional *halakha* when addressing the issue of withdrawal of medical treatment from a terminally ill patient?" More specifically, are factors such as the patient's pain, financial and emotional concerns, and the concept of "death with dignity" considered when deciding if medical treatment may be removed from a patient?

The first chapter of this thesis sets the stage by comparing the *halakhic* system with the American secular judicial system. Theories are presented to attempt to clarify how judges approach questions to which there is no clear answer or precedent, given the restraints of the system within which they are working.

The second chapter provides translations of the pertinent traditional sources used by the *poskim*. Suggestions are also made as to how each of these sources might be used by the *poskim* in their decision-making process.

The next chapter surveys modern *responsa* which deal with the treatment of the terminally ill patient. Each *posek's* work is summarized and analyzed individually. This is followed by a chapter which notes if *poskim* mention non-*halakhic* factors in their *responsa*. Which factors, and how they were used, are also discussed in this chapter.

The study of the role of non-*halakhic* factors in

modern *halakhic* decision-making is an important step in understanding how the *halakhic* system works. Further investigation is necessary in order to obtain a complete picture of the *halakhic* system. It is hoped that this thesis may be the first step in that process.

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INTRODUCTION

A judge's role in the legal system is to make decisions based upon the legal sources available. The judge uses the general laws found in the sources in order to arrive at decisions regarding particular cases. In most instances the resolution of the case is clear based upon a thorough investigation of the sources. Some cases, however, are more difficult to resolve. In instances such as these the judge's role changes. The judge no longer merely finds the relevant legal sources and applies them to the case at hand, but rather must now resolve the case based upon factors not found in the sources. Whether or not individual judges should have the power to decide cases using extra-legal factors has been the topic of much discussion in secular jurisprudential circles. Moreover, which factors judges may use in making such determinations -- if indeed any at all -- has been of concern as well. The use of extra- or non-legal factors is a problem which plagues Jewish law as well.

As medical technology becomes more sophisticated, the length of people's lives has been extended. Such development is, of course, to be applauded in many instances. However, there are cases in which medical technological advances can cause problems for the patient and/or the patient's family. For the terminally ill patient the extension of life may not necessarily be welcome. This is particularly true if medical treatment results not only in increasing the length of the patient's life, but also in increasing the patient's pain -- both physical and emotional. In such cases

the cessation of medical care becomes an issue.

Whether it is permissible to stop medical treatment for Jewish terminally ill patients is a question which is very relevant in today's world. Indeed, many modern-day *poskim* ("deciders") have written on the subject. The purpose of this investigation is to determine if the *poskim* base their decisions regarding the cessation of medical care for the terminally ill patient solely on the classical sources (the Tanakh, Talmud, codes, and commentaries) or if other, non-*halakhic* ("non-legal") factors also play a role in their decisions. Such factors may include, but are not limited to, questions of "death with dignity," whether a life of pain and anguish is a life worth living, the cost of medical care needed to keep the patient alive, the emotional costs which affect both the patient and the family, and so on.

Before examining the classical sources and surveying contemporary *responsa* ("questions and answers") which deal with the cessation of medical treatment, it will be of benefit to study how legal decisions are made. Comparing the *halakhic* system to the secular jurisprudential system will enable us to better comprehend how *poskim* make decisions.

CHAPTER ONE

"In countless litigations, the law is so clear that judges have no discretion. They have the right to legislate within gaps, but often there are no gaps."¹ These are the words of Benjamin Nathan Cardozo in his classic work The Nature of the Judicial Process.² In this work Cardozo attempts to describe the process through which a judge proceeds in order to make a legal decision. Cardozo suggests that in the vast majority of cases, "the first thing he [the judge] does is to compare the case before him with the precedents....Almost invariably, his first step is to examine and compare them. If they are plain and to the point, there may be need of nothing more."³ A judge's main role in such instances is to determine the appropriate precedents and apply them to the case at hand. The precedents determine the case's solution and the judge then gives a verdict based upon these precedents.

Cardozo also notes that there are some cases for which a decisive precedent does not exist; it is at this juncture, he says, "when....the serious business of the judge begins."⁴ Those cases to which Cardozo refers, those which do not have obvious answers, are referred to elsewhere as "hard cases."⁵ Since there are no simple answers in such cases, judges must find other ways to resolve them. Three major theories try to describe how judges decide such hard cases. The three are known as the realist, positivist, and interpretivist positions.⁶ Each of these theories can describe

not only how the secular judicial system works but also the *halakhic* system as well.

The realists maintain that, despite popular belief to the contrary, judges make laws. They do not merely apply or interpret existing laws, but rather they make decisions on their own. According to the realist position, judges decide the cases first and then try to find reasons to support their decisions. This occurs not only in hard cases for which no precedents exist, but in all cases. Realists believe that judges legislate.

The positivists, on the other hand, do not feel that judges have the right to legislate in every instance. Existing laws are important; judges are obligated to apply the relevant law to the situation at hand. However, the positivists realize that the law does not respond to every situation. In cases such as this, in which no existing law pertains to the question at hand, the judge becomes a legislator. In other words, according to the positivists, judges legislate only in hard cases; in most instances judges simply apply the appropriate laws to the case before them. According to positivist theory, there exists one overriding norm which is central to the legal system. This norm justifies the legal system; it allows the system to exist in its present manner.

The interpretivists, as their name suggests, state that judges interpret the law. In instances in which there is no law on the books which applies to a particular case, judges must look elsewhere to resolve the case. Unlike the realists, judges do not make law on their own. Judges take the

values or principles of the legal system into account before pronouncing a decision. Hard cases are not decided, then, by some whim or belief of the individual judge, but rather by applying the underlying values of the legal system to the case at hand. The values of the system correspond to those of the society which it serves.

As stated earlier, scholars use these three positions to describe the workings of Jewish law. Louis Jacobs, in his book A Tree of Life: Diversity, Flexibility, and Creativity in Jewish Law, notes that the *halakhist* has its own unique methodology. The *halakhist* aims

to discuss and eventually to state what the law is. The Halakhist seeks far more to apply the established rules than to function as a legislator. He is guided in his decisions by precedent, accepting in toto the authority of the Talmud....⁷

However, Jacobs then seems to contradict himself by stating:

Nevertheless, there is sufficient evidence to allow us to reject as one-sided the conventional picture of the traditional Halakhist as an academic lawyer who, when he sits down to investigate his sources dispassionately and with complete objectivity, never knows beforehand what his conclusions will be. In many instances...he knows full well, before he begins his investigation, that only one conclusion is acceptable, not because the sources he is about to examine will inevitably lead to that conclusion but because his general approach to Judaism compels him to come up with a conclusion that must not be at variance with Jewish ideas and ideals as he and his contemporaries or his "school" sees them.⁸

As Mark Washofsky points out,⁹ Jacobs' position sounds like that of the realists described above. According to this view, the *halakhist* first decides the answer to the

question before him according to "his own understanding of Jewish 'ideals'; he then searches for *halakhic* rules and principles -- 'acceptable legal ploys,' Jacobs calls them, to support his opinion."¹⁰ Washofsky further notes that Jacobs' view does not correctly explain the process of *halakhah*. It is inherent in the system that the Jewish legal texts must be used in making legal decisions. The *poskim* must consider what the texts say; they are not free to ignore the texts.¹¹

Furthermore, J. David Bleich regards views such as Jacobs' to be nonsense. In the introduction to his work Contemporary Halakhic Problems, he states: "It is a travesty of the halakhic process to begin with a preconceived conclusion and then attempt to justify it by means of halakhic dialectic...The law must be determined on its own merit and let the chips fall where they may."¹² To think that *halakhah* could possibly be determined by the whims of the judges or *poskim* -- without regard to the texts and traditions of Judaism -- is absolutely incorrect in Bleich's view. It therefore seems clear that the realists' view, as espoused by Louis Jacobs, is not an universally accepted method of describing the Jewish judicial system.

Other scholars would describe the *halakhic* system as a positivist one. Norman Lamm and Aaron Kirschenbaum describe legal positivism as it relates to Jewish law in the following manner:

By positivism we mean the view that the law is what the divine Sovereign commands; it is the will of God which He revealed to man. There are no

immanent qualities in the nature of man or the world which constitute moral criteria that need to complement or can supplant the Law which was transcendently legislated. Such extraneous notions as right/wrong, good/evil, just/unjust can be considered only when the law specifically makes room for them. Hence, great emphasis is placed on the judge's use of logical deduction and interpretation in order to reach decisions.... Because positive laws can never cover the whole gamut of life and its almost unlimited possibilities, and because moral judgments are not considered as absolutes, the judge is comparatively free in his decision-making.¹³

As is clear from this description, there are some who see the Jewish judicial system as leaving room for judges to become legislators; what may not be as clear is that the judges are free to legislate only when no existing law pertains to the case at hand. This is what distinguishes the positivist from the realist position.

In his article "Legal Positivism and Contemporary *Halakhic* Discourse,"¹⁴ Alan J. Yuter summarizes a debate between Professors Menahem Elon¹⁵ and Izhak Englard¹⁶ regarding their different understandings of *halakhah*. Englard agrees that Jewish law can be described in terms of the positivist model presented above, whereas Elon believes that other factors influence *halakhah*:

Englard claims that Jewish law is a religious positivist order and assigns to the [Orthodox] rabbinate the sole authority to interpret the law. Any prescriptive judgment on the part of an academic scholar invalidates the intellectual detachment of the judgment. For Elon, objective philological and historical research into Jewish law often reveals trends, ideas, and policies that are unnoticed by contemporary [Orthodox] rabbis, and he prescriptively argues that Jewish law be integrated into Israeli law. Englard, in turn, rejects Elon's "historicism" as an unscientific

heresy....¹⁷

Yuter acknowledges that both Elon and Englard could be described as positivists. However, they do differ a bit: "Whereas Elon's program is defended in terms understandable to a legal positivist, Izhak Englard's rhetoric is positivist in nature, but his methodology is not."¹⁸

The third theory of how the *halakhic* system works is interpretivism. Here there is some sort of consensus as to the basic values of the community. These values form the basis upon which judges make decisions in hard cases. Louis E. Newman¹⁹ believes that the Jewish judicial system follows this method of operation. Newman states that

Diversity results from the inescapable subjectivity of individual interpreters. These differences are legitimate because there is considerable consensus on the roles that place constraints upon the interpretive process, and so ensure that the result is objective. All contemporary Jewish authorities look to the same body of literature as a source of precedents, that is, they are committed to the same canon. All would acknowledge that the history of previous interpretation of these sources must be given some weight and that the principles embodied in these sources (and not merely the words of the texts themselves) must be interpreted. It is within these parameters [sic] that each interpreter works, rendering a personal, but constrained and therefore objective, judgment as to the meaning of these texts when applied to a contemporary moral problem.²⁰

Judges, therefore, are constrained in their decision-making process by the body of literature which serve as precedents, and yet their role as interpreters of this literature is clear. In cases in which there is no precedent, judges take the values inherent in this body of literature into account when

making their decisions.

The three theories described at the beginning of this chapter, then, have each been used to explain the *halakhic* system. No one theory has been agreed upon by all scholars. The role of the judge is different in each. The realists believe that judges have free rein in their decision-making; that is, they can apply their own values and beliefs when considering cases. The positivists, however, do not have such freedom. As Lamm and Kirschenbaum point out above, the law is what God commands (see pages 6-7); it is a given, it is concrete. Judges only legislate in hard cases. Unlike the interpretivists, the positivists do not recognize any underlying communal assumptions, values, or principles which influence the judge's decision-making process. The positivists do recognize a basic norm which justifies the legal system's existence, and from which all other precepts follow, but it does not influence the judge's decisions in particular cases.

It is also beneficial to see what scholars have to say about the use of non-legal, or in our case, non-*halakhic* or extra-*halakhic*, factors in the *halakhic* decision-making process. Specifically, the *responsa* of modern-day *poskim* regarding the cessation of medical treatment will be surveyed and analyzed in later chapters to see if non-*halakhic* factors have affected their decisions. (See Chapters Three and Four.) The remainder of this chapter will be devoted to an examination of scholarly works which discuss the use of non-*halakhic* factors in general Jewish

decision-making. These scholars discuss whether non-*halakhic* factors are used and, if so, what types the *poskim* use.

Emanuel Rackman, in his article about Orthodox approaches to *halakha* in the *Encyclopedia Judaica*,²¹ acknowledges that *poskim* use psychological and sociological data in their *responsa*.²² He also feels that *poskim* do not own up to their use of non-*halakhic* considerations as they should:

Perhaps it was because rabbis could not always agree on the purpose of the law that it was regarded as safe to rely on texts alone in judicial decision-making. Nevertheless, occasionally there were rabbis who did not hesitate to say that intuitively they felt what the correct decision was -- on the basis of ethical or even political considerations -- and they later supported their intuition with relevant texts. Indeed, were more rabbis to be this candid it would be discovered that a personal philosophy is a very important factor in the process. Needless to say, the conclusion must be based on the law, and its vast literature, and the reasoning must be objective and able to withstand criticism by peers. The subjective element cannot be the basis for decision, but honesty requires that its presence shall not be denied.²³

Bleich,²⁴ as discussed earlier, would disagree with Rackman's realist-sounding assertion that rabbis make their decisions and only later support them with texts from the tradition. However, the latter part of his statement, that *poskim* do use factors outside the realm of *halakha* during the process of making decisions, does seem to have the support of other scholars.

Louis Jacobs agrees with Rackman that extra-*halakhic*

factors play a role in the decision-making process. He claims that *poskim* sometimes explicitly state that certain of their decisions are not strictly based on the law; in these instances such judgments must be made, in the opinion of these *poskim*, because "to decide otherwise would lead to undesirable consequences."²⁵ If the *posek* has great authority, his decision will become accepted as *halakhah* even though it is founded upon extra-legal factors. "When this happens," Jacobs claims, "the theory is that since a Halakhist of undisputed rank has allowed this kind of extra-Halakhic motivation to govern his final decision this becomes a legal motivation to be applied in analogous circumstances."²⁶

Joel Roth also agrees that judges consider extra-legal factors when making their *halakhic* decisions. In fact, he devotes an entire chapter to this subject in his book The Halakhic Process: A Systemic Analysis.²⁷ Roth notes that although such factors are not legal norms, they "nevertheless bear greatly on the determination of the law. Among these factors are some that are stated explicitly in the literature as well as others that are implicit."²⁸ Roth notes four categories of extra-legal factors: medical/scientific, sociological/*realia*, economic, and ethical/psychological.²⁹

Roth devotes much space to the question of medical/scientific sources and the role they play in determining *halakhah*, a question of great relevance to our subject -- the cessation of medical treatment for a

terminally ill patient. Roth notes that such sources have functioned in the *halakhic* arena for quite a long time:

The use of medical/scientific sources continued throughout the Middle Ages and into the modern period. It is a matter of record that the number of matters of law...stipulated in the talmudic sources and contradicted either by the expert scientific opinion of later ages or by the personal observation of later sages has produced many problems. How could it be that the talmudic sages had been mistaken? Surely it was not reasonable to surmise that the reality had changed...[and] medical/scientific sources that might result in the abrogation of previously held norms could be introduced without impugning the reliability or integrity of the talmudic sages. A new systemic principle, referred to as *Shinnui ha-ittia* ("a changed reality"), became the vehicle that enabled later sages to make use of new medical/scientific knowledge without vitiating the smooth functioning of the halakhic system.³⁰

Emanuel Rackman agrees that changed conditions, or a "changed reality" as Roth calls it, "play a part in the revision of halakhic rules."³¹ He describes a situation in which certain rabbis felt that a rule which had been formulated at a specific time in history was no longer applicable in their day since the conditions had changed. No formal nullification of the rule was considered necessary since the requisite conditions under which the rule was to be followed no longer existed.³²

Roth concludes his chapter about extra-legal sources by noting that such sources are used in three ways: promulgating new rules, modifying old ones, and adopting previously nonprecedented positions.³³ Roth is quick to note, moreover, that such factors are not necessarily employed in every instance of *halakhic* decision-making; however, it

should be recognized that non-*halakhic* factors play a role in some cases.³⁴

Louis Jacobs is among the scholars who recognizes that non-*halakhic* factors are used. He notes that *poskim* have used such factors throughout the ages, although they might not have acknowledged doing so.³⁵ As the *halakhah* is "a complete guide to life," it needed to account for situations which arose due to the result of new inventions or discoveries. Since the *halakhah* could not recognize these new situations, the *poskim* employed analogies, combing the sources for the basic principles involved and applying them to the new situation.³⁶

Robert Gordis³⁷ and Eliezer Berkovits³⁸ agree that new concerns must be dealt with in the *halakhah*. There must be an interplay between the traditional sources and the modern situation. Each of these plays a role in determining *halakhah* for the modern Jew.³⁹ Berkovits states that it is "proper to apply to a problem new solutions, not provided for in the Torah, if the novelty serves a purpose similar to the one aimed at by the biblical law."⁴⁰ Neither the sources nor the present-day conditions can be ignored by modern *poskim* in their legal deliberations.

It is clear from the above survey that scholars agree that *halakhah* must adapt to new situations. Jews live in a modern world to which *halakhah* needs to conform. In adapting to new inventions and discoveries, *poskim* seem to have employed factors outside the realm of *halakhah* in

making their decisions. Such use is vital for keeping the *halakhah* responsive to the people which it governs.

The remainder of this investigation will be devoted to examining the question of the withdrawal of medical treatment for a terminally ill patient. The relevant traditional sources will be noted and a survey of modern *responsa* examined. It will be interesting to note whether modern *poskim* do indeed use non-*halakhic* factors in their considerations, and if they do so, whether they acknowledge such use.

CHAPTER TWO

Modern-day *poskim* base their decisions regarding the withdrawal of medical treatment on classical Jewish sources: the Tanakh, Talmud, codes, and commentaries. This chapter will cite the most commonly used sources, in English translation, noting their possible applications and potential value to the *poskim* in their study of the treatment of terminally ill patients.

One of the most widely used sources is the story of King Saul. The two accounts of his death -- one which makes it seem like a suicide, the other a case of euthanasia -- are discussed by a number of *poskim*. The Biblical text is as follows:

The Philistines attacked Israel, and the men of Israel fled before the Philistines and [many] fell on Mount Gilboa. The Philistines pursued Saul and his sons, and the Philistines struck down Jonathan, Abinadab, and Malchi-shua, sons of Saul. The battle raged around Saul, and some of the archers hit him, and he was severely wounded by the archers. Saul said to his arms-bearer, "Draw your sword and run me through, so that the uncircumcised may not run me through and make sport of me." But his arms-bearer, in his great awe, refused; whereupon Saul grasped the sword and fell upon it. When his arms-bearer saw that Saul was dead, he too fell on his sword and died with him. Thus Saul and his three sons and his arms-bearer, as well as all his men, died together on that day....After the death of Saul -- David had already returned from defeating the Amalekites -- David stayed two days in Ziklag. On the third day, a man came from Saul's camp, with his clothes rent and earth on his head; and as he approached David, he flung himself to the ground and bowed low....And he told him how the troops had fled the battlefield, and that, moreover, many of the troops had fallen and died; also that Saul and his son Jonathan were dead. "How do you know," David asked the young man who brought him the news,

"that Saul and his son Jonathan are dead?" The young man who brought him the news answered, "I happened to be at Mount Gilboa, and I saw Saul leaning on his spear, and the chariots and horsemen closing in on him. He looked around and saw me, and he called to me. When I responded, 'At your service,' he asked me, 'Who are you?' And I told him that I was an Amalekite. Then he said to me, 'Stand over me, and finish me off, for I am in agony and am barely alive.' So I stood over him and finished him off, for I knew that he would never rise from where he was lying. Then I took the crown from his head and the armlet from his arm, and I have brought them here to my lord." (I Samuel 31 - II Samuel 1:18)¹

Commentary on these two conflicting versions of the story of King Saul's death abounds. Below are the commentaries of Ralbag² and Radak³:

Ralbag on I Samuel 31:4 -- He was afraid that they would kill him with great cruelty which could cause him to sin and because of this he chose to die at the hand of his friend.

Ralbag on II Samuel 1:6 -- After he fell upon his spear and saw that it did not pierce him, Saul leaned upon it with force to complete the stabbing and when he saw that it could not occur in this manner he told the Amalekite youth to kill him.

Radak on I Samuel 31:5 -- ...[Perhaps] Saul was not dead until the Amalekite killed him as he said in his bringing news to David. It is [also] possible that the Amalekite lied for he had not really killed him but rather found him dead after he had fallen on his sword and told [such a story] in order to please David [so that David would not think that Saul had committed suicide]. Saul did not sin by killing himself....Saul knew that he would die during a war for that is what Samuel had told him. Also, he saw the archers and he could not escape from them, thus it was good for him to kill himself so that the uncircumcised ones could not treat him cruelly.

Radak could be implying that if a person finds himself in a situation in which he may be forced to commit a sin, then

suicide is a valid option. For example, taking one's own life is preferable to committing murder, incest or idolatry. Raibag points out that Saul did not commit suicide, but rather had another person (the Amalekite) kill him lest he be forced to sin. The commentary of both Radak and Raibag could be used by *poskim* to show that in cases in which torture and/or pain could lead to sin, death is preferable.

The Talmud provides much source material for *poskim* studying the question of the cessation of medical treatment for terminally ill patients. Translations of the Talmudic material follow:

Rav Yehudah said in the name of Shmuel, or perhaps it is Rabbi Ammi, or some say it was taught in a baraita: 400 boys and girls were captured [for the purpose of] prostitution. They realized on their own why they were wanted. They said to themselves, "If we drown in the sea we will acquire life in the world-to-come"....The girls all jumped into the sea. The boys then realized [what was to happen to them] and said, "If these [the girls], for whom this is natural act in such a way, shall not we also for whom it is unnatural?" They also jumped into the sea. Of them the text says, "For Thy sake we are killed all day long, we are counted as sheep for the slaughter (Psalms 44:23)." (Gittin 57b)

This passage could be interpreted to mean that it is acceptable to kill oneself before committing a sin, despite the prohibition against suicide. Applied to the question at hand, this citation may be used to approve the withdrawal of medical care for a terminally ill patient lest the pain of his illness cause him to sin.

The following passage from Avodah Zarah could be used to make the distinction between passive and active forms of

euthanasia. Rabbi Chaninah ben Tradyon, while not terminally ill in the medical sense, is about to die. He refuses to actively hasten his own death, yet he allows the removal of items which will impede his soul's departure. The *bat kol* ("divine voice") comes to approve this action:

It was said that within a few days Rabbi Yosi ben Kisma died and all of the great men of Rome went to his burial and greatly mourned [his passing]. Upon their return they found Rabbi Chaninah ben Tradyon sitting and engaging in [the study of] Torah, publicly convening assemblies and placing a *Sefer Torah* in his bosom. [These acts were against Roman law.⁴] They took him and wrapped him in the *Sefer Torah*, encircled him with bundles of branches, and set fire to them. They brought tufts of wool, soaked in water, and placed them over his heart so that his soul should not depart quickly. His daughter said to him, "Father, that I should see you thusly!" He said to her, "If only it was I alone being burnt, this would be difficult for me; but now that both I and the *Sefer Torah* are burning, He who avenges the *Sefer Torah* will avenge me." His students said to him, "Rabbi, what do you see?" He said to them, "The parchments are being burnt but the letters are flying [up to heaven]." [His students said], "Open your mouth so that the fire will enter you." He said to them, "It is better that the One who gave [me my soul] should take it away [as well]. No one should injure himself." The executioner then said to him, "Rabbi, if I increase the flame and remove the tufts of wool from over your heart, will you bring me to the life of the world-to-come?" "Yes," he said. "Swear to me," [said the executioner]. He swore to him. Immediately he increased the flame and removed the tufts of wool from over his heart. His soul departed quickly. [The executioner] jumped and fell into the fire. A *bat kol* came out and said, "Rabbi Chaninah ben Tradyon and the executioner are invited into the world-to-come." (Avodah Zarah 18a)

The Tosafot⁵ add:

Rabbeinu Tam said that they fear lest the idolaters cause them to transgress, for example by

causing them pain that they are unable to withstand. In that case it is a mitzvah to injure oneself as is seen in Gittin 57b.

The question of praying for a person's death is addressed in the story of Rabbi Yehudah ha-Nasi's impending death:

On the day that Rabbi [Yehudah ha-Nasi] was dying, the Rabbis decreed a fast and asked for mercy [from God through the medium of prayer]... Rabbi's handmaid ascended to the roof and prayed: "The heavenly creatures desire Rabbi [to join them, in other words, to die] and the earthly creatures desire Rabbi [to remain with them -- alive]. May it be God's will that the earthly creatures overpower the heavenly creatures." When she [then] saw how many times he went to the restroom, painfully removing his tefillin and putting them on again, she prayed: "May it be God's will that the heavenly creatures overpower the earthly creatures." As the Rabbis were not silent, praying for mercy, she took a jar and threw it down from the roof to the ground. They stopped praying [for a moment to see what had occurred] and Rabbi's soul departed. (Ketubot 104a)

This passage clearly shows that although life is precious, pain and suffering are undesirable. It is therefore acceptable to pray for the death of someone who is in pain. (It should be noted, however, that Rabbi did not pray for his own death. Perhaps this indicates that praying for one's own death is not acceptable.) Since the handmaid interrupts the prayers which had kept Rabbi alive, maybe this passage can be interpreted to say that removal of medical treatment for a dying person who is in pain is permissible. Or is this passage limited to the question of praying for relief of another's pain, through the action of death? These are questions with which the *poskim* must deal.

The case of Rabbi Yehudah ha-Nasi is also discussed in the following commentary on Nedarim 40a:

It appears in the eyes of the Holy One that sometimes it is necessary to request mercy [from God] upon the sick person that he may [be permitted to] die. For example, as in the case of a sick person who is in a lot of pain and it is impossible for him to live, as we said in Ketubot 104a: When Rabbi's handmaid saw how many times he went to the bathroom and sighed due to the pain of taking off and putting on his tefillin, she said: "May it be God's will that the heavenly creatures overpower the earthly creatures." In other words, [she prayed] that Rabbi would die.... (Rabbeinu Nissim⁶ on Nedarim 48)

Rabbeinu Nissim learns from Ketubot 104a, quoted above, that it is sometimes better to pray for a person to die rather than for that person to live a life of pain. These two sources could be used by the *poskim* to show that not only is the length of one's life important, but also the quality of that life. If the quality of life is very poor, as in the case of Rabbi Yehudah ha-Nasi, then perhaps death could be considered a blessing.

Below is the translation of Pesachim 4:9, followed by Rambam's⁷ commentary on it:

King Hezekiah did six things. Concerning three [of these] they praised him, and concerning three they did not praise him. He dragged his father's bones on a bier of ropes, and they praised him. He crushed the brazen serpent, and they praised him. He hid the Book of Remedies, and they praised him. Concerning three [things] they did not praise him. He cut down the doors of the Temple and sent them to the king of Assyria, but they did not praise him. He stopped up the waters of the Upper Gichon, but they did not praise him. He intercalated Nisan in Nisan, but they did not praise him.

Rambam -- ...The Book of Remedies was a book which

contained a list of things which the Torah did not permit to be used in healing....When the people sinned and treated themselves [with the remedies found in the book, King Hezekiah] hid it....Or, Solomon wrote the Book of Remedies so that when a person fell sick with a certain illness, he could turn to it and do whatever it said and be healed. Hezekiah saw that the people were not trusting in God during their illnesses, but rather [were relying] upon the Book of Remedies, so he hid it....If a person is hungry, he turns toward food and eats it so that he is healed from great pain....Just as I thank God at the time of eating for supplying me with something to remove my hunger, to keep me alive, and to sustain me, so too do we thank Him for supplying medication which heals my illness when I use it. (Rambam on Pesachim 4:9; 4:18 in the Kafakh edition)

The Rambam equates food with medication and medical treatment in this commentary. He is saying that since God provides both food and medicine for our use, we must use both in seeking to cure the patient. Modern *poskim* agree that food should never be withheld from a patient; Rambam is going one step further in stating that medical treatment must not be withheld either.

Yoma 85a discusses what one must do if a person is caught under a pile of debris on Shabbat and it is uncertain whether he is alive. The Meiri⁸ comments on what should be done, and why, if the person is found to be alive:

Someone upon whom there fell a collapse [on the Sabbath] and it is uncertain whether he is there or not, whether he is alive or dead, [or] whether he is a gentile or a Jew, they open up the heap for him. If they found him alive, they [continue to] open [the heap]; if he is dead, they leave him. (Yoma 85a)

Meiri -- ...If they check his nose and find that he is alive, they continue saving him even if it is clearly impossible for him to live for even one hour, for in that time he can repent [for his sins].

The Meiri could be interpreted to mean that every moment of life is precious and thus all must be done in order to prolong life. The *poskim* could learn from the Meiri that medical treatment should not be withheld from a terminally ill patient; on the contrary, everything possible should be done in order to lengthen the patient's life.

Elsewhere in the Talmud we find agreement with the Meiri that all life is precious, even the last moments of that life. In no way should death be hastened -- euthanasia is unacceptable:

Mishnah -- It is not permitted to close [the eyes of] a dead person on Shabbat. Nor is it permitted to do so on weekdays when his soul is about to depart [that is, his death is imminent]. One who closes [the eyes of a dying person] at the time of the soul's departure is a murderer. Gemara -- Our Rabbis taught: One who closes [the eyes of a dying person] at the time of the soul's departure is a murderer. This may be compared to a candle which is going out. If a person places his finger on it, it is immediately extinguished. [Rashi⁹ (see "shofekh damim") explains that the small effort of closing the eyes may slightly hasten death.] (Shabbat 151b)

The first chapter of Semakhot gives the laws for the treatment of the *goses*. This section is the basis for much commentary, as will be seen. (A *goses* is defined as a person who is about to die, usually within a 72-hour period of time.¹⁰)

The one who is dying (*goses*) is considered as a living person in all respects.... It is forbidden to bind his jaws, to stop up his orifices, nor to place metal vessels or any cooling object upon his navel until the time that he dies, as it is written: "Before the silver cord snaps" (Ecclesiastes 12:6). It is not permitted to move him nor to place him on sand or salt until the time that he dies. It is forbidden to close the

eyes of a dying person (*goses*). One who touches them or moves them is a murderer, as Rabbi Meir used to say: This can be compared to a candle which is flickering. When a person touches it, it goes out. So too, one who closes the eyes of a dying person is considered as if he took his soul. (Semakhot 1:1-4)

This passage describes activities which are normally done to a person after death. Since a *goses* is considered as a living person in all respects, these activities are forbidden. Again we see the idea that every moment of life is precious in the quotation from Rabbi Meir; therefore, it is forbidden to do anything to hasten one's death.

The Rambam, in his Mishneh Torah, also uses Rabbi Meir's image of the flickering candle in his discussion of the status of the *goses*:

One who is dying (*goses*) is considered as a living being in all matters. It is not permitted to bind his jaws, to stop up his orifices, nor to place metallic or cooling objects upon his navel so that he will not swell. It is not permitted to rub him or wash him, nor to place him upon sand or salt until the time that he dies. One who touches him is a murderer. To what is this similar? To a candle which is flickering: when a person touches it, it becomes extinguished. Whoever closes the eyes [of a dying person] at the time of the soul's departure is a murderer. One should wait a little while -- perhaps he is only in a swoon. Similarly, it is not permitted to rend a garment in mourning for him, to bare the shoulder, to mourn, nor should a casket or shroud be brought into the house until he dies. (Judges, Laws of Mourning 4:5)

Again we see that one who is dying is considered as a live person in all respects. It is forbidden to make any preparations for burial and mourning until after the person dies. The sanctity of life, even in the final moments, remains.

A different viewpoint is seen in the following source:

...Do not yell out at the time of the soul's departure lest [this cause] the soul to return and the dying person (*goses*) will suffer great torment. "There is a...time to die" (Ecclesiastes 3:2). Why did Kohelet need to say this? With respect to a person who is dying (a *goses*), when his soul departs do not yell out for its return for he cannot live for more than a few days and these will be days of suffering.... (Sefer Chasidim¹¹ #234)

This passage indicates a concern for the *goses*' pain and suffering. Lengthening a life of pain is viewed negatively; an earlier death is preferable to one of pain and suffering. This text could be used to prove that extraordinary, life-saving efforts should not be made lest they add more days of pain to the patient's life.

Elsewhere in Sefer Chasidim we find this passage:

It is forbidden to cause a person to die quickly. For example, if one is dying (a *goses*) and there is a woodchopper near his house and his soul cannot depart [due to the noise of the woodchopping], one removes the chopper from there. It is forbidden to put salt on his tongue in order to prevent his death. If he is dying and he says, "I cannot die until you put me in a different place," do not move him from there. (Sefer Chasidim #723)

The removal of impediments which are unnecessarily hindering a *goses*' death, such as the noise of the woodchopper cited here, is permitted. This passage, in addition to some of those listed below, could be understood as permission to remove medical treatment from a terminally ill patient. If such treatment is merely hindering what would otherwise be an imminent death, such as the woodchopper is doing here, then cessation of treatment is allowed.

The Shiltei HaGiborim¹² first explains the *minhagim* relating to the treatment of the dead and their burial. Then he discusses the topic of how to treat a *goses*:

The custom of Israel regarding [the treatment of] the dead and their burial is to close the eyes of the dead person. If his mouth is open, they bind the jaws. They [also] stop up his orifices after they wash and rub him in different kinds of spices and cut his hair and dress him in shrouds sewn of white linen. These will not be very expensive. It is forbidden to bury [a person] in silk shrouds or embroidered clothing -- even for the chief (*nasi*) of Israel, for this is [a sign of] haughtiness and corruption. This is the custom of the idolaters.

From here it would appear that it is forbidden to do that which is customary for some people: when the dying person (*goses*) is expiring and the soul cannot depart, they remove the pillow from under him in order that he will die more quickly. They say that there are bird feathers in the pillow that cause the soul to not depart. How many times have I shouted loudly to stop this evil custom and I did not succeed?! Other rabbis disagreed with me. Rabbi Nathan of Igra, of blessed memory, wrote about this [specific act of removing the pillow] to permit it. After many years I found in Sefer Chasidim 723 support for my words, as it is written there that if a person is dying (a *goses*) and he cannot die until they put him in another place, he is not to be moved from there. It is true that the words of the Sefer Chasidim need to be examined for at the beginning he wrote that if there was a person dying and near his house there was a woodchopper and [because of the noise of the woodchopping] the soul could not depart, they removed the woodchopper from there. This is the opposite of what he wrote afterwards. However, there is an explanation. Thus it is said that to do something which will certainly delay the death of the *goses* is forbidden. For example, to chop wood there in order to delay the soul's departure or to put salt on his tongue so that he will not die quickly, all of this is forbidden. He indicated there from his language and the like that it is permissible to remove that cause [which is already an impediment to death]; however, to do something which will cause his speedy death and the departure of his soul is forbidden. Therefore

it is forbidden to move the dying person (*goses*) from his place and put him in another place so that his soul will depart. Therefore it is also forbidden to put the keys to the synagogue under the *goses*' head so that he will die quickly as this also speeds the soul's departure. According to this, if there is something which causes the soul to not depart, it is permitted to remove this thing. There is nothing wrong with [doing] this for it is not [like] placing a finger on the candle and it is not doing a positive action (*ma'aseh*). However, to place something on the *goses* or to move him from place to place in order to cause his soul to depart quickly certainly appears to be forbidden, for this is [similar to] placing a finger on the candle. (Shiltei HaGiborim, Mo'ed Katan 3)

The Shiltei HaGiborim clearly differentiates between removal of an impediment and positive action which will hasten a dying person's death. According to this passage, removing an item which is merely hindering the soul's departure and is doing nothing to heal the person is permitted. This is because it is forbidden to place the impediment there in the first place. This could be seen as the basis for removing medical treatments which are merely lengthening the terminally ill patient's life without aiding in curing the patient. As will be seen in the chapter dealing with modern-day *responsa*, there is some question as to whether medical treatment can be equated with salt on the tongue or the noise of a woodchopper.

The Beit Yosef¹³ returns to the discussion of whether or not suicide and/or euthanasia are permissible in times of danger or great pain:

Orkhot Chayim¹⁴ writes: In Bereshit Rabba it expounds, "Surely ["]akh" your blood of your lives..." (Genesis 9:5) as a warning [against] one who strangles himself.... [Does this include even]

Hananiah, Misha'el, and Azariah? The text says "akh" [meaning: no, they are excluded]. This is to explain that at a time of persecution one can give oneself over to death and kill oneself if one knows that he cannot stand the test. Similarly [in the case of] Saul, son of Kish. Perhaps he feared that they [the Philistines] would cause him great pain, thus he could give himself over to death. The text says "akh" [to exclude such a case from the law against suicide]. From here the slaughterers of babies at a time of persecution bring proof. There are others who forbid this. They explain that the text says "akh" [meaning] that one cannot kill himself. Hananiah, Misha'el, and Azariah gave themselves over to others but they did not injure themselves. Saul, son of Kish, did not follow the Sages' desire [for he killed himself (in I Samuel 31)]. There is a story of one rabbi who slaughtered many babies at a time of persecution for he feared they would be forced to transgress the religion. There was one rabbi who was angry with him and called him a murderer. [The first rabbi] did not take cognizance of [the second rabbi's] words. The rabbi who tried to prevent the murders said, "If the *halakhah* is as I say, may you [meet with] an unnatural death. And thus it happened.... Afterwards the decree was abolished. And if he had not murdered them it is possible that they would have been saved and would not have killed themselves. These are the words of Rabbi Yitzchak [of Dampierre]: The *paskanim* (decisors) wrote that if one wishes to be harsh with oneself and allow oneself to be killed privately over the remaining commandments [all except idolatry, incest, and murder], it is permitted. He is not called a self-mutilator.... (Beit Yosef, Yoreh Deah 157)

The Beit Yosef presents conflicting viewpoints here. In times of destruction, is it or is it not permissible to kill oneself? He is clear in his statement, however, that it is not permissible to kill others, even in a time of destruction and devastation.

The Shulkhan Arukh¹⁵ is the most frequently cited source, discussed and debated by the *poskim* more than any other of the classical sources. It bases its discussion on

the first chapter of the tractate Semakhot, cited earlier.
 (See pages 22-23.) The citation which deals with our topic
 is found below, followed by Rabbi Moshe Isserles' ¹⁶
 commentary:

A dying person (*goses*) is considered as a living being in all matters. It is not permitted to bind his jaws, to rub him with oil, to wash him, nor to stop up his orifices. It is not permitted to remove the pillow from under him, nor to place him on sand or clay or soil. It is not permitted to place on his stomach a dish, shovel, flask of water, nor globule of salt. It is not permitted to summon [the people of] the towns nor to pay the pipers and the mourners. It is not permitted to close his eyes until his soul departs. Whoever closes his eyes before the soul's departure is considered a murderer. It is not permitted to tear [one's clothing], to take off one's shoes, to mourn, nor to bring the coffin into the house until he dies. It is not permitted to begin the justification prayer [said at burial] until his soul has departed. (Shulkhan Arukh, Yoreh Deah 339:1)

Isserles -- Some say it is not permitted to dig his grave, although it is not with him in the house, until after he dies. It is forbidden to dig a grave to be left open until tomorrow in which a dead person will not be buried on the same day. There is danger in doing so. It is forbidden to cause the dying to die quickly, such as one who is a *goses* for a long time and cannot depart [die]. It is forbidden to remove the pillow and the mattress from under him for some say there are some bird feathers that cause him not to die. Similarly, do not move him from his place. Similarly, it is forbidden to place the keys of the synagogue under his head in order to cause him to die. However, if there is something which causes a delay in the soul's departure, such as the presence near the house of a woodchopper making noise, or there is salt upon his tongue, and these hinder the departure of the soul, it is permitted to remove them for this is not a positive action (*ma'aseh*) at all but rather the removal of an impediment.

Various commentaries have been written concerning the

above passages; commentators have attempted to explain Isserles' reasoning. Three of the most noteworthy, also found on the same page as Isserles' commentary, are discussed briefly below.

The Turei Zahav¹⁷ states that the removal of the pillow does not bring on the person's death. He views the pillow as an impediment to the soul's departure which can therefore be removed. Nevertheless, the pillow should not be removed, according to the Turei Zahav, since removal will move the body and such movement will cause death. In addition, the Turei Zahav questions Isserles' decision to permit removal of the salt on the tongue. He feels that removing the salt should not be permitted as it constitutes movement of the mouth; this is like the prohibition against "closing his eyes" and is therefore not allowed.

The Nekudot HaKeseif,¹⁸ commenting upon the Turei Zahav's comments, explains that any movement incurred by removing the salt from the tongue is so light that it is insignificant. He does not discuss the topic any further.

The Beit Lekhem Yehudah¹⁹ agrees with Isserles' viewpoint. It is forbidden to lengthen the death process, thus placing salt on the tongue to delay death is prohibited. If salt was nevertheless placed on the tongue, permission is given to remove it if this is done gently (in order to prevent movement of the body). The Beit Lekhem Yehudah also notes that it is not allowed to yell at the time of the soul's departure, in order to cause the soul's return to the body, for this may cause unnecessary pain and suffering to

the person, as previously stated in Sefer Chasidim.

The Arukh HaShulkhan²⁰ agrees with and expounds upon Isserles' viewpoint:

We learned at the beginning of tractate Semakhot: The one who is dying (*goses*) is considered as a living person in all respects....It is forbidden to do anything which will draw near his death. And so the Sages taught in Mishnah Shabbat (151b): One who closes the eyes of the dying person at the time of the soul's departure is a murderer. Although we see that he is suffering greatly while he is dying and it will be good for him to die, in any case it is forbidden for us to do anything which will draw near his death, for the world and its fullness are [the possession of] the Holy One, Blessed be He. Such is His desire. All the more so it is forbidden to make a coffin, shrouds, or a grave for him while he is still alive. (Arukh HaShulkhan, Yoreh Deah 339:1)

Therefore it is not permitted to bind the jaws of the dying person so that his mouth will not open widely, nor is it permitted to rub him or to stop up his orifices as is the custom of doing to the dead. It is not permitted to remove the pillow from under him as is the custom of doing to the dead; all the more so it is not permissible to place him on sand, clay, or soil. It is not permitted to place on his stomach a dish, shovel, flask of water, nor globule of salt as it is customary to do. It is an inference from minor to major that it is not permitted to summon [the people of] the towns to mourn him nor to pay the pipers to mourn and the mourners. It is not permitted to close his eyes until his soul departs. All the more so it is not permissible to tear [one's clothing], to bare the shoulder as was the custom in those days, to mourn him, nor to bring the coffin into the house until he dies. It is not permitted to begin the justification prayer [said at burial] until he dies. Only priests are required to leave the house when he is dying (as explained elsewhere). (Arukh HaShulkhan, Yoreh Deah 339:2)

Rabbeinu Moshe Isserles wrote that it is forbidden to cause the dying to die quickly, such as one who is a *goses* for a long time and cannot depart [die]. It is forbidden to remove the pillow and

the mattress from under him for some say there are feathers from some birds that cause this [the feathers are said to prevent death]. Similarly, do not move him from his place. Similarly, it is forbidden to place the keys of the synagogue under his head in order to cause him to die. However, if there is something there which causes a delay in the soul's departure, such as the presence near the house of a noise knocking -- such as a woodchopper -- or there is salt on his tongue, and these impede the departure of the soul, it is permitted to remove them from there for this is not a positive action (*ma'aseh*) at all but rather the removal of an impediment. (Arukh HaShulchan, Yoreh Deah 339:3)

An explanation of the preceding words clarifies that it is not permitted to do an act by which death is drawn nearer, such as removal of the pillow from under him. To this he [Rabbi Moshe Isserles] added that even if in their opinion it is a *mitzvah* to bring near his death for his own sake -- for instance, if he has been a *goses* for a long time and they see that he has great pain -- in any case it is forbidden to do any action to him for this is God's will. Not only [does this include] removing the pillow from under him, as this moves his head up and down a lot, but also even to move him a little is forbidden. Even if they do not do any action at all to his body but do place under his head -- without any movement at all -- the keys of the synagogue, this is also forbidden for ultimately this is doing something to cause him to die quickly, even if this is not an action related to the dying person's body. However, if there is something external which hinders the soul's departure it is permissible to remove it; this is true in either case. If there is an external factor, why should he suffer? This is not as a result of his medical situation. [The external factor, which is not present as a treatment of his illness, may be removed as it is only causing avoidable suffering.] If it is not an external factor, it is not beneficial to him at all. Also, the removal of the salt from his tongue is not considered a positive act (*ma'aseh*) at all as it is a slight movement. Moreover, it is obvious that [the salt] was placed there to lengthen his life and it is obvious that it is permissible to remove it. There are some who doubt this (see Turei Zahav, Nekudot HaKesef, and Beit Lekhem Yehudah). Truly there is nothing to this. (Arukh HaShulchan, Yoreh Deah 339:4)

As stated earlier, the Arukh HaShulchan agrees with Isserles' view that the removal of an impediment is acceptable. It is possible that the modern *poskim* could use this source as proof for their giving permission to cease medical treatment; if the medical treatment is merely prolonging a sure death, then its removal is allowed. On the other hand, *poskim* could cite Yoreh Deah 339:1 which forbids humans to do anything to draw near a person's death despite the fact that the person is suffering greatly. This would lend credence to the argument that one must seek to lengthen life, not shorten it.

The Levush²¹ reiterates much of the Shulchan Arukh and the other sources discussed above. He, too, is attempting to explain Isserles' words:

The dying person (*goses*) is considered as a living being in all matters. It is forbidden to do anything to him which will draw near his death; whoever draws near his death is a murderer. Therefore it is not permissible to bind his jaws, to rub him, to wash him, nor to stop up his orifices. It is not permitted to remove the pillow from under him nor to place him on sand, clay, or soil. It is not permitted to place on his stomach a dish, shovel, flask of water, nor globule of salt. It is not permitted to summon [the people of] the towns nor to pay the pipers and the mourners. It is not permitted to close his eyes until his soul departs. Whoever closes his eyes before the soul's departure is considered a murderer. It is not permitted to tear [one's clothing], to take off one's shoes, to mourn, nor to bring the coffin into the house until he dies. There are some who say that it is also not permissible to dig for him a grave until after he dies although it is not in the house with him. Similarly, it is forbidden to dig any grave which will stand open until the next day as it is not [customary] to bury the dead on the same day. This is received from the mouth of Rabbeinu

Yehudah HeChassid, for if it remained open until tomorrow not even a few days would pass before someone died, [this would occur] within sixteen days. The rule is that all that is done in relation to death is not done until the soul has departed for [to do otherwise] is bad luck. Man should not open his mouth to Satan [do not give Satan a chance to harm you]. Do not say the justification prayer [said at burial] until the soul has departed. My teacher, Rabbeinu Moshe Isserles, of blessed memory, wrote that it is forbidden to cause a dying person (*met*) to die quickly, such as one who is a *goses* for a long time and cannot depart [die]. If they want to remove the pillow from under him, for some say there are some birdfeathers that cause him not to die, this is forbidden. Similarly, do not move him from one place to another; perhaps he will die there. Similarly, it is forbidden to put the keys to the synagogue under his head for they say that [the keys] have a property that causes one to die quickly. If there is something which causes a hindrance to the soul's departure -- for instance, the presence near the house of a noise such as a woodchopper or there is salt upon his tongue or something similar which impedes the soul's departure -- it is permitted to remove it from there. This does not bring death closer but rather is a removal of an impediment. It is surprising to me why he forbade removal of the pillow from under him because of the feathers for also in that instance there is no action but is rather the removal of an impediment. This needs to be examined. It is possible that his explanation that the removal of the feathers brings death near is a way of saying that it is known that if the feathers were not under him he would also be in a state of *gesisah* for a long time. However, the property of the feathers is thus that if it occurred that they were in the pillow on which the sick person was lying, and they removed it from under him at the time in which he was dying, his death would be brought closer. This is a forced explanation. (Levush Ateret Zahav, Yoreh Deah 339:1)

The final source is a responsum entitled Beit

Ya'akov.²² He discusses whether medical treatment can be done on Shabbat. He explains that such treatment depends upon the advice and expertise of a trained physician. If it

is possible to heal the patient, then medical treatment must be done, even if it profanes the Shabbat. However, if it is impossible to cure the person, and treatment would only hinder the soul's departure, treatment is not to be done:

...But with a *goses* there is sometimes a factor working to the disadvantage [of the *goses*]. If they treat him and keep him alive for a while [*Echapei sha'ah*], and by so doing they impede the departure of the soul, behold -- it is permissible to withhold from the *goses* something which impedes the soul's departure. Although it is forbidden to bring near his death, as it is explained in Yoreh Deah 339, if they treat him and a disadvantageous factor comes into play which hinders the soul's departure so that he will not die quickly, they do not profane the Shabbat [for his sake]... With respect to a *goses*, it is not correct to hinder the departure of the soul... It is possible to explain the Tosafot's words [cited earlier in this *responsum*] by saying that if there is an expert doctor and he thinks it is possible to treat him so that he will live and be healthy, they can violate the Shabbat; however, to treat him for the sake of keeping him alive a little while [*Echapei sha'ah*], they do not profane the Shabbat. Even on a weekday it is forbidden to impede the soul's departure. (Beit Ya'akov 59)

The Beit Ya'akov clearly emphasizes the often-stated concern for not hindering the soul's departure. His statements could be interpreted by the *poskim* to prove that cessation of medical treatment is acceptable. It is obvious that lengthening one's life at all costs is not an overriding concern for the Beit Ya'akov.

It is clear that the classical sources are divided in their views about life, death, and the treatment of the *goses*. It is these divisions which allow the modern-day *poskim* to formulate their own conflicting views regarding the treatment of the terminally ill. Their viewpoints will be

discussed in the following chapter.

CHAPTER THREE

In order to adequately understand the decisions of the modern-day *poskim* regarding the treatment of the terminally ill patient, it is first necessary to define how they comprehend the idea of euthanasia -- both passive and active. In addition, examining some of the basic *halakhic* principles upon which the *poskim* base themselves is also vital to a thorough investigation of their works.

Abraham Steinberg, in his survey article examining euthanasia in light of *halakha*, differentiates between passive and active euthanasia. Passive euthanasia -- also known as negative euthanasia -- occurs when new medical treatment is not started or when treatment which is already being used is stopped. Active (or positive) euthanasia, on the other hand, is the act of giving drugs or other medical treatment for the express purpose of accelerating the patient's death.¹ Steinberg notes that the punishment for actively hastening a person's death is the same as that for murder.² In other words, the authorities equate active euthanasia with murder.

J. David Bleich agrees with Steinberg's assessment that active euthanasia is equal to murder. However, he also notes that there is an exception to the rule against euthanasia:

Although euthanasia in any form is forbidden and the hastening of death even by a matter of moments is regarded as tantamount to murder, there is one situation in which treatment may be withheld from the moribund patient in order to provide for an

unimpeded death. While the death of a *goses* may not be speeded, there is no obligation to perform any action which will lengthen the life of the patient in this state. The distinction between an active and a passive act applies to a *goses* and to a *goses* only. When a patient is, as it were, actually in the clutches of the angel of death, and the death process has already begun, there is no obligation to heal. . . . Of course, if the condition is reversible there is an obligation to heal. When the condition of *gesisah* is irreversible there is no obligation to continue treatment, and, according to some authorities, there is even a prohibition against prolonging the life of the moribund patient.³

With rare exceptions, modern-day *poskim* recognize the unique position of the *goses* as explained by Bleich above. It is accepted that while positive actions (in Hebrew *ma'asim*; *ma'aseh* in the singular) are prohibited, passive euthanasia is a viable option for the *goses*. To reiterate, euthanasia is not considered an option for those who are not "in the clutches of death." The manner in which each *posek* decides the specific activities which are acceptable under the rubric of "passive euthanasia" is the key to understanding his decision-making process. Relevant *responsa* will be considered and evaluated later in this chapter.

Prior to discussing the *responsa* themselves, it is beneficial to enumerate some of the *halakhic* principles which the *poskim* must consider. The first and perhaps most important of these is the value of human life. As Bleich states, "Not only is every human life of infinite value but every moment of human life is of infinite value."⁴

Whereas some civilizations consider only healthy individuals to be of value, Judaism deems all humans to be of equal value

and importance, regardless of age, health, or other factors.⁵

Another principle with which the *poskim* must contend is the traditional belief that God, and not the individual, is the owner of each person's body. As the caretaker of one's body, each person is responsible for taking proper care of it. This care, according to the Rabbis, includes seeking professional medical help in all instances of ill health.⁶ Human beings must do their utmost to stay healthy by seeking sustenance and medical attention when necessary. It is not up to the individual to determine whether life is worth living; only God can decide such a thing.⁷

According to traditional Judaism, which bases itself on the Torah, the physician is God's messenger.⁸ As such, the physician must do everything possible to heal the sick. Although the physician has the right to practice medicine, he does not have the authority to shorten life.⁹ Steinberg notes that the classical doctors' oaths point out the importance of lengthening a patient's life; nowhere do these oaths mention the possibility of hastening a person's death.¹⁰ The physician's job is to heal, not to kill. God -- not human beings -- determines the appropriate time for death.

Another topic which factors into the *poskim's* decision-making process is that of pain. Prolonging life without curing illness may lead to a life of pain for the patient. The *posek* must take into account such human suffering when rendering his decisions. Despite its strong

emphasis on the importance of every moment of life, as mentioned above, the Talmud also takes pity on those who are suffering greatly.¹¹ Tradition recognizes that in some instances death may bring more comfort and relief than would a prolonged life.

The consideration of a patient's suffering brings us to the conflict with which the *poskim* must deal: recent developments in medicine have made it possible to lengthen human life, sometimes for an indefinite period of time. As alluded to above, however, this medically-lengthened existence may be one of pain and sorrow; for this reason the patient may desire to die. How can the obligation to prolong life be reconciled with concern for the patient's pain?¹² Stated differently: on the one hand, both patient and doctor are obligated to try to save the patient's life because of the holiness and importance of human life; on the other hand, the recognition of and the desire to ease pain and suffering is expressed in many *halakhic* sources.¹³ Can these two competing concerns be satisfactorily reconciled? The remainder of this chapter will be devoted to examining how selected *poskim* deal with these questions.

The first *responsum* to be examined is one of the most strict when it comes to the question of the treatment of the terminally ill patient. The title of Nathan Zvi Freedman's Hebrew article "The Command of Life" is a clear sign of his position on the subject: life is of the utmost importance and thus everything possible must be done in order to preserve it. Freedman begins by presenting

relevant sources, including many of those cited in the previous chapter.¹⁴ He cites these as proof that it is totally forbidden to touch a *goses* lest this hasten his death. Nothing should be done which will bring death closer. In addition, giving drugs which will ease pain yet also cause a patient's death is forbidden -- regardless of the pain in which the patient may be.¹⁵ He cites the Chokhmat Adam as proof for his viewpoint: "It is forbidden to cause one to die quickly, even if one has been a *goses* for a long time and he [the patient] and his family have great pain."¹⁶

Freedman continues his *responsum* with a discussion of the efficaciousness of prayer. Even though physicians may be unable to cure a given illness, the patient is still obligated to pray that he be restored to health. Why pray for something which seems impossible? Precisely because cures may not be impossible! Medical developments occur daily. Lengthening life may allow physicians and scientists time to find a cure for the illness, thus enabling the patient to recover and resume a normal life.¹⁷ Although keeping a person alive may in the end only serve to lengthen his pain and not his life, it is obligatory to do as much as possible in order to provide more time in which to beseech God. Prayer may indeed bring results, as Freedman notes, for the ultimate decision is in God's hands.¹⁸

Freedman then expounds upon the worth of *chayer sha'ah*, explaining how a person can use the last moments of life to repent, do *mitzvot*, and so on. He sums up his

opinion in the following words:

We are obligated to supercede all of the *mitzvot* in order to lengthen [one's] days...even for an hour, and even if he is in a spiritual or mental situation which prohibits the possibility or understanding to fulfill *mitzvot*. All the more so, no one has the authority -- even the person himself -- to shorten the years or hours of his life.¹⁹

Freedman concludes by discussing the physician's right to practice medicine. He states that the Torah gives physicians authority to practice medicine, but it does not give them the right to kill. Even if it appears to be in the best interests of the patient or his family, the physician is not permitted to do anything which will bring on the patient's death. The physician and the patient must look to God for further "treatment" if the physician cannot find a cure.²⁰

It is clear that Nathan Zvi Freedman is very adamant about the human role in preserving life. Regardless of any outside considerations, such as the pain of the patient or the suffering of his family, life must be preserved. One must do all that is humanly possible to cure an illness and maintain life; what ultimately happens to that ill person is up to God.

In his *halakhic* study, Abraham Steinberg deals with the question of how to deal with a "defective" child, that is, one born with birth defects. Steinberg poses the following questions: What is the position of the parents in relation to the decision of whether or not to save the child's life? Should other concerns, such as economic considerations, play a role in this decision?²¹ Steinberg does not answer these

questions; he merely points them out in the hopes that others will consider them and find suitable answers.

Although much of this study does not deal directly with the question at hand, that is, the treatment of the terminally ill patient, part of it is relevant to this discussion. In presenting the dilemma of how, or if, to treat a child with birth defects, Steinberg uses the analogy of an adult who is near death. He states that for such an adult who is in a lot of pain, some *poskim* allow the cessation of medical treatment if the patient so requests, assuming that the patient is in complete possession of his faculties.²² Others do not abide by the patient's wishes.

In the case of a child born with birth defects, the child obviously cannot make such decisions and thus his parents must do so. If they decide to continue treatment, the physicians must abide by this decision. If, however, they decide against treatment, some *poskim* accept their decision while others state that the parents should not be listened to for they may be acting out of selfish reasons. For instance, they may be considering the financial and emotional hardships which such a child would impose upon the family.²³ There is no agreement amongst the *poskim* in this situation.

It is clear from the above synopsis of Steinberg's study that there is disagreement in both the case of a child born with birth defects and in that of an adult who is terminally ill. This discussion is valuable, however, because Steinberg challenges the *poskim* to answer some difficult

questions regarding the motivations inherent in the question of the cessation of medical treatment.

Dr. Ya'akov Levy writes from the viewpoint of a physician. As such he provides descriptions of two types of cases: the comatose patient and the dangerously ill patient. Levy considers a comatose person to be alive and, therefore, he disagrees with those *poskim* who, considering the comatose patient to be dead, allow him to be starved and parched to death.²⁴ According to Levy, just as live beings need food and water in order to exist, so too do comatose patients. Nutrition gives sick people extra strength in order to overcome their illnesses.

Some consider artificial feeding to be an impediment to a comatose patient's death. Since Isserles has stated that impediments can be removed in order to allow the soul to depart,²⁵ they would allow artificial feeding tubes to be removed from the patient. Levy disagrees with this view. In the situation which Isserles described, the person is a *goses*; in other words, the death process has already begun and is impossible to stop. Since death is inevitable at this point, impediments can be removed in order to allow the soul to depart more easily. The death process has not begun in the case of a comatose patient. Indeed, as Levy sees it, a comatose patient may live for weeks or months, or even become healthy again!²⁶ The case which Isserles described is thus not analogous to that of the comatose patient; therefore, feeding tubes cannot be considered impediments to death and consequently should not be

removed.

In his discussion of the case of a "dangerously" or terminally ill patient, Levy states that killing is always forbidden, even in the case of a *goses*.²⁷ However, if the patient's prospects for life are nil, the physician is not obligated to treat him. There is a difference between killing the patient and not treating him. Levy reasons that the commandment to save a life depends upon the condition "if it can be saved."²⁸ If the person cannot be healed, then it is acceptable to not treat him.

Levy briefly discusses the subject of pain. Citing Avodah Zarah 18a, Levy states that even though he was in great pain Rabbi Chaninah ben Tradyon did not cause his life to be shortened. He refused to open his mouth to allow the flames to enter and kill him more quickly. As Rabbi Chaninah ben Tradyon said to his students: "It is better that the One who gave [me my soul] should take it away [as well]."²⁹ The rabbi left it up to God to determine the appropriate time for death.

Levy also learns another lesson from this Talmudic story: while one should not shorten life due to pain, neither is one obligated to lengthen such a life.³⁰ The Talmudic story does not describe any efforts to lengthen Chaninah ben Tradyon's life. Without explicitly saying so, here Levy is differentiating between passive and active euthanasia. Passive euthanasia appears to be acceptable to Levy as he states that not lengthening a life of pain is a viable option.

To sum up, Levy differentiates between the treatment of a comatose patient and a terminally ill patient. Since death is not imminent for a comatose patient, medical treatment should not be withdrawn as this person has a chance of recovery. A person in whom the death process has already begun, as in the cases of Rabbi Chaninah ben Tradyon and of a *goses*, items hindering the soul's departure may be removed. These items are simply delaying the inevitable: death.

The major part of Chaim David HaLevi's article in the journal *Techumin* surveys the traditional sources dealing with the subject of euthanasia and the *goses*.³¹ It is not until near the end of his *responsum* that he explains how Isserles' permission to remove an impediment can be applied to modern medical situations.

HaLevi explains that removal is permitted of something external which causes an impediment to the soul's departure for the simple reason that the hour of death by natural means has arrived. Since the time of death is at hand, there is no reason to attempt to delay the inevitable. HaLevi reiterates the often-stated prohibition against doing any positive action which will cause a more rapid death.³²

As is stated in the *Sefer Chasidim*,³³ discussed in the previous chapter, it is forbidden to put salt upon the tongue of a person who is dying in an effort to prevent his death. Instances occurred in which such an action was done, despite this prohibition, for the purpose of trying to delay death. In order to combat such actions, Moshe Isserles, in his

commentary to Karo's Shulkhan Arukh, expressly permits removal of impediments such as salt which was placed upon the *goses'* tongue.³⁴ Isserles is the first to codify the permissibility of removing anything hindering the soul's departure.

The grain of salt upon the tongue is analogous to the modern artificial respirator, according to HaLevi. HaLevi describes the situation of a person being brought into a hospital emergency room. This person is automatically connected to a respirator, giving him "artificial life" while the physicians attempt to treat the patient. Once the physicians realize that they cannot possibly cure the patient, the respirator can be removed.³⁵ Such action is permitted since when there is no real prospect for life it is forbidden to lengthen a *goses'* life by artificial means, such as salt upon the tongue or the noise of a woodchopper outside. The respirator, just like the salt, is thus an impediment to death and can be removed.³⁶

HaLevi further states that not only is it permitted to remove the machine, but it is obligatory to do so. It will become obvious once the respirator is removed that God has already taken the person's soul; he will die immediately upon removal of the machine. In using the respirator, the soul is forced to remain in the body, causing it pain since "it cannot depart and return to its resting-place."³⁷

Once it becomes obvious that medical treatment cannot cure a patient, the physician is not only permitted but also obliged to remove the artificial respirator. HaLevi clearly

supports this action based upon his study and understanding of Isserles' comments about the removal of impediments to the soul's departure.

Moshe Dov Welner, like many of the *poskim* discussed above, begins his *responsum* by citing some of the sources translated in the previous chapter.³⁸ From his study of the sources, he concludes that if there is any doubt about whether or not a *goses* can be cured, the physicians are obligated to treat him. If there is no cure, treatment can be stopped. Moreover, the patient is permitted to stop taking drugs which merely delay death and do not cure him.³⁹

Welner emphasizes that to do anything active which draws death nearer is strictly forbidden, even if the *goses* is suffering greatly.⁴⁰ However, Welner permits the removal of something which impedes the soul's departure. Like HaLevi, he bases his opinion on Isserles,⁴¹ as he explains:

It is clear that the main reason for the prohibition against touching a *goses*, [which is like] placing a finger on a candleflame, is [because] it weakens the power of the natural life. However, removing a non-natural factor, even if [the non-natural factor] lengthens life, and by removing the impediment death is drawn closer, even this there is no prohibition against because it does not weaken the natural life, but rather removes the super-natural power.⁴²

It is evident from Welner's statement that if there is no hope for recovery medical treatment can be suspended as such treatment falls into the category of "impediments to

death."

In his *responsa* collection Tzitz Eliezer, Eliezer Yehudah Waldenberg clearly states that in cases of terminal illness it is the physician's duty to ease the patient's suffering. (Waldenberg's view regarding the treatment of pain is discussed later in this chapter.) It is also up to the physician to prevent non-beneficial treatment the use of which could cause the patient's family economic hardship.⁴³ Moreover, the physician is duty-bound to enable the patient to die with dignity; as Waldenberg states: The physician especially wants to enable the patient to die with dignity -- a death of honor...without so many tubes in him that he loses the Godly image which is in him.⁴⁴

Although other *poskim* discuss the *goses'* pain and suffering, Waldenberg is the first to also mention such non-*halakhic* considerations as economic concerns and the idea of death with dignity. It is noteworthy that while he mentions such considerations, Waldenberg does not dwell on them at any length. Indeed, after briefly mentioning these concerns in the opening paragraphs of Tzitz Eliezer 13:89, Waldenberg does not discuss them any further. He devotes the remainder of this lengthy *responsum* to a discussion of the removal of artificial respirators.

Waldenberg agrees with HaLevi and Welner that if medical technology has no curative powers, but is simply delaying an inevitable death, it is permitted to remove such items. However, Waldenberg notes that the Turei Zahav and the Siftei Kohen⁴⁵ do not permit removal of such things as

salt upon the tongue or a pillow beneath the *goses'* head. Their opinions seem to be in direct contradiction to that of Moshe Isserles who states that such items are impediments which can be removed.⁴⁶ However, as Waldenberg interprets their comments, the Turei Zahav's and Siftei Kohen's real concerns deal not with the removal of these items as such, but rather with moving the *goses'* body. It is this movement which they fear will cause death to occur, not the actual removal of the salt or the pillow. Waldenberg therefore believes that the Turei Zahav and Siftei Kohen would permit removal of an artificial respirator if it is done without moving or jostling the patient's body. He suggests that this can be accomplished by simply removing the respirator's plug from the wall or by turning off the electrical button.⁴⁷

Waldenberg also discusses the concept of "self-sufficient life." Anything which does not aid the *goses* in obtaining a self-sufficient life is permitted to be removed. Such permission is granted even if it involves contact with the body. Removal of such an object is considered to be the removal of something which hinders the soul's departure, not as something which causes death.⁴⁸

Waldenberg suggests that respirators have automatic time clocks, similar to Shabbat clocks, which can be activated for short periods of time. (He suggests either 12 or 24 hours.) In this amount of time the physicians can test the patient and decide if there is any chance for life. Once the respirator automatically stops at the end of the pre-set

time period, it can be re-started if the physicians feel that there is a chance for survival. If there is no sign of spontaneous respiration when the respirator shuts itself off, the physician is not obligated to reconnect it. In fact, the physician is forbidden to do so as this will only cause the patient pain and sorrow.⁴⁹

The question in Solomon Freehof's 1969 *responsum*, "Allowing a Terminal Patient to Die," is whether it is permitted to hasten a terminally ill patient's death by withdrawing all medication and fluids given intravenously. Freehof states that a physician is not obligated to force a patient to live a few more hours or days by giving him drugs or by performing acts which will lengthen the patient's life.⁵⁰ Freehof reaches this conclusion from his study of Ketubot 104a as well as Rabbeinu Nissim's explanation of this passage in his commentary to Nedarim 40a.⁵¹ He learns from these sources that "while it is our duty to pray for a sick person that he may recover, there comes a time when we should pray for God's mercy that he should die."⁵²

Citing the Sefer Chasidim,⁵³ Freehof states that not only do people have a right to live, but there comes a time when they also have a right to die. The physician is therefore obliged to allow a *goses* to die. Obviously, the physician may not do anything positive to hasten the patient's death; it is permitted, though, to remove anything which hinders the *goses'* death.⁵⁴

The best summary of Freehof's position is stated in the conclusion of his *responsum*:

To sum up: If the patient is a hopelessly dying patient, the physician has no duty to keep him alive a little longer. He is entitled to die. If the physician attempts actively to hasten the death, that is against the ethics of Jewish law. . . . The physician is not really hastening the death; he has simply ceased his efforts to delay it.⁵⁵

In the brief section which deals with the removal or withholding of medical care in his 1991 *responsum* "A Jewish Approach to End-Stage Medical Care," Elliot Dorff agrees that "when the patient has an irreversible, terminal illness, medications and other forms of therapy may be withheld or withdrawn."⁵⁶ Withholding treatments is justified if the physician judges that such treatments would be futile. Since nutrition and hydration are necessities of life they must be provided.⁵⁷ However, Dorff makes a distinction between intravenous feeding and providing food and water in the usual sense. If the patient cannot swallow food and water, then he may or may not be fed intravenously. This is a medical decision which should be based upon a consideration of the benefits which the patient might receive.⁵⁸

Dorff cautions that when decisions are made to withhold or withdraw therapy the patient must not be abandoned. Pain relief and other "humanitarian support systems must be maintained."⁵⁹ These statements adequately summarize Dorff's main position regarding the topic at hand;

his *responsum* will be discussed in another context later in this chapter.

Moshe Feinstein writes extensively about the treatment of the terminally ill.⁶⁰ Feinstein's *responsa* on this topic can be found in his work Iggerot Moshe: Choshen Mishpat, part 2. These *responsa* are extremely lengthy and detailed; only the most pertinent points of these *responsa* will be discussed here.

Feinstein states that in the case where a person is terminally ill and there is no chance for recovery, the physicians are not allowed to give him drugs which will shorten the patient's life despite the fact that he may be suffering great pain. Such actions would be considered murder. However, the physicians should not administer treatment if such treatment will not cure the patient who is in pain, even if the treatment will lengthen his life.⁶¹

Physicians must do all that they can in order to make the patient comfortable. They are also obligated to give the patient, when available, drugs which will ease the pain without shortening life. Feinstein thus recognizes the suffering of such a person. Easing pain must be done even if death is not imminent, that is, even if the patient is not yet a *goses*.⁶² This statement is significant; the *responsa* previously evaluated only discuss the case of a *goses*, that is, one who will die within a three-day period of time. Here Feinstein, as does Waldenberg, broadens his discussion to add terminally ill patients who are not in danger of dying in the near future.

Those suffering from an incurable illness, even if they are not in danger of imminent death, are allowed to deny themselves treatment. Feinstein uses the example of a patient who is suffering from advanced cancer to demonstrate this point.⁶³ Although the patient will live for more than three days, Feinstein gives him the right to refuse medical treatment which would only prolong his life of pain and suffering without curing him.⁶⁴ Thus, while life is sacred, the permit for taking medical action is that one may save life thereby. If these acts lose their therapeutic rationale, they are no longer permitted. For this reason, this discussion is not limited to the case of a *goses* only, but covers all terminal patients.

Feinstein also discusses two ideas which most of the other *poskim* do not. The first of these regards treating a terminally ill patient who does not desire such treatment. Physicians must try to persuade the patient to accept treatment which they know will benefit the patient. If the patient does not believe the physicians, it is necessary to find one whom he will trust.⁶⁵ If after consultation with the physicians the patient still does not want a certain treatment because it frightens him, it is better not to force the patient to accept such treatment. Feinstein believes that forcing treatment upon an unwilling patient could further harm him or even cause death.⁶⁶

A terminally ill patient who cannot breathe must be given oxygen as the oxygen, by enabling him to breathe

better, will ease his pain.⁶⁷ Furthermore, in the case of a patient who cannot eat, intravenous feeding must occur as this will strengthen him. This is true even for a patient who is unconscious.⁶⁸ Just as a patient who is frightened of a specific treatment is not obligated to accept such treatment, so too a person who does not want to be fed for fear that this will harm him is not to be fed. If the patient thinks that such will be dangerous for him, it may indeed be true and it is thus better not to feed him, according to Feinstein.⁶⁹

The second idea which Feinstein discusses is that of the treatment of a terminally ill patient who develops a second illness. If it is possible to treat the second illness, there is an obligation to do so. However, if the terminal illness is very painful, the patient can refuse additional treatment which would not cure him but would instead prolong a life of pain.⁷⁰ If the patient cannot speak for himself, family members can be consulted to speak on the patient's behalf.⁷¹ Feinstein, in allowing the family members to make such a decision, may be assuming that the family members will respond according to the patient's wishes. This may be a false assumption as family members may, consciously or unconsciously, project their own wishes onto those of the patient, yielding a decision which may not be the one which the patient would have made had he been able to speak! Despite this possibility, it is important to note that Feinstein allows family members to participate in the decision-making

process. This in and of itself is highly unusual.

Immanuel Jakobovits, in his two-part *responsum* in the journal HaPardes, begins by discussing many of the sources listed in chapter two.⁷² Jakobovits explains that permission to practice medicine is given in the Torah.⁷³ Jakobovits understands this as permission to practice medicine, not as an obligation to do so. One is commanded to perform actions which can cure the patient; this is the definition of "medicine."⁷⁴ Medicine restores life. If the physicians feel that a specific treatment will not cure the patient, it is no longer considered medicine; therefore, it is not incumbent upon the patient to accept such treatment.⁷⁵

Jakobovits briefly discusses a case similar to one described by Feinstein, as noted above, in which a patient has two illnesses: one terminal and one treatable. Jakobovits uses the example of a diabetic who develops cancer. (This is a bit different from Feinstein's case in that here the patient already has a treatable illness and then contracts a terminal illness; in Feinstein's case the reverse is true.) Jakobovits takes a different tack than Feinstein: he does not object to withholding the diabetic's insulin as he sees it as an impediment to death. It does not matter that the person is not yet a *goses*.⁷⁶ This is an extremely lenient position; others state that insulin is necessary -- equating it with food and water -- and thus it cannot be discontinued.⁷⁷

As is clear from the discussion in this chapter, a

recurrent theme in many of the *responsa* is that of pain. One of Eliezer Yehudah Waldenberg's *responsa* deals solely with this topic. Indeed, his Tzitz Eliezer 13:87 is considered the premier *responsum* on this issue. Waldenberg equates pain with disease; pain is not merely a symptom of another illness but is an illness in and of itself. As such, the relief of pain is just as valid a medical objective as is curing any other illness.⁷⁸

Waldenberg explains that each person reacts differently to pain and illness; it is this factor which makes medicine so risky. The Ramban⁷⁹ states that treatment "which will cure one person may kill another."⁸⁰ It is due to this inherent risk of harming (or killing) the patient that the Torah had to give permission to perform medicine.

In Tzitz Eliezer Waldenberg describes a case in which physicians have given up hope of curing a terminally ill patient. If the patient is suffering greatly, can he be given "calming injections" such as morphine -- even if they will not cure his illness but instead will most likely hasten death? Waldenberg answers with a resounding "yes!"⁸¹ In Waldenberg's opinion it is permitted to give drugs to a terminally ill patient in order to relieve that disease which is commonly referred to as "pain." The only condition is that the drugs' purpose must be to ease pain, not to hasten death. As long as this is the case, permission is granted to give patients drugs such as morphine.⁸²

Solomon Freehof also deals with the topic of pain in his

1975 *responsum* "Relieving Pain of a Dying Patient."

Freehof states that "for a man to ask that his life be ended sooner is the equivalent of his committing suicide...[and] suicide is forbidden by Jewish law."⁸³ In the case of a person who is in great physical agony, however, the conclusion is different. Freehof notes that one who is under much stress is not considered to be a "free agent" according to *halakhah*. A person under a great deal of stress is forgiven for the act of suicide. Freehof cites, amongst other sources, both the case of King Saul and the one described in Gittin 57b in which the children were taken captive and then committed suicide.⁸⁴

Freehof cautions, however, that although these people were forgiven for committing suicide, it was not within their rights to do so. Just because a person is in agony does not mean that he is allowed to ask for death. However, if in his agony the person does so, it is pardonable.⁸⁵

The next question Freehof deals with is that of the role of the physician in cases in which the patient, due to his extreme pain, wishes to die. Is a physician permitted to administer a pain reliever to a dying patient which the physician knows may hasten the patient's death? Freehof cites the Shulkhan Arukh, Yoreh Deah 339, in responding that *halakhah* "absolutely forbids hastening the death of a dying patient."⁸⁶

Freehof then poses this dilemma:

If... this were definitely a lethal medicine, the direct effect of which would be to put an end to the patient's life, the use of such medicine would be absolutely forbidden. But this medicine is neither immediately, nor intentionally, directly lethal; its prime purpose and main effect is the alleviation of pain. The harmful effect on the heart of the patient is only incidental to its purpose [this refers to the weakened respiratory system of the patient referred to in the question to which Freehof is responding] and is only a possible secondary reaction. The question, therefore, amounts to this: May we take that amount of risk to the patient's life in order to relieve the great agony which he is now suffering?⁸⁷

Freehof states that it is possible to take some risk for the patient's benefit. Since the patient is dying anyhow, it is possible to risk the last dying hours [*chayei sha'at*] in order to take a chance on a medicine or treatment which may be beneficial to the patient.⁸⁸

We know, therefore, that it is permitted to take some risks for a dying patient in the hopes of curing him. What about in our case in which the objective is not to cure the patient but rather solely to relieve pain? Freehof believes that this, too, is allowed. He cites Ketubot 104a to show that death may be an acceptable alternative to pain.⁸⁹ Freehof concludes that relieving the patient's pain might actually serve to strengthen the patient more than the medicine weakens him!⁹⁰

The above-mentioned *responsa* have defined a terminally ill patient as a *goses*, that is, one who has less than 72 hours of life remaining. Elliot Dorff discusses the inappropriateness, in his opinion, of using the term *goses* in his recent *responsum* "A Jewish Approach to End-Stage

Medical Care.⁹¹ It is worth mentioning his ideas as, if accepted, they may change the thinking and the decisions of the *poskim*. This could greatly affect the treatment of the terminally ill patient in the modern context.

Briefly, Dorff explains that the codes cited in the previous chapter dealt with people who were literally "on their deathbeds."⁹² There was no doubt that these people would die in the very near future. Today, however, medical technology is such that people can be kept alive indefinitely, even if this so-called "life" is one spent hooked up to a machine. Even if the term *goses* was to be used only to refer to the amount of life remaining unaided by modern medicine, Dorff points out, it is still impossible to know exactly when the patient's death will occur; therefore it is impossible to accurately assign the term *goses* to an individual. This is not a new problem -- it has always existed.⁹³

Dorff suggests that *terefah* is a more appropriate category than *gosisah*. He notes:

As Daniel B. Sinclair⁹⁴ has pointed out, however we define the category of *gosisah*, all agree that the person in that category is still considered alive. Therefore, any withholding or withdrawing of treatment from such people always comes with not a small amount of ambivalence and guilt. The *halakhic* category which describes these situations much more accurately and appropriately, he suggests, is that of *terefah*, a person with an incurable disease. Such a person is, according to medieval authorities, ... an already dead person, and consequently one who kills him or her is exempt from human punishment although subject to divine and extra-legal penalties.⁹⁵

Dorff notes that Rashi, in Sanhedrin 78a, points out that a *terefah* is analogous to a dead person but is not equated to one. This analogy, according to Dorff, makes the category of *terefah* exactly parallel to the modern medical cases which are of concern here.⁹⁶ If the category of *terefah* replaces that of *geisrah*, the questions of withholding or withdrawing medical treatment will be mute. It would be foolish to give medical treatment to the *terefah* since he is considered to already be dead. A dead person cannot benefit from modern medicine. No one would question withdrawing treatment from someone who is no longer alive!

CHAPTER FOUR

Medical knowledge and technology have increased in recent years, greatly improving and lengthening many lives, unfortunately, as a result of this same technology, new and unforeseen problems have also arisen. When technology allows people to live longer and possibly more pain-filled lives, the problem of when medical treatment is "too much" becomes relevant. The question of the cessation of medical care for terminally ill patients has thus become of great importance and concern today. Jewish authorities turn towards tradition -- Tanakh, Talmud, codes, and commentaries -- for answers to this question. As was seen in the previous chapter, modern *poskim* search these texts as they grapple with this important question: "Can medical treatment be withdrawn from a terminally ill patient who so desires?"

It is obvious from our study that the *poskim* do not unanimously agree upon an answer to the above question. Some state that life must be lengthened at all costs, while others believe that medical treatment may be withdrawn in certain instances.¹ The question posed by this study, whether *poskim* consider non-*halakhic* factors in making decisions regarding cessation of a terminally ill patient's medical treatment, cannot be answered with a simple "yes" or "no." It is impossible to know if *poskim* think about such factors unless they explicitly mention them in their *teshuvot* ("answers"). Our survey clearly shows that at least some *poskim* consider these factors, or at least

recognize in their *responsa* that such non-*halakhic* concerns do exist.

The remainder of this chapter will be devoted to a study of those *poskim* who mention in their *responsa* non-*halakhic* factors such as pain, economic concerns, and "death with dignity." Does the knowledge that such concerns exist influence the decisions they make? Or, do the *poskim* merely recognize these concerns yet concentrate solely upon the *halakhic* tradition when answering questions regarding the cessation of medical care?

Nathan Zvi Freedman, to begin, clearly states that everything possible must be done in order to preserve life. While he recognizes that a patient may be in pain, he disregards the patient's suffering. The primary concern of all involved in the medical care of the patient must be to preserve the patient's life. Freedman notes that it is forbidden to cause anyone to die quickly; this prohibition even includes a person who is in a great deal of pain and will die soon anyway (i.e., the person is a *goses*).² Of all the *poskim* surveyed in this study, Freedman is the harshest in his decision. Regardless of any other considerations, life must be lengthened at all costs.

Ya'akov Levy, a physician, only briefly discusses the topic of pain in his article which describes medical background relevant to our discussion. Basing himself upon Avodah Zarah 18a, Levy notes that despite one's pain, one may not do anything to shorten life. However, Levy also learns from the Talmud that while shortening one's life is forbidden it is at the same time not obligatory to lengthen a

life of pain. This is a bit more lenient than Freedman's view; Levy recognizes the patient's pain and does not wish to cause further suffering by lengthening his life. This is the only mention of a non-*halakhic* factor in Levy's article.³

Moshe Feinstein is considered an authority about many subjects, including the treatment of terminally ill patients. Feinstein agrees with the other *poskim* that nothing can be done to shorten a person's life, even if that person is in great pain. However, physicians are obligated to do their utmost to relieve a patient's pain as long as such relief does not shorten life.⁴ Feinstein goes one step farther than Levy here. Not only must a pain-filled life not be lengthened, as Levy states, but also the patient's pain must be treated. This is the physician's obligation.

In Feinstein's discussion of a terminally ill patient who develops a second illness, he permits the refusal of additional treatment which would simply prolong a life of suffering without curing the patient. Moreover, if the patient is unable to speak for himself, Feinstein allows the patient's family members to help make decisions about withdrawing medical treatment.⁵ Feinstein is the only *posek* studied who allows family members to participate in the decision-making process. Clearly non-*halakhic* factors are recognized by Feinstein and play a role in his consideration of the treatment of terminally ill patients.

Elliot Dorff, a Conservative rabbi, allows the withdrawal of medical treatment in cases of irreversible terminal illness.

In such instances, however, the patient must not be totally abandoned. The medical team is obligated to provide pain relief at all times, allowing the patient to die a more peaceful death.⁶ Although Dorff does not explicitly say so, he is actually recognizing the concept of "death with dignity," a non-*halakhic* or extra-*halakhic* concern. Dorff's concern with the patient's pain and the relief of such is also an obvious non-*halakhic* factor which Dorff stresses in his work.

Solomon Freehof, a well-known writer of Reform *responsa*,⁷ discusses the topic of pain in his writings as well. Citing Ketubot 104a, Freehof demonstrates that death may be an acceptable alternative to a life of pain.⁷ The Talmud accepts -- and, indeed, even seems to promote -- this extreme alternative. By using Ketubot 104a as proof, Freehof clearly recognizes and applies non-*halakhic* concerns such as pain in his *responsa*.

Returning to the world of traditional Judaism, Eliezer Yehudah Waldenberg cites non-*halakhic* concerns in his *reshuvot* more than any other *posek*. Like the other *poskim* already mentioned, Waldenberg discusses the subject of pain; however, he takes the discussion a step farther by equating pain with disease. If pain is a disease, its cure is a valid medical objective as medicine seeks to cure diseases.⁸

Waldenberg also recognizes economic concerns in his *responsum* Tzitz Eliezer 13:89. It is up to the physician, in Waldenberg's opinion, to avoid non-beneficial treatment which would only serve to cause the patient's family

financial hardship. Waldenberg is the only *posek* who admits that such economic considerations are of concern to him. In addition, Waldenberg is the only one to explicitly state that the patient should be allowed to die with dignity. The physician must enable the patient to do so by removing any tubes or other items to which the patient is connected.⁹

The remainder of the *poskim* whose *responsa* were discussed in the previous chapter -- Chaim David HaLevi, Immanuel Jakobovits, and Moshe Dov Welner -- do not mention non-*halakhic* concerns.¹⁰ In his *halakhic* study regarding the "defective" child, Abraham Steinberg does raise questions regarding this subject. Although he does not give his own opinions about the matter, Steinberg does realize the importance of dealing with such concerns and challenges the *poskim* to do so.¹¹

It should be noted that there is no simple formula for determining which *poskim* will permit the withdrawal of medical treatment from a terminally ill patient and which will not. Some of those who do permit the cessation of treatment do so basing themselves solely on the traditional sources; leniency in this area is not restricted only to those who allow non-*halakhic* factors to figure into their decision-making processes.

To conclude, it is obvious that many *poskim* recognize that there may be non-*halakhic* concerns in questions of the cessation of medical treatment for a terminally ill patient. At least one of these concerns -- that of the pain suffered by the patient -- is noted by the majority of

poskim studied. This may be due to the fact that a precedent is set in the Talmud itself, the Talmud recognizes the pain of Rabbi Yehudah ha-Nasi and, through the actions of his handmaid, allows him to die rather than continue to suffer.¹²

Regardless of the possible motivations behind their recognition of the patient's pain, many *poskim* do indeed note it in their *teshuvot* and some even go so far as to state that its relief is obligatory. Other non-*halakhic* or extra-*halakhic* concerns, it is clear, are rarely discussed. When *poskim* mention these concerns, it is often a mere recognition that such concerns exist, quite rarely do non-*halakhic* concerns besides pain play a major role in the decisions.

Of course, it is difficult, if not impossible, to make any general conclusions about the use of non-*halakhic* factors by modern *poskim*. This study has only surveyed a small selection of modern *responsa*, but if any conclusion can be made from such a sampling it would be that non-*halakhic* concerns are recognized by *poskim*. Some *poskim* even admit to considering such concerns when making their decisions. It is impossible to know what role non-*halakhic* factors may or may not be playing in the minds of other *poskim* who do not mention them in their *responsa*.

CONCLUSION

In conclusion, this thesis surveyed the *responsa* of modern *poskim* to determine if they consider non-*halakhic* factors when making decisions regarding the cessation of medical care for the terminally ill patient. The *responsa* presented a wide range of views regarding this topic -- from the command to lengthen life no matter the cost to the permit to remove medical treatment which prevents the patient from dying.

Those *poskim* who permitted the withdrawal of treatment did not necessarily base their decisions upon non-*halakhic* factors. Many of these *poskim* relied upon Moshe Isserles' codification of the permit to remove impediments which unnecessarily prohibit the *goses'* death, as was explained in Chapter Two.

Although *poskim* may not have based their decisions upon non-*halakhic* considerations, it is clear that they were recognized and mentioned by the majority of *poskim* surveyed. Pain was the non-*halakhic* factor cited most in the *responsa*; other factors were rarely mentioned.

It is possible from this brief survey of *responsa* to state that non-*halakhic* factors do seem to play a role in the decision-making process of many *poskim* in the area of the medical treatment of terminally ill patients. Some *poskim* admitted to considering these factors in their *responsa*. The extent to which these factors really influence the *posek's* ultimate decision regarding the cessation of medical treatment is not totally clear. Further

investigation is necessary to determine the size and shape of the role of non-*halakhic* factors.

NOTES

Chapter One

1. Margaret Hall, ed., Selected Writings of Benjamin Nathan Cardozo (New York: Fallon Publications, 1947), p. 160
2. The Nature of the Judicial Process was originally published in 1921 by Yale University Press.
3. Hall, p. 112.
4. Hall, p. 113.
5. See Ronald Dworkin, Taking Rights Seriously (Cambridge: Harvard University Press, 1978), p. 81.
6. Dworkin explains these three theories although he ascribes different names to them. See pp. 14-23 in his book.
7. Louis Jacobs, A Tree of Life: Diversity, Flexibility, and Creativity in Jewish Law (Oxford: Oxford University Press, 1984), p. 10.
8. Jacobs, p. 11.
9. Mark Washofsky, "The Search for Liberal *Halakhah*," Dynamic Jewish Law (Tel Aviv: Rodef Shalom Press, 1991), p. 30.
10. Washofsky, p. 29.
11. Washofsky, p. 30.
12. J. David Bleich, Contemporary Halakhic Problems (New York: Ktav Publishing House, Inc., 1977), p. xv.
13. Norman Lamm and Aaron Kirschenbaum, "Freedom and Constraint in the Jewish Judicial Process," Cardozo Law

Review, Vol. 1 (Spring 1979), p. 106.

14. Alan J. Yuter, "Legal Positivism and Contemporary *Halakhic* Discourse," The Jewish Law Annual, Vol. 6 (1987), pp. 148-163.
15. Elon's view is found in HaMishpat Halvri (Jerusalem: Magnes Press, 1973).
16. Englard's view is presented in "Research in Jewish Law -- Its Nature and Function" in Bernard S. Jackson, ed., Modern Research in Jewish Law (Leiden: Brill, 1980).
17. Yuter, pp. 153-154.
18. Yuter, p. 156.
19. Louis E. Newman, "Woodchoppers and Respirators: The Problem of Interpretation in Contemporary Jewish Ethics," Modern Judaism, Vol. 10 (February 1990), p. 32.
20. Newman, p. 32.
21. Emanuel Rackman, "Halakhah: Orthodox Approaches," Encyclopedia Judaica Yearbook 1975-1976 (Jerusalem: Keter Publishing House), pp. 134-144.
22. Rackman, pp. 140-142.
23. Rackman, p. 143.
24. See p. 6 above for his opinion on this matter.
25. Jacobs, p. 15.
26. Jacobs, p. 15.
27. Joel Roth, The Halakhic Process: A Systemic Analysis

(New York: The Jewish Theological Seminary of America, 1986), pp. 231-304.

28. Roth, pp. 231-232.
29. Roth, p. 234.
30. Roth, p. 237.
31. Rackman, p. 142.
32. Rackman, p. 142.
33. Roth, p. 302.
34. Roth, p. 302.
35. Jacobs, p. 17.
36. Jacobs, p. 166.
37. Robert Gordis, The Dynamics of Judaism: A Study of Jewish Law (Bloomington: Indiana University Press, 1990), pp. 86-126.
38. Eliezer Berkovits, Not in Heaven: The Nature and Function of Halakha (New York: Ktav Publishing House, Inc., 1983), pp. 71-84.
39. Gordis, p. 95.
40. Berkovits, p. 82.

Chapter Two

1. Biblical translations are from the Jewish Publication Society's Tanakh (Philadelphia, 1985).
2. Levi ben Gershom (1288-1344), also known as the

Ralbag or Gersonides, was a French mathematician, astronomer, philosopher, and biblical commentator.

3. David Kimkhi (1160?-1235?), or the Radak, lived in Provence. He was a grammarian as well as a biblical exegete.
4. After the Bar Kokhba Revolt (132-135 C.E.), the Roman authorities were concerned with preventing the Jews from meeting in their synagogues, praying or studying Torah, and maintaining communal institutions. (H.H. Ben-Sasson, ed., A History of the Jewish People, p. 334.)
5. The Tosafot were collections of comments on the Talmud by 12th-14th century Ashkenazic authorities arranged according to the order of the talmudic tractates.
6. Rabbeinu Nissim (1310?-1376) was popularly known as the Ran. Born in Gerona, he lived most of his life in Barcelona. Rabbeinu Nissim was one of the most important Spanish talmudists. His best-known work is the commentary on the Alfasi.
7. The Rambam (1135-1204), Rabbi Moses ben Maimon, lived in many places, including Morocco and Egypt. The Rambam was a rabbinic authority, codifier, philosopher, and royal physician. His most famous works are the Mishneh Torah, Sefer HaMitzvot, and Guide of the Perplexed.
8. Menakhem ben Solomon Meiri lived in Provence (1249-1316). His commentary on the Talmud was called the Beit HaBekhirah.
9. Solomon ben Isaac of France was better known as Rashi (1040-1105). He was the leading commentator on the Bible and the Talmud.
10. As cited in J. David Bleich's "Ethico-Halakhic Considerations in the Practice of Medicine" (Dinei Yisrael, Vol. 7,

p. 130), "a *goses* is one who cannot, under any circumstances, be maintained alive for a period of seventy-two hours." [See also: Tur, Yoreh Deah 339:1.]

11. Sefer Chasidim ("Book of the Pious") comprises the ethical teachings of the Chasidei Ashkenaz (German Chasidim) movement in the 12th and early 13th centuries.
12. The Shiltei HaGiborim, the 16th century Italian Joshua Boaz ben Simon Barukh, wrote a commentary on Isaac Alfasi's Rif and Mordekhai b. Hillel's Mordekhai. It contains supplementary *halakhot* and talmudic novellae.
13. Joseph Karo's Beit Yosef was first published in 1555. It is a commentary on Jacob b. Asher's Arba'ah Turim. The Beit Yosef follows the development of talmudic laws from their beginnings to the 16th century.
14. Rabbi Aharon HaKohen (early 14th century), from Lunel, Provence, wrote the Orkhot Chayim. It is a *halakhic* compendium.
15. Joseph Karo's Shulkhan Arukh is a *halakhic* synopsis of his previous commentary on the Turim (the Beit Yosef). First printed in Venice in 1565, it is accepted as the Jewish law par excellence after amendments had been added by Moshe Isserles.
16. Moshe Isserles (1525?-1572) was also known as the Rema. He was a Polish rabbi and codifier; he was considered a great *halakhic* authority. His major works include the Darkhei Moshe which was the basis for his Mappah, glosses on the Shulkhan Arukh.
17. David ben Samuel HaLevi is better known by the name of his premier work, the Turei Zahav (or Taz). The

Turei Zahav is a commentary on the four parts of the Shulkhan Arukh, written in the 1600s.

18. Shabbetai ben Meir HaKohen (1621-1662) was a Lithuanian rabbi, *posek*, and commentator on the Shulkhan Arukh. His book Siftei Kohen (which gives him the name by which he is better known, the Shakh) is a commentary on Yoreh Deah in the Shulkhan Arukh. After the Turei Zahav also commented upon Yoreh Deah, the Shakh returned to comment upon the Taz's words. This commentary is known as the Nekudot HaKesef.
19. The Beit Lekhem Yehudah is a collection of commentaries of later scholars on Yoreh Deah. It was written by Zvi Hirsh ben Azariah ben Azriel and was printed in 1733.
20. Jehiel Michael ben Aaron Isaac HaLevi Epstein (1829-1908) wrote the Arukh HaShulkhan. This work contains novellae and *halakhic* rulings on the four parts of the Shulkhan Arukh, bringing it up-to-date. The Arukh HaShulkhan, like the Shulkhan Arukh, deals only with laws which have a practical importance.
21. Mordekhai ben Abraham Jaffe (c.1535-1612) was a talmudist, kabbalist, and communal leader, born in Prague. He is known as the Levush, as his works were known as *levushim* (after Esther 8:15).
22. The Beit Ya'akov, by Jacob Zausmer (Dyhernfurt), is a book of *responsa* printed in 1696.

Chapter Three

1. Abraham Steinberg, "Euthanasia -- In the Light of Jewish Religious Law," Sefer Assia, Vol. 3 (1982), p. 429 [in Hebrew].

2. Steinberg, Sefer Assia, p. 433.
3. J. David Bleich, "Ethico-Halakhic Considerations in the Practice of Medicine," Dinei Yisrael, Vol. 7 (1976), pp. 128-129. [See also: J. David Bleich, Judaism and Healing (New York: Ktav Publishing House, Inc., 1981), p. 140.]
4. Bleich, Dinei Yisrael, p. 121. [See also: Bleich, Judaism and Healing, p. 135.]
5. Steinberg, Sefer Assia, p. 430.
6. Elliot N. Dorff, "A Jewish Approach to End-Stage Medical Care," Conservative Judaism, Vol. 43:3 (Spring 1991), pp. 13-14.
7. Bleich, Dinei Yisrael, p. 108.
8. Tradition understands Exodus 21:18-19, on the basis of exegesis, to give physicians the right to practice medicine. [See: Babba Kamma 85a.]
9. Steinberg, Sefer Assia, pp. 438-439.
10. Steinberg, Sefer Assia, p. 441.
11. Steinberg, Sefer Assia, p. 441.
12. Ya'akov Weinberger, "Euthanasia in Jewish Religious Law," Dinei Yisrael, Vol. 7 (1976), p. 118 [in Hebrew].
13. Steinberg, Sefer Assia, p. 442.
14. Nathan Zvi Freedman, "The Command of Life," HaTorah v'HaMedinah, Vol. 5-6 (1953-1954), p. 227 [in Hebrew]. Freedman cites the following sources: Shabbat 151b; Semakhot 1:4; Shulkhan Arukh, Yoreh Deah 339; Mishneh Torah - Judges: Laws of Mourning 4:5; Shiltei HaGiborim, Mo'ed Katan 3; and Sefer

Chasidim #723.

15. Freedman, p. 228.
16. The citation referred to is Chokhmot Adam 151. This work was written by Abraham ben Jehiel Michal Danzig (1748-1820). In it he methodically arranges and explains laws from the Shulkhan Arukh.
17. Freedman, pp. 228-229.
18. Freedman, p. 229.
19. Freedman, pp. 231-232.
20. Freedman, p. 232.
21. Abraham Steinberg, "The Treatment of the Defective Child," Techumin, Vol. 7 (1986), p. 226 [in Hebrew].
22. Steinberg, Techumin, p. 230.
23. Steinberg, Techumin, p. 230.
24. Rabinowitz and Koenigsberg, in HaDorom (Vol. 32, Tishrei 5731), explain that a person in an irreversible coma is considered dead; therefore it is permitted to starve him. Cited in Ya'akov Levy, "An Impediment to the Soul's Departure," No'am, Vol. 16 (1973), p. 53 [in Hebrew].
25. Moshe Isserles in the Shulkhan Arukh, Yoreh Deah 339:1.
26. Levy, No'am, pp. 55-56.
27. Levy, p. 59.
28. Levy, p. 59.

29. See Avodah Zarah 18a in chapter two above.
30. Levy, p. 60.
31. Chaim David HaLevi, "Disconnecting from an Artificial Respirator an Ill Person with No Hope of Recovery," Techumin, Vol. 2 (1981), pp. 297-302 [in Hebrew].
32. HaLevi, p. 303.
33. See Sefer Chasidim #723 in chapter two above.
34. See Shulkhan Arukh, Yoreh Deah 339:1 in chapter two above.
35. HaLevi, p. 304.
36. HaLevi, pp. 304-305.
37. HaLevi, p. 305.
38. He cites the story of King Saul (I Samuel 31:1 - II Samuel 1:10); Avodah Zarah 18a; Shulkhan Arukh, Yoreh Deah 339; and Sefer Chasidim #723.
39. Moshe Dov Welner, "The Rights and the Authority of the Physician," HaTorah v'HaMedinah, Vol. 7-8 (1955-1956), p. 318 [in Hebrew].
40. Welner, p. 318.
41. See Shulkhan Arukh, Yoreh Deah 339:1 in chapter two above.
42. Welner, p. 318.
43. Eliezer Yehudah Waldenberg, Tzitz Eliezer (13:89) [in Hebrew].
44. Waldenberg, Tzitz Eliezer (13:89).

45. Shabbetai ben Meir HaKohen (1621-1662) was a Lithuanian rabbi, *posek*, and commentator on the Shulkhan Arukh. His book Siftei Kohen is a commentary on Yoreh Deah in the Shulkhan Arukh.
46. See Shulkhan Arukh, Yoreh Deah 339:1 in chapter two above.
47. Waldenberg, Tzitz Eliezer (13:89).
48. Waldenberg, Tzitz Eliezer (13:89).
49. Waldenberg, Tzitz Eliezer (13:89).
50. Solomon B. Freehof, "Allowing a Terminal Patient to Die," American Reform Responsa (New York: Central Conference of American Rabbis, 1983), No. 77, p. 258.
51. See Ketubot 104a and Rabbeinu Nissim on Nedarim 40a in chapter two above.
52. Freehof, American Reform Responsa, No. 77, p. 258.
53. See Sefer Chasidim #234 in chapter two above.
54. Freehof cites Sefer Chasidim #723; Shabbat 151b; Semakhot 1; Shulkhan Arukh, Yoreh Deah 339; and Shiltei HaGiborim, Mo'ed Katan 3.
55. Freehof, American Reform Responsa, No. 77, p. 260.
56. Dorff, p. 27.
57. Dorff, p. 34.
58. Dorff, p. 35.
59. Dorff, p. 27.

60. Fred Rosner, "Rabbi Moshe Feinstein on the Treatment of the Terminally Ill," Judaism, Vol. 37, No. 2 (Spring 1988), p. 191.
61. Moshe Feinstein, Iggerot Moshe: Choshen Mishpat, Part 2, No. 74:1 [in Hebrew].
62. Feinstein, No. 73:1. [See also: Feinstein, No. 74:1.]
63. Feinstein, No. 75:1.
64. Feinstein, No. 75:1. [See also: Rosner, p. 193.]
65. Feinstein, No. 73:5.
66. Feinstein, No. 73:5.
67. Feinstein, No. 74:3.
68. Feinstein, No. 74:3.
69. Feinstein, No. 74:3.
70. Feinstein, No. 74:2.
71. Feinstein, No. 74:2.
72. Immanuel Jakobovits, "Whether it is Permissible to Hasten the Death of a Desperately-Ill Person who is Suffering Great Pain," HaPardes, Vol. 31, No. 1 and Vol. 31, No. 3 (1956) [in Hebrew]. He cites Gittin 57b; Sefer Chasidim #723; Avodah Zarah 18a; Nedarim 40a; and Shulchan Arukh, Yoreh Deah 339.
73. See note 8 (chapter three) above.
74. Jakobovits, No. 3, p. 18. This is exegetically derived from Deuteronomy 22:2. [See: Sanhedrin 73a.]
75. Jakobovits, No. 3, p. 18.

76. Jakobovits, No. 3, pp. 18-19.
77. The following *poskim* equate insulin with food and thus do not allow insulin to be discontinued: S. Auerbach and N. Telushkin. Auerbach is cited in Sefer Nishmat Avraham, Vol. 2, Yoreh Deah, pp. 245-246 [in Hebrew]; Telushkin is cited in Sefer Assia, Vol. 3 (1982), p. 449 [in Hebrew].
78. Waldenberg, Tzitz Eliezer (13:87).
79. Moses ben Nachman (1194-1270), the Ramban, was a Spanish rabbi, scholar, philosopher, kabbalist, biblical exegete, poet, and physician. The Ramban, also known as Nachmanides, was one of the leading authors of talmudic literature in the Middle Ages.
80. Waldenberg, Tzitz Eliezer (13:87). He cites the Ramban's Torat HaAdam, Sha'ar HaSakana.
81. Waldenberg, Tzitz Eliezer (13:87).
82. Waldenberg, Tzitz Eliezer (13:87).
83. Freehof, "Relieving Pain of a Dying Patient," American Reform Responsa (New York: Central Conference of American Rabbis, 1983), No. 76, p. 254.
84. Freehof, American Reform Responsa, No. 76, p. 254.
85. Freehof, American Reform Responsa, No. 76, p. 255.
86. Freehof, American Reform Responsa, No. 76, p. 256.
87. Freehof, American Reform Responsa, No. 76, p. 255.
88. Freehof, American Reform Responsa, No. 76, p. 256. Freehof bases himself upon Avodah Zarah 27a/b. The Talmud discusses the incident of the four

leprous men described in II Kings 7:3-4. The Talmud uses this incident to permit risk of immediate death in an effort to obtain life.

89. Freehof, American Reform Responsa, No. 76, p. 256.
90. Freehof, American Reform Responsa, No. 76, p. 257.
91. Dorff, p. 19.
92. Dorff, p. 19.
93. Dorff, p. 19.
94. Daniel B. Sinclair, Tradition and the Biological Revolution: The Application of Jewish Law to the Treatment of the Critically Ill (Edinburgh: Edinburgh University Press, 1989), pp. 80-81, 88-89. Cited in Dorff.
95. Dorff, p. 20.
96. Dorff, p. 21.

Chapter Four

1. See previous chapter.
2. See previous chapter, pp. 39-41.
3. See previous chapter, pp. 43-45.
4. See previous chapter, p. 52.
5. See previous chapter, pp. 54-55.
6. See previous chapter, pp. 51-52.
7. See previous chapter, pp. 57-58.

8. See previous chapter, p. 56.
9. See previous chapter, pp. 48-50.
10. See previous chapter, pp. 45-48, 55.
11. See previous chapter, pp. 41-43.
12. See Chapter Two, p. 19.

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 Meiri on Yoma 85a
 Rabbeinu Nissim on Nedarim 40a
 Rambam on Pesachim 4:9 (4:10 in Kafakh edition)
 Rambam, Mishneh Torah: Judges, Laws of Mourning 4:5
 I Samuel 31 - II Samuel 1:10, including commentary
 Sefer Chasidim #234
 Sefer Chasidim #723
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 Shiltei HaGiborim, Mo'ed Katan 3
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