Asher Yatzar, But What If One of My Organs Were To Fail?
A LIBERAL LENS ON END-OF-LIFE DECISION MAKING

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SUMMARY

Asher Yatzar, But What If One of Them Were To Fail?
A Liberal Lens on End-of-Life Decision Making.

During a summer of Clinical Pastoral Education in a long-term care facility, I witnessed people who grappled with sickness and pain and their loved ones who struggled to make difficult decisions about their care. The goal of this thesis was to gain deeper insight into Jewish views toward end-of-life decision-making. This thesis compiles and synthesizes many different traditional texts as well as Reform texts on this topic. The first chapter explores traditional Jewish texts that have informed the Reform movement's understanding of these issues. Through CCAR Responsa, resolutions and Journals, URJ Bio-Ethics Guides and resolutions, the second chapter examines the ways in which Reform rabbis and scholars have interpreted traditional texts, wrestled with, and responded to these issues from 1948 until today. The third chapter analyzes the Advance Directives/Halakhic Living Wills of each Jewish movement to understand their different approaches to end-of-life care. Chapter Four records twenty-one Reform rabbis' reflections about their counseling of those who face end-of-life decisions. This chapter also provides the author's guide for clergy as they counsel people who face decisions about nutrition and hydration, kidney dialysis and DNRs. This section serves as a suggestion of the way in which a clergy member could consider important questions, ways to frame the discussion, and the many different facets of these decisions. The Appendices provide an overview of Halakhic terms and medical and legal definitions related to end-of-life as well as the Hebrew texts from Chapter 1.

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INTRODUCTION

Baruch atah, Adonai Eloheinu, Melech haolam asher yatzar et haadam b'chochmah…
Praise to You, Adonai, who formed the human body with skill…it is well known…that if one of (my organs) be wrongly opened or closed, it would be impossible to endure and stand before You…

Elohai N'shamah Shenatata bi t'horah hi
My God, the soul you have given me is pure…

Barukh Ata Adonai, Eloheinu Melech Haolam zokeif k'fufim.
Blessed are You, God, who lifts up the fallen…[1]

Every morning we praise God who returns our souls to our bodies, implants within us pure souls, gives us a body that allows us to praise God, straightens us and allows us to stand on this earth. But what happens when our bodies begin to fail? What happens when we cannot stand up anymore? What happens when the pain is too great and it becomes difficult to say words of praise? What happens when we cannot recognize our loved ones anymore? What happens when our bodies can hardly move and our mouths cannot express our thoughts?

How does Jewish tradition, founded upon that idea that we are created *b'tzelem Elohim*, in the image of God, and given these beautiful bodies and pure souls, address issues of pain, suffering and dying? What does Judaism say should happen when one's suffering is so unbearable that death seems like a better option than life? Should we have the right to such an option? How do Reform Jews interpret thousands of years of Jewish wisdom related to these decisions?

The original impetus to write this thesis came to me while serving as a chaplain at the Hebrew Rehabilitation Center for the Aged in Roslindale, MA. On a daily bases, I

[1] All translation and transliteration of prayers comes from: *Mishkan T'filah: A Reform Siddur: Weekdays, Shabbat, festivals, and other occasions of public worship* (New York: Central Conference of American Rabbis, 2006), 32-36.

visited people who wrestled with life and death, who suffered with illness and pain, and whose families struggled to make decisions for their loved ones.

I walked into Paul's room one day, ready to resume our conversation about his days as a bus driver and later a professor of sociology at a nearby college, only to hear the question, "What is Judaism's view of suicide?" After I gulped and listened to the meaning behind his question, I learned that he abhorred his hour-long journey to the hospital and four-hour experience in a chair to receive kidney dialysis. He was ninety and ready to die, he did not want to continue going to dialysis, the process was painful and draining and left him with little time to appreciate his life. As of that day, he was continuing with kidney dialysis treatment for the sake of his only daughter and granddaughter. He loved to spend time with them and he was deciding how much longer he could withstand the pain. If he refused the dialysis, would that be suicide? Paul wanted to know. The man who was not so interested in Judaism for much of his life now desired an answer, "What would Judaism say about my choice to discontinue dialysis?"

Rabbi David suffers from Alzheimer's disease. Our conversation started something like this:

> Hi, My name is Sandi and I'm the chaplain here at Hebrew Rehab, can I visit with you?
> Yes, sure, thanks for coming, why don't you sit down here.
> Thank you. How is your day going today?
> Very good, what did you say your name was?
> I'm Sandi, I'm the chaplain here, and I'm actually studying to become a rabbi.
> Really? At the seminary in NY?
> Well, I know you studied at JTS, I am a student at HUC, also in NY.
> HUC has a school in NY? I thought it was just in Cincinnati.
> Yes, they also have a campus in NY.
> What do you do there?
> I'm studying to be a rabbi.
> At the seminary?
> Well, at HUC.

In Cincinnati?

And so it went, over and over, the same conversation, in circles, until I found ways to redirect the conversation and bring us to Rabbi David's places of comfort: song and prayer.

One Friday afternoon, while I was wheeling him to Kabbalat Shabbat services, I was humming *Oyfn Pripetchik* that I had sung earlier in the day. Rabbi David burst into song, right in the middle of the hallway, singing every word, perfectly – he remembered more verses and pronounced them with a better Yiddish accent than I ever could. While Rabbi David did not know it was Friday, nor could he explain where he lived or who his family was, he looked "at home" in the sanctuary.

Rabbi David turned page after page, reciting the Kabbalat Shabbat service and *Ma'ariv* with accuracy and a beautiful, low voice.

The next week, I asked Rabbi David if he would be willing to lead the service with us. Though at first I do not think he quite understood what I was asking, when I brought him to the bima, he led each part of the service with the chaplain and me. He was flawless, as if he were leading a service for his congregation twenty years before. When I wheeled him back to the elevator afterward, he asked, "Where are we going?" "Home," I replied. "I don't live here! This is not my home!" But that was his residence and when I returned Shabbat morning, there he was, sitting on his bed, staring out the window. While Rabbi David may not remember who I am from day to day, and he does not know where he is, and he can no longer recognize his children, his soul remains in his body. What is his quality of life? What will happen when he needs surgery or medication? Soon after my visits with Rabbi David, he had a heart attack and was in the hospital. As his daughter

wrestled with questions of whether or not to sign the DNR, I sang *Oyfn Pripetchik* and Kabbalat Shabbat songs with him in his hospital bed, after he asked to wear my *kippah.* How do we make life and death decisions for people with such a strong soul with a brain that does not function the way we want it to, the way it used to? What does Judaism say and how has Reform Judaism interpreted those texts?

On my last visit with Charles, I took his hand and with his wife, we formed a circle and recited the priestly blessing, as we concluded every visit. With tears in his eyes, Charles thanked me for spending time with him. Charles is bound to his wheelchair, a quadriplegic, after complications with a tumor on his spine. He will never be able to walk again, and, a retired art teacher; he has limited use of his hands and only can use his voice to express his emotions. He asked me what was going to happen in a couple of years, if his wife died before him? Who would take care of him? It hurts him so much to rely on other people for help; he cannot bear the thought of living without his wife. What happens when his physical pain becomes too great to bear? What happens when his physical condition declines, as the doctors predict it will, and he needs more surgery to help him breathe properly? What happens when he can no longer chew his food and he needs a feeding tube? This man who has so much love and passion within him does not want to depend on others for the rest of his life. What does Judaism say about the choices Charles has? How has Reform Judaism interpreted those choices?

These are three examples of the kinds of people I met and questions with which I grappled. The souls of Paul, Rabbi David, and Charles, and the many more people that I met, are with me as I write this thesis.

After my summer of Clinical Pastoral Education, I came away with huge questions of life and death. I wanted to know how Jewish tradition has answered these questions. Peter Knobel[2] comments that, "A liberal *halakhic* approach is more than an attempt to look for lenient precedents within the law. It is essentially an ethical analysis of the structure of Jewish living."[3] I yearned to know how the Reform movement grappled with these issues and what questions Reform rabbis in the field face and they how they address the questions everyday.

My questions led me to interview Reform rabbis in the field, study Reform responsa, read CCAR Journals and resolutions, and examine the URJ's Bio-Ethics Guides and resolutions. I studied the ancient texts that have informed Reform interpretations and confronted the technical medical differentiations that are given at different stages of death. I compared the Advance Directives that each movement offers as a way of helping their congregants prepare for end-of-life decisions.

During this year, as President Obama and Congress attempt to establish universal health care, magazines and newspapers are filled with articles about dying and end-of-life care. The government and media have addressed many of the same kinds of issues that Reform rabbis recognize. For example, in September of 2009, Jon Meacham wrote, "The fear of death is one of the most primal and perennial human instincts, if not *the* most primal. In our own day, the decisions about how far to go to prolong the life of a loved one are among the most wrenching many Americans ever face. Patients vacillate;

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[2] Rabbi Peter Knobel graduated HUC-JIR in 1969 and is the Rabbi of Beth Emet The Free Synagogue in Evanston, Illonois.

[3] Peter Knobel, "Suicide, Assisted Suicide, Active Euthanasia" in Walter Jacob and Moshe Zemer, eds., *Death and Euthanasia in Jewish Law: Essays and Responsa* (Pittsburgh: Freehof Institute of Progressive Halakhah, Rodef Shalom Press, 1995), 28.

families disagree; doctors have different opinions."[4] Meacham recognizes the frequency of such decisions today and the angst they bring. He highlights one problem with end-of-life care and why something must be done about it. He writes, "Americans do spend an inordinate amount of money (30 percent of Medicare, for instance) on care in the last six months of life…. the National Palliative Care Research Center estimates that we could save $6 billion a year if we better matched treatments to patient goals and wishes during serious illness and at the end-of-life."[5]

President Obama's team addressed this issue when he suggested that people should have more counseling around end-of-life decisions; this prompted former governor Sarah Palin's hyperbolic use of the term "death panels" to describe such counseling. Such a discussion demonstrates that these issues are not only medical or religious, but are highly political. Like many rabbis, Meacham also suggests that people create living wills and think carefully about these issues before facing them. He recognizes that with medical technology, "death can be delayed only so long, and sometimes the wait is grim and degrading."[6] In a recent article in the *New York Times*, Denise Grady comments that doctors are often hesitant to engage in difficult conversations about the end-of-life including issues of cancer, DNRs, and hospice care. She writes that "Without planning, Dr. Hilden said, dying patients may wind up in exactly the situation they dreaded most, tethered to machines in a hospital instead of being kept comfortable at home in their own beds."[7] Decisions made prior to such

[4] Jon Meacham, "I Was a Teenage Death Panelist," *Newsweek*, September 21, 2009, 8.
[5] Meacham, 8.
[6] Meacham, 40.
[7] Denise Grady, "Facing End-of-Life Talks, Doctors Choose to Wait," *The New York Times*, January 12, 2010, D1.

situations allow doctors to make decisions guided by the patient's desires. While this thesis does not address political issues or specifically discuss healthcare, the content discussed here may inform one's understanding of such issues.

While this thesis can become technical, with details of how to determine death and the distinctions between hastening death and prolonging life, I tried to keep myself focused on the larger message of the rabbis, ancient and modern, as they recorded their ideas. The rabbis write with a deep respect for their bodies and souls. They believe that our bodies are a gift from God and we must do everything to savor our lives and live them fully for as long as possible. The awe for God and the gift of our bodies motivate the rabbis to find ways to alleviate pain and suffering while not promoting a termination of life. Though they do not want to prolong suffering and delay the inevitable, the rabbis create laws to ensure that death is not hastened at any point because of their utmost belief in the sanctity of life.

The answers are not easy. Medical technology advances at such a fast pace and the lines between prolonging life and hastening death become increasingly blurry. Reform rabbis respond to life's sanctity as they do to Torah, they strive to uphold it and cling to it, as they grapple with issues of pastoral care, the effects of illness on loved ones, and the debilitating implications of pain and suffering. Like their predecessors, most Reform rabbis give deference to sanctity of life over quality of life, eliminating quality of life as a factor in end-of-life decisions.

> *Blessed are You God who created humankind with wisdom…how well I am aware that if one (of my organs) were to fail, I would lack the strength to stand before You…*

And then what will I do? What will my loved ones do?

How will Reform clergy teach, preach, and counsel about these issues?

Chapter 1: An Exploration of Jewish Texts that Address End-of-Life Decisions

The thesis begins with a summary of classic texts that have guided Jews as they have grappled with health care and end-of-life decisions. In order to understand the contemporary discussions and their Jewish grounding, it is important to be familiar with these texts and their argumentation. These texts demonstrate over two thousand years of thinking about end-of-life decisions. They show that the rabbis recognized that the end-of-life was a difficult time and while they hold *pikuah nefesh* and the sanctity of life as essential values, there are times when these values are complicated and difficult to uphold. Early rabbis did not have the medical technology that exists today but they believed in many healing and curative interventions including the powers of prayer and other superstitions like putting a key to the synagogue under one's pillow. While one could never have predicted all of the medical technology that exists today, many of the actions of which the rabbinic sources speak could correlate to current medical interventions. As the CCAR responsa, Journals and Bio-Ethics Guides take these sources seriously and feel at liberty to interpret them, so should we.

BIBLICAL TEXTS

1. 1 Samuel 31:1-6 - **King Saul on Mount Gilboa, part 1**

Translation: 1Samuel 31:1-6: The Philistines attacked Israel, and the men of Israel fled before the Philistines and many fell on Mount Gilboa. 2 The Philistines pursued Saul and his sons, and the Philistines struck down Jonathan, Abinadav, and Malchi-shua, sons of Saul. 3 The battle raged around Saul, and some of the archers hit him, and he was severely wounded by the archers. 4 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. 5 When his arms-bearer saw that Saul was dead, he too fell on his sword

and died with him. 6 Thus Saul and his three sons and his arms-bearer, as well as all his men, died together on that day.[8]

2. II Samuel 1:1-16 - **King Saul on Mount Gilboa, part 2**

Translation: 2Sam. 1:1-16 After the death of Saul—David had already returned from defeating the Amalekites—David stayed two days in Ziklag. 2 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. 3 David said to him, "Where are you coming from?" He answered, "I have just escaped from the camp of Israel." 4 "What happened?" asked David. "Tell me!" 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. 5 "How do you know," David asked the young man who brought him the news, "that Saul and his son Jonathan are dead?" 6 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. 7 He looked around and saw me, and he called to me. When I responded, 'At your service,' 8 he asked me, 'Who are you?' And I told him that I was an Amalekite. 9 Then he said to me, 'Stand over me, and finish me off, for I am in agony and am barely alive.' 10 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." 11 David took hold of his clothes and rent them, and so did all the men with him. 12 They lamented and wept, and they fasted until evening for Saul and his son Jonathan, and for the soldiers of the LORD and the House of Israel who had fallen by the sword. 13 David said to the young man who had brought him the news, "Where are you from?" He replied, "I am the son of a resident alien, an Amalekite." 14 "How did you dare," David said to him, "to lift your hand and kill God's anointed?" 15 Thereupon David called one of the attendants and said to him, "Come over and strike him!" He struck him down and he died. 16 And David said to him, "Your blood be on your own head! Your own mouth testified against you when you said, 'I put God's anointed to death.'"

Summary: During a battle against the Philistines on Mount Gilboa, when King Saul realizes that the enemy might capture him, he asked his arms-bearer to kill him. When the arms-bearer refused, King Saul fell upon his own sword, killing himself. Later, David met an Amalekite who retold the story and added that this Amalekite found King Saul dying on the sword. King Saul asked the Amalekite to "finish him off" and the

[8] *Hebrew-English Tanakh Student Edition* (Lanham: Jewish Publication Society of America, 2000). Unless indicated, all other biblical translations come from this source.

Amalekite proceeded to do so. With this confession, David sentences the Amalekite to death.

In this text, King Saul commits suicide. Since King Saul is not condemned for his actions, many have used this text to prove the legality of suicide in situations such as King Saul, when one awaits a torturous fate. Jewish law says that one is permitted to commit suicide only in three situations, to avoid murder, adultery and idolatry.[9] *While one can argue that by killing himself King Saul avoided idolatry, others argue that whether or not he faced idolatry, he made his decision under great duress. Some may use this text to condone euthanasia because the Amalekite saved King Saul from more suffering by "finishing him off." However, one could argue that since the Amalekite was punished for his actions, Jewish law does not condone euthanasia.*

Jewish law and CCAR responsa debate the implications of the story of King Saul in contemporary times with respect to suicide and euthanasia. Some argue that King Saul's suicide was forgiven when he asked to be killed rather than be captured by an enemy. Some try to use this as an example of excusing suicide in cases where someone faces great pain and suffering. However, according to the excurses included with the responsum, "On the Treatment of the Terminally Ill," Saul's case cannot be expanded to allow suicide in other cases. This was a special case in which if Saul were captured and others tried to release him, it could have resulted in the death of others. Others say that he committed suicide for fear that his captors would try to make him an idolater – so he

[9] *Yoma* 82a, *Sanhedrin* 74a

did it for Kiddush Hashem. Others say that he is guilty of sin for committing suicide. In the discussion that follows the Euthanasia responsum of 1950, Rabbi Samuel Atlas comments on the actions of the Amalekite who "finished off" Saul when he was dying. Rabbi Atlas explains that David's punishing of the Amalekite had political motivations and therefore one cannot deduce any legal ruling about euthanasia today based on this text.

MISHNAH/TALMUD TEXTS AND THEIR COMMENTARIES

3. *Avodah Zarah* 18a

Translation: It was said that within but few days R. Jose b. Kisma died and all the great men of Rome (The Roman officials in Caesarea where he lived and died) went to his burial and made great lamentation for him. On their return, they found R. Haninah b. Teradion sitting and occupying himself with the Torah, publicly gathering assemblies, and keeping a scroll of the Law in his bosom. Straightaway they (Roman officials) took hold of him, wrapped him in the Scroll of the Law, placed bundles of branches round him and set them on fire. They then brought tufts of wool, which they had soaked in water, and placed them over his heart, so that he should not expire quickly. His daughter exclaimed, 'Father, that I should see you in this state!' He replied, 'If it were I alone being burnt it would have been a thing hard to bear; but now that I am burning together with the Scroll of the Law, He who will have regard for the plight of the Torah will also have regard for my plight.' His disciples called out, 'Rabbi, what do you see?' He answered them, 'The parchments are being burnt but the letters are soaring on high.' (Scrolls of the Torah may be destroyed, but its spirit is immortal and indestructible) 'Open then thy mouth' [said they] 'so that the fire enter into thee.'(And put an end to his agony) He replied, 'Let Him who gave me [my soul] take it away, but no one should injure oneself.' The Executioner (Torturer) then said to him, 'Rabbi, if I raise the flame and take away the tufts of wool from over thy heart, will thou cause me to enter into the life to come?' 'Yes,' he replied. 'Then swear unto me' [he urged]. He swore unto him. He thereupon raised the flame and removed the tufts of wool from over his heart, and his soul departed speedily. The Executioner then jumped and threw himself into the fire. And a *batkol* exclaimed: R. Haninah b. Teradion and the Executioner have been assigned to the world to come. When Rabbi heard it he wept and said: One may acquire eternal life in a single hour, another after many years.[10]

[10] Rabbi David Kantrowitz, Judaic Classics, computer software, version 3.0.8 (New York: Davka Corporation, 1991-2004). Unless otherwise noted, all Talmud translations come from this source.

Summary: Rabbi Haninah Ben Teradion was arrested for studying and teaching Torah publicly. He was wrapped in a Torah scroll and set on fire. His executioners brought tufts of wool, soaking in water and placed them over his heart so that we would be in more pain, and it would not die as quickly. People requested that Rabbi Haninah open his mouth to hasten his own death, but he would not, as he did not want to kill himself. However, Rabbi Haninah permitted the executioner (Roman guard) to remove the tufts of wool, allowed Haninah to die more quickly. Both the executioner and Haninah were rewarded with life in the world to come.

This story teaches that one may remove impediments to death so as not to prolong suffering in life. However, according to the excurses included with the responsum, "On the Treatment of the Terminally Ill," this text cannot be used as a basis for ending the life of a terminally ill patient. This was a case of martyrdom and Haninah was at the mercy of the Romans who could do whatever they wanted; Haninah does not really have control over the removal of the wool. Since Haninah was a martyr, one cannot apply this to the case of the terminally ill patient.

4. *Avodah Zarah* 27a-b

Translation: Rava said in the name of Rabbi Yohanan, and some say it was Rav Chisda in the name of Rabbi Yohanan, if is doubtful whether [the patient] will live or die (if he is not treated), do not accept healing from them (non-Jews – Shottenstein says 'pagan practitioners)[11]; if it is clear that he will die, accept healing from them[12]. Die! But is there

[11] On this passage, Rashi comments that it is better to take the chance that he will live without medical intervention than risk help from a pagan

[12] On this passage, Rashi says that since one is going to die anyway, it is permitted to take the chance that a pagan may heal him

is still *hayyei sha'ah* ('life of the hour' to be considered)?[13] *Hayyei sha'ah* is not a concern. What authority do you have for saying that *hayyei sha'ah* is not to be considered? As the Bible says, "If we say: we will enter into the city, then the famine is in the city, and we shall die there."[14] Now there is *hayyei sha'ah* [which they might forfeit]! This implies that *hayyei sha'ah* is not to be considered.[15]

Summary: In this text, Rava considers the *hayyei sha'ah* status. He asserts that in a case in which it is unclear whether a person will live or die, a non-Jewish physician is not allowed to try to heal the patient. If it is clear that the person will die, a non-Jewish physician may help the patient. The Talmud asks if *hayyei sha'ah* (the rules for "the life of the hour") should be considered in this case. The rules for the *hayyei sha'ah* status state that a non-Jewish physician may not help a patient in the last hours of his life. This contradicts the previous statement that a non-Jewish physician *can* help a dying patient. Rava replies that the usual prohibitions for a person who is in *hayyei sha'ah* should not apply in this case. He quotes 2 Kings 7:4, the full verse is, "If we decide to go into the town, with the famine in the town, we shall die there; and if we just sit here, still we die. Come, let us desert to the Aramean camp. If they let us live, we shall live; and if they put us to death, we shall but die."[16] This means that since the people know that they are going to die, they are permitted to go to the non-Jews, the Arameans, to ask for help. Similarly, then, a patient who is dying should be permitted to go to a non-Jew for help.

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[13] Rashi says that the pagan may hasten his death even by a day or two

[14] II Kings VII, 4; where the four leprous men decide to hand themselves over to the besieging enemy saying, If they kill us, we shall but die

[15] My translation with Mesorah Heritage Foundation, *Schottenstein Edition of the Talmud - English Full Size - Avodah Zarah (Schottenstein Edition, Volume 1)* (ArtScroll, 2001), 27b.

[16] The rest of the verse continues: "…and if we just sit here, still we die. Come, let us desert to the Aramean camp. If they let us live, we shall live; and if they put us to death, we shall but die."

Rava explains that this proves that the rules for *hayyei sha'ah*, prohibiting the help of a non-Jew, should not be considered.

These rules about whether or not a non-Jewish physician can attend to a patient have been generalized to understand the guidelines for all physicians healing patients. According to Rabbi Elliot Dorff,[17] *to attend to the patient when it is unclear whether one will live or die would be considered "sustaining life."*[18] *However, if the patient will inevitably die then the doctor is permitted to try to help the patient. In the Kings text, the people decide not to go into the town because they know they will die. They choose the other option, the Aramean camp, because there is a possibility of life. Here, hope of life depends on the Arameans, a group of non-Jews. This means even in those last stages of life, one can rely on help from a non-Jew. If one applies this to the situation of someone who is dying today, a physician (regardless of religion) could help a patient in the last hours of life.*

5. *Tosafot* to *Avodah Zarah* 27b

Translation: Since it is written in *Yoma* 85, to remove the debris on Shabbat (to save his life), we take into consideration *hayyei sha'ah*. There are those who say that we should allow non-Jews to help for his benefit (*l'tovato*), if you do not consider this, he will die and thus if you consider *hayyei sha'ah* and do not allow non-Jews (pagans) to heal him, of course he will die and therefore we should allow the doctors to try to be successful.[19]

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[17] Rabbi Elliot N. Dorff is a Conservative Rabbi and professor at the American Jewish University in California. He is also the Chairman of the Rabbinical Assembly's Committee on Jewish Law and Standards.
[18] Elliot N. Dorff, *Matters of Life and Death A Jewish Approach to Modern Medical Ethics* (Lanham: Jewish Publication Society of America, 2004), 201.
[19] My translation

Summary: They say in *Yoma* 85, surgery on Shabbat is permitted for people in *hayyei sha'ah*. The *Tosafot* comment on this text explains that the more important value in this case is *l'tovato*, "for his benefit" rather than *hayyei sha'ah*. They argue that if one upholds the prohibition of non-Jewish physicians in the case of a *hayyei sha'ah*, the patient will die. However, if one uses the principle of "for his benefit," the outcome may be different and there is a possibility that the patient may live.

This text permits non-Jews to assist in the healing of Jews when they face death, in the hayyei sha'ah time period, even though other texts prohibit non-Jews from healing Jews during this stage of life. One can broaden the understanding of this text to permit doctors (Jewish or non-Jewish) to do anything they can to heal a patient during the hayyei sha'ah stage.

6. *Bava Metzia* 84a

Translation: One day R. Yohanan was bathing in the Jordan, when Resh Lakish saw him and leapt into the Jordan after him. Said he [R. Yohanan] to him, 'Your strength should be for the Torah.' 'Your beauty,' he replied, 'should be for women.' 'If you will repent,' said he, 'I will give you my sister [in marriage], who is more beautiful than I.' He undertook [to repent]; then he wished to return and collect his weapons, but could not. Subsequently, [R. Yohanan] taught him Bible and Mishnah, and made him into a great man. Now, one day there was a dispute in the schoolhouse [with respect to the following] a sword, knife, dagger, spear, hand-saw and a scythe — at what stage [of their manufacture] can they become unclean? When their manufacture is finished. And when is their manufacture finished? — R. Yohanan ruled: When they are tempered in a furnace. Resh Lakish maintained: When they have been furbished in water. Said [R. Yohanan] to him: 'A robber understands his trade.' Said [Resh Lakish] to him, 'And how have you benefited me: there [as a robber] I was called Master, and here I am called Master.' 'By bringing you under the wings of the Shechinah,' he retorted. R. Yohanan therefore felt himself deeply hurt, [as a result of which] Resh Lakish fell ill. His sister [R. Yohanan's sister, the wife of Resh Lakish] came and wept before him: 'Forgive him for the sake of my son,' she pleaded. He replied: 'Leave your fatherless children. I will preserve them alive.' (Jer. 49: 11) 'For the sake of my widowhood then!' 'And let thy widows trust in

me,' (Jer. 49: 11) he assured her. Resh Lakish died, and R. Yohanan was plunged into deep grief. Said the Rabbis, 'Who shall go to ease his mind? Let R. Eleazar b. Pedath go, whose disquisitions are very subtle.' So he went and sat before him; and on every dictum uttered by R. Yohanan he observed: 'There is a Baraita which Supports you.' 'Are you as the son of Lakisha?' he complained: 'when I stated a law, the son of Lakisha used to raise twenty-four objections, to which I gave twenty-four answers, which consequently led to a fuller comprehension of the law; while you say, "A Baraita has been taught which supports you:" do I not know myself that my dicta are right?' Thus he went on rending his garments and weeping, 'Where are you, son of Lakisha, where are you, son of Lakisha;' and he cried until his mind was turned. Thereupon the Rabbis prayed for him, and he died.[20]

Summary: Yohanan and Resh Lakish are great study partners. Yohanan is beautiful; Resh Lakish is a gladiator. One day during a debate in the yeshiva, they have a fight and never speak again. Resh Lakish dies and Yohanan becomes depressed. A rabbi comes to speak to him and study with him but he could not study as well as Resh Lakish, so Yohanan went out of his mind. The rabbis prayed for God's mercy and he died.

This text begs the question, "What does it mean to pray for mercy?" The rabbis were not necessarily praying for his death, but Yohanan died. Perhaps that was the only way God could bring him mercy. Sometimes the pain or mental state is too severe; the only way to bring "mercy" is for someone to die.

7. *Ketubot* 104a

Translation: On the day when Rabbi died, the Rabbis decreed a public fast and offered prayers for heavenly mercy. They furthermore, announced that whoever said that Rabbi was dead would be stabbed with a sword. Rabbi's handmaid (A famous character, known for her sagacity and learning) ascended the roof and prayed: 'Those in the upper realms (the immortals or angels) desire Rabbi [to join them] and the mortals desire Rabbi [to remain with them]; may it be the will [of God] that the mortals may overpower the

[20] My translation with Judaic Classics

immortals'. When, however, she saw how often he resorted to the privy, painfully taking off his *tefillin* and putting them on again, she prayed: 'May it be the will [of the Almighty] that the immortals may overpower the mortals'. As the Rabbis incessantly continued their prayers for [heavenly] mercy she took up a jar and threw it down from the roof to the ground. [For a moment] they ceased praying and the soul of Rabbi departed to its eternal rest.[21]

Summary: Rabbi Yehudah HaNasi was dying and all of his students surrounded him, praying for his life. At first, the Rabbi's handmaiden prayed for his life too, asking that the prayers of the mortals (his students) overpower the prayers of the immortals (angels who she presumably knew were praying for him to join them and God). However, when she saw the pain and suffering of Rabbi HaNasi, she reversed her prayer, to pray that the prayer of the immortals overpower the prayer of the mortals. While the students were praying, she went to the roof and threw a jar from the roof to the ground to make a loud noise. When the students noticed the noise, they stopped praying, and Rabbi HaNasi died.

Because the rabbis do not condemn the handmaiden for her action, this text can teach us the weight of pain and suffering in making decisions about end-of-life care.
According to the excurses included with the responsum, "On the Treatment of the Terminally Ill," there is an important distinction to be made here between mercy killing and removing impediments to death. The handmaiden is not directly responsible for Yehudah HaNasi's death; she just removed the impediment (the rabbi's prayers) that perhaps should not have been there in the first place, so that his death was not delayed unnecessarily. However, she did not have an active hand in his death, which is forbidden.

[21] My translation with Judaic Classics

8. *Midrash Mishlei* Chapter 14

Translation: Rabbi Abahu said, Come and see how hard it was at the hour of Moses, our Master's departure from the world. For when God told him: Your time has come to depart the world, Moses began to scream and cry. He asked God: Master of the universe, Was it for naught that I labored? …. If you could see it my way, may You afflict me with suffering but do not have me over to the pangs of death. (Of this David spoke,) God, *afflict me with suffering, but give me not unto death* (Psalm 118:18)

God said to him: Moses, I have taken an oath that one sovereignty may not overlap another by even a hair's breadth. Thus far, you were king over Israel; now it is time for Joshua to be sovereign over them.
Moses answered God: Master of the Universe, in the past I was the master and Joshua the disciple. Now I'll be his disciple and he shall be my master; just do not let me die!
God said: If you can do it, go right ahead….

As was their custom, the Israelites rose early to pay their respect at Moses' door, but did not find him. They asked: Where can Moses be? And were told: He role early to pay his respects at Joshua's door. So they went and found Joshua seated and Moses, our master, standing in service upon him. They asked: Joshua, Joshua, what is this you have done? Moses, your master, stands in service upon you….

Joshua's eyes were opened and he noticed it was Moses standing in service upon him. Immediately Joshua prostrated himself before Moses and wept: Father! Father!... in that you raised me since I was a child, Master – who has taught me wisdom….

Then they [the students] said to Moses: Conclude the Torah for us! But the traditions were forgotten by Moses and he did not know what to answer them. At this failure Moses fell to his face and said: Master of the universe, *My death is better than my life* (Jonah 4:3). When God saw that Moses has reconciled himself to death, God eulogized him: It is written, *Who will stand up to Me for this nation of wicked, who will stand watch for Me on behalf of this nation of evildoers* (Psalm 94:16)? Who will stand up to Me in the wars of My children when they sin before Me?....

They came said to him: The moment of your departure from this world is ending. At that moment Moses cried out mightily to God. He said: Master of both Worlds, if You take my soul in this world, will You return it to me the Coming Future? God answered: By your life! Just as you were the head of them all in this world, so will you be in the Coming Future, as it is said, *He comes as the head of the people* (Deut 33:21)…."[22]

[22] Quoted from: Confronting Death: Four Stories of Consolation, by Rabbi Burton L. Visotzky and Rabbi Carolyn Braun (January 1995/Shevat 5755: The Rabbinical Assembly, pp 10-12) in: Rabbi Simcha Y. Weintraub, "Transitioning, Teaching, and

Summary: When Moses was about to die, Moses requested of God that he remain among the living. God allowed Moses to go back to the people, but as a disciple of the new leader, Joshua, not as the leader of the Israelites. When the people saw Moses, they requested that he conclude the Torah for them and Moses realized that he could not answer them. Moses did not want to go on living, in this state, so he died, though he remained a teacher in the world to come.

This midrash illustrates the mental state of one who does not have cognitive abilities. Based on this text, one may seek to legitimate the desire to end one's life.

9. *Nedarim* 40a and the *RaN*[23] Commentary to *Nedarim* 40

Translation: R. Helbo is sick. But no one visited him. He rebuked them [sc. the scholars], saying, 'Did it not once happen that one of R. Akiva's disciples fell sick, and the Sages did not visit him? So R. Akiva himself entered [his house] to visit him, and because they swept and sprinkled the ground before him, he recovered. 'My master,' said he, 'you have revived me!' [Straightway] R. Akiva went forth and lectured: He who does not visit the sick is like a shedder of blood.

When R. Dimi came, he said: He who visits the sick causes him to live, while he who does not causes him to die. How does he cause [this]? Shall we say that he who visits the sick prays that he may live, while he who does not prays that he should die? that he should die!? can you really think so? But [say this:] He who does not visit the sick prays neither that he may live nor die.

Whenever Rava fell sick, on the first day he would ask that his sickness should not be made known to any one lest his fortune be impaired. But after that, he said to them [his servants], Go, proclaim my illness in the market place, so that whoever is my enemy may rejoice, and it is written, 'Rejoice not when your enemy falls . . . Lest the Lord see it, and it displeases him, and he turn away his wrath from him' (Proverbs 24:17ff) while he who loves me will pray for me.

Transcending: Exploring Some Classical Jewish Narratives about Dying" (lecture, Clinical Pastoral Education, Newton Jewish Community Center, Newton, July 2008).

[23] Rabbi Nissim Gerondi lived in Barcelona in the 14th century.

Rav said: He who visits the sick will be delivered from the punishments of Gehenna, for it is written, 'Happy is he that considers the poor: God will deliver him in the day of evil' (Psalm 41:2) ….

R. Shisha son of R. Idi said: One should not visit the sick during the first three or the last three hours [of the day], lest he thereby omit to pray for him. During the first three hours of the day his [the invalid's] illness is alleviated; in the last three hours his sickness is most virulent. Rabin said in Rav's name: Whence do we know that the Almighty sustains the sick? From the verse, 'God will strengthen him on his sickbed.' (Psalm 41:4) Rabin also said in Rav's name: Whence do we know that the Divine Presence rests above an invalid's bed? From the verse, 'God does set himself upon the sickbed.' (another translation of Psalm 41:4) It was taught likewise: He who visits the sick must not sit upon the bed, or on a stool or a chair, but must [reverently] robe himself and sit upon the ground, because the Divine Presence rests above an invalid's bed, as it is written, God does set himself upon the sickbed." (Psalm 41:4)

Summary: This text explores the power of visiting the sick. Rabbi Akiva argues that visiting the sick has curative powers and those that do not visit the sick shed blood. In contrast, Rabbi Dimi asserts that while one who visits causes one to live, one who does not visit does not necessarily cause one to die. This text underscores the importance of visiting the sick because of the healing power of the visitor. In addition, according to this text, one must not visit the sick during the first three hours of the sickness or the last since the visitor may not be moved to pray for the patient during those times. They believed that God has to power to heal the sick and rests above the patient's bed.

This text illustrates the power of both people and God in healing. Humans are partners with God in healing and must be diligent in attending to the needs of the sick.

***RaN*'s Commentary**

(Quoting Rav Dimi) 'He who does not visit the sick prays neither that he may live nor die': it seems, in my eyes, that there are times when one needs to request mercy on one who is sick so that one dies, for example, when the sick person experiences great suffering in one's sickness and it is not possible that he will live, as it is said in the section on this

subject in *Ketubot* 104, that the handmaiden of Rabbi (HaNasi), who saw how often he went to the bathroom, painfully taking off his tefillin and putting them on again, prayed: 'May it be the will [of the Almighty] that the immortals (angels) may overpower the mortals'. That is to say, she prayed for the death of Rabbi. And because of this, when one visits the sick and prays for him, even if he prays for his life, this prayer is more useful (effective –than one who does not visit). And the One who does not visit, one should not say (about him) that he does not want him to live. Rather, either one of them (the person who prays while he visits or the one that does not come to visit) they see the benefit of death, you do not need to say (prayers) even if it the prayer brings a small profit (the prayer brought small change to his condition), it is not for his benefit (the small recovery from the prayers may not really benefit the sick long-term).[24]

Summary:

The *RaN* comments on the discussion of the efficacy of prayer and visiting the sick. He says that prayer is more effective when one visits the sick and recites the prayer in his presence. Though when one prays in the presence of the sick, the prayer does not always need to request life. However, one should not think that one who refrains from visiting wants the person to die. In either case, prayers for someone to live are not always beneficial in the long term because while the prayer may help someone to recover for a short time, one may die in the coming hours or days and the prayer for life prolongs dying.

This text builds on Nedarim 40 to underscore the importance of praying for the sick. However the RaN adds another important piece; there are times when one should stop praying for someone's healing and rather pray for God's mercy to allow the patient to die. One could apply this text to passive euthanasia that allows the patient to die without hastening one's death. In the CCAR Responsum: "Allowing a Terminal Patient To Die,"

[24] My translation

the author uses RaN's commentary on Nedarim 40 to say that there are times when one does not need to pray for the dying, "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."[25] *Since prayer, in rabbinic times was viewed as a way to prolong life or save life, one can apply medical technology with a similar function to these same principles.*

10. *Sanhedrin* 43a

Translation: "One who is taken to be executed is given a small grain of frankincense… or a cup of wine… to drink, to cloud his mind, so that he does not worry and think about his execution (Rashi, *Exodus* 30:34), as the Bible says (*Proverbs* 31:6): "Give liquid to someone who is perishing and wine to those of bitter spirit." (*Sanhedrin* 43a)[26]

Summary: The Talmud teaches that one is permitted to drink wine before his execution. The assumption is that this wine will numb his senses so that he will not experience as much pain during the execution.

This text is used to show that one may offer medicine to ease pain as one is dying.

11. *Mishnah Semachot* 1.1

Translation: A dying person (*goses)* is considered as a living person in all respects.[27] *Since a goses is considered living, if one takes actions to end the life of a goses, he is liable for murder. This differs from a person who is a terefah. Since a terefah is not*

[25] Summary statement from CCAR Responsum: Central Conference, "77. Allowing a Terminal Patient to Die, 1969," ed. Solomon Freehof, in *American Reform Responsa Collected Responsa of the Central Conference of American Rabbis, 1889-1983*, vol. LXXIX (New York: The Conference, 1983), 257-60.
[26] V. P. Elon, "YAEL SHEFER (A MINOR) BY HER MOTHER AND NATURAL GUARDIAN, TALILA SHEFER V. STATE OF ISRAEL," ed. Daniel B. Sinclair, in *Jewish Biomedical Law* (Binghamton University: Global Academic, 2003), 219.
[27] My translation

considered living in all respects, one is not liable for murder if he takes the life of a terefah.

12. *Mishnah Semachot* 1.2, Ecclesiastes 12:6

Translation: "One may not bind his jaws, not plug up his openings, nor place a vessel of metal or an object that cools on his naval until he dies, as it is written 'Before the silver cord (i.e. spinal column) is snapped asunder.'[28]

When one is a goses, in the dying process, this text explains that it is forbidden to touch the person in any way that may hasten his death.

13. *Mishnah Semachot* 1:3

Translation: One may not move him nor may one place him on sand or on salt until he dies[29]

Similar to Mishnah Semachot 1:2, it is forbidden to move a goses in a way that may hasten his death.

14. *Mishnah Semachot* 1:4

Translation: "One may not close the eyes of the dying person. He who touches it or moves it, is shedding blood for Rabbi Meir used to cite an example of a flickering light. As soon as a person touches it, it goes out. So too, whoever closes the eyes of the dying is as if he has taken his soul."[30]

If one touches the goses in a way that hastens his death, it is considered murder.

Therefore, one may not touch a person or close his eyes because that would hasten his death.

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[28] From Rabbi Zlotowitz in Richard F. Address, ed., *III. Bio-Ethics Case Study: Termination of Treatment* (New York: Union for Reform Judaism, Department of Jewish Family Concerns, April 1990), 2.
[29] Rabbi Zlotowitz, 2
[30] ibid, 2

15. *Mishnah Shabbat* 23.5

Translation: We may attend to all the necessities of the deceased: We may anoint and rinse him provided we do not move any of his limbs; we may pull the pillow from under him and lay him on the sand in order that [his body] keep; we may bind the jaw, not that it should close, but that it should not [open any] further….
We may not close the eyes of the dead on the Sabbath, nor [may we do so] on a weekday at the moment of death [for] whoever closes the eyes [of a dying person] is a murderer.[31]

Many of the descriptions of the actions that this Mishnah instructs one perform for the dead are prohibited in the Shulhan Arukh for the goses. The last sentence of this Mishnah shows that one cannot hasten death by closing one's eyes. For many on the CCAR Responsa Committee, this is a statement against active euthanasia.

16. *Shabbat* 55a

Translation: "R. Ammi said: There is no death without sin, and there is no suffering without iniquity. There is no death without sin, for it is written, 'The soul that sins, it shall die: the son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son, the righteousness of the righteous shall be upon him, and the wickedness of the wicked shall be upon him….' (Ezek. 43:20), There is no suffering without iniquity, for it is written, 'Then will I visit their transgression with the rod, and their iniquity with stripes' (Ps. 89:33)."

Summary: Every person sins in their lifetime. One suffers because of his sins.

This text argues that suffering is a Divine punishment for sins committed in one's lifetime. In Rabbi Jacob's responsum, "Drugs to Relieve Pain," he argues that while texts like this justify pain as Divine punishment, that does not mean that today, one should refuse pain medication and suffer.[32]

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[31] Edward Levin, trans., *The Mishnah: Seder Moed, Shabbat*, ed. Rabbi Bernard Susser, vol. 1 (Jerusalem: Hechal Shlomo, 1990), 233-234.
[32] Walter Jacob, "151. Drugs to Relieve Pain, 1991," in *Questions and Reform Jewish Answers: New American Reform Responsa* (New York: Central Conference of American Rabbis, 1992), 239-41.

17. *Shabbat* 151b

Translation: Mishnah: The one who closes the eyes of someone when he is about to die sheds blood. *Gemorrah*: This is compared to a person who puts his finger on a lamp that is going out – if a man places his finger upon it, it is immediately extinguished. It was taught, Rabbi Simeon ben Gamaliel said, if one desires that a dead man's eyes should close, let him blow wine into his nostrils and apply oil between his two eyelids and hold his two big toes; then they close of their own accord.[33]

Commentary:

Rashi says that to close the eyes of a *goses* hastens death.

This text supports earlier texts that assert that one may not hasten the death of one who is dying; one must let him die naturally, without touching him. Rabbi Simeon ben Gamaliel expands on this text to say that while one may not close the eyes of the dying, one can apply oil between the eyelids, which corresponds to a termination of treatment rather than hastening death. However, these actions, although they do not directly close one's eyes, do require one to touch the person.

18. *Taanit* 23a

R. Yohanan said: This righteous man [Honi] was throughout the whole of his life troubled about the meaning of the verse, 'A Song of Ascents, When God brought back those that returned to Zion, we were like unto them that dream.' (Psalm 126:1) 'Is it possible for a man to dream continuously for seventy years?' (Jer. 25:11, 29:10). One day he was journeying on the road and he saw a man planting a carob tree; he asked him, 'How long does it take [for this tree] to bear fruit?' The man replied: 'Seventy years.' He then further asked him: 'Are you certain that you will live another seventy years?' The man replied: 'I found [ready grown] carob trees in the world; as my forefathers planted these for me so I too plant these for my children.'….

Honi sat down to have a meal and sleep overcame him. As he slept a rocky formation enclosed upon him which hid him from sight and he continued to sleep for seventy years. When he awoke he saw a man gathering the fruit of the carob tree and he asked him, 'Are

[33] My translation with Judaic Classics

you the man who planted the tree?' The man replied: 'I am his grandson.' Thereupon he exclaimed: 'It is clear that I slept for seventy years.' He then caught sight of his ass who had given birth to several generations of mules; and he returned home. He there inquired, 'Is the son of Honi the Circle-Drawer still alive?' The people answered him, 'His son is no more, but his grandson is still living.' Thereupon he said to them: 'I am Honi the Circle-Drawer,' but no one would believe him. He then repaired to the Bet Hamidrash and there he overheard the scholars say, 'The law is as clear to us as in the days of Honi the Circle-Drawer, for whenever he came to the Bet Hamidrash he would settle for the scholars any difficulty that they had.' Whereupon he called out, I am he; but the scholars would not believe him nor did they give him the honor due to him. This hurt him greatly and he prayed [for death] and he died. Rava said: Hence the saying, Either companionship or death.

Summary: Honi, the circle drawer, saw a man planting carob trees and asked why he would plant trees since he will not live to see them grown. The man replied that he was planting them for his grandchildren. Honi then fell asleep for 70 years. When he awoke, he discovered the grandson of the tree-planter collecting fruit from the carob tree. When he went back to the Beit Midrash and tried to establish himself as who he was before he slept, no one paid any attention to him and they did not give him any honor. He was hurt and he prayed for his own death and he died. "Rava said: hence the saying, either companionship or death."

The first part of the story, quoted frequently during Tu B'Shevat, shows the importance of providing for future generations. The second part of the story, in which Honi prays for his own death, shows the mental anguish of one who does not receive honor and companionship. This anguish causes him to pray for his own death. One may apply this to patients who have lost their dignity and support from others and therefore request to die.

19. *Mishnah Yoma* 8:5

Translation: A sick person they feed according to the word of experts; and if there are no experts there, they feed him at his own wish, until he says "enough."[34]

This text demonstrates that an individual has the right to withhold nutrition when s/he decides that it is enough. However, this can only occur when there are no experts around. This Mishnah argues that when there are experts around, the experts determine how much food one should have. Today, with new medical technology and doctors available around the clock, one may have a more lenient interpretation.

20. *Yoma* 83a

Translation: (Mishnah) If debris fall on someone, and it is doubtful whether or not he is there, or whether he is alive or dead, or whether he be an Israelite or a heathen, one should open [even on Sabbath] the heap of debris for his sake. If one finds him alive one should remove the debris, and if he be dead one should leave him there [until the Sabbath day is over].

Summary: This text argues that one should violate Shabbat to save a life, whether Jewish or not. If someone sees a pile of debris and suspects that someone is under the debris, he is permitted to move the debris until he can determine whether or not there is in fact a person under it and whether or not he is alive. If the person is alive, it is permitted to remove the debris to save the person's life. If the person has died, one must wait until after Shabbat to bury him.

This text determines that saving a life is of utmost importance, even if one must violate Shabbat, and even if it is unclear whether or not someone is still living. Since one who is

[34] Edward Levin, trans., *The Mishnah: Seder Moed, Yoma*, ed. Raphael Fisch, vol. 4 (Jerusalem: Hechal Shlomo, 1990), 170.

trapped under a pile of debris is likely dying, this text shows that one can try to save the life of someone who has few minutes to live. This state is called hayyei sha'ah.

21. *Yoma* 85a

Translation: Mishnah: If debris had fallen upon someone, etc. Talmud: What does he teach here? It states a case of 'not only.' Not only must one remove the debris in the case of doubt as to whether he is there or not, as long as one knows that he is alive if he is there; but, even though it be doubtful whether he is alive or not he must be freed from the debris. Also, not only if it is doubtful whether he be alive or dead, as long as it is definite that he is an Israelite; but even if it is doubtful whether he is an Israelite or a heathen, one must, for his sake, remove the debris.

Mishnah: If one finds him alive, one should remove the debris. Talmud: But that is self-evident if one finds him alive? No, the statement is necessary for the case that he has only a short while to live.

Translation of Maimonides, *Hilkhot Shabbat 2:18; Shulhan Arukh, Orah Hayyim* 329:4 based on *Yoma* 85a*:* "If an avalanche fell on someone… and he is found alive, even if he is crushed and it is impossible for him to recover, he should be rescued [on the Sabbath] and he should be extricated for the momentary period of life."[35]

Summary: This text clarifies the argument in *Yoma* 83a, stating that even if the person is in the state of *hayyei sha'ah*, with a short time to live, it is required to remove debris and save the person's life.

Similar to the Yoma 83a text, this text argues that one must try to save a human being, even if he does not have long to live. According to Rabbi Elliot Dorff, this has led Orthodox rabbis to conclude that "every medical therapy must be used to save even moments of life."[36]

[35] Elon, 218.
[36] Dorff, 377.

CODES AND THEIR COMMENTARIES

22. Maimonides *Mishneh Torah, Hilkhot Avel* 4:5 Date 1200CE

Translation: One should not touch a dying person or close his eyes. If one does, he is considered a murderer (This is from Shabbat 151b). The person assumed to be dying may not actually be dying, he may be in a "swoon." A person in his deathroes [sic] is considered as a living person with regard to all matters. We do not tie his cheek, stuff his orifices, nor do we place a metal utensil or a utensil that cools on his navel so that [his body] will not bloat. We do not anoint it or wash it or place it on sand or on salt until the person dies. One who touches him is considered as shedding blood. To what can the matter be compared? To a candle that is flickering; were a person to touch it, it will be extinguished. [Similarly,] anyone who closes [a dying person's] eyes as his soul expires is considered as shedding blood. Instead, they should wait some time lest he have fainted. Similarly, we do not rend out clothes because of him, uncover our shoulders, recite eulogies, or bring a coffin or shrouds into the house until the person dies." (note 21: lest the dying person take notice and become aggrieved. This might hasten his death)[37]

Summary: One should not hasten the death of a person who is dying (in the *goses* stage). Maimonides considers a *goses* living and therefore one cannot do anything to him/her that one would do for a person who has died. The Mishnah outlines many of these prohibitions as the steps one should take after one has died.

Maimonides explains why the Talmud would instruct someone not to close the eyes of the dying. According to him, one may not actually be dying but could awaken at any moment. This offers hope at the last moments of life and cautions someone against hastening death when one might not actually be dying. The Shulhan Arukh reiterates many of these prohibitions for a goses.

23. Maimonides *Mishneh Torah, Hilkhot Shabbat* 2:19

Translation: "If [in the process of clearing the debris,] they [reached] his nose and saw that he was not breathing, he should be left there, for he has died already. Although it is

[37] Rabbi Eliyahu Touger, trans., "Hilkhot Evel: The Laws of Mourning," in *Maimonides, Mishneh Torah* (New York/Jerusalem: Moznaim, 2001), 422.

discovered that people on the upper level of a landslide have died, one should not assume that those on the lower levels have died. Instead, [the debris] should be cleared away from all of the people, for in a landslide it is possible that those on the upper level will die, while those on the lower level will remain alive."[38]

Summary: Maimonides says that the lack of breathing determines death. In addition, on Shabbat, Rambam permits one to do work to remove debris if s/he believes that the person under the debris is still living. However, if the person has died, one may not do work on Shabbat to remove the debris and recover the body.

Maimonides supports Mishnah Yoma 8:5 and clarifies that a cessation of respiratory activity determines death. As mentioned earlier, recent technology caused this determinant to change to from the cessation of the heart to a cessation of brain activity.

SHULHAN ARUKH AND COMMENTARIES

24. *Shulhan Arukh, Yoreh Deah*, 335

Translation/summary: How should you visit the sick? The primary purpose of visiting the sick is to pray for them, for God has the power to heal. So, if it is not a good time to pray, either because the person does not look too sick (in the morning) or looks too sick (in the evening), one should not visit because one will not be moved to pray.
There is a distinction between people who are about to die and those that are not. At night, when someone looks very sick, one may not want to pray because it does not seem worth it. One should pray in Hebrew because angels do not know/respond to any other language. But, when you are by the bed or in the synagogue you can pray in any language because God is there. We do not pray on Shabbat because we do not want to cry out all of our troubles and create sadness.[39]

This text explains that one visits the sick for the purpose of praying for them. This text begs the question, can one pray for someone who is dying, and if so, for what does one pray? What does refuah shlema mean? Sometimes, it may mean death. If one should not

[38] Rabbi Eliyahu Touger, trans., "Hilkhot Shabbat [1] The Laws of the Sabbath," in *Maimonides, Mishneh Torah* (New York/Jerusalem: Moznaim, 2002), 48.
[39] My translation

visit someone at a time when he will not be moved to pray, does that mean that one should pray for someone even if he is "too sick" to recover, or that it is not worth visiting because it is not necessary to pray for that person?

25. *Shulhan Arukh, Yoreh Deah*, 337

My translation/summary: One should not tell a sick person that someone they know has died because one does not want to upset that person.[40]

This text provides compassion for the person who is sick and prevents them from becoming more upset. In addition, person one should refrain from upsetting a sick person because, though it does not say so explicitly, upsetting a sick person may hasten their death.

26. *Shulhan Arukh, Yoreh Deah*, 338

Translation/summary: When one goes to help another to recite the *vidui*, make sure that one assures the sick person that saying the *vidui* does not ensure that someone will die right away. The merit of saying it may let one live. If the person cannot say the *vidui*, let them say it silently to themselves. If they do not know it, do an abbreviated form. Keep person alive for as long as possible, do not upset them – there is a strong mind-body connection.[41]

This text supports the one before it to ensure that one does not do anything to upset the sick person and seems to imply that upset can hasten one's death.

27. *Shulhan Arukh, Yoreh Deah*: 339:1 and the *Shach's*[42] Commentary

***Shulhan Arukh* 339:1**
My translation: The *goses* is living in all matters. Do not bind him, for, he is living: Do not endanger him, do not push him and do not stop up openings, and do not loosen the

[40] My translation
[41] My translation
[42] Rabbi Shabtai HaKohen lived in Poland from 1621-1662 and wrote *Siftei Kohen*, abbreviated *Shach*.

pillow from under him, do not put him on the sand, do not lay him on the red soil/clay, do not lay him on the earth, do not lay him on his stomach, no cupping, do not scrape, do not use a flask of water, not a grain of salt, do not announce about him in the cities, do not rent a grave or buy it, do not close the eyes - (do not do any of the above) until his soul departs, all that close his eyes with the soul (before the soul has departed) this is spilling blood (murder), do not rend (*kriya*), do not take your shoes off preparation for mourning), do not eulogize him, do not put him in the coffin until he dies, do not (idiomatic) say "*barukh dayan haemet*" until his soul departs.[43]

***Shach* on *Shulhan Arukh* 339:1**

"He is living in all ways" And it is forbidden to do anything to hasten his death. And the Ran writes (on the phrase) "that he is living," he can give a get and receive a gift, it is permitted for a *cohen* to enter the house and stand, despite that the majority of *gosesim* are in bed."

(And Bikkur Holim brings from Stam, and later, the *Shulhan Arukh* makes it clear that it is forbidden to enter the house of a *goses*.

"*ain koshrin*" so he shouldn't open up his mouth

"Do not endanger" do not prevent someone who leads them to remove all the smells (soil) from his body

"Do not loosen the mattress from his bed" even though they do not lie a dead person on anything warm, if he is on a mattress and he dies, immediately lower him and remove the mattress and place him on the floor because warmth makes him smell[44]

Summary: This text is similar to the *Mishneh Torah, Hilkhot Avel* 4:5. It describes all of the actions that one may not perform on a *goses*.

This text is the basis for many arguments used by rabbis and the CCAR Responsa to prohibit hastening the death of one who is dying.

28. Moses Isserles[45] to *Yoreh Deah* 339:1 in *Shulhan Arukh* (Rema's source is *Sefer Hasidim*)

Translation: And some say that there are no stonecutters for his grave despite that there are no people in the house until after he dies

[43] My translation. This seems to be a list of folk remedies that are not clear to the modern reader and they are also not obvious to medieval commentators. Many of these rulings are similar to those found in Maimonides *Mishneh Torah, Hilkhot Avel* 4:5.

[44] My translation

[45] Rabbi Isserles (Rema) was a Polish scholar who lived from 1530-1572; his glosses are integrated into the *Shulhan Arukh*.

It is forbidden to cut his grave and to have it waiting open. Do not bury him in the same day that he dies, there is danger in doing that
It is forbidden to hasten his death, for example, someone who is a *goses* for a long time and cannot separate from this world
It is forbidden to loosen the pillow and covering from under him [do not do anything for him as if he were dead, because he is alive]
There are those that say that feathers from small chickens (down feathers) can cause (death) and similarly do not move him from his place
Do not put the keys of the synagogue under his head in order that it hasten (his death) but if there's something that causes a delay in his soul leaving such as something close to his house that is knocking such as a tree-chopper or if there is salt on his tongue and it is delaying his death then it is permitted to move it from there. This is not a generalized action, rather it is to remove an impediment (according to *Rif*)[46]

Alternate Translation: "It is forbidden to cause the dying person to die quickly, for example, if someone has been in the process of dying for a considerable time but cannot depart, it is forbidden to remove the pillow and cushion from underneath him, as it is said that the feathers of certain birds cause this [delay in departure], and similarly he should not be moved from where he is; and it is also prohibited to put the keys of the synagogue underneath his head in order that he depart.

But if there is something which is impeding the departure of the soul, such as a knocking noise near the house, like a woodchopper, or if there is salt on his tongue, and these are impeding the departure of the soul – it is permitted to remove it from there, for this does not involve any act at all, but it is removing the impediment."[47]

This, like other texts, enforces the distinction between hastening death and prolonging life. One cannot remove those things that help a person to live and would cause the person to die quickly if removed. However, those things that are just prolonging life but are not helping the person to live can be removed.

29. Rabbi Solomon Eiger in his work, *Gilion Maharsha,* on *Yoreh Deah* 339:1 based on *Beit Ya'akov*

Translation: Comment on: *ain koshrin* in the *teshuva* of *Beit Ya'akov* 60:49, it is written that it is forbidden to delay the soul's departure. Take a look (he (*Beit Ya'akov*) disagrees with the *teshuva* of *Shevut Ya'akov* 3:13 who (*Beit Ya'akov*) says that to withhold the *goses* from the doctor, even an hour, is of course permitted, also with the *hayyei sha'ah*, it is permitted to remove the rubble from him on Shabbat as it is written in *Yoma* 85 and

[46] My translation
[47] Elon, 223-4.

look at *Teshuva Beit Ya'akov* (same as above) that is more precise than the *RaN*, where in the *Shach* it is written, likewise on the issue of desecrating Shabbat, (*Shach*) holds the opinion that we do not desecrate Shabbat, like *Tosafot* in *Niddah* 44, rather let him die since the majority of the *gosesim* die, and this is according to the *Shulhan Arukh*, *Orekh Hayim*, 329:2. In my humble opinion, it is possible that the rule of desecrating Shabbat is not related to saying that he is like someone living, because they also say that it is important that he is like dead when removing him. It seems to me that it is revealed in all places about the desecrating of Shabbat, and this needs to be the essence. If there are those that say that it is not permitted to remove someone if it will desecrate Shabbat, it is only permitted to remove a body when the soul is living and in all places where it talks about desecrating Shabbat, according to what is written in *Tosafot* in *Niddah* that desecrating does not depend on the soul and it is not what is written in *Hidushin*, part 2, page 95.[48]

Summary: Rabbi Eiger begins his commentary by saying that one cannot prolong death. He then goes on to comment on a debate about the removal of debris from a dying person on Shabbat. Rabbi Eiger explains that the minority opinion of rabbis argue that one cannot remove a *goses* from the rubble on Shabbat because the majority of *gosesim* die anyway. However, the majority of commentaries say that one should remove a *goses* if he is living.

Rabbi Eiger synthesizes many comments regarding removing the debris on Shabbat. Though he offers many minority opinions that argue against removing the debris, Eiger concludes that one should remove the debris if one is living. This demonstrates that one should do whatever one can to save someone, even if he is in the dying process.

30. Taz's[49] comment on *Shulchan Arukh, Yoreh Deah*, 339:1

Translation: Only hasten death by removing impediments to soul leaving:
As it is written, forbidden to move his body when he is close to death in his hands…

[48] My translation
[49] Rabbi David HaLevi (Taz), is a Polish scholar who lived from 1586-1667 and wrote *Turei Zahav*, a response to *Orekh Hayim* and *Yoreh Deah* in the *Shulhan Arukh*.

It is hard for me to understand why they permit the removal of salt from on his tongue, Wouldn't shaking his mouth for him be like closing his eyes? And so, in my opinion, it shouldn't be permissible to behave in a way that would remove salt (If you can't move his body, or his mouth, or close his eyes, why should you be able to move remove salt from his tongue, it's too much of an invasion.)[50]

Summary: Taz comments that removing salt from the tongue of a dying person would disturb patient and is too overt an act to permit. Here, the Taz disagrees with Isserles who allows the removal of salt because, Issserles argues, salt prolongs life and is an impediment to death.

This disagreement between Taz and Isserles underscores the sensitive nature of medical interventions and how difficult it could be to determine what is hastening death and what is an impediment to the natural dying process.

31. *Shiltei Hagiborim*[51] *to Moed Katan*, third chapter (Vilna edition, Alfasi) 16b

Translation: "It follows that apparently one should forbid what several people have the practice of doing when a person is dying and the soul cannot depart, whereby they remove the pillow from under him so that he will die quickly, since they say that there are feathers of birds in the bed that prevent the soul from leaving the body. On several occasions I have protested against this bad practice but have been unsuccessful… and my teachers disagreed with me, and Rabbi Nathan of Igra, of blessing memory, wrote that it is permitted.

After a number of years I found support for my position in *Sefer Hasidim* para. 723, where it is written: "And if he is dying and he says that he cannot die until he is taken to a different place – he should not be moved from that place."

The words of the *Sefer Hasidim* require close examination, for at the beginning of the passage he wrote that if someone is dying and there is someone near that house who is chopping wood and the soul cannot depart – we remove the woodchopper from there, which implies the opposite of what he wrote later.

[50] My translation
[51] Rav Yehoshua Boaz ben Shimon Barukh, who lived in Spain until 1942 and, after the expulsion, moved to Italy, wrote *Shiltei Hagiborim*

But this can be explained by saying that to do something which will cause the dying person not to die quickly is forbidden, such as chopping wood there in order to prevent the soul from departing, or putting salt on his tongue so that he does not die quickly – all of this is forbidden, as can be seen from his remarks there, and in all such cases it is permitted to remove the impediment. But to do something that will cause him to die quickly and his soul to depart is forbidden, and therefore it is forbidden to move a dying person from his place and put him elsewhere so that his soul may depart. And therefore it is also forbidden to put the keys of the synagogue under the pillow of the dying man so that he dies quickly, for this too hastens the departure of the soul.

According to this, if there is something that prevents his soul from departing, it is permitted to remove that impediment. This does not present any problem, for a person does not thereby put his finger on the candle and performs no act. But to put something on a dying person or to carry him from one place to another so that his soul departs quickly would certainly appear to be forbidden, since thereby he is putting his finger on the candle."[52]

Summary: Rabbi Boaz begins by saying that he disagrees with the practice of removing a pillow from the dying person because it hastens death. He then notes a distinction in *Sefer Hasidim* between prolonging dying and hastening death; one is permitted to remove the woodchopper who prolongs dying but cannot remove a dying person from his place nor put the keys of the synagogue under his pillow because these actions hasten death.

This responsum supports the Shulhan Arukh, Yoreh Deah 339:1 and Isserles' argument that one may remove impediments to death though one may not hasten death.

RESPONSA

32. R. Immanuel Jakobovits[53] in *HaPardes* 31:3 (1957), pp. 18-19

Summary: "Any form of active euthanasia is strictly prohibited and condemned as plain murder…At the same time, Jewish law sanctions the withdrawal of any factor – when

[52] Elon, 223.
[53] Rabbi Immanuel Jakobovits lived from 1921-1999 in Germany and then England. He was the Chief Rabbi of the United Hebrew Congregations of the British Commonwealth.

extraneous to the patient himself or not –which may artificially delay his demise in the final phase" only in the case where death is imminent that is in three days of less."[54]

Jakobowits' responsum stresses that while euthanasia is prohibited, a physician may remove the impediments to death only when someone is considered a goses.

33. **Dr. Jacob Levy's *Hama-a-yan*, Tamuz, 5731**

In the 1980 CCAR Responsum, "Euthanasia," the authors note that "a recent Israeli physician, Jacob Levy, has stated that modern medical methods change this criterion [cessation of respiration and a heart beat], and the lack of blood pressure as well as respiratory activity should suffice."[55] This means that a person is considered dead when there is a lack of blood pressure and the respiratory system ceases to function.

Dr. Jacob Levy redefines the rabbinic determinant of death from just lack of respiratory activity to include lack of blood pressure. The fact that the CCAR responsum quotes this doctor demonstrates the collaboration between doctors and rabbis to reconcile halakhah with changes in medical technology. The "Euthanasia" responsum notes that earlier rabbinic sources, such as "Gesher Hayim"[56] and "Responsa Yismach Lev"[57] determine death when there is no movement of the body in fifteen minutes or an hour, respectively.

34. **Jacob Reisher of Metz: *Shevut Ya'akov* 1:13 (quoted by Zlotowitz as 3:13)**

Translation: The question that was asked in *Beit Ya'akov* about the prohibition of delaying death (the going out of the soul), even when the experts are engaged in healing. The doctor, in doing the healing, prevents the *g'sisah* from suspecting that he is in the *hayyei sha'ah,* in his last hours of life, even though you violate Shabbat for him.[58]

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[54] Rabbi Zlotowitz 6 (quoted from Rosner's, *Modern Medicine and Jewish Ethics*, 200
[55] As quoted in: Central Conference, "79. Euthanasia, 1980," ed. Walter Jacob, in *American Reform Responsa Collected Responsa of the Central Conference of American Rabbis, 1889-1983* (New York: The Conference, 1983), 271-274, the authors write that the source is: *Hama-a-yan*, Tamuz, 5731. I cannot find this source.
[56] According to "Euthanasia": *Gesher Hayim* I, 3, p. 48, though I cannot find this source
[57] According to "Euthanasia": *Responsa Yismach Lev, Yoreh Deah*, #9, though I cannot find this source
[58] My Translation

In the Bio-Ethics Guide, III, Rabbi Zlotowitz summarizes the Shevut Ya'akov saying that, "no positive or direct act may be withheld even for a second, from a dying person."[59] *This text explains that one does not want the goses to suspect that s/he is in the last hours of his life, hayyei sha'ah, so the doctor continues to try to heal him.*

35. Jacob Reisher of Metz: *Shevut Ya'akov* III:75

Translation: In the case of the sick person that is in danger of dying and all the doctors give up on him: when they say that there is one hope that it is possible for them to heal him or possible that if they are not successful, he will die suddenly; if they suspect that he is in *hayyei sha'ah* it is preferable for the doctors not to do anything. If they think that he is *hayyei sha'ah* and if they were not to successfully do something, he could die immediately.[60]

Summary: One should not do anything to try to heal someone who is *hayyei sha'ah* because the doctors may hasten the patient's death.

This text seems to contradict Yoma 85a that says that one should try to heal someone in the hayyei sha'ah stage. While the previous responsum from Shevut Ya'akov said that one should try to do anything possible to help someone in the goses stage, this text says that one should not try to help someone in hayyei sha'ah.

36. *Hatam Sofer, Yoreh Deah* #38

In the Bio-Ethics Guide, III, Rabbi Zlotowitz summarizes the Hatam Sofer to say, "lack of respiration alone was considered conclusive if 'the individual lay as quietly as a

[59] Rabbi Zlotowitz, pg. 5 (quoted as *Shevut Ya'akov* 3:13)
[60] My translation

stone."[61] *This expands slightly on the determination of death due to the cessation of respiratory activity.*

37. *Tel Talpiyot*, Letter 42, vol. 30, 1923, Budapest

Rabbi Zlotowitz explains that *Tel Talpiyot* says, "No nourishment, however little the amount, may be withheld from a dying person whose condition seems hopeless and his pain great in order to hasten his death. Termination of treatment is not permitted.[62]

This responsum underscores the law that one may not hasten the death of the dying person, nor terminate treatment. However, he does not address whether or not he believes one is able to withdraw treatment when it is prolonging life.

OTHER WORKS

38. *Sefer Hasidim*[63], chapter 723 & 724, Date 1300 CE

Translation, 723: "Do not cause a man to die quickly; for example, if a person is dying (a *goses)*, and someone near that house is chopping wood and the person's soul cannot depart, the woodchopper should be removed from that place. And we do not put salt on his tongue to prevent his death, and if he is dying and he says that he cannot die until he is taken to a difference place – he should not be moved from that place."[64]

Translation, 724
Even though they have said that a person is a *goses*, do not move him from his place. If there is a fire do not leave him in the house and take him out [bet] if there is a fire in the house, and there is a dead person lying in the house, and there are books, and it is doubtful [gimel] that one can save both, save the dead man first. If one's father has died and the father is lying in the house and the living child is there, save the living child first,

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[61] Rabbi Zlotowitz, 5
[62] *Tel Talpiyot*, Letter 42, quoted by Israel Bettan, "American Reform Responsa," p. 263 as quoted by Rabbi Zlotowitz, 5. I cannot find this text in the original.
[63] Rav Yehuda Ben Shemuel Hehassid lived in Germany in the twelfth century and wrote *Sefer Hasidim*
[64] My translation with Elon, 222.

even though he knows his father will burn. If one is a *terefah* and one is a healthy person (and it is doubtful that one can save both), (one should) save the healthy person.[65]

Isserles based his commentaries on the Shulhan Arukh on these texts from Sefer Hasidim. These texts explain the differences between hastening death and prolonging death. One cannot hasten death but one can remove impediments, such as the woodchopper, from someone's way so that one's soul can depart. This is the basis for numerous distinctions between hastening death and prolonging dying. It also serves as a guide when one decides whether or not to remove modern medical interventions that some may view as impediments to death.

39. ***Avodat Yisrael***

(Rabbi Meir teaches (in *Avot* 6:5) that every Jew has a piece of Torah in them from birth) Based on this, *Avodat Yisrael* explains, each day, he uncovers a portion of that spark "based on what he needs to repair (*letaken)* that day."[66]

In addition, since every person is different, each person contributes his own unique teaching to the world. This teaches that though it may not always be so clear, regardless of what stage of life someone is in, and how aware they are, they have the potential to uncover a portion of Torah.

[65] My Translation
[66] Rabbi Dayle A. Friedman, "Provisions for the Journey: Fostering Meaning-Making in Later Life: Texts to Frame Aging" (lecture, Clinical Pastoral Education, Hebrew Senior Life, Roslindale, July 2008). I cannot find the original text.

40. *Yesod Haolam* 4:2

"In the name of the Ari, *z'l*, no day and hour is identical to another since creation, and thus no person since creation is identical to another, and one person cannot repair what another can repair, thus every day has a purpose and a role for each person.[67]

This text shows the importance of every soul and the sanctity of life.

41. "God's Partner"

When Rabbi David Leikis, who had lived more than one hundred years was dying, the judges of the town hoped he would lend his knowledge to one final case. When they went to his house, the Rabbi's family protested and would not let the judges enter the room of the rabbi. Rabbi Leikis heard the arguing and came out to declare that "one who judges a case correctly becomes thereby God's partner."[68] He decided the case and when he was done, he died.

This can help us to understand that up until the time of death, one can still contribute to the world. On the other hand, it teaches that there comes a time when one has finished all that they were meant to do on the earth and their time has come to die.

[67] Rabbi Dayle A. Friedman, (lecture, Clinical Pastoral Education, Hebrew Senior Life, Roslindale, July 2008).

[68] Quoted in Nahum N. Glatzer: The Judaic Tradition. Boston: Beacon paperback, 1969. From Rabbi Simcha Y. Weintraub, "Transitioning, Teaching, and Transcending: Exploring Some Classical Jewish Narratives about Dying" (lecture, Clinical Pastoral Education, Newton Jewish Community Center, Newton, July 2008).

Chapter 2: A History of the Voices of the Reform Movement on End-of-life Care

Section 1: Literature for a Rabbinic Audience

1. **CCAR Responsa and CCAR Resolutions**
2. **CCAR Journals**

1. CCAR Responsa and CCAR Resolutions

In the CCAR Responsa, Reform rabbis address many specific end-of-life issues. Such issues include: active and passive euthanasia, brain death and respiratory death, organ transplants, nutrition and hydration, pain medication, implications of patients in a coma, kidney dialysis, and living wills. From 1949 until today, the rabbis root themselves firmly in the present, as they respond to and address United States legislation on end-of-life issues and advances in medical technology. The rabbis wrestle with Jewish law as they seek ways to uphold and apply Jewish Law to advances in modern technology. To support their arguments, the rabbis use classic rabbinic texts including the Talmud, *Shulhan Arukh*, and responsa. They also use concepts and criteria from the American medical world, such as the Harvard Medical School definition of brain death.[69]

In their Reform responsa, the rabbis do not seek to dictate laws that they expect Reform Jews to follow, rather they provide insight, a *halakhic* history, and their own interpretations of Jewish law. Rabbi Solomon Freehof, who wrote many of the responsa included in this chapter, wrote that one should view the CCAR Responsa as "guidance not governance."[70]

Throughout the responsa, as they address the specific issues listed above, the rabbis confront larger ethical issues including sanctity of life, quality of life, the

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[69] See discussion of brain death in Appendix B

[70] Walter Jacob, *Contemporary American Reform Responsa* (New York: Hebrew Union College Press, Central Conference of American Rabbis, 1987), xix.

distinction between prolonging life and hastening death, the implications of being a *goses,* and pain and suffering.

The responsa authors uphold the sanctity of life as a supreme value to Reform Jews, a concept they derive from traditional sources. They assert that humans are created in the image of God and that life is a gift from God. This stance influences all the responsa, and prompts the preference for the pursuit of life and healing rather than death. Since life is a gift from God, one must not engage in physician assisted suicide or active euthanasia, and should not take actions to end one's own life or instruct doctors to terminate life.

However, what happens when one is dying and doctors cannot cure the illness? What happens when one's pain is so great and s/he requires medication to alleviate pain that may hasten death?

In these cases, the Reform rabbis use the Jewish medical category of a *goses* and the medical implications and important distinctions that accompany it. A *goses* is someone who is imminently dying with no chance of a cure. One is permitted to remove impediments to death and interventions that prolong life for a *goses.* However, one is not permitted to hasten death.[71] This distinction widens the discussion of possible options for one who is dying. While sanctity of life is of utmost importance, the rabbis rule that where there is pain and death is inevitable; doctors can remove impediments to death.

The rabbis recognize that with advances in medical technology, it becomes easier and easier to prolong life and delay death. With many of these interventions, the question of whether or not these interventions prolong life or promote healing becomes more

[71] See further discussion of a *goses* and other medical *halakhic* terms in the Appendix.

difficult to answer. In addition, there is a fine line between technologies that hasten death or prolong dying.

The rabbis carefully differentiate between pain and "quality of life." In many of these responsa, the question implies that a diminished "quality of life" could be a potential reason to shorten one's life. Over and over, the rabbis argue that it is *not* a justifiable reason. However, they clearly state that one can administer pain medication to ease suffering, even if it may, indirectly, hasten death. Some might argue that pain hinders one's "quality of life." The responsa committee, though, does not draw this connection. For the rabbis, pain and "quality of life" are separate categories.

Many of the responsa discuss explicitly or allude to the idea of treating a person as a whole being rather than looking at individual illness or diseases. For example, if someone is dying of cancer, and considered a *goses,* and becomes sick with pneumonia, while in other situations the rabbis would advocate for treatment of the pneumonia, here, they do not. The rabbis see the pneumonia as one part of the whole person rather than a specific disease that should be cured. Since one will not cure the person of all diseases when one cures the pneumonia, doctors are not obligated to cure the pneumonia and, if they do, the responsa authors view this as prolonged suffering.

The responsa committee discusses but does not resolve the important issues of nutrition and hydration. Some argue that they are medicinal and some argue that they are life giving and necessary. Depending on how they are viewed, the implications change. If they are considered medicinal, in the case of a *goses,* it is permitted to remove them, because it prolongs death. If they are essential to life and not medicine, to remove them is forbidden because it hastens death. Both rabbis from across the spectrum and medical

professionals continue to debate how to classify nutrition and hydration. In these CCAR Responsa, the rabbis only offer recommendations rather than clear guidelines.

While most of the responsa focus on the details of medical technology and Jewish law and they respond to specific medical questions, in many of the responsa, the authors acknowledge the pain and emotional hardship that patients and families face when their loved ones die. They also recognize that every person is unique and, even with all of these guidelines from the responsa, people should consider each case separately, in conversation with doctors, sometimes clergy, family members and the patient.

What follows is a summary of the CCAR Responsa from 1949 to 2004. With each responsum, one can read the issues at hand, the Jewish laws and principles applied, and the conclusions of the Reform rabbis.

In 1949, two thousand physicians from New York sought to create a bill that would legalize "the practice of orderly scientific euthanasia."[72] Meeting that same year, the CCAR requested that a committee delve deeper into this issue from a Jewish standpoint and present a report at the next meeting. Rabbi Israel Bettan[73] presents his opinion in his 1950 report in the form of a responsum.[74] Bettan advises that Judaism forbids active euthanasia because euthanasia violates the sanctity of life, a supreme value in Judaism. He argues that God gave humans life and it is a gift. Even when one suffers, Judaism forbids one to hasten the death of a human being. This responsum, compared to other lengthier discussions, is short and pointed, with several Jewish texts to support the

[72] Proceedings of Central Conference of American Rabbis Resolution (1948), 129.
[73] Rabbi Israel Bettan lived from 1889-1957 and was Professor of Midrash and Homiletics at HUC-JIR in Cincinnati.
[74] Central Conference of American Rabbis. "78. Euthanasia, 1950." In American Reform Responsa: Collected Responsa of the Central Conference of American Rabbis, 1889-1983 (New York: The Conference, 1983), 261-71.

argument. Bettan applies the story of Rabbi Haninah who refuses to breathe in the flames surrounding him to hasten his own death as a martyr.[75] He also cites the *Shulhan Arukh, Yoreh Deah* 339:1 to argue that while one cannot hasten death, one can remove impediments to death.[76] In the discussion located at the end of the responsum, Rabbi Solomon Freehof[77] (who will have his own responsum in later years), comments on the distinction between hastening death and refraining from doing something positive to prolong life, when there is no cure for a person suffering from a terminal illness.[78]

Almost twenty years later, in 1968, Rabbi Freehof responds to a question of whether or not organ transplantation is permitted.[79] Freehof stresses the point that under no circumstances may a physician remove the body part of someone who is dying to give it to another person if it will hasten the death of the first person. This statement prompted the need to define "death." Though rabbinic Judaism argues that respiratory failure determines death,[80] Freehof asserts that brain death according to the medical technology of the time determines death. Since Jewish law does not address organ transplantation, one must interpret the laws to find guidance. Freehof notes that the traditional laws might

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[75] *Avodah Zarah* 18a
[76] *Shulhan Arukh* 339:1 is quoted often in subsequent CCAR Responsa
[77] Rabbi Solomon Freehof lived from 1893-1990 and was the Rabbi of the Rodef Shalom Congregation. He was President of the CCAR and Chair of the Responsa Committee of the CCAR. He authored eight volumes of CCAR Responsa including, *Today's Reform Responsa* (1990), *Reform Jewish Practice* (1947, 1952), *The Responsa Literature* (1955), and *A Treasury of Responsa* (1963).
[78] This distinction began in the thirteenth century work, *Sefer Hasidim* according to Dr. Elliot Dorff in this article, "Terafah [sic], Rather than Goseis [sic], as the Operative Category," found in the Bio-Ethics Guide VI
[79] CCAR. "86. Surgical Transplants, 1968." In American Reform Responsa, 291-96.
[80] See Chapter 1 for many examples of rabbinic texts arguing that the cessation of breath and respiration determines death.

appear contradictory. There are two laws[81] that state that one can do anything (except murder, idolatry and adultery) to save a life. Therefore, it would seem that it is permissible to perform a transplant from someone who is dead to heal the living. However, Jewish law also affirms that a dead body is sacred and may not be used for the benefit of the living. Freehof explains that the term "benefit of the living" does not refer to life giving but benefits of satisfaction, like food.

There is another argument that when one removes a body part from a dead person, the person is no longer whole and one cannot bury the body. However, Freehof suggests that when one transplants a body part, the part becomes part of the other person's body and does not prevent the dead person's body from being considered whole. Traditionally, the obligation to bury a body whole was related to the desire to have all body parts present to facilitate bodily resurrection. Freehof does not mention this here.

Freehof concludes that one may only use the organs of one who is determined to be brain dead. And, one may use organs of a dead person because it is not for "benefit" (meaning satisfaction from food). When it goes into a living being, the body part is not considered dead so it does not need to be buried and (though the responsum does not use these words) saving a life is of supreme importance, "because the patients about to receive these implants are actually in danger of death, and for such patients any possible help is permitted by Jewish tradition."

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[81] "We may use any material for healing except that which is connected with idolatry, immorality, and bloodshed" (*Pesachim* 25a) and "He who is sick and in danger of death, and the physician tells him that he can be cured by a certain object or material which is forbidden by the Torah, must obey the physician and be cured" (*Hilkhot Yesodei Torah* 5.6). This is codified as a law in the *Shulhan Arukh, Yoreh Deah* 155.3

One year later, in 1969, Rabbi Freehof addressed a *sheelah* that asked more specific questions regarding hastening death.[82] "Two physicians, one of whom was the patient's son, decided--with the consent of the family--to hasten the end by withdrawing all medication and fluids given intravenously. Is such a procedure permitted by Jewish law?" Rabbi Freehof responds with the same distinction he offered in his comments in 1950. Freehof establishes that one cannot hasten death according to Mishnaic and Talmudic sources.[83] He then explains Isserles' comments on the *Shulhan Arukh, Yoreh Deah*, 339:1, that shed light on the distinction between hastening death and removing impediments to death. Isserles asserts that if a woodchopper is chopping outside the window of a dying person and the patient's soul is not able to leave the body because he is distracted by the noise, then it is permitted to stop the woodchopper and allow the patient to die.[84] This does not require an action to the physical body of the patient and therefore is not considered "hastening death" but it removes a stumbling block in the way of death. Similarly, if there is salt on the patient's tongue and it prevents the person from dying, one may remove the salt, according to Isserles. Since the salt was added to a person's being, to remove it simply returns the patient to his original state so that the natural process of dying can continue. Rabbi David Halevi[85] argues, however, that one cannot remove the salt because it may bother the patient enough to hasten his death[86]. Based on this distinction between hastening death and removing impediments to the

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[82] Central Conference, "77. Allowing a Terminal Patient to Die, 1969," ed. Solomon Freehof, in *American Reform Responsa*, 257-60.
[83] *Mishnah Shabbat* 23:5, Talmud *Shabbat* 151b, *Semachot* 1:1
[84] Rabbi Moses Isserles on *Shulhan Arukh, Yoreh Deah*, 339:1, based on *Sefer Hasidim*, #723, see Chapter 1
[85] Rabbi David Halevi, also known as the Taz because of his signature work, *Turei Zahav*, lived from 1586-1667.
[86] Taz's comments on the *Shulhan Arukh, Yoreh Deah*, 339:1

dying process, Freehof concludes that one may remove "impediments" like intravenous tubes, as long as their removal does not bother the patient enough to hasten his death. Freehof permits this only in the case where the patient was terminally ill and the intravenous was not curative. Freehof also notes that rather than remove the intravenous it would be better to have a situation in which the doctor orders intravenous every day and one day ceases to order it. This would be a more passive way to stop the intravenous rather than the physical removal of the intravenous.

The question of hastening death returns to the CCAR, with a different twist, six years later. Rabbi Freehof responds to the question of whether or not one may administer medicine to a dying patient, when doctors know that the medicine will hasten death.[87] While the questioner in 1969 requested permission to remove medications that did not aid the patient, this responsum addresses the issue of adding pain medications that will hasten death. Freehof draws the distinction between medicines that are administered for the direct purpose of hastening death and those that have the main purpose of relieving pain with a side affect (such as slowing heart rate) that will hasten death. It is forbidden and considered suicide or homicide, according to Jewish law, to act with the direct purpose of hastening death. However, in the case of a terminally ill person in pain, rabbis permit doctors to relieve that pain, even if the medicine will indirectly hasten death. Freehof considers the patient to be in the stage of *hayyei sha'ah* and therefore permits doctors to do whatever is necessary to relieve pain. He uses the story of Rabbi Yehuda HaNasi and his handmaiden to further support this argument. Tradition praises Rabbi Yehudah HaNasi's handmaiden when she throws a jar from the roof that causes a sound to distract

[87] Solomon Freehof, "76. Relieving Pain of a Dying Patient, 1975," in *American Reform Responsa,* 253-256.

those that prayed for the rabbi's recovery.[88] When they stopped praying, the rabbi died and was relived from his suffering. Therefore, rabbis permitted one to administer medicine that will relieve suffering of a terminally ill patient, even if it will hasten death.

In 1980, the question moves from administering pain-relieving medicine to removing non-curative medicine from a patient in a coma.[89] This responsum repeats the same idea that one cannot hasten death but can remove those medical interventions that are not curative but are impediments to death. Here, the rabbis use the traditional Jewish category of *goses*, a moribund person. While a *goses* is dying, s/he is still, according to Jewish law, living and therefore death cannot be hastened. However, in this case, rabbis permit the removal of medical technology that prolongs suffering.

This responsum also considers the time at which one can pronounce someone "dead." While there have been various standards throughout Jewish history, all of them consider the cessation of breath and or a heartbeat to be the determinant of death. However, after 1968, the liberal Jewish community and many Orthodox authorities began to accept the Harvard Medical School definition of brain death. Harvard Medical School suggests several criteria to indicate that someone is "brain dead." This responsum abides by those standards and asserts that if someone is brain dead, though he may have an artificial heartbeat, it is permitted to remove medical interventions and life saving devices. The authors of this responsum write, "We are satisfied that these criteria include those of the older tradition and comply with our concern that life has ended."[90]

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[88] *Ketubot* 104a
[89] CCAR, "79. Euthanasia, 1980," 271-274.
[90] ibid, 271-274.

It is clear, though, that the CCAR Responsa committee does not endorse active euthanasia; they only permit the removal of life sustaining devices under certain circumstances.

In 1977, the CCAR adopted a resolution on death and dying.[91] This resolution recognizes the serious issues of dying, death and bereavement and applauds those efforts already made to support those dealing with such issues through school curricula and sermons. This resolution calls for leaders to help their communities face the reality of death and the issues surrounding it, not use euphemisms, and use customs that help people come to terms with the reality of death.

In 1980, the CCAR drafted a resolution to address hospice care. The CCAR believes that the hospice movement should align with Jewish values and therefore they became an institutional member of the National Hospice Organization. In addition, they urge public and private organizations to support health care and recommend that CCAR members become involved in the hospice movement.[92]

The CCAR Responsa committee responded to a question about amputation in 1984.[93] A rabbi in Illinois asked if the family of a ninety-six year old woman should permit doctors to amputate the foot of this woman. The woman is disoriented, with short periods of lucidity and refuses to allow the surgery. The surgery and recovery could be fatal, but, if she does not have the surgery, the continuing hardening of her arteries will

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[91] "Death and Dying," proceedings of 88th Annual Convention of the Central Conference of American Rabbis (1977)

[92] "Hospice," proceedings of 91th Annual Convention of the Central Conference of American Rabbis (Pittsburgh, 1980)

[93] Walter Jacob, "85. Surgery at Ninety-Six, 1984," in *Contemporary American Reform Responsa* (New York: Hebrew Union College Press, Central Conference of American Rabbis, 1987), 142-144.

lead to a painful death (which could be helped with sedation). Through biblical and rabbinic sources, the CCAR rabbis establish that doctors should use medical interventions to heal patients, in most cases.[94] These rabbis ask three questions: "Is this appropriate when the procedure is dangerous? Is there an age limit beyond which tradition would not advocate rigorous medical intervention? Shall this ninety-six-year-old woman face the trauma of an amputation?" With regard to the first question, there is debate among rabbinic sources; many sources encourage one to save a life regardless of the risks, while other sources allow one to withhold medical interventions in the case of great risks. The CCAR rabbis use examples from Psalms and Deuteronomy[95] to show the way in which biblical texts praise old age; this implies that old age should not deter doctors from operating. However, in response to the last question, the CCAR rabbis conclude that the psychological stress of the amputation might be too great for this woman. This, combined with a doubtful medical prognosis, causes the rabbis to conclude that the family should not force this woman to have surgery.

In the CCAR Responsum of 1987, Rabbi Walter Jacob[96] responds to the question of a diminished "quality of life" and its possible implications.[97] Rabbi Jacob's strong

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[94] *Avodah Zarah* 27b demonstrates the efforts one should take to save oneself. *Shevut Ya'akov* III establishes that one should take drugs even if there are hazardous risks. In *Tzitz Eliezer's* responsa 10, #25, Chap. 5, Sec. 5, he recommends that there should be a fifty percent chance of success to use drugs with risks.

[95] Psalm 90 describes the ideal life of three score years and ten and four score years and in Deut. 34:7, Moses lives to one hundred and twenty.

[96] Rabbi Walter Jacob was the Rabbi of the Rodef Shalom Congregation in Pittsburgh, President of the CCAR and Chair of the CCAR Responsa Committee. He authored and edited sixteen books including *American Reform Responsa* (1987), *Contemporary Reform Responsa* (1987) and *Questions and Reform Jewish Answers – New Reform Responsa* (1991). He also edited *Death and Euthanasia in Jewish Law: Essays and Responsa* with Moshe Zemer.

response underscores the value of human life. He explains that every life is precious and one cannot judge the "quality of a human life," and use it as a factor in deciding medical procedures. God created all people in the image of God and every person, regardless of their mental state or handicap or deformity has the right to life. Therefore, one may not cease treatment due to what one perceives as a poor "quality of life." Rabbi Jacob however, does not consider, according to this responsum, pain as a measure of "quality of life." As all of the previous responsa state, while one may not hasten death, one may relieve pain and remove impediments to death. And, when "independent life" has ceased, or when one is considered brain dead, rabbis permit the removal of medical technology. One should not use "heroic measures" to prolong suffering. Rabbi Jacob also recognizes the sensitivity of this matter; he notes that each patient is unique, and recommends counseling and other measures that will help patient cope with pain and his situation.

One year later, the *sheelah* of 1988 becomes even more specific. In summary, the question is: Can a doctor force a patient who has renal disease (among other sicknesses) to undergo kidney dialysis if she refuses?[98] This patient refused dialysis when she was first diagnosed eight years ago. This question asks the CCAR Responsa committee to apply Jewish law to even more specific, newer medical technologies. Whereas in prior responsa, the questions addressed general medicine and life saving devices, kidney dialysis treats a specific illness. Since this patient has other conditions, including

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[97] Walter Jacob, "83. Quality of Life and Euthanasia, 1985," in *Contemporary American Reform Responsa*, 138-140.

[98] Walter Jacob, "157. An Elderly Patient who Refuses Dialysis, November 1988," in *Questions and Reform Jewish Answers: New American Reform Responsa* (New York: Central Conference of American Rabbis, 1992), 259-262.

congestive heart failure, the dialysis will not save her life; it will only prolong her life. In addition, the process of receiving dialysis can be long, painful and tiring.

The responsum underscores the obligation of a doctor to try everything within his means to cure a patient. When it is possible to cure, according to the Talmud, one can even violate Shabbat to administer a cure.[99] In the same light, a patient has the responsibility to take care of herself and remain in good health. The CCAR Responsa committee offers a new idea in the chain of responsa on this topic: the *Shulhan Arukh* argues that if a given medicine poses a risk to life, then it is not necessary to continue with that procedure or medicine. *Shulhan Arukh Orekh Hayim* 328:5 and commentaries suggest that a patient can override the doctor's orders because the patient knows her own heart and suffering the best. In conclusion, if this woman is at the end of her life without a cure but only treatments that will prolong death and add suffering, and these same treatments could actually hasten death given her other medical conditions, she has the right to refuse such treatment.

In a 1989 responsum, Loren Roseman, inquires about Jewish attitudes toward a living will. Rabbi Jacob asserts that a living will is an important document that one should obtain to help doctors and families make important decisions, should a patient become unable to communicate.[100] Rabbi Jacob encloses a copy of a living will with this responsum. Though a living will is helpful in situations where one becomes unable to articulate one's wishes, the responsum's author fears that the living will could allow active euthanasia. Therefore, Rabbi Jacob repeats the traditional distinction between

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[99] *Yoma* 84b

[100] Walter Jacob, "156. Living Will, 1989," in *Questions and Reform Jewish Answers: New American Reform Responsa*, 254-59.

active euthanasia and the permissible actions for a *goses.* This document also recognizes medical technology that holds someone in a persistent vegetative state, where in the case of no medical intervention, the person would die. In this case, if the Harvard definition of brain death is not met, and the respiratory system functions only with medical help, then the person has no "independent life," is considered a *goses* and while one cannot hasten death, one can treat pain and remove impediments to death. In this case, a living will would be helpful to instruct doctors to remove those impediments to death.

The CCAR responsa committee answered the question of administering CPR to the frail elderly in 1989.[101] This responsum's authors drew on the distinction between a *goses* who is actively dying and a frail elderly person without a specific illness or predicted lifespan. This question broadens the issues from those who are actively dying to those in the aging community who face tough questions. While one can refrain from adding new medical procedures with a *goses,* a frail elderly person who is not actively dying, and therefore not a *goses,* should receive medical attention. In addition, the author explains that though medical experts try to estimate life spans, one can never accurately determine how long one will live and therefore age should not be a factor in whether or not to use CPR. This responsum underscores the importance of living wills to help inform medical professionals how to effectively respond to the wishes of patients at the end-of-life. However, in the absence of a living will, one must administer CPR to a frail elderly person if it will prolong life and s/he is not a *goses.*

[101] Jacob, Walter. "160. CPR and the Frail Elderly, April 1989." In *Questions and Reform Jewish Answers*, 265-167

The next responsum in 5750 (1989-90) reflects the advances in medical technology to assess and treat patients. [102] The question, in summary, is: Is it possible to remove a feeding tube from a man who suffered from a stroke, was given a feeding tube, and then went into a semi-comatose state? (The patient would not have wanted to live in this way and is not technically in a persistent vegetative state, does not have any quality of life, according to doctor and family). The responsum includes additional details about the patient's condition from the doctor. The rabbis first acknowledge that this person is not a *goses* since he is not imminently dying. Therefore, one cannot remove the impediments to death. As an earlier responsum stated, the "quality of life" is not a determining factor in medical interventions. If the patient would die without the feeding tube then it may not be removed. The fact that this person is unconscious should not determine care; one is not permitted to remove the feeding tube because the patient is not a *goses*. This responsum upholds the sanctity of life and asserts that to remove the feeding tube would be active euthanasia and it is not permitted. The rabbis, however, do express sensitivity to the pain this situation causes and do show sympathy for the family.

The responsa mentioned so far have all been consistent on a number of issues. They recognize a difference between forbidding active euthanasia in patients that are not considered a *goses* and removing impediments to death in the case of a *goses.* The rabbis maintain the sanctity of life and do not consider quality of life a factor in determining medical interventions.

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[102] "Hospital Patient Beyond Recovery, 5750.5," in *Teshuvot for the Nineties Reform Judaism's Answers to Today's Dilemmas* (New York: Central Conference of American Rabbis, 1999), 365-70.

While the previous 5750 (1989-1990) responsum asks if one can remove nutrition from someone in a coma, a 1991 responsum asks if one can remove nutrition from someone in a coma, *with* cancer.[103] Once again, like Rabbi Jacob's responsum in 1987, this responsum explains that when someone has an incurable disease, like cancer, she is considered a *goses* and they permit the removal of medical technology that just prolongs the natural dying process.[104] The main goal in this situation should be to relieve suffering, even if medicine will hasten death. Though there is some debate, nutrition, according to this responsum, is considered medicine because it is in intravenous form.

Rabbi Jacob responds to a different kind of question related to pain and medication in 1991.[105] Independent of a specific illness, the question asks if there is a limit to the amount of pain relievers one who is suffering is permitted to take. The questioner assumes that pain relievers can hasten death if given in certain dosages. Rabbi Jacob responds that while rabbinic tradition may say that the Divine causes suffering,[106] one does not need to suffer if doctors can ease pain.[107] Rabbi Jacob permits one to take medicine to relieve pain, even if that medicine will hasten death.

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[103] Walter Jacob, "159. Nutrition and Incurable Cancer, 1991," in *Questions and Reform Jewish Answers,* 263-64.
[104] It should be noted that the rabbis of this responsum refer to someone with a terminal illness, like cancer, a *goses*. However, according to Jewish tradition a *goses* was not necessarily someone with a terminal illness, but someone who would die within three days. *Terefah* is the traditional term used to define someone with a terminal illness. This responsum does not use the term *terefah*.
[105] Walter Jacob, "151. Drugs to Relieve Pain, 1991," in *Questions and Reform Jewish Answers,* 239-41.
[106] Job, *Bava Batra* 5a, *Shabbat* 55a
[107] According to this responsa, *Shulhan Arukh, Yoreh Deah* 241.13 and commentaries assert that one should not endure suffering if there are ways to avoid it

Gunther Plaut and Mark Washofsky begin to discuss the implications for the differences between different kinds of illnesses and age in this 1997 responsum.[108] The question, in summary, is: What is the proper treatment plan for Naomi, a girl with Canavan's Disease, whose quality of life is diminishing?[109] "Does her current 'happiness' mandate some or all efforts to extend her life as long as possible?" What differentiates this case and that of this girl's great grandmother, Esther, with Alzheimer's who does not recognize the family and has requested no life-prolonging measures?

The rabbis acknowledge the tremendous hardship present for the family in both of these cases and recognize that any decision will not necessarily alleviate the anguish of the family. However, to make a decision in this case, Washofsky and Plaut argue, will ensure that no one suffers unbearable pain and that the value of the sanctity of life is upheld.

Though they recognize that the *sheelah* does not propose euthanasia as a possibility, in light of the debate about euthanasia, Washofsky and Plaut address these issues. They draw distinctions among many different issues, the first of which is assisted suicide and active euthanasia. As has been stated in previous responsa, Judaism forbids active euthanasia. Washofsky and Plaut quote *Semachot* 1:1 which asserts that a "dying person is like a living person in all respects."[110] One cannot cause the death of a person, even in the *goses* stage, even when one cannot "save" the person's life, and to do so, is

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[108] Mark Washofsky, "On the Treatment of the Terminally Ill, 5754.14," ed. W. Gunther Plaut, in *Teshuvot for the Nineties*, 337-63.
[109] Among other limitations, this girl is heading toward blindness, cannot grasp objects, roll over or hold up her head and is not gaining weight.
[110] *Semachot* 1:1 as quoted in: Mark Washofsky, "On the Treatment of the Terminally Ill, 5754.14," ed. W. Gunther Plaut, in *Teshuvot for the Nineties*, 337-63.

murder.[111] Washofsky and Plaut cite the stories of King Saul, Rabbi Haninah ben Teradion, and Rabbi Yehudah HaNasi as examples of people whose stories might be used to support euthanasia.[112] However, the responsum's authors unequivocally state that over the years, Jewish tradition has never interpreted these texts as condoning euthanasia and even with a liberal interpretation of these texts; they do not permit euthanasia. They do state that one is permitted to alleviate the pain of a dying person but may not hasten death.

Washofsky and Plaut discuss the issue of "quality of life" and their strong belief that it should not be a reason to commit euthanasia. They conclude that "quality of life" is subjective and to decide to end a person's life based on a limited or absent quality of life is neither permissible nor justifiable. If the rabbis were to permit euthanasia due to a diminished "quality of life," Washofsky and Plaut argue, anyone who felt any diminished "quality of life" at any point in their lives could request euthanasia and there would be no clear way to decide who was justified. Plaut and Washofsky cite the example of the Netherlands in which euthanasia is permitted. Rabbi David Lilienthal discusses the situation in the Netherlands in his article in the CCAR Journal, published in the same year as this responsum, in 1997.[113]

Washofsky and Plaut discuss the cessation of treatment for terminally ill patients. They permit one to provide pain relief and surgery that could relieve pain for terminally ill patients. In addition, when one's death is imminent, one can remove impediments to

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[111] In their responsa, Washofsky and Plaut quote, among other sources: Rambam, Commentary to M. *Arakhin* 1:3 and *Shulhan Arukh, Yoreh Deah* 329:4 (see responsum for complete list)
[112] See Chapter 1: II Sam 1:1-16, *Avodah Zarah* 18a, *Ketubot* 104a
[113] See further discussion in the section on CCAR Journals

death that prolong dying because, citing *Sefer Hasidim* and Isserles,[114] Washofsky and Plaut consider this passive euthanasia rather than active euthanasia. The responsum authors explain that these traditional sources, "distinguish between 'active euthanasia,' defined as the application of any factor such as physical contact which would hasten the patient's death, and 'letting nature take its course,' the removal of any existing factor which serves only to impede the patient's otherwise imminent death."[115]

Washofsky and Plaut note an apparent inconsistency with Isserles' comment. Isserles argues that one cannot touch the dying patient because it may hasten death, but one is permitted to remove salt from the tongue of a dying patient. Other sources, including *Shiltei Hagiborim*,[116] try to resolve this contradiction. *Shiltei Hagiborim* argues that some medical interventions, like salt, should not have been applied in the first place because they do not cure the dying patient. Therefore, one can remove such interventions, even if it requires touching the patient. Washofsky and Plaut apply this example of salt to modern technology. They explain that it is permitted to remove technology that no longer aids in the preservation of life but prolongs the dying process. One can remove a ventilator, for example, from someone who is imminently dying because it is not helping the patient live, it is only prolonging dying. According to this responsum, "Once their therapeutic function is exhausted, the machines 'merely prolong in an artificial way the process of dying. We must disconnect the patient from the machines, leaving him in his natural state until the soul departs'."[117]

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[114] See further discussion in Chapter 1
[115] Mark Washofsky, 337-63.
[116] Written by Rav Yehoshua Boaz ben Shimon Barukh, further discussion in Chapter 1
[117] The responsum of Mark Washofsky, 337-63 quote: R. Eliezer Yehudah Waldenberg, Resp. *Tsitz Eliezer*, vol. 13, # 89. Waldenberg allows this upon the performance of

After all of this discussion, Washofsky and Plaut return to the case of Naomi and her great grandmother. They draw an important distinction between a terminally ill patient and a *goses*, one who is imminently dying. Isserles' ruling refers to medical interventions that if stopped would cause the patient to die quickly. However, in the case of Naomi and Esther, neither of them are dying imminently, they are not *gosesim.* Therefore, one cannot use the above rulings as a justification to remove treatment.

Naomi and Esther fall into the category of terminally ill patients and therefore different sets of rules apply to their care. The authors obligate one to provide medicine and interventions only when they will heal the patient or control a disease and allow the person to live. If the physician is not sure that they will heal the patient, s/he is under no obligation to administer them. Washofsky and Plaut explain, "One is under no obligation to undertake useless actions, actions which clearly do not contribute to the rescue of another person, for such measures are not to be defined as 'the saving of human life'."[118]

Based on the rulings of Rabbi Moshe Feinstein and Jakobovits, even if someone is not a *goses*, if he is terminally ill, they permit doctors to cease treatments that will not cure patient. They quote Rabbi Feinstein who says, "when the physicians see that a person cannot recover from his illness but can only continue to live in a state of suffering; and when the treatment they prescribe serves only to prolong his life as it is now, filled with suffering; they must not administer the treatments but leave him alone."[119] It seems here that Rabbi Feinstein does include suffering as a reason to cease treatments, though he does not define "suffering."

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extensive test that show that the patient cannot recover independent respiration. See also R. Chaim David Halevy, Aseh Lekha Rav, v. 5, # 29.

[118] Mark Washofsky, 337-63.

[119] Rabbi Feinstein as quoted in: Mark Washofsky, 337-63.

Washofsky and Plaut write that Jakobovits “permits a diabetic who develops terminal, inoperable cancer to cease taking insulin. Although the insulin is a successful treatment for the diabetes, it can now only prolong his suffering and delay his death. This is true "even though he is not yet a *goses*; since the whole point of medicine is to restore a person's health, (the insulin) is no longer obligatory but merely voluntary." While before the person developed cancer he took the insulin as a life saving medicine, the insulin is no longer life saving because the person will die of cancer whether or not he takes the insulin.

If, in another example, someone uses chemotherapy to treat cancer, one is permitted to stop chemotherapy, in the final stages of cancer, when the chemotherapy no longer leads to a cure or controls the cancer. Washofsky and Plaut do recognize that the point at which a medicine may no longer have therapeutic benefit is not always clear and one must use caution when making these decisions.

Based on the above distinctions, Washofsky and Plaut return to Naomi’s case. Naomi is not a *goses*, but is terminally ill. Doctors cannot hasten her death, but can administer drugs to alleviate pain. Any medical interventions, Washofsky and Plaut explain, would only prolong her life and would not cure the disease. If she develops a respiratory tract disease (a common disease for those with Canavan’s Disease), the authors do not obligate doctors to cure this disease since it is only a part of a larger terminal disease. Washofsky and Plaut conclude that though doctors cannot do anything to hasten her death, they are not obligated to give her treatments that lengthen her life but prolong suffering.

Similarly, for her great grandmother, since there is no hope of curing Alzheimer's the doctors are not obligated to provide "life-prolonging" measures to treat other medical problems, especially if they could be painful. Since death is inevitable, the authors do not mandate even medical treatments, such as antibiotics, that might cure other diseases. This responsum explains that doctors should treat the patient as a whole person, rather than just treating each specific illness. Like curing the respiratory tract disease for Naomi, if one cures one illness and still leaves Esther with another long-term illness, the cure for the other illness just prolongs death.

In this responsum, the rabbis respond to an additional question of whether or not to withdraw nutrition and hydration. In the 1991 responsum, they conclude that doctors could remove nutrition and hydration because they consider them medicine and since they cannot cure, they prolong death. Here, though, there is a wider debate as to whether nutrition and hydration is life-giving food and water or if it is medicine. If nutrition and hydration are considered life-giving, then it would kill the patient to remove them and is therefore forbidden. If the rabbis view them as medicine, then they permit their removal because they only prolong suffering. This responsum offers both opinions. Orthodox *poskim* are divided on this issue, some say that nutrition and hydration are medicine and therefore can be removed from someone in *gesisut*; others argue that they give life and cannot be removed. The responsum explains that the Reform movement has not made a decision, though its members must take the issue seriously and not get in the habit of always removing hydration and nutrition. Though some argue that it is not against *halakhah* (since the *halakhah* is divided) to remove hydration and nutrition, these

responsum authors do not recommend it as a general course of action. One must be sensitive to the individual case at hand.

In 1997, the CCAR adopted a resolution about healthcare. This resolution recognizes the preservation of life as a supreme value and affirms a commitment to support health care that includes genetic testing, especially for women who are at risk for breast cancer.[120]

The CCAR Responsa committee wrote the final responsum[121] that addressed these issues in 2003. They dealt with the question of whether or not to hasten death for organ donation. The responsum responds to and considers conversations about the advances in technology and deeper questions of the value of human life that are taking place in America. Can the desire to save life with organ transplantation lead to measures that can hasten the death of another human being? Can one give medicine, such as heparin, to a dying patient to increase the viability of the organ even if it may hasten the death of the donor? The rabbis note that according to medical research, heparin has not been proven to hasten the death of a patient in the doses used to keep the organ viable. Therefore, the committee permits one to give heparin on a case-by-case basis, as long as it does not shorten the life of the patient.

The rabbis deal with the intricacies of organ donation. Many rabbis permitted doctors to take the organs from someone who has stopped breathing, since that is considered death, even though they are not brain dead. The Pittsburgh Protocol establishes that people have reached death when the cardiopulmonary system has failed.

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[120] "Breast Cancer, Genetic testing, and Health Insurance Discrimination," proceedings of 108th Annual Convention of the Central Conference of American Rabbis (1997)
[121] "Hastening the Death of a Potential Organ Donor, 5763.3," in *Teshuvot for the Nineties*

Some people would rather abide by the Pittsburgh Protocol because it would allow many more people to donate organs (fewer people can donate organs once they have reached brain death). However, since Reform Judaism has traditionally adhered to the Harvard Medical School definition of brain death, this limits the number of people who would have organs viable for transfer. This responsum states that the Harvard definition of brain death overrides the Pittsburgh Protocol, meaning that doctors must wait until brain death to remove organs. The rabbis conclude, "The fact that there is nothing physicians can do to save the life of this patient does not entitle us to kill him or her, even out of compassion and importantly for our *sheelah*, even when it would benefit others were we to do so." They conclude that it is permitted to use medicine to allow organs to be viable for transplantation as long as they do not hasten death. And, it is only permitted to take organs once someone is declared brain dead.

In this responsum, as compared to the 1968 responsum on organ transplantation, one can see the way in which Reform rabbis take medical advances into consideration. In the earlier responsum, the rabbis conclude that one can only take the organs from someone who is declared brain dead. Here, while that still remains the case, advances in medicine allow someone's organs to be viable for transplantation even after brain death. As a result, the rabbis allow this medicine to be used, as long as it does not hasten the death of the donor. The rabbis continue to uphold a strict view of the determinant of death, according to the Harvard criteria of brain death, rather than a less stringent view of cardiopulmonary death according to the Pittsburgh Protocol. The result is that fewer people will be able to donate their organs since fewer people are able to donate organs

after they have reached brain death. This decision is consistent with the Reform rabbis' stance on the sanctity of life.

2. CCAR Journals

Reform rabbis and scholars have grappled with issues of end-of-life care, active and passive euthanasia and the pastoral needs of the dying for at least a half a century. The CCAR Journals record the voices of these rabbis and scholars in their attempts to clarify the issues and provide guidance from a liberal perspective. Many authors write their views in connection to and response to CCAR resolutions, responsa and legislation. There are two important issues that emerge most often in the journals: ministering to the sick and euthanasia. Articles from 1953 to 2004 address the rabbis' pastoral role in ministering to the sick. While these articles do not specifically address end-of-life questions, they illustrate the authors' value in pastoral care with sick patients. In addition, the information they provide can inform clergy as they provide pastoral care to those facing end-of-life decisions. In the summer of 1997 and in several other journals, the rabbis and scholars spend a considerable amount of time writing about physician assisted suicide and euthanasia.

Because all Reform rabbis and scholars can submit articles to this journal, in relation to responsa compiled by a committee, there is much more of a range of opinions in the journals. Each article expresses the opinions of one author rather than the views of a group. For example, while most articles oppose euthanasia and physician assisted suicide, there are a couple of rabbis who advocate for the practice of active euthanasia.

The nature of the journals allows for more debate than the responsa and therefore the journals contain a dialogue through the years varying opinions on these issues.

In contrast to the CCAR Responsa, most articles do not indulge in the same specific information nor the extensive references to Jewish texts. There are few articles that get into the specifics of defining *goses* and *terefah*. These journals emphasize pastoral care, spiritual healing, and an individual's connection to God to a much greater extent than the responsa. The authors of these articles accept a responsibility to help congregants make sense of all that they are hearing in the legal and medical world and help reframe the conversation for Reform Jews to focus on Jewish values including the sanctity of life.

The summer 1953 CCAR Journal features the first article that relates to end-of-life issues. In his article entitled, "Ministering to the Sick," Granger Westberg[122] writes that rabbis must feel comfortable visiting the sick and do so because patients need pastoral care.[123] People need to know that when one they are sick, they are not alone and that sickness is part of life. Westberg notes a connection between spiritual and physical health and asserts that rabbis can play an important role in spiritual healing. The rabbi also represents Judaism and helps the patient to feel a part "of the sacred community of believers who through their prayers and their wishes and their rabbis are expressing concern for him."[124] The rabbi offers comfort to the patient and helps him/her see life in a greater perspective. According to Westberg, the rabbi can restore the patient's faith and

[122] Granger E. Westberg was attached to the staff of the University Clinics of the University of Chicago as Chaplain.
[123] Granger E. Westburg, "Ministering to the Sick," *CCAR Journal* (June 1953): 28-33.
[124] Westberg, 30

help him to have the courage to face his illness. The rabbi, through conversation and prayer, reminds the patient of his/her connection to God and a world beyond the physical and beyond our control. These ideas can apply to someone who faces death as well; it is important for someone who is dying to reflect on their life with perspective and recognize the people around them who care for them and pray for them.

In Rabbi Jerome Folkman's[125] article (1958), "The Rabbi's Role in Sickness," he echoes many of Westberg's ideas and explains that one of the most important roles of a rabbi is to restore social status to the patient in a hospital.[126] When a patient is stripped of his clothes and much of his identity, the rabbi brings the outside world with him and helps the patient to feel connected to that outside world. Folkman explains that that the rabbi's role in this situation is to listen and allow the patient to voice his fears, desires and feelings without judgment. While others may ignore the patient's true emotions, the rabbi can acknowledge and validate the person. The rabbi can also alleviate a patient's feeling of guilt and help him/her to understand God's role in forgiveness. Folkman quotes his teacher Rabbi Israel Bettan who said, "when a *basar v'dam* (flesh and blood) mortal gives his friend or beloved a love tap, it sometimes hurts, but the pain is slight and welcome. When *ribbono shel olam* (master of the world) gives a love pat to one of His beloved, he may spit blood!"[127] Folkman concludes that a rabbi's visit may help a patient feel connected to God, help the patient to understand his/her illness in a new way, and increase his/her spirituality. Though Folkman does not say so in his article, one may

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[125] Jerome D. Folkman (HUC 1928) was an Adjunct Professor in the Ohio State University Sociology Department. He also was on the CCAR's committees on Marriage, Home, and Family from 1950 to1958 and Judaism and Medicine from 1965 to 1967.
[126] Folkman, Jerome D. "The Rabbi's Role in Sickness." *CCAR Journal* (October 1958): 26-30
[127] Rabbi Israel Bettan, quoted by Folkman, 29

imagine that this description from Bettan may also alienate people who do not want to think of God as the one who is involved in their daily lives and the source of suffering. Folkman does not specifically refer to end-of-life decisions, though his suggestions for pastoral care can apply to rabbis who offer counseling at the end of people's lives. One who faces the end of his/her life may want to connect with God to say the *vidui* or *Shema* and reflect on one's life.

Rabbi Steven Moss[128] wrote "Rabbinic Involvement in the Hospice Movement" in 1981. This is the first article that appears in the CCAR Journal that specifically relates to end-of-life decisions. There are numerous responsa and some resolutions from 1958 to 1981, though no CCAR Journal articles address these issues. Moss wrote this article one year after the CCAR Resolution on the important role of the hospice movement in Judaism and in America.[129] Moss supports the resolution and explains the history of the hospice movement. This article pushes the conversation about ministering to the sick one step further. Moss argues that the hospice is one important way to provide care to the sick. He stresses the rabbinic mandate to take care of the sick and provide for the sick. He also expresses the opinion that rabbis are thus obligated to provide spiritual care to patients in hospice care. Moss urges rabbis to be involved in the pastoral care of their community members, and offer psychological and spiritual support to those that are dying. Moss writes, "Our positive participation in the hospice movement will show our

[128] Steven A. Moss was the Rabbi of B'nai Israel Reform Temple in Oakdale, Long Island, N.Y. He was also the chairman of the CCAR's Subcommittee on Grief and Terminal Illness.
[129] Moss, Steven A. "Rabbinic Involvement in the Hospice Movement." *CCAR Journal* (Summer 1981): 41-46.

care for the dying and their families in the Jewish and non-Jewish communities."[130] A rabbi must not ignore patients when they move from hospitals to hospice care.

In the winter of 1991, Rabbi Adam Fisher[131] wrote a moving poem called "Comfort," about his experience comforting a family during the death of a loved one.[132] His poem stresses the emotions of the family members during this sacred time and the importance of Jewish ritual as a component of spiritual care.

In her 2002 article entitled, "*L'Dor VaDor*: Serving the Aged," Rabbi Loraine Heller[133] addresses the community aspect of pastoral care.[134] She discusses her pastoral role as a rabbi in a long-term care center and its effects on the residents. She underscores the importance of being present with people during hard times. She notes how helpful it is for rabbis to help patients feel that they are a part of a community in a nursing home setting. This advice is helpful to those patients in nursing homes that face the end of their lives, though Heller does not specifically address such patients.

In Samuel Karff's[135] 2004 article entitled, "Healing of Body, Healing of Spirit," he uses rabbinic texts to convey the importance of God as a Healer and the rabbi's role in providing spiritual healing for the sick.[136] He cites God's role in healing as evidenced in the *Amidah* in which we ask for healing from God who is "healer of the sick." Quoting

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[130] Moss, 46
[131] Adam D. Fisher was the Rabbi of Temple Isaiah in Stony Brook, New York.
[132] Adam Fisher, "Comfort," *CCAR Journal* (Winter 1985): 38-39.
[133] Loraine C. Heller (HUC NY 1990) was the Director of Jewish Life at The Jewish Home & Hospital, Bronx, New York.
[134] Heller, Loraine C. "L'Dor VaDor: Serving the Aged." CCAR Journal (Spring/Summer 2002): 77-82.
[135] Samuel E. Karff (HUC, Cincinnati 1956) is the rabbi emeritus of Congregation Beth Israel in Houston, Texas.
[136] Samuel E. Karff, "Healing of Body, Healing of Spirit," *CCAR Journal: A Reform Jewish Quarterly* (Summer 2004): 85-95.

the Talmud, Karff notes the story of Rabbi Isaac, who said that even when someone is dying by divine decree, prayer for the patient is still important.[137] While historically prayer and healing by physicians were linked, Karff explains that, "the revolutionary age of scientific medicine, coinciding with a radical secularization of our society, gave rise to a reductionist perspective that marginalized the previous concern with a patient's belief and attitudes."[138] As a result, physicians became much more focused on curing and when they could not cure, moved the patient out of their care, sending the message that the only type of healing possible is a cure. Therefore, through counseling and prayer, rabbis must step in to play an important role in spiritual healing, beyond a cure. Karff notes that in recent times, there has been more of a focus on and recognition of the connection between mind, body and spirit and the rabbi plays a greater role in the discussion and care for patients. Rabbis must help connect patients to "God's healing presence."

It is clear from the above articles, from 1953 to 2004, that the authors of these articles see great importance in the role of a rabbi as pastor. They emphasize the essential nature of the rabbi's ability to provide comfort, spiritual healing and help those in hospitals and long-term care facilities feel connected to the Jewish world.

As mentioned earlier, the authors of the CCAR Journal articles write a considerable amount about physician assisted suicide and euthanasia. The rabbis and scholars grapple with various ways to end one's life and discuss whether or not they are acceptable within a Reform context.

[137] Rosh HaShanah 18a, quoted in Karff, 93
[138] Karff, 87

This issue arises first in a discussion of suicide in the winter of 1990, in an article[139] by Alvin Reines.[140] Reines states explicitly that, "A Reform Jew has a moral right to commit suicide."[141] Though the article focuses on the morality of assisted suicide for people in general (not only for people who struggle with physical illness), Reines says that, "If a person takes a Reform Jew's life at the request of the latter, then the former has performed a moral act."[142] Reines calls this act voluntary euthanasia. He gives the case of a patient dying of ovarian cancer who asks the doctor to end her life. The doctor administers a high dosage of morphine, with intent to end the patient's life. Reines calls this act moral, since, according to him, "suicide, attempted suicide, aiding and abetting suicide, and euthanasia are all adjudged to be moral so long as they take place as the choice of the person who wishes her or his life terminated."[143] This statement is radical, from the point of view of Judaism and the Reform movement. He does not address the different states of illness, including *goses* and *terefah* and their *halakhic* implications, or make any distinctions between different kinds of sicknesses. He argues that committing suicide is moral as long as the person states the desire to end his/her life. Reines does not consider the community of this person, the affect the suicide will have on them, and the moral implications of those effects.

The next year, Zlotowitz[144] and Seltzer[145] respond to Alvin Reines.[146] They

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[139] Alvin Reines, "Reform Judaism, Bio-Ethics, and Abortion," *CCAR Journal: A Reform Jewish Quarterly* (Winter 1990): 43-59.
[140] Alvin J. Reines was a Professor of Jewish Philosophy at HUC-JIR in Cincinnati.
[141] Reines, 45
[142] Reines, 46
[143] Reines, 51
[144] Bernard Zlotowitz was the Director of the New York Federation of Reform Synagogues.

staunchly disagree with Reines' harsh reading of the Orthodox authorities and maintain that suicide is wrong within Judaism, even in a liberal context. They do note that sometimes, in the case of a suffering terminally ill patient, assuming s/he is deemed able to make his/her own decisions; his/her actions to terminate her life are rational. They use Talmudic definitions of suicide to justify their position.[147]

The issue swings back toward a more liberal approach to suicide with Kahn's[148] article, "On Choosing the Hour of Our Death" in the summer of 1994.[149] He explains that Judaism strongly opposes suicide and "The fundamental Jewish value is that life itself – regardless of its quality – is sacred and good." Kahn therefore, acknowledges that the quality of one's life should not be a factor in determining end-of-life care. He uses Jewish texts, including *Bereishit Rabba*[150] to teach that Judaism discourages people from taking their own lives. However, Kahn then explains a different way of understanding suicide with the notion of Kiddush HaShem. There are times when Kiddush HaShem is appropriate, when one gives up one's life for a higher purpose (traditionally so as not to commit murder, idolatry and adultery). One makes a decision to end one's life because the

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[145] Sanford Seltzer was the Director of the UAHC Task Force on Youth Suicide Prevention.
[146] Sanford Seltzer and Bernard M. Zlotowitz, "Sanford, Suicide as a Moral Decision: A Response to Alvin J. Reines," *CCAR Journal: A Reform Jewish Quarterly* (Winter 1991): 65-72.
[147] *Semachot* (Dov Zlotnick, ed and translator, Tractate "Mourning" (*Semachot*), Yale Judaica Series XVII (New Haven: Yale University Press, 1966), pp. 1-9)
[148] Yoel H. Kahn (HUC 1985) was the rabbi of Congregation Sha'ar Zahav in San Francisco and is now the rabbi at Congregation Beth El in Berkeley, CA.
[149] Yoel H. Kahn, "On Choosing the Hour of Our Death," *CCAR Journal: A Reform Jewish Quarterly* (summer 1994): 65-72.
[150] *Bereishit Rabba* 34:13, according to Kahn, "teaches that those who take their own lives will be called to an accounting before God," Kahn argues his point further with the following texts: Semachot 2:1, *Mishneh Torah, Hilkhot Evel* 1:11; *Shulhan Arukh*, Y.D. 345:1, *Semachot* 2:4-5, Kahn, 66

other option would lead to a desecration of life. There may be times, Kahn argues, when, due to illness, there is no longer holiness in life and to stay alive desecrates life. Though it is not within the traditional parameters for Kiddush HaShem, Kahn suggests that to choose to end one's life could be considered Kiddush HaShem. In these cases, "choosing to end one's life can be an act of holiness." Kahn cautions that even with this reading, ending life is "an extreme act, reserved for extraordinary occasions, and it cannot be invoked casually." Kahn redefines Kiddush HaShem for today in light of serious illness and argues that this term rather than "suicide" is a way to think about ending one's life with dignity.

The spring 1997 CCAR Journal features a symposium on the topic of euthanasia and devotes many articles to different aspects of the issue. The edition begins with a letter from the editor, Rifat Soncino, explaining the importance of grappling with issues of euthanasia and assisted suicide, especially in anticipation of a Supreme Court ruling on the matter.[151] Soncino dedicates this spring 1997 CCAR issue, not to providing answers, but to sharpening the questions and crystallizing some answers. The authors of this issue are acutely aware of the ways in which these issues are playing out in America, in hospitals and in legislation and have a strong desire to respond.

In the first article, "Physician-Assisted Suicide: Framing Some Thoughts for a

[151] "Washingtonpost.com: Unanimous Decision Points To Tradition of Valuing Life," Washingtonpost.com - nation, world, technology and Washington area news and headlines, http://www.washingtonpost.com/wpsrv/national/longterm/supcourt/stories/die.htm (accessed November 16, 2009).

Difficult Discussion," Rabbi Richard Address[152] opens by explaining that the assisted suicide debate in the country is focused on the wrong side of the question.[153] Rather than dwell on death, Jewish tradition urges us to focus on the sanctity of life. He explains that this is an important time to wrestle with these issues. As Medical technology advances, the Reform movement will continue to add to the resources already out there to help Reform Jews better understand and grapple with these issues.

Throughout his article, Address connects different rabbis' opinions, CCAR Resolutions and Responsa. Address states boldly, "We cannot sanction, favor, or support the legalization of physician-assisted death."[154] He explains, that instead of relying on legislation to dictate decisions on these issues, we should be pro-active and help families deal with the issues based on a life-centered, rather than death-centered tradition. Address mentions the 1995 Biennial in which the resolution requested that congregations raise awareness on comfort and palliative care. The resolution made it clear that one cannot hasten death but can withdraw medical treatment that only prolongs dying. Without resorting to ending a life, doctors must work with spiritual caregivers and families to find ways to increase quality of life and ease suffering.

Address delves into the differences between a *goses* and *terefah* and explains contemporary rabbis' opinions on these terms. He defines a *goses* as still living, while a

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[152] Richard F. Address (HUC, Cincinnati, 1972) is a rabbi, and the director of the Department of Jewish Family Concerns for the Union For Reform Judaism and the director of the UAHC committees on Bio-Ethics and Older Adults. He was the regional director of the Pennsylvania Council/Philadelphia Federation of the UAHC.
[153] Richard F. Address, "Physician-Assisted Suicide: Framing Some Thoughts for a Difficult Discussion," *CCAR Journal: A Reform Jewish Quarterly* (Spring 1997): 1-10.
[154] Address, 1

terefah is considered dead (that is why it is not punishable to end the life of a *terefah*). According to Address, Rabbi Elliot Dorff changes the meaning of *goses* to someone who has an irreversible, terminal illness. Address mentions that Dr. Daniel B. Sinclair[155] also talks about redefining these terms. According to Sinclair, *terefah* means the "inevitability of death." Even with all of these definitions, rabbis and doctors must treat each case separately and with care.

Address notes that the CCAR Responsum "On the Treatment of the Terminally Ill" is included in this 1997 CCAR issue.

Address asserts that if the government legalizes assisted suicide, there is a fear that it will be administered in a way that is not fair, without treating everyone equally, since the current health care system does not treat all people equally. There are a lot of problems with health care that complicate this issue. It does not make sense to have the right to die before many have the right to adequate health care to allow them to live. Medicine should help people control their lives, Address, argues, not help lead people to death.

Address asks, how we, as a Reform Jewish community, can teach values of life, meaning and dignity and steer the discussion away from facilitating death. He encourages rabbis to help congregants appreciate life and make meaning in their lives. Address concludes with the question, "How do we choose life, even as it ends?" The responsum, "On the Treatment of the Terminally Ill" that Address mentioned follows his article.

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[155] Dr. Daniel B. Sinclair is the author *of Tradition and the Biological Revolution: The Application of Jewish Law and the Treatment of the Critically Ill* and *Jewish Biomedical Law: Legal and Extra-Legal Dimensions.*

This article sets the tone for the issue, all of the arguments proposed are against physician assisted suicide and euthanasia as they provide arguments for and against and resources to understand the issues.

In the next article, entitled, "The CCAR Responsum on End-of-life Issues: An American Legal Perspective," Saperstien[156] and Mishkin[157] provide a comprehensive overview of many of the issues regarding euthanasia, from an American legal perspective, while they maintain that Judaism has an important piece to add to the discussion. They explain that few religious groups grant individuals the right to suicide and assisted suicide. They then respond to the CCAR responsum from an American legal perspective, with five key questions/issues:[158]

1. Does a competent adult have the right to refuse treatment? According to Supreme Court in America, yes, every individual has a right to refuse treatment and stop current treatment.

2. Who decides, should someone become incompetent? This is up to the states; some states recognize living wills, some allow a surrogate to make decisions. The rabbis of this article urge everyone to have a living will.

3. Can someone refuse or withdraw artificial nutrition and hydration? This raises the question of whether nutrition and hydration are life saving (and therefore it would be

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[156] David Saperstein (HUC, New York 1973) is the Director of the Religious Action Center of Reform Judaism and an attorney who teaches Jewish Law and Constitutional Law at Georgetown University Law Center.
[157] Douglas Mishkin is a partner with McKenna and Cuneo in Washington, D.C., and a member of two hospital ethics committees.
[158] David Saperstein and Douglas Mishkin, "The CCAR Responsum on End-of-life Issues: An American Legal Perspective," *CCAR Journal: A Reform Jewish Quarterly* (Spring 1997): 36-45.

hastening death to remove them) or medicinal (and therefore permitted because they are prolonging dying). The Supreme Court in the Cruzan case allows the removal of nutrition and hydration but does not state an answer as to how it views such interventions, medicinal or life saving. In many states, it is permitted to withdraw artificial nutrition and hydration.

4. Does one have the right to end his own suffering with suicide? According to all cases so far, no. However, there is an understanding that someone who commits suicide is most likely one who suffers from mental illness.

5. Is Physician Assisted suicide permissible? Here, Saperstein and Mishkin address two constitutional issues: the Fourteenth Amendment and liberty. In the Fourteenth Amendment to the Constitution, each person is granted the right to make decisions over his/her own body. Therefore, if doctors must treat everyone in the same way ("equal protection"), how can (and should) they differentiate between withdrawing technology and giving medicine that may hasten death to ease suffering and a more active forms of euthanasia – administering medicine with the intent to end life?

Liberty is the second constitutional issue on which Saperstein and Mishkin focus. Does an individual have the liberty to allow someone to end their life for them? There is a distinction noted between the right to refuse treatment and right to assisted suicide. It is possible, in some states for a doctor to provide medicine that the patient, only when competent and terminally ill, can administer him/herself. If s/he has that liberty, the slippery slope may lead to the liberty to allow a doctor to do it for the patient.

If someone can give medicine to a patient with three days to live to alleviate pain,

even if it will hasten death, how would the rules change if the person has three years to live?

Some argue that it would be condoning suicide to allow euthanasia at the end of one's life. And, if one allows assisted suicide, it would hurt the integrity of the medical profession.

Saperstein and Mishkin conclude the article by stating that no matter how the American courts rule on this issue, the moral debate over this issue will continue within Reform Judaism (and religious communities in general). From their perspective, the CCAR Responsum is a good beginning to this moral discussion.

Joseph Fins[159] provides an historical overview of the relationship between law and medicine in his article, "What Medicine and the Law Should Do for the Physician-Assisted Suicide Debate."[160] He begins by stating that priests used to intervene in the areas of both law and medicine, but, according to Justice Cardozo, this connection no longer exists. However, legislators are now asked to provide rulings in medical cases without having the necessary connections and conversations with physicians to truly understand all of the issues. Fins notes the debate between assisted suicide as a patient's act of self-determination or assisted suicide as a threat to sanctity of life. In Quill v. Vacco, in the second circuit, they found that a ban on assisted suicide is unconstitutional. If society allows some people who are terminally ill to choose their death by refusing

[159] Joseph J. Fins, M.D. was Assistant Professor of Medicine and Medicine in Psychiatry at Cornell University Medical College, Director of Medical Ethics at The New York Hospital, and Associate for Medicine at The Hastings Center. He is also a member of the UAHC Bio-Ethics Committee.

[160] Joseph J. Fins, "What Medicine and the Law Should Do for the Physician-Assisted Suicide Debate," *CCAR Journal: A Reform Jewish Quarterly* (Spring 1997): 46-53.

medical intervention, equal protection should allow all people to choose their deaths even if they are not terminally ill. If someone can refuse life-sustaining medical interventions then people who are not dependent on life support should also be able to end their lives. Therefore, the court decided in favor of assisted suicide. But Fins strongly states that there is a difference between active and passive euthanasia. To remove someone from life support and actively assist someone in suicide are not the same and should not be considered the same type of right under "the equal protection" clause. He argues further, that to remove someone from a ventilator is not really "killing" them because some people can stay alive after being removed from such a device; it is the underlying disease that kills them, while assisted suicide leads to death in all cases. Fins ends with a note of hope that, "we[161] must recognize that the two professions (medicine and law) must be informed by the society we serve, must collaborate to reach a sensible and compassionate process to address this troubling issue."[162]

In his article entitled, "Reflections on Moral Autonomy and Physician Assisted Suicide," Rabbi Neil Kominsky[163] argues that Jewish tradition, including Reform Judaism, in its responsa, does not condone any type of suicide.[164] While Reform Judaism grants autonomy to individuals, Kominsky states that our lives belong to God and humans are

[161] Though Fins does not explicitly say so, when he says "we," I think he is referring to rabbis since he is addressing them in this 1997 *CCAR Journal*.
[162] Fins, 52
[163] Neil Kominsky (HUC, Cincinnati, 1970) was the rabbi of Temple Emanuel of the Merrimack Valley, Lowell, MA, and chaired the CCAR Task Force on Physician-Assisted Suicide.
[164] Neil Kominsky, "Reflections on Moral Autonomy and Physician Assisted Suicide," *CCAR Journal: A Reform Jewish Quarterly* (Spring 1997): 54-57.

created in the image of God. He describes the types of people who would grapple with the question of physician assisted suicide: patients who are suffering but do not have terminal illnesses, those who do have terminal illness and pain, and those whose condition is not terminal but do have a debilitating disease. Kominsky argues that a desire to die could indicate a mental illness that should be treated. If such a request is the result of too much pain then the pain needs to be treated before anything else happens. Regardless of the reason, one cannot resort to physician-assisted suicide. Physicians should try all measures to enhance life. From a Jewish perspective, rabbis should help people in these situations to "enhance mitzvot." Kominsky does not quote any Jewish texts to support his arguments.

The physician assisted suicide debate plays out differently in different countries. The last article of relevance in the spring 1997 CCAR Journal addresses some of the issues people in Holland face.[165] In Rabbi David Lilienthal's[166] article, "Physician-Assisted Suicide – The Dutch Situation," he describes the situation in Holland where physician assisted suicide is a legal way to "treat" terminally ill patients. Lilienthal notes the difference between euthanasia and physician assisted suicide. Euthanasia occurs when a physician administers a lethal drug. In a physician-assisted suicide, the patient gives himself the drug. In Holland, when people cannot make decisions on their own, and doctors do it for them, the law views patients as exercising their "right to die." However,

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[165] David Lilienthal, "Physician-Assisted Suicide – The Dutch Situation," *CCAR Journal: A Reform Jewish Quarterly* (Spring 1997): 58-64.

[166] Rabbi David Lilienthal is the Senior Rabbi of a liberal congregation in Holland and chair of the European Beit Din.

many argue that the system has created a "duty to die" where patients feel obligated, in certain situations, to end their lives rather than use medical interventions to sustain life. While doctors have a duty to preserve life, people ask, how long does that apply and when is it not right to keep a patient alive? When is passive euthanasia acceptable? In the majority of cases in Holland, when people request to die and then the doctor explains that they will not suffer and will receive proper medication, most patients choose to have medication and not to die.

In Holland, there are strict rules to ensure that euthanasia is carried out properly. In order to avoid prosecution in euthanasia cases, the government, the medical profession, and prosecuting authorities reached an agreement based on compliance with following terms: if a patient experiences unbearable pain and requests euthanasia in writing, before acting on it, the doctor must ensure that there is no pressure from the family, another colleague agrees with prognoses, another doctor (representing the law) agrees, and all details must be reported to prosecution for review. If this protocol is followed, usually, the government will not prosecute the doctor.[167] However, there are many times when this system is not followed properly and doctors end the lives of people without ensuring that all necessary pieces exist. Lilienthal does not condone physician assisted suicide or active euthanasia because of his belief in Jewish tradition, the sanctity of life and his belief that the quality of life should not be a factor in ending life.

[167] Lilienthal, 59

The most recent articles on these issues appear in the winter of 2005 in "A Report from the CCAR Task Force on Assisted Suicide."[168] The chair of this Task Force, Michael Cahana asserts that, "the purpose of this task force is to craft language and a position for the body's approval on the controversial subject of physician-assisted suicide."[169] Cahana provides a world history of assisted suicide as well as a history of the Jewish perspective. The debate over euthanasia is not a new one. Cahana indicates that the Hippocratic Oath, written in the fifth century B.C.E., prohibits doctors from administering a deadly drug; this statement underscores a prohibition of physician assisted suicide. In addition, the Church has opposed euthanasia dating back to fourth century with Augustine. These examples are in line with the Jewish views of euthanasia and physician assisted suicide.

He notes that this is an important issue today because of all of the advances in medical technology that cause death to be "forestalled."[170] This issue plays out in America as certain states try to legalize physician-assisted suicide. At the time of this article, Washington and California tried to decriminalize physician-assisted suicide and active euthanasia and both attempts failed.[171] Oregon passed a *Death With Dignity* act in 1997 that allows physicians to prescribe medicine to end the lives of patients. Rabbi Cahana provides arguments for and against physician assisted suicide (PAS). The

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[168] Michael Z. Cahana, ""Who Shall Live…" A Report from the CCAR Task Force on Assisted Suicide, June 11, 2003-11 Sivan 5763," *CCAR Journal: A Reform Jewish Quarterly* (Winter 2005): 42-58.
[169] Cahana, 42
[170] Cahana, 43
[171] Physician-Assisted suicide is now legal in Washington. The law was passed in November of 2008 and went into effect in March of 2009, according to Wall Street Journal Heath Blog: "Washington's Physician-Assisted Suicide Law Takes Effect - Health Blog - WSJ," WSJ Blogs - WSJ, http://blogs.wsj.com/health/2009/03/05/ washingtons-physician-assisted- suicide-law-takes-effect/ (accessed November 16, 2009).

arguments in favor include: a patient's right to autonomy and the right to choose, equal rights (if someone can refuse treatment one should also be able to end one's life with medicine). PAS allows an end to suffering in cases where other measures may not work, enforces personal liberty, opens the discussion for people who may be practicing PAS anyway. The arguments against PAS include belief in the sanctity of life, opposition to active euthanasia though passive is permitted, a recognition of the potential abuses of PAS, an appreciation of and a desire to promote the integrity of doctors and an acknowledgement of the possibility of error. Through this article, Cahana draws on many sources to support an argument against PAS. He quotes the stories of Saul, Rav Yehudah HaNasi, Haninah ben Teradion, responsa from Rav Yaakov Zvi Mecklenburg, Moshe Feinstein and Rabbi Aaron Soloveichik.[172] Cahana provides an overview of the CCAR Responsa on this issue. In the end, this CCAR Task Force affirms previous decisions that physician assisted suicide and active euthanasia are against Jewish law.

While the majority of the CCAR Journal articles on this topic fall into two categories, ministering to the sick and issues of euthanasia and physician assisted suicide; two articles address other issues. In 1986, Matthew Maibaum[173] requests a progressive view toward medical ethics, and in 1999, Byron Sherwin[174] discusses the supreme importance of the sanctity of life.

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[172] 1Samuel 31:4, *Ketubot* 104a, *Avodah Zarah* 18a, *HaKsav V'HaKabbalah*, 9:4: Quoted in *Crosscurrents – A Journal of Torah and Current Affairs*, vol. 1, issue 2, and J. David Bleich, "Treatment of the Terminally Ill" in *Bioethical Dilemmas, A Jewish Perspective* (Jersey City, N.J.: Ktav, 1998), pp. 63-64 as quoted in Cahana, 48-49. While other CCAR Journals quote other sources (see footnotes throughout), they generally do not quote these sources.

[173] Matthew (Menachem) Maibaum was a consulting psychologist and behavioral scientist living and working in Los Angeles.

[174] Byron L. Sherwin (JTSA 70) was Vice President and Distinguished Service Professor at Spertus Institute of Jewish Students in Chicago, Illinois.

In Maibaum's article, "A "Progressive" Jewish Medical Ethics: Notes for an Agenda," he argues the importance of having a liberal, Reform approach to medical ethics, including caring for the chronically ill, the acutely diseased and the aged.[175] Maibaum criticizes Dorff for relying only on Orthodox sources and for arguing that the most important value is that our bodies belong to God, since, according to him, liberal Jews will think this is ridiculous. He challenges Reform rabbis and Reform rabbinic leadership to compile all the thinking and responsa on medical ethics and make them available for rabbis and laity so that rabbis will have something to say about the issues rather than rely solely on Orthodox views. Maibaum argues that most American Jews would only follow what their liberal rabbis have to say if it is convenient for them and does not explicitly contradict their own feelings, truths and values.

In the fall of 1999, Sherwin writes, "A Jewish View of Death and Dying" in the CCAR Journal.[176] He begins with a quote from Rabbi Bunan who is dying, "Why do you cry? All my life I have been learning how to die"[177] Instead of dwelling on death, Sherwin argues, we must try to preserve life. In the article, Sherwin provides a history of Jewish views of death using Jewish sources. He notes that, in general, while Judaism definitely acknowledges death and does not avoid discussing it, Jewish tradition is not focused on death and dying but on the sanctity of life and the ways in which we should strive to make the best out of life.

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[175] Matthew (Menachem) A. Maibaum, "A "Progressive" Jewish Medical Ethics: Notes for an Agenda," *CCAR Journal: A Reform Jewish Quarterly* (Summer 1986): 27-33.
[176] Byron L. Sherwin, "A Jewish View of Death and Dying," *CCAR Journal: A Reform Jewish Quarterly* (Fall 1999): 12-20.
[177] Samuel of Shinow, *Ramatayim Zofim* (Warsaw 1881), Sherwin, 243

These CCAR Journals focus on two main issues, pastoral care and euthanasia. For the most part, the issues of pastoral care do not specifically address end-of-life issues but one can apply the values and teachings to such situations. Some, though not all, of the CCAR Journals include discussion of Jewish texts that influence the authors' thinking. The journals remind rabbis of the importance of helping those that are sick to view themselves as part of a community and connect with the Sacred. Moss underscores the importance of a rabbi's involvement in the hospice movement and in helping people to transition to hospice care. Fisher's poem illuminates the struggles of families who help their loved ones through sickness. Though the CCAR journal authors rarely mention God, Karff's article stresses the importance of God as a healer and the rabbi's essential role in the facilitation of spiritual healing.

The CCAR journals shift to a debate about active euthanasia. In 1990, Rabbi Reines is the first rabbi to argue for the morality of committing suicide and performing active euthanasia for some patients. This radical statement invites great opposition from other rabbis who maintain that Judaism, including from a Reform perspective, prohibits euthanasia and suicide. Later, Yoel Kahn reframes the discussing with the idea that euthanasia is in fact an act of Kiddush HaShem.

In response to an upcoming ruling by the United States Supreme Court about euthanasia, the 1997 CCAR Journal focuses on euthanasia. This Journal incorporates many of the different ideas about euthanasia while bringing together various responsa and UAHC resolutions on the subject. These articles highlight various issues including the desire to frame the discussion with a Jewish lens, while acknowledging that America

discusses the issue from a secular perspective and the Holland's status of legal euthanasia.

These CCAR Journals provide a rich history of those issues that rabbis and scholars consider important in pastoral care and end-of-life decisions.

Chapter 1: A History of the Voices of the Reform Movement on End-of-life Care

Section 2: Literature for a Lay/Congregational Audience

1. **Bio-Ethics Case Studies from UAHC/URJ Department of Jewish Family Concerns**
2. **UAHC Resolutions**
3. ***Reform Judaism* Magazine**

1. Bio-Ethics Case Studies from UAHC/URJ Department of Jewish Family Concerns

From the early 1980s until today, Rabbi Richard Address, director of the Union for Reform Judaism, Department of Jewish Family Concerns, has produced fifteen Bio-Ethics guides, addressing the following issues in this order: A Time to Be Born, Autonomy-My Right to Live or Die, Termination of Treatments, Will/Medical Directives, Genetic Screening/Human Genome, Voluntary Active Euthanasia-Assisted Suicide, Allocation of Scarce Medical Resources, The Role of Pain and Suffering in Decision-Making, Organ Donation and Transplantation, Cloning, Infertility and Assisted Reproduction, Genetic Testing, The Spiritual Challenges of Living with Chronic Illness, Jewish Approaches to Stem Cell Research, and Alzheimer's and Dementia.[178]

According to the website: "The Bio-Ethics Study Guides are self-contained program guides featuring thought pieces, Jewish and secular resources, and program ideas on key issues that have to do with Reform Judaism and emerging medical technology. They are designed for use in both formal and informal educational settings."[179]

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[178] "Bio-Ethics Study Guide Information - URJ," Home - URJ, http://urj.org//life/health/Bio-Ethics//?syspage=article&item_id=20440 (accessed September 10, 2009).
[179] ibid

Each study guide begins with an introduction that explains some of the important issues addressed. The guides contain a table-of-contents, relevant responsa, articles, sample forms such as a living will, and other important resources.

In 1989, "Case Study II: Autonomy-My Right to Live or Die" was published.[180] It begins with the case study of an eighty-three year old woman who refuses dialysis. This case was a question in the CCAR Responsum from the previous year.[181] Following an explanation of the case, there are responses from Rabbi Dayle Friedman, Rabbi Bernard Zlotowitz and Rabbi Walter Jacob. These serve as a basis for a discussion on this issue with the "program discussion starters" found on the next page. The questions draw out important issues from the information provided, including the terms "prospect for recovery," "quality of life," "independent life" and "sanctity of life." This guide relies heavily on the CCAR Responsa with copies of three responsa: the first 1950 responsum called "Euthanasia," "Allowing a Terminal Patient to Die," from 1969, and "Quality of Life and Euthanasia" from 1987. There are many rabbinic sources quoted in each of these responsa, though they are not explained further in this Bio-Ethics guide.

Also included in this guide are three articles from outside the Reform movement, though relevant to the issue: an article from *Hippocrates,* The Magazine of Heath and Medicine, about Jewish views on dying and examples from American law and medicine related to this topic, a guide to the Living Will, and an article entitled "Patients' Rights" from the *New York Times Magazine*. A list of "Additional Resources" is included in the

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[180] Richard F. Address, ed., *II. Bio-Ethics Case Study: Autonomy: My Right to Live or Die* (New York: Union for Reform Judaism, Department of Jewish Family Concerns, April 1989)
[181] Walter Jacob, "157. An Elderly Patient who Refuses Dialysis," 259-262.

back of this issue. This Bio-Ethics Guide contains many good resources to provide background information for one preparing to teach about autonomy and euthanasia. There are no summary statements or conclusions that would lead someone to make any definitive decisions, though one can find such statements in the conclusions to each responsum.

The next Bio-Ethics Guide, entitled, "Termination of Treatment" was issued in 1990.[182] Rabbi Address notes in his introduction that the material was presented at the UAHC National Biennial in November of 1989. The Bio-Ethics Committee discussed the issues related to termination of treatment at the convention. This case study addresses issues including removing feeding tubes from a person in a permanent vegetative state, the role of a living will, and how advances in medical technology intersect with traditional Jewish views. This guide begins with an extremely helpful overview of the rabbinic sources that relate to the termination of treatment. Zlotowitz brings in Jewish texts that argue for and against termination of treatment, and discusses the ways *halakhic* authorities determine the time of death. He strongly argues that, according to Jewish sources, one may not hasten death but one can terminate treatment so as not to prolong death. He says that this should be done in consultation with "the family, the rabbi and the physician, and the patient, if possible."[183] There is an article from Dr. Gerald Golden on the medical matters pertaining to termination of treatment. Among other points, he notes that, "At least one medical organization has put forward the opinion that the provision of fluids and nutrition by injection or tube to a patient in a persistent vegetative state is a

[182] Richard F. Address, ed., *III. Bio-Ethics Case Study: Termination of Treatment* (New York: Union for Reform Judaism, Department of Jewish Family Concerns, April 1990).
[183] Address, ed., *III. Bio-Ethics Case Study*, pg. 7

medical procedure and can, like any medical procedure, be terminated with the consent of the patient's family." This is particularly important because the latest Reform Responsum on this issue, in 1997, does not issue a definitive answer on the basis of *halakhah*.[184]

In the last article, one can find Roselyn Kretzky's, Esq, remarks that she delivered at the Biennial in 1989 regarding the legal aspects of termination of treatment. In her remarks, she highlights the importance of advance directives to help each person gain their autonomy in making these difficult decisions. For each article presented in this Guide, there are "Program Discussion Starters" to illuminate the major issues raised. There is also a list of "additional resources" at the end of the Guide. This Guide does not refer to other Bio-Ethics Guides nor does it include relevant responsa.

In the Winter of 1991, the UAHC Department of Jewish Family Concerns distributed their fourth Bio-Ethics Guide entitled, "The Living Will/Medical Directives."[185] This was written in response to recent Supreme Court decisions related to living wills and in anticipation of the UAHC Biennial that would vote on a resolution about the living will (the draft is included). This Guide begins with the text of the 1989 CCAR Responsum on the Jewish view toward a living will. It continues with Rabbi Zlotowitz's opinion about the living will. Zlotowitz justifies the place of the will within Talmudic tradition and then explains the use of such wills as legal documents in the American justice system today. Rabbi Zlotowitz is careful to uphold Jewish law that forbids euthanasia while permitting a living will to dictate one's choice to end their life if

[184] Washofsky, 337-63.
[185] Richard F. Address, ed., *IV. Bio Ethics Case Study: The Living Will/Medical Directives* (New York: Union for Reform Judaism, Department of Jewish Family Concerns, Winter 1991).

medical interventions prolong dying. It also recommends that one write a living will with a lawyer to ensure that is it done in accordance with the law of the particular state.

Rabbi Address includes a number of resources in this Guide to expose the reader to a wide variety of voices and issues involved in the living will and "right to live/die" debate. This Guide includes a draft of a living will from the Union for Traditional Judaism and an article by Rabbi Ronald Price, also from this same Union, entitled, '"Right to die' debate could well degenerate into the 'right to kill'" in which he discusses the intersection of Jewish law, our personal feelings toward those we love, the living will, and the American justice system.[186] Other articles include: a sermon by Rabbi Joseph Edelheit encouraging people to fill out living wills, an exploration of medical directives, a *New York Times* article that discusses what to do in the event that the wishes reflected in the living will differ from those of family members, and other articles addressing the "right to live." The end of the Guide lists "Programmatic Suggestions" for synagogues that include resources and ideas, such as leading a group to complete medical directive forms, and hosting forums in which people discuss relevant legislation in their state with appropriate, learned representatives. This Guide is helpful because of the number of resources it has outside the Reform perspective. With contemporary articles from the news and articles from traditional Judaism, one comes away with a deeper sense of the issues. It is clear that at the time that this Guide came out, the issue was hugely debated in the country by political and religious leaders. Though it is difficult to include the whole range of voices, a summary of views might have been helpful.

[186] "Right to die' debate could well degenerate into the 'right to kill' as quoted in Richard F. Address, ed., *IV. Bio Ethics Case Study, 15*

With the publicity of Dr. Kevorkian,[187] attempts to legalize physician assisted suicide in two states, the institution of the Patient Self-Determination Act and other concerns regarding euthanasia, the UAHC Department of Jewish Family Concerns issued its sixth volume of the Bio-Ethics Guide, "Voluntary Active Euthanasia – Assisted Suicide" in the summer of 1993.[188] This Guide includes articles that were written for the UAHC Committee on Older Adults that met in 1993 and parts of the debate on the limits of personal autonomy from the 1993 UAHC National Board meeting.

In the first three articles featured in this Guide, Rabbi Terry A. Bookman,[189] Dr. Harvey L. Gordon,[190] and Rabbi Richard F. Address, respond to issues of assisted suicide and euthanasia. Rabbi Bookman asserts that life does not really belong to us, so, it is up to God, not us, to give and take away life. Though it can be difficult, we must help others, who might want to take their own lives, to understand that point. Dr. Gordon explores the differences and implications of helping someone to die, committing suicide and helping one to commit suicide. He condones helping someone to die when keeping them alive prolongs suffering. Dr. Gordon upholds the idea that suicide is wrong though one must not condemn those who have committed suicide due to depression. He also maintains that it is morally wrong to help one commit suicide, especially as a doctor,

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[187] Dr. Jack Kevorkian (1928-) is from Michigan and is a right-to-die activist who supports terminally ill patients in physician assisted suicides. He has been jailed many times due to his role in physician assisted suicides.

[188] Richard F. Address, ed., *VI. Bio Ethics Case Study: Voluntary Active Euthanasia - Assisted Suicide* (New York: Union of American Hebrew Congregations (Union for Reform Judaism) Committee on Older Adults/Bio-Ethics Committee, Russell Silverman, Chairperson, Summer 1993).

[189] Rabbi Terry A. Bookman was the Senior Rabbi at Congregation Sinai in Milwaukee, WI and is now the Senior Rabbi at Temple Beth Am in Pinecrest, Florida.

[190] Dr. Harvey L. Gordon is a medical doctor and was a member of the UAHC Committee on Older Adults.

because doctors have an obligation to help people live. He upholds the sanctity of life even with its sufferings. Communities must support each other and provide comfort to each other in life, not help each other to end life. Rabbi Address draws upon the distinction between passive and active euthanasia. According to Jewish sources, to cease medical intervention when someone is in the *goses* stage with medicine prolonging life is called passive euthanasia and is permitted. However, to actively hasten death, whether by the patient, doctor or family member, is active euthanasia or suicide and is forbidden.

This Guide presents a number of articles that address issues of autonomy, the implications of the medical *halakhic* terms including *terefah* and *goses*, and the idea of death with dignity.[191] Freehof's 1975 CCAR Responsum on "Relieving Pain of a Dying Patient" is included along with *New York Times* articles on related topics. Pages of suggested programs and additional resources are also included. This Guide has a tremendous number of helpful and interesting articles that expose the reader to different perspectives on this issue.

The UAHC Program Guide VIII, published in 1996, addresses "The Role of Pain and Suffering in Decision Making."[192] This Guide is divided into two sections, "Thought Pieces" and "Study Pieces." The "Thought Pieces" include essays from rabbis and doctors on the issue of pain and suffering and appropriate Jewish responses. It begins with the reflections of a lay person, Carol Baron, who recalls the incredible suffering of her parents who chose to end their lives rather than prolong their suffering. Dr. Blicker

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[191] This idea is stated in many Reform sources including, "On the Treatment of the Terminally Ill" and the "UAHC Resolution: Healthcare Decisions on Dying."
[192] Richard F. Address, ed., *VIII. Program Guide: The Role of Pain and Suffering in Decision Making* (New York: Union of American Hebrew Congregations (Union for Reform Judaism) Committee on Bio-Ethics, Chair: Dr. Harvey L. Gordon, Winter 1996).

marks a distinction between pain and suffering. Suffering, he writes, is someone who "feels alone, abandoned, dependent on others" and is not always related to a medical problem. Pain, on the other hand, refers to physical pain for which doctors administer pain medication. Dr. Blicker also notes that there are more and more ways to treat the pain of patients so that death is not the only way to end pain. Rabbi Kozberg reminds us of the holiness of all lives, no matter their condition, after all, we say, "let every soul praise God."[193]

The study pieces include articles of Jewish texts relating to pain and comfort care, Jacob's 1992 responsum "Drugs to Relieve Pain" and Freehof's 1975 Responsum "Relieving Pain of a Dying Patient" (also available in the previous Study Guide), and the UAHC Resolution on Comfort Care (1995). These texts express the desire to improve the quality of comfort care and pain management. There are no programmatic suggestions in this Guide, though there is a list of "Resources to Help Dispel Myths About Pain Management" from the New York State Task Force on Life and the Law.

The most recent Bio-Ethics Study Guide, XV, was just issued in the Spring of 2009 and is entitled "Jewish Approaches to: Alzheimer's and Dementia."[194] This Guide, according to Rabbi Address, came about because the work on Mental Health and Sacred Aging illuminated issues facing those with Alzheimer's and Dementia and their families. This is meant to be a resource for clergy when conducting classes around these issues. Unlike other guides, the compiler suggests that it be a resource for clergy when writing sermons. The Guide begins with information from the Alzheimer's Association including

[193] Psalm 150
[194] Richard F. Address, ed., *XV. Bio-Ethics Case Study: Jewish Approaches to: Alzheimer's and Dementia*, comp. Rabbinic Intern Rena Polonsky (New York: Union for Reform Judaism, Department of Jewish Family Concerns, Spring 2009).

definitions, statistics, warning signs and symptoms. This section is followed by a collection of texts related to honoring the aging and those who have lost their memory and permission to have someone other than family care for a parent.

Section three includes articles and relevant CCAR Responsa related to Alzheimer's and the ethical issues that surround it. The next section includes sermons that address aging with Alzheimer's and caring for parents. The last sections are filled with liturgical resources, educational resources and a sample program. This Bio-Ethics Guide is available on the URJ website.

Summary

For the most part, these Guides were written in response to issues raised by the Reform movement and/or issues facing America. Many of the Bio-Ethics Guides include the relevant CCAR Responsa and UAHC Resolutions. Each Guide compiles pertinent writings from rabbis in the movement and in some cases, other rabbis and experts in the field. While most of the articles in all of the Bio-Ethics Guides are user-friendly, I think it would be overwhelming for a congregant to read these materials when facing an end-of-life decision. These are better used as resources for clergy and educators who plan sessions and deliver sermons on these issues. Most of these Guides are collections of articles without explicit connections between each guide or the articles within them. There is no voice of the editor commenting between articles or summarizing statements or drawing conclusions; this is left to the reader. The Guides do not build on each other

in any systematic way, other than that they collect material through time and reflect the essential issues of the Reform movement at the time.

2. UAHC Resolutions

In 1991, the UAHC (URJ) adopted a resolution on healthcare and dying.[195] In the resolution, the authors commit to affirm the sanctity of life and the precept of preserving life. The resolution asserts that when there is no hope, people should not create impediments to death and should allow patients to die with dignity. The authors recognize that the use of technology to artificially prolong life takes a huge toll on patients and their families.

Therefore, in light of the 1990 Cruzan v. Director, Missouri Dept of Health, the UAHC (URJ) resolves to:

> Reaffirm that each individual has the ethical, moral, and legal right to make his or her own health care decisions and that right remains even if the patient becomes incompetent, Provide educational programs related to death and dying, Encourage people to use Advance Directives, living wills and other such documents, Promote and support the enactment of legislature that will facilitate decision making process**,** and Ask congregations to support this effort. [196]

The UAHC adopted a resolution in 1995 with regard to compassion and comfort. The authors resolve that the synagogue has a responsibility to educate its members about Judaism's belief in dignity and sanctity of human life. While they had already affirmed

[195] "Health Care Decisions on Dying," proceedings of the Committee on Bio-Ethics and the Commission on Social Action, Adopted by the delegates to the UAHC Biennial, Baltimore (1991).
[196] "Compassion and Comfort Care at the End-of-life," proceedings of A Resolution of the UAHC adopted at the 63rd Biennial Convention of the UAHC, Atlanta (1995).

the right to refuse medical treatment that prolongs death, they recognize that there are other needs to consider in addition to treatment. The authors recognize that the community has an obligation to help people who face pain and suffering and find ways that palliative care can support them. They underscore the principle of *pikuach nefesh* and state the goal is: "to provide a quality of life that is at least tolerable for each one whose journey ends in pain and suffering." Rather than end life, patients should choose to find ways to live with help from family, doctors, community, etc.

Therefore, the UAHC resolves to: "Address needs to provide adequate comfort care, Distribute materials regarding liberal approach to end-of-life decisions, Distribute materials to raise awareness of issues of pain and suffering to help sound decision making, Help clergy develop skills in these issues, Have congregations develop connections with community to help, Have Committee on Bio-Ethics work with CCAR responsa and provide guidance with physician-assisted death and active voluntary euthanasia."

3. *Reform Judaism* Magazine

While Reform Judaism Magazine does not contain a plethora of articles related to end-of-life decision-making, the magazine alerted its readers to helpful resources prepared by the URJ Department of Jewish Family Concerns. In 1992, 1994, and 1997[197], there were

[197] "Reform Judaism PLUS, Two Favorites Reissued By The UAHC Press," *Reform Judaism*, Winter 1994, 46., "UAHC & You: A Workbook Helps With Tough Decisions," *Reform Judaism*, Summer 1997, 52.

short advertisements for Rabbi Address' book *A Time to Prepare*.[198] The 1992 announcement came soon after the Patient Self-Determination Act was passed and underscores the pertinence of *A Time To Prepare*. In 1994, when *A Time To Prepare* was reissued, the advertisement read, "The manual tells how to create an ethical will, how to assign durable power of attorney, and how to express your wishes on matters such as health care, life support, organ donation, funeral arrangements, and more." Another advertisement for *A Time to Prepare* in 1997 provides more information: "There's space to write in life data – people to notify immediately after the death of a loved one, instructions to the rabbi and funeral director…."

In fall of 1995, Dr. Harvey Gordon wrote an article for *Reform Judaism* entitled, "Say No to Mercy Killing."[199] This article came out a couple of months before the UAHC Resolution on "Compassion and Comfort Care at the End-of-life" was passed in December of 1995.[200] In his article, Gordon describes the distinction between hastening death and removing an impediment to dying. He refers to the UAHC Bio-Ethics committee that affirmed the right to die a natural death by withholding or withdrawing medical interventions (for someone in *g'sisah*), but not through active euthanasia. Gordon explains that the 1993 UAHC Biennial voted against Reform Judaism's affirmation of legislation that would allow physician assisted suicide and active euthanasia.

In his article, Gordon highlights some of the main issues in end-of-life decision-making. Often, when people say that they want to die, according to Gordon, if they had

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[198] See the discussion of *A Time To Prepare* in the chapter on Advance Directives
[199] Harvey L. Gordon, "Opinion: Say No to Mercy Killing," *Reform Judaism*, Fall 1995, 96.
[200] "Compassion and Comfort Care at the End-of-life"

adequate comfort care that eased suffering, they would not want to die, but fight to live. In a medical journal in 1993, doctors discovered that 95% of people who are chronically ill and request to die also have "diagnosable psychiatric disorders." If one eases pain and addresses the mental disorder, most people would not want to take their own lives.

Gordon argues that Jews should balance God's authority with individual autonomy; one does not have the right to take one's life into his/her own hands with active euthanasia or assisted suicide. If life is a gift from God, one cannot determine for one's self when one wants to live or die. If one is lenient in this way, s/he will not work through any pain and suffering to arrive at a stronger state.

Gordon explains that there could be infrequent times when someone in a lot of pain and suffering who has exhausted all other measures, might decide to end his/her life, in conjunction with their physician and God. He cites the story of Rabbi Yehudah HaNasi[201] to argue that one may not hasten death but can remove impediments to dying. Otherwise, Reform Judaism cannot condone voluntary active euthanasia (VAE) or physician assisted suicide (PAS). Gordon uses the quote from Deut. 30:19 to say that Jews have an ethical obligation to help people live and "choose life," not assist people in dying.

If Judaism accepts VAE and PAS, Gordon asserts, it will become a "slippery slope" and one cannot predict what will happen. Once people know of the option to end their lives, they may do so without adequately considering other options, especially when they no longer want to be a burden to their families. Jewish leaders must help people to live as best as they can rather than offer the "solution" of death.

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[201] *Ketubot* 104a

In the summer of 1996, there is an advertisement for the UAHC Bio-Ethics Guide called "The Role of Pain and Suffering in Decision Making." There is an explanation of what is offered and an assertion that more must be done to help ease pain and suffering and help people to live.[202]

The UAHC and CCAR spent considerable time writing about assisted suicide in 1997. In addition to the CCAR Journal devoted to the topic, Rabbi Washofsky wrote an article entitled, "Why Judaism Opposes Assisted Suicide" in *Reform Judaism* Magazine in the summer of 1997.[203] Several people wrote letters responding to Rabbi Washofsky in subsequent magazines. In his article, Rabbi Washofsky presents the case of a woman with cancer who has exhausted all possible curative measures and requests to die. According to Jewish law, would she be able to end her life?

Washofsky uses the biblical example of King Saul to assert that when someone ends his/her life due to suffering, it is not considered suicide because it was done under duress.[204] However, he notes that someone with a disease is in a different category. Washofsky explains that one may not take the life of a moribund person (*goses)*.[205] Since human lives belong to God, one cannot take his/her own life; only God can do that. Humans may choose how they want to live their lives and people have the responsibility to help the sick live lives as best as possible. Washofsky refers to previous CCAR Responsa that affirm this idea. Those who disagree with the prohibition of physician

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[202] Nina Salkin, "UAHC & You: Jewish Responses To Pain And Suffering," *Reform Judaism*, Summer 1996, 44.
[203] Mark Washofsky, "Responsa: Why Judaism Opposes Assisted Suicide," *Reform Judaism*, Summer 1997, 64.
[204] See the explanation of King Saul in Summary of Rabbinic texts
[205] Here, Washofsky is speaking of a *goses*, though he does not use the term.

assisted suicide or who advocate for an end to suffering, argue that humans should have the right to their own medical care and termination of that care.[206]

That said, Washofsky argues that doctors should have the right to administer pain medication even if it will hasten death. Using *Ketubot* 104a and *Shulhan Arukh Yoreh Deah* 339:1, Washofsky emphasizes the distinction between hastening death and removing impediments to the natural dying process. Washofsky explains that the Jewish tradition stresses the importance of using medicine only as a means of healing.[207] It is therefore not required, though a person may request it, to accept medicines that will not heal. A physician is only obligated to do those things that have "therapeutic benefit" and "legitimate medical purpose" but those terms are hard to define and people must grapple and study and interpret them as the medical technology changes. Washofsky concludes with the point that each patient and their family should be handled differently because each person's situation is unique.

Later that year, Dr. Gregory David commented on Rabbi Washofsky's article, affirming his stance against physician assisted suicide.[208] From the perspective of a doctor, Dr. David argues that if a physician is permitted to assist in suicide, it will change the trust between patient and doctor and it will change the identity of the doctor into one that does not only save lives but ends them. To commit such an act also contradicts the Hippocratic Oath that physicians sign.

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[206] See further arguments in favor of physician assisted suicide in the CCAR Journal section

[207] Lev 18:5, 19:16, BT *Yoma* 85b, *Sanhedrin* 73a, *Shulhan Arukh Yoreh Deah* 336:1

[208] Gregory J. David, M.D., "Letters: Opposing Assisted Suicide," *Reform Judaism*, Fall 1997, 9.

Dr. David is wary of an already rising mistrust in doctors and concerned that it will get worse, especially if the "right to die" is construed as a "duty to die" to cut costs. David does not believe that if a patient's quality of life is insufficient one should be able to decide to terminate the patient's life.

In the winter of 1997, Sidney Rosoff wrote a letter in which he states that he disagrees with Washofsky's assertion that Judaism opposes assisted suicide.[209] He argues that God would not want people to suffer and would allow them to end their lives. Since medicine has lengthened people's lives, they could end up in situations where they are in awful pain and suffering, similar to the suffering of King Saul.[210] Rosoff believes that one should not put pressure on anyone to make decisions about their own lives. Reform Judaism, he argues, should permit individuals to make their own decisions in this matter.

In the summer of 1998, the magazine announces Dr. Harvey Gordon's guide, "Questions and Answers About Jewish Tradition and the Issues of Assisted Death." There is also a reiteration of the importance of the Bio-Ethics Guides and *A Time To Prepare*.[211]

Reform Judaism reflects an attempt on the part of the Reform movement to provide relevant information about end-of-life decisions to its laity. In response to Resolutions or Responsa within the movement or national debates and laws, the magazine publishes articles that address euthanasia and physician assisted suicide. Many of these articles have relevance today in the national health care debate. It also advertises other publications that address a wide variety of end-of-life issues including wills, pain

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[209] Sidney D. Rosoff, "Letters: Assisted Suicide," *Reform Judaism*, Winter 1997, 6.
[210] See discussion of King Saul in summary of rabbinic texts
[211] Amy Hersh, "UAHC & You: For You: Clear Information On Heartrending Decisions," *Reform Judaism*, Summer 1998, 50

and suffering, and organ donation. It is interesting to note that there are few articles in *Reform Judaism* about end-of-life decisions; the articles direct laity to *A Time to Prepare* and the Bio-Ethics Guides.

Chapter 3: The Advance Directives/ Halakhic Living Wills of Jewish Movements

1. **The Conservative Movement's Advance Directive (1994)**
2. **The Reform Movement's Advance Directive (1995)**
3. **The former version of the "Halachic [sic] Living Will" of the Mainstream Orthodox Movement (unknown)**
4. **The Reconstructionist Guide to End-of-life Decisions (2002)**
5. **The "Halachic [sic] Living Will" of Agudath Israel of America, the Ultra Orthodox Movement (2003)**
6. **New version of "Halachic [sic] Living Will" of the Mainstream Orthodox Movement (2009)**

One hopes that one will never find oneself or a loved one in a place in which one can no longer make decisions for oneself. In the event that one becomes unconscious, suffers brain damage, is in a coma or compromised in another way, an Advance Directive guides health professionals and loved ones through tough decisions, using the expressed wishes of the compromised individual. Though one can never accurately predict every possible scenario that one might find oneself in, the Advance Directive provides as much information as possible to help the decision making process. In America, many states provide living wills or advance directives. The documents that are given to a family when entering a hospital are based on American law. A generic form from the state in which one lives may not, however, take into consideration certain issues and nuances within Jewish law. Therefore, each Jewish movement has its own guidelines, in most cases in the form of an Advance Directive or *Halakhic* Will, to help its members anticipate decisions and convey their wishes. The advance directives of each movement reflect the ideology and Jewish principles of the movement.

1. The Conservative Movement's Advance Directive (1994)[212]

In the introduction to this document, it is clear that the purpose is to help a person convey his/her wishes should s/he "lose the ability to make such decisions." However, this document also explains that, "we should be guided by our commitment to Judaism, to its law (*halakhah*) and to its moral values." The questions and guidance provided is informed by the values and interpretations of Conservative Judaism. The purpose of this document, as stated in the introduction, is not only to provide guidance for physicians when the patient is unable to make decisions, but also to help the person filling out the form "gain a sense of Jewish teachings concerning medical decisions…." This document stresses the importance of *halakhah* in the decision making process.

The Conservative AD includes a section on "Jewish Teachings about Heath Care" that outlines values and principles in Judaism that relate to end-of-life decisions. The description highlights the understanding that "life is a blessing and gift from God." Since one's body is from God, one has a responsibility to protect it and ensure that one receives adequate care to preserve life. It is clearly explained that based on this value, Conservative Judaism is against "any form of active euthanasia or assisted suicide." That said, the person might decide how best to preserve life in a given situation. Though this language is not used with the Reform AD, the rabbis of the CCAR Responsa and CCAR Journals use similar language and the majority of Reform rabbis that write on the subject oppose active euthanasia and assisted suicide.

Within this document, two opinions of the Conservative movement are explained, and the person filling out the directive is expected to understand the differences and

[212] Rabbi Aaron L. Mackler, ed., *Jewish Medical Directives for Health Care* (New York: The Committee on Jewish Law and Standards, The Rabbinical Assembly, 1994).

choose the view that adheres closely to one's own interpretations of laws and ethics. Rabbi Avram I. Reisner[213] holds a stricter view of the *halakhah*, while Rabbi Elliot Dorff provides a wider scope of options. Rabbi Reisner notes the distinction between sustaining life and prolonging the dying process. He believes that all measures to sustain life should be used until those interventions prolong dying or include fear and pain. On the other hand, Rabbi Dorff allows patients to "reject life-sustaining measures" in cases of terminal illness and when the patient feels that extending life without a cure is not beneficial to that person. While these two opinions are strong, they do not dictate one decision over another and still allow the patient to choose between multiple medical options. This document explains that, "Both Rabbis Dorff and Reisner agree that the advance directives should only be used to indicate preferences within the range allowed by Jewish law." They do provide more information about Jewish laws and values and a greater link to tradition than the Reform AD. People are explicitly told to "consult with your rabbi and carefully ascertain that your statement is consistent with Jewish law and ethics." This idea is strong and apparent throughout the whole document.

After the introduction, one is asked to sign off on a statement that is taken directly from the ideas of Reisner and Dorff. In part, it reads…

> I am a Jew…. I want Jewish teachings and values to guide and inform the way in which I live… including times when I may be temporarily unable to communicate… I share Judaism's respect for my body, the creation and possession of God…Nothing in this directive should be construed as my wish to die, but rather as a wish to live in accordance with the traditions of Judaism and God's desires… I unequivocally reject any form of active euthanasia or assisted suicide.

[213] Rabbi Avram Israel Reisner is a Conservative Rabbi at Chevrei Tzedek in Baltimore, MD. He is a Ph.D. in Talmud and Rabbinics from JTS and is a member of the Conservative Movement's Committee on Jewish Law and Standards where he contributes greatly to in the area of biomedical ethics.

A Conservative Jew filling out this AD is asked to make decisions in four categories:

> general views,
> irreversible terminal illness,
> permanent loss of consciousness and
> wishes in case of death.

This is much simpler than the longer list found in the Reform and Mainstream Orthodox ADs. Within the "general views" section, one is asked to choose between two basic goals of treatment, one that aligns with the views of all Conservative rabbis and one that goes against Rabbi Reisner's opinion. This requires that the person understand the differences in opinion and decide which one best matches their own views. Unlike the Reform AD, but similar to the two Orthodox ADs, at the end of this section, the person is asked to list his own rabbi for consultation should medical decisions arise.

Within the section of "irreversible, terminal illness," a patient is asked to decide:

> whether or not to have:
> diagnostic tests,
> surgery,
> amputation,
> nutrition and hydration,
> aggressive medical or surgical procedures,
> mechanical support,
> cardiopulmonary resuscitation,
> pain relief,
> sedation, and
> hospital or home care.

While this list is similar to the one listed in the Reform AD, each option is explained in greater detail. Some of the options include choices "inconsistent with Rabbi Reisner's opinion." One may choose this option, knowing that Rabbi Reisner's interpretation of *halakhah* differs from this decision. For example, within the choice of modes of feeding, one can choose to have artificial nutrition and hydration or to have this

only on a "trial basis" or not at all. However, it is clear that to choose "on a trial basis" or not at all is "inconsistent with Rabbi Reisner's opinion" who would choose nutrition and hydration in all circumstances.

The cardiopulmonary resuscitation (CPR) category, notes one option. The explanation reads, "If my heart has stopped beating and my condition is such that there is no reasonable expectation of my recovery, I would consider CPR, by whatever means, to be contrary to God's will…". This statement assumes that the person requesting such an order believes in God and believes that to request CPR would violate their body in such a way that God would not want. This is consistent with the ideological statements in the introduction that speak of the human body as a gift from God. This section does not indicate a difference of opinion between Reisner and Dorff. The other ADs do not include any discussion of God.

In the section "pain relief and risk if I am terminally ill," there are two options, based on the differing opinions of Reisner and Dorff. Reisner believes that one can only receive pain medication if the chance of hastening death is less than fifty percent, while Dorff will allow pain medication, even if, as a side effect, it will hasten death. Many of the CCAR responsa agree with Dorff's interpretations and allow for pain medication even though it may indirectly hasten death.

This document permits one to make decisions limited to those allowed by either Reisner or Dorff. It seems that one does not have to be consistent in all areas, one may choose Reisner's opinion in some areas and Dorff's in others. There is a little bit of space for "comments" under each section, allowing the person to add his/her own instructions and thoughts.

2. The Reform Movement's Advance Directive (1995)[214]

The Reform Movement's AD can be found in *A Time To Prepare,* a publication edited by Rabbi Richard Address and the Union for Reform Judaism's Department of Jewish Family Concerns. The Advance Directive is a revised form of one that appeared in the *Journal of the American Medical Association* in 1989. *A Time To Prepare* includes many resources for more information about end-of-life decisions as well as copies of a few CCAR responsa and resolutions on these issues.[215] This book also includes an "ethical will," some rituals for saying good-bye and extensive information about organ donation from a Reform point of view.

In the chapter called, "The Dignity and Sanctity of Life," the author explains that this guide should promote discussion of these issues as well as provide practical assistance to make difficult decisions. It explains that the Reform movement affirms one of the most important ethics found in Jewish texts, "the dignity and sanctity of human life and the preservation of that human life in dignity and sanctity."[216] Address writes about "wild cards," as he calls them, that influence end-of-life decision-making: autonomy, technology, and spirituality. Autonomy means that while one has the ability to make decisions regarding one's care, one may do so remembering that one is created in the image of God and exists in partnership with God. Address asks how one can balance

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[214] *The Advance Directive/Health Care Proxy Forms* (New York: Union for Reform Judaism: Department of Family Concerns, 1995).
[215] The Responsa and Resolutions that included are: UAHC Resolution on "Health Care Decisions on Dying," "Compassion and Comfort Care at the End-of-life," CCAR Responsa on "Relieving Pain of a Dying Patient," "Quality of Life and Euthanasia," "Drugs to Relieve Pain," "Living Will," and "On the Treatment of the Terminally Ill."
[216] Address, *A Time to Prepare*, 38. This Jewish ethic is derived from many places including Genesis 1:27, "God created humankind in God's image."

one's desire to make decisions with the idea that one's body is a gift from God. The second "wild card" of technology is complicated with advancing technology and increasingly new ways to prolong death with life-saving measures. When does life saving become prolonging death? The third "wild card," is the desire to live a spiritually fulfilling life with meaning and purpose. Address inquires as to how one can apply the values of autonomy, technology and spirituality as one makes decisions that preserve the sanctity and dignity of life. Address discusses some of the important Jewish texts, like that of Rabbi Yehudah HaNasi, the terms *goses* and *terefah*, and the distinction between prolonging life and hastening death as one tries to uphold the sanctity of life.

The purpose of the Advance Directive (AD) included in this book, according to the introduction, guarantees a "person's right to self-determination." It allows the patient to make his/her own decisions about health care and treatment. This document ensures that the patient's wishes will be followed, especially in situations in which the patient is no longer conscious. Reform Judaism's focus on autonomy is evident from the introduction and throughout this document; the patient's desires come first. There is no mention in the introduction of Judaism's role in a patient's decisions, it is clear that the decision is up to the patient in consultation with a physician, rather than a rabbi or Jewish text.

In the "Completing the form" section of this document, congregants are invited to discuss the issues in the form with "family, friends, or religious mentor."[217] This form does not mention rabbi, only "religious mentor." Unlike other forms that explicitly request the name of a rabbi, this form does not. Religion and the advice of a clergy

[217] Address, 95-6

member may be some of the factors that play into the decisions of the person filling out this form.

The form contains six scenarios, the first five of which are the same as those found in the old[218] Mainstream Orthodox AD:

-permanent coma or persistent vegetative state
-coma with chance of survival with brain damage
-terminal illness, weeks to live, can't make decisions, have feelings
-irreversible brain damage, brain disease, no terminal illness
-a scenario left open to be provided by patient and doctor (not in the old Mainstream Orthodox AD)
-current state of health (not in the old mainstream Orthodox AD)

The person is asked, in the event that they are in one of the above six scenarios, which of the following they would want:

prolong life,
attempt to cure, reevaluate
limit to less invasive
comfort care only
other

In addition, for the following interventions, the person may check off whether or not s/he wants, does not want, wants tried until there is no improvement or is undecided:

cardiopulmonary resuscitation,
major surgery,
mechanical breathing,
dialysis,
blood transfusions,
artificial nutrition and hydration,
simple diagnostic tests,
antibiotics,
pain medications, even if they dull consciousness and indirectly shorten life.

This list is the same list found in the old Mainstream Orthodox AD. It is important to note that at every step of the way, the person is given the option of "other,"

[218] See the section on both the new and old Orthodox Advance Directive and Halakhic Living Will

to write his/her own guidelines based on his/her own opinions or the advice of professionals.

Unlike the other ADs, the person is also asked to create a "personal statement" in which s/he specifies any other information that s/he feels it is important for the physician/health proxy to know. This includes situations in which the person may want life-sustaining treatment withheld and any rationale for the decisions put forth. The new Halakhic Living Will of the Orthodox Movement requests a similar form with specific questions to which people can respond.

Other parts of this AD that are not found in other Jewish AD's include: organ donation options, preference for where a person can be cared for (home, hospice), and a place to write which preferences listed throughout the document should be given greater weight.

A person's autonomy is maintained throughout this document. Though one is making serious and difficult decisions about their care, at every step of the way, the person has plenty of space and is invited to provide more information and other details related to their decisions. In addition, if one uses the AD found within *A Time To Prepare*, one can read information about various issues that can help inform one's decisions. *A Time to Prepare* also includes resources and a bibliography so that one can seek additional information.[219]

[219] Address, ed., *A Time to Prepare*, 91-4.

3. Advance Directive of the Mainstream Orthodox Movement (unknown)[220]

The old Mainstream Orthodox AD, developed by the Commission on Medical Ethics of the Rabbinical Council of America (RCA), is a straightforward document without an introduction or explanation. After the appointment of the health care proxy, the person is asked to write the name of three rabbis for consultation. The text states, "Prior to my agent making a decision about my health care, in any case not covered by these directions one of the following rabbis shall be consulted. The Rabbi's decision should govern my agents and my doctors." The language of this is much stronger than the Reform and Conservative AD. In the Conservative document, the decisions should be given to the rabbi for "review" whereas, here, the rabbi's decision overrides all other opinions. However, even though the rabbi's voice governs, the individual does have some choice of care within given scenarios.

The AD continues with four different situations:

irreversible coma,
coma with possibility of recovering with brain damage,
brain damage, terminal illness and unable to recognize or communicate with people
brain damage, no terminal illness and unable to recognize or communicate with people

Within each of these categories, a person can choose whether they want or do not want some* of the following:

CPR
Mechanical breathing

[220] *Appointment of a Health Care Agent/Advance Directive* (New York: Commission on Medical Ethics of the Rabbinical Council of America). I do not have a date for this document. When I asked Rabbi Barry Kornblau of the RCA to provide information about this document, he explained that he and other members of the RCA were not available to take the time to respond to students' research questions.

Major surgery
Kidney dialysis
Chemotherapy
Invasive diagnostic tests
Blood transfusions
Antibiotics
Simple diagnostic tests
Pain medication (even if they indirectly shorten my life)

*In the first case of an irreversible coma, there is a note that "antibiotics and simple diagnostic tests should be administered;" this is not a choice. In the second case of a coma with a small possibility of recovery, and a greater chance of living with permanent brain damage, "blood products, antibiotics, diagnostic tests, pain medication, even if it dulls consciousness and indirectly shortens my life, should be provided." The reason for these interventions is not explicitly stated though it is clear that one's quality of life would be altered if there were brain damage. While the Conservative AD provides two options with regard to pain medication, this document does not draw a distinction between the amounts of pain medication allowed or note any options.

This list is very similar to the Reform movement's AD, with some differences. Artificial hydration and nutrition are not listed in the Mainstream Orthodox AD. Since hydration and nutrition are life giving, according to mainstream orthodoxy, one should not remove these from care. Chemotherapy is not listed in the Reform movement's AD; the reason is unclear.

In the Reform Movement's AD, the person is given a range of ways to answer these questions (listed above), here, one can only choose "I want" or "I do not want." One can choose, for example, that he does not want chemotherapy if he is in a coma with reversible or irreversible brain damage.

There is a paragraph that states one's wish to donate all life-saving organs for the purpose of transplantation. There is no place to check-off one's intention to do this; it appears that by signing the whole document, this statement is included.

This is a very simple AD, without any discussion of *halakhah* or Jewish values that would influence decisions.

4. The Reconstructionist Guide to End-of-life Decisions (2002)[221]

The Reconstructionist Movement does not provide one Advance Directive document, however it published a book entitled *Behoref Hayamim: In the Winter of Life: A Values-Based Jewish Guide for Decision Making at the End-of-life* in 2002. Rabbis, chaplains, ethicists, and physicians compiled this book. In the introduction, Rabbi David Teutsch, President of the Reconstructionist Rabbinical College and Director of the Center for Jewish Ethics, explains that when most American Jews are making decisions today, they do not rely on *halakhah*, rather, "they would like to draw on the values, experiences and insights of Jewish tradition while forming their own responses to situations that are often made complex by medical advances, high technology, distance, and a host of other factors."[222] This book is designed to guide and provide insight for people in making those decisions with particular attention to Jewish values and the wide variety of issues and arguments facing someone at the end of one's life. Teutsch explains that specific imperatives are not outlined in the book though one can find a compendium of different teachings, values and Jewish texts to inform one's decisions. He hopes that one will read this book and discuss its context in a Jewish community, rather than alone.

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[221] *Behoref Hayamim: In the Winter of Life A Values-Based Jewish Guide for Decision-Making at the End-of-life* (New York: Reconstructionist Rabbinical College P, 2002).
[222] *Behoref Hayamim*, 3-4

In order to make successful moral decisions, as outlined by this book, Teutsch enumerates many Jewish values and ideas that are important to consider. They include: *ahava*[223]: love between people that gives life meaning, *beriyut:* health and wellness, *B'tzelem Elohim*: created in the image of God, *Eyt lamut*: time to die, *Goses*: one certain to die, *Hesed*: covenantal caring, *Kedusha:* Holiness, *K'vod Habriyot:* human dignity, *Ladonay ha'aretz umelo'o:* The earth and all that is in it belong to God, *mitzvah:* moral obligation, *Pikuach nefesh*: saving a life, *Rahmanut*: compassion/mercy, *Refua*: Healing of body and spirit, *Sh'lom bayit:* peace in the family, *Sh'mirat haguf:* guarding the body, and *Yirat shamayim:* reverence for God.

This book does not include an Advance Directive, but does express the importance of having one and gives advice in creating one. In the chapter, "Taking Control of Difficult Decisions," Dr. William Kavesh explains that most advance directives offer extensive checklists of options (like those of the other Jewish movements outlined in this thesis) that could create complications if a situation that is not enumerated on the checklist arises. Kavish believes an advance directive should have

> a list of values that a person cares about, and the designation of a surrogate who is familiar with the person's values and can help interpret what the person would want. If the person then wants to list what s/he would or would not want done in a given situation, the items on the list can be interpreted in light of the person's overriding values. These may include avoidance of pain, desire to be spared a lengthy period with the inability to understand or communicate, avoidance of artificial life-extending devices like respirators, or, on the contrary, the desire to struggle on with life even if it means periodic or prolonged periods on a respirator.[224]

[223] The spelling of these transliterated words comes from Teutsch's introduction, in *Behoref Hayamim,* 6-11
[224] *Behoref Hayamim,* 23-24

For example, in chapter 4, "End-of-Life Technologies," Dr. Kavesh describes in great detail some of the importance decisions that are found on advance directives, including CPR, ventilators and feeding tubes. For each of these, Dr. Kavesh provides a background, technical aspects, effectiveness, and the pieces that should be considered when making a decision. This chapter would be extremely helpful for one debating how to answer such questions on an advance directive. Kavesh concludes the chapter by saying that advance directives cannot adequately capture everything that one needs to say about one's wishes, however, one should consult and discuss these issues at length with his/her rabbi, family, and doctors.

The multiple chapters in this book address the numerous decisions involved with end-of-life care, the ways that many different kinds of people can be involved in one's care and support, advancing medical technology, pain and suffering, caring for the dying, and thoughts on ending life.

In the chapter entitled "Pain and Suffering," Certified Jewish Chaplain, Sheila Segal, addresses many of the same issues covered in the CCAR responsa. She underscores the importance of relieving pain and offers the idea that medicine is only one way to alleviate pain, "patients whose emotional and spiritual needs are addressed actually require less medication for pain."[225] It is up to the community, chaplains, and family to respond to spiritual and emotional pain. Segal also notes the importance of prayer in lifting the spirits of the sick. As Segal explains the parameters of *goses* and *terefah*, hastening death and removing impediments to death, pain management, and the values inherent in any decision, she weaves real stories of people who endure pain and

[225] *Behoref Hayamim*, 82

suffering with classic midrash and text. Through these texts, Segal asserts, one must always "affirm the sanctity of life that God gives."[226] Segal's chapter in this book provides an in depth explanation of many of the issues and values with which one should grapple when facing end-of-life decisions.

Behoref Hayamim is an excellent resource for liberal Jews who face end-of-life decisions. Though it does not have its own advance directives, the guidelines it offers help Reconstructionist Jews have all of the information they need to make informed decisions. With the information the book provides, Reconstructionist Jews can find ways to balance their Jewish and American values and the advances in medical technology.

5. The Advance Directive of the Agudath Israel of America (2003)[227]

According to this document, it is important for an observant Jew to have "The Halachic [sic] Living Will" to ensure that "all medical and post-death decisions made by others on your behalf will be made in accordance with Jewish law and custom (halacha) [sic]." In an older version of this document,[228] there was an explicit fear expressed in the language that an observant Jew will find him/herself in a situation where doctors will make decisions that are inconsistent with Orthodox Judaism. For example, it stated that, "doctors know nothing about" Jewish law and custom regarding medical decisions, and,

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[226] *Behoref Hayamim*, 99

[227] *The Halachic* [sic] *Living Will* (New York: Agudath Israel of America, 2003). Mordecai Biser, Esq., "Halachic Living Will Question," e-mail message to author, December 16, 2009. Mordecai Biser, Esq. is the Associate General Counsel of Agudath Israel of America. He explained, "The Agudath Israel of America Halachic [sic] Living Will was developed by our organization in conjunction with the New York law firm of Debevoise and Plimpton. It has gone through a number of changes over the years in response to changes in federal and state law, and so each state version has its own date of "publication" depending on when it was recently updated."

[228] There is no date in the older document

that “decisions made on your behalf that will be contrary to basic *halachic* [sic] principles.” This language does not appear in the most recent document.

The new document, like the RCA document, explains, “It is my desire, and I hereby direct, that all health care decisions made for me (whether made by my agent, a guardian appointed for me, or any other person) be made pursuant to Jewish law and custom as determined in accordance with strict Orthodox interpretation and tradition.”

This Orthodox “Halachic [sic] Living Will” differs greatly from the previous Reform and Conservative ADs because it does not enumerate the different kinds of decisions one might be forced to make in medical emergencies. One is asked to list the name and information of two agents who will help determine the wishes of the patient, following Orthodox Judaism. The person then lists two rabbis with whom the agents should consult as they make decisions following Jewish law and custom. When one includes the name of rabbis and signs this form, one ensures that doctors will make all decisions consistently with Orthodox *halakhah* and custom. There is no place for a person to have a choice in any part of their health care; they must rely on the decisions of the agents and rabbis, who will adhere to Jewish law. It is clear that *halakhah* and customs are the only way to make decisions regarding health care, though the specific laws and customs to which they refer are not enumerated in any way in this document.

6. The New Rabbinical Council of America's "Halachic [sic] Living Will" (2009)[229]

The Rabbinical Council of American recently issued a new "Halachic [sic] Living Will" in August of 2009. While the old Advance Directive was similar in form and choice to the Reform Movement's AD, this new "Halachic [sic] Will" differs greatly from the previous version and bears more resemblance to the Living Will of Agudath Israel of America. The guidelines for this "Halachic [sic] Will" explain that an Advance Directive is a state document while the will is in accordance with *halakhah*.

On August 10, 2009, the Rabbinical Council of America (RCA) announced, on their website, the creation of a revised living will. The website reads, "In the midst of a national debate over the escalating costs of healthcare, especially in the last years of life, and recognizing the increased lobbying by various hospitals and health care providers to take over decision-making processes at the end-of-life, the Rabbinical Council of America today published its newly-revised Halachic [sic] Health Care Proxy."[230] This Health Care Proxy is "fully in accord not just with civil law, but with Jewish law and tradition." While the previous Advance Directive enumerated many choices based on many scenarios, this document does not specify such scenarios. The authors of this document at the RCA explain that the proxy should make those decisions at the time of such an emergency, because, "Few people are able to anticipate such detailed developments that may or may not occur many years in the future. By designating trusted parties to act in one's stead in case one is personally unable to do so, one allows for

[229] The Rabbinical Council of America: Halachic [sic] Health Care Proxy: Proxy and Directive With Respect To Health Care and Post-Mortem Decisions, http://www.rabbis.org/pdfs/hcp.pdf (accessed November 23, 2009).
[230] Rabbinical Council of America (RCA), http://www.rabbis.org/news/article.cfm?id=105470 (accessed November 23, 2009).

reasonable decisions by one's agent, in consultation with an informed rabbi, under all situations." This document takes into consideration the national health care debate, advancing technology, and the fact that there are so many different kinds of situations that one could find oneself in at the end-of-life. They do not expect that one should have to make decisions prior to a specific emergency; rather, the proxy will make these decisions in accordance with Jewish law.

On that same day that the RCA published their new "Halachic [sic] Will," they issued a document entitled, "Halachic [sic] Guidelines to Assist Patients and their Families in Making "End-of-Life" Medical Decisions" that offers information, though not comprehensive information, about many of the decisions one might face.[231] The introduction explains, "This document is intended to provide general halachic [sic] guidance to patients and families involved in making difficult medical decisions that frequently arise at the end-of-life. It is not intended as a source for halakhic decisions, nor is it a substitute for the essential dialogue among patients, families, rabbis and doctors. All end-of-life issues and questions should be presented to a Halachic [sic] authority, preferably, when possible, before they become urgent or emergency decisions."[232] The rabbis elucidate the following issues: DNR, DNI[233], the removal of life support, nutrition, pain management, treatment of secondary conditions, brain death, organ donations and autopsies. For each of the issues, the rabbis provide the *halakhic* ruling and, on most issues, explain that in certain circumstances, the *halakhah* is complicated and people

[231] Rabbinical Council of America: Halachic [sic] Guidelines to Assist Patients and their Families in Making "End-of-Life" Medical Decisions, http://www.rabbis.org/pdfs/hcpi.pdf (accessed November 23, 2009).
[232] ibid
[233] "Do Not Intubate," see further discussion in Chapter 4

should make decisions in consultation with doctors and rabbis. For example, Jewish law prohibits the removal of a ventilator because its removal hastens death. However, there are situations in which rabbis allow its removal, if it no longer contributes to the patients care. And, while halakhic authorities usually require treatment for secondary illness, there may be times when such treatment is not required.

In the opening paragraphs of the "Halachic [sic] Living Will," the authors acknowledge the work of Agudath Israel of America, whose work heavily influenced this new document. In the second section of this document entitled "Jewish law to Govern Health Care Decisions," there is a statement that is very similar to the one found in the Living Will of Agudath Israel of America. The only difference is that the Ultra-Orthodox document says that decisions should be made "as determined in accordance with strict Orthodox interpretation and tradition" and the Modern Orthodox document omits the word "strict." This document also requests the name of two agents who will function as proxies and two rabbis who can guide the agents.

This document also includes an "Expression of Intent," different than any other AD included in this chapter. While the Reform and Conservative ADs request that a person check off options with given scenarios, this section requests that the person discuss end-of-life issues with one's agent and rabbi and document one's views about "life-support interventions, palliative/comfort care, pain medication, symptom relief, antibiotics and feeding tubes," in response to the following scenarios: "If I become terminally ill, I want to be treated...If I am in a coma or have little conscious understanding, with no hope of recovery, then I want to be treated..... If I have brain damage or a brain disease that makes me unable to recognize people or speak and there is

no hope that my condition will improve, I wish to be treated....." While this allows some choice, all decisions must be within the *halakhic* guidelines proscribed in the enclosed document.

Conclusion

It is clear that each movement's values and ideology guide its advance directives. Each movement allows individuals different amounts of autonomy in decision-making. The Reform movement's AD is overwhelmingly a document of choice with no discussion of Jewish values, *halakhah,* or the rabbi's role in helping the decision making process. The Conservative AD states its goals of adhering to Jewish law explicitly, though there are multiple ways to abide by that law, with the different interpretations of Reisner and Dorff. In addition, this document requests information about the person's rabbi. The RCA's AD allows little choice in decision-making and requires the listing of a rabbi to help make those decisions, while Agudath Israel's AD only requests the name of the Orthodox rabbi who should be consulted. The Reconstructionist approach makes very much sense, given its approach to community, decision-making, and view of history. The extensive information about all possible decisions is pertinent and useful.

After reading all of these ADs and *Behoref Hayamim,* I think that the Reform movement's AD is lacking in its Jewish content. While I appreciate that it grants the individual autonomy and a plethora of choices, I think that the Reform movement could include more explicitly Jewish statements and information about Jewish choices.

For example, instead of religious mentor, the document could say "Jewish chaplain, rabbi or member of the clergy." In addition, in the way that the Conservative and modern Orthodox ADs include a statement of identity that the person signs, the

Reform movement's AD could include an identity statement that could be viewed as a guide to writing one's one statement. It could include statements such as:

> I am a Jew, I am thankful for the life that I have, and I respect Judaism's emphasis on the importance and holiness of both body and soul.
> I recognize the sanctity and dignity of life and I am created in the image of God. Jewish teachings can help me make sense of the many difficult decisions I will need to make about my care should I lack the ability to articulate my wishes and needs.
> I recognize that there is a distinction, dictated in Jewish tradition and affirmed by Reform rabbis, between hastening death and prolonging life. If I am in a situation in which I am dying,
>
> (check your preference)
> ___I do not want doctors to take actions that may hasten my death but I permit them to remove impediments to dying.
> ___I do want doctors to take actions that may hasten my death and/or remove impediments to my dying.
>
> In addition, if I am in pain, I understand that, according to Reform rabbis' interpretations of Jewish texts, I could receive pain medication to alleviate all my pain, even if it may indirectly hasten my death.

I think that these statements will raise the consciousness of Reform Jews to some of the important issues related to end-of-life care. It will help them acknowledge these hard decisions and know that Reform rabbis have contemplated and offered their opinions on these issues.

In addition, similar to *Behoref Hayamim*, I think it would be helpful to compile more detailed information about specific decisions that people have to make, from a liberal perspective. Though *A Time To Prepare* has some discussion and a glossary of important terms needed to understand such decisions,[234] I think more information that is accessible to a lay audience is warranted.

[234] Address, *A Time to Prepare*, 31-32.

Chapter 4: Reform Clergy – Survey and Guide

Section 1: Reflections from Reform Rabbis in the Field

As I wrote this thesis and wrote about the statements of Reform rabbis through CCAR Responsa and CCAR Journals, it was important to me to be in touch with Reform rabbis in the field as well. From August to December 2009, I sent out an email interview to thirty-four Reform rabbis that I know personally or who other rabbis referred to me as people who have expertise in this area. I spoke with or received the email interview back from twenty-one Reform rabbis. From their answers, I gained a sense of the kinds of issues they come upon as they interact with people who face end-of-life decisions. The rabbis I interviewed are congregational rabbis, rabbis in long-term care facilities and hospitals, and rabbis with a range of experience in different settings. I recognize that the data I gathered is not exhaustive, though it does provide insight into many of the issues that rabbis face. The questions in the survey were as follows:

1. For what kinds of issues have families sought your support and counsel as they made decisions for their cognitively impaired loved ones? (feeding tube, kidney dialysis, etc)
    a. If you have worked in more than one setting, can you describe any differences between the kinds of issues you have experienced in each of these settings (such as long term care facilities, congregations, acute care hospital).

2. If at all, what Jewish texts/sources do you use (including contemporary sources such as Advance Directives, URJ materials, liberal Jewish responsa, etc) either for yourself or with congregants, to inform end-of-life decisions? How do you use them and why?

3. Are there particular end-of-life decisions for which you would like to have Jewish texts and/or Reform Jewish guidance? If so, what kinds of resources might be helpful for you and those you counsel?

4. Do the people you counsel explicitly request Jewish answers to end-of-life questions? If so, can you give some examples?

For the most part, there is not a great difference between congregational rabbis and rabbis in medical settings in the range of issues and the sources that they use when they counsel others. However, rabbis who have worked in both hospital and congregational settings commented that, in a hospital setting, the questions are more urgent and people must make split second decisions regarding the life and death of their loved ones; while in a congregational setting, the questions can be theoretical once a loved one is sick. Rabbis in congregations have more time to use Jewish sources and advance directives with their congregants before end-of-life decisions become pressing.

Question 1

In response to the first question about the kinds of issues for which people seek counseling by their rabbis, there were many different issues ranging from withdrawal of life support to ending dialysis, to questions regarding whether or not to perform surgery. The majority of the responses were about continuing or discontinuing life support. Over half of the rabbis surveyed reported that families sought support and guidance about a loved one who had a feeding tube. This was an issue of importance for both rabbis in hospitals, long-term care settings and congregations. Families question whether or not to put a feeding tube in a loved one, and once it is in, when and if to remove it.

The second major question that rabbis face is about whether or not to sign a "DNR" (do not resuscitate) order. People wonder if heroic measures are appropriate for their loved one and if Judaism sanctions signing such a form.

Another common issue for which rabbis offer counsel is respiratory intervention: intubation, ventilation, and artificial respiration. Family members want to act humanely.

Kidney dialysis is another frequent topic for which rabbis counsel their community members. Patients often begin kidney dialysis when their kidneys fail and sometimes there is a hope of recovery. However, sometimes a patient gets to a point when the kidney dialysis is keeping the person alive but there is no chance of recovery. The patient him/herself or loved ones must then decide whether or not to continue with dialysis.

While the CCAR responsa argue that quality of life should not be a factor in end-of-life decision making, many rabbis mentioned this or similar phrases when explaining the questions they are asked or the language they use to counsel people. The quality of life question occurs when people face hospitalization or hospice care, surgery or antibiotics near the end-of-life, artificial life support, and palliative care for those who are suffering.

Other questions that were asked include options regarding chemotherapy and radiation, whether or not to put in a pacemaker, whether or not to amputate and advice regarding a health care proxy.

Two rabbis who work in a hospital setting commented that people ask about the afterlife and cremation though no one mentioned these questions in the congregational setting.

Some of the specific questions rabbis have been asked include:

> "Should I treat my mother's pneumonia aggressively? She is 78 years old and has had dementia for eight years."
>
> "Should doctors perform surgery to stop a bleed in the brain for an 87 year old man who has lost his capacity to speak and use his right limbs?"
>
> "How should we address the pain and suffering of a badly deformed child?"

Question 2

Thirteen rabbis commented that with all of these questions, many congregants do not necessarily seek a definitive Jewish answer but want to know how Judaism can guide them. Or, want their rabbi to give them a word of comfort and approval as they make these difficult decisions. Many people want their loved ones to have a "dignified death" and want to make the best decisions possible for their loved ones.

The next question asked about the Jewish sources rabbis use either for themselves or their community members. Fourteen rabbis commented that they use the resources of the Reform movement including CCAR Responsa, the URJ Bio-Ethics guides, and Address' book *A Time To Prepare.* One rabbi wrote that he created workshops for his congregants based on *A Time To Prepare.* Rabbis also use living wills and advance directives with their congregants. Two rabbis in hospital settings commented that by the time a patient arrives at the hospital, it is too late to fill out a living will or advance directive and the loved ones must use an old form or make decisions for them.

Seven rabbis quoted Rabbi Yehudah HaNasi and his handmaiden (*Ketubot* 104a) as the most popular rabbinic text that they use to inform their counseling in end-of-life decisions. One rabbi referred to the wood-chopping story as a way to help a congregant with end-of-life decisions (*Sefer Hasidim* #723).

One rabbi commented that he keeps the following responsa as a resource: Warhaftig, Jakobovits, Feinstein and Tendler, while another rabbi uses the writings of Reisner, and Zev Shostak. Five rabbis mentioned that the boundaries of *goses* and *terefah* are helpful for them and some rabbis even use them with their congregants. David Bleich's article about the *goses* in Shema was helpful for two rabbis. Six rabbis

highlighted the importance of Rabbi Dorff's book *Matters of Life and Death* and his discussion of all end-of-life issues, especially *goses* and nutrition/hydration matters. Three different rabbis mentioned the following books and resources: *Flames to Heaven* by Debbie Perlman, *Clinical Ethics* by Albert Jonsen, Jewish Lights Publications, and *Five Wishes*[235]. One rabbi said that he uses biblical, rabbinic, and contemporary texts that he received from Boston Jewish Family and Children Services. In addition to these specific sources, one rabbi said that she discusses basic Jewish values when she is with patients in the hospital while another rabbi said that he helps congregants arrive at their own answers.

Question 3

There was a wide of range of responses to the question of what resources rabbis would like as they continue to counsel people on end-of-life decisions. Most rabbis either could not think of anything or felt that they knew where to find the resources they needed. One rabbi in a long-term care setting said that Jewish materials that will help a patient with pain *and* suffering would be appreciated. Other rabbis requested material on "rituals to say goodbye" and ways to extend life to promote comfort and peace. One rabbi noted that the line between delaying dying and hastening death gets "finer and finer" and it would be helpful to have Judaism more clearly define that line. Another rabbi asked for help with the "limits of living wills." A congregational rabbi said that the

[235] *Five Wishes* is a document, introduced in 1997, similar to an Advance Directive, that allows individuals to explain their desired medical care, and who they would to make decisions for them. It is produced by Aging With Dignity, "a national non-profit organization with a mission to affirm and safeguard the human dignity of individuals as they age and to promote better care for those near the end-of-life."

issue of "withholding antibiotics or other relatively benign treatments is also very important" and it is an issue that begs for further clarification.

Question 4

The final question asked rabbis if the people they counsel request "Jewish" answers to the challenges they face. Yes, thirteen rabbis commented that in many cases people want to know Judaism's approach to one specific issue and the answers will become one factor in their decision-making. In other cases, rather than seeking specific answers, many people seek the rabbi as a pastor to assure them that they are making the right decisions and offer moral support as they deal with difficult situations with their families. Rabbis can provide comfort, hope, and help people pray for guidance and acceptance. Rabbis have also been asked to address the guilt that one may feel after or during the process of making difficult decisions.

Conclusion

The responses above illustrate the issues that twenty-one Rabbis in the field face. While they are by no means representative of all Reform rabbis in the field, they shed light on some of the key issues that Reform Jews bring to their rabbis. They also show the range of sources that Reform rabbis use to inform themselves and help their community members make decisions. Many rabbis rely on the URJ and CCAR resources and Dorff's book to guide them as they work with families. I was surprised to see how many rabbis use the Reform responsa as guides for themselves and how often they quote the story of Yehudah HaNasi.

Chapter 4: Reform Clergy – Survey and Guide

Section 2: For Clergy: A Guide for Decision Making

1. **Nutrition and Hydration**
2. **Kidney Dialysis**
3. **Do Not Resuscitate Order**

Imagine the situation in which a Reform congregational rabbi receives a call from a congregant whose loved one is seriously ill. In the coming week, the congregant must make important decisions for his/her loved one. When family members are forced to make difficult decisions, it can be overwhelming, and cause stress to and conflict among family members. Rabbis play an important role in helping family members sort through the various issues that they face, and help them think clearly and methodically about the decisions they need to make. In addition to the pastoral aspect of care, what Jewish resources would be helpful for this rabbi? Regardless of whether the rabbi will share the resources with his/her congregant, what would be helpful for the rabbi to know as s/he listens to and advises the congregant?

In my interviews with rabbis in the field, the three most common questions that they face concern: nutrition and hydration, kidney dialysis, and the DNR order. This chapter explores these three issues. I provide a narrative voice that synthesizes the material and indicates differences of opinions. I provide brief summaries of relevant resources and raise larger questions about the issues. Most of the materials referenced in this summary chapter can be found with a more detailed summary and further analysis in other chapters of this thesis. In each section, I offer relevant primary Jewish texts that highlight the issues one faces when making these decisions. In all cases, one can find the translation, a summary and commentary for these texts in the appendix.

While this guide is a resource for Reform clergy, clergy, especially those in settings other than congregations, do not only speak to Reform Jews. I hope that the resources presented will provide information that will help clergy address these issues with all people, regardless of their religious affiliation.

Reform rabbis are not *poskim* and rarely, if ever, do patients ask them to offer specific answers or to make decisions for them. With that in mind, this guide does not attempt to answer questions or offer decisive rulings. However, it provides rabbis with important questions to ask and ways to categorize information and think about these difficult issues. In addition, Reform rabbis rarely base their opinions solely on *halakhic* rulings and traditional Jewish texts but use these texts to draw their own interpretations. I have included those Jewish texts that are relevant for a foundational understanding of the Jewish views on these issues.

With all of the following issues, Rabbi Richard Address suggests two important ways that rabbis can help their patients or congregants and their families with these decisions. He recommends that rabbis help patients and their family members think about their goals of care. Does one want to provide care to facilitate treatment that would extend life? Does one want to focus only on comfort care? Does one want to ensure that a loved one lives for as long as possible? What is the value that one places on pain management and a dignified death? Rabbi Address underscores the importance of providing instructions for one's health care proxy. He notes that it is important "to have conversations about how to make decisions on the end-of-life and to know what the laws are of a particular state or province that can impact those decisions. For example, it is essential to have health care proxies and powers of attorneys in addition to an Advance

Directive." When one becomes clear on these issues, it becomes easier to see how other decisions fit into these goals.

In addition, Rabbi Address proposes that when a rabbi begins to help a patient, congregant, and their family members tackle these important decisions, the rabbi, if possible, should consult with a doctor to ensure the s/he understands all of the issues to the best of the rabbi's ability. This way, the rabbi will have the necessary information to assist fully as s/he guides the patient and loved ones in answering questions and forming decisions.

1. **Nutrition and Hydration**

When a family approaches clergy with questions about nutrition and hydration, as with most questions asked of rabbis, pastoral care is an essential part of the conversation. Pastoral care includes the way in which a rabbi responds to congregants or patients and the environment that the rabbi creates. When the rabbi responds, the rabbi should validate the concerns and enormity of the decisions that face this person. Rabbis should convey that through these difficult decisions, the rabbi is there to help facilitate a discussion and provide comfort, grounded in Judaism, and ask questions to help families arrive at the most appropriate answers in each unique situation. When the rabbi asks questions rather than providing answers, s/he demonstrates that there are multiple ways to think about these issues and many ways to find answers that are appropriate within Judaism. With each question that the rabbi asks the family, there are no right answers, but different implications depending on how one views a situation. The way in which the rabbi asks questions and the rabbi's role in helping a family make sense of the questions and think about their own views is an important part of pastoral care.

When a family engages in the process of deciding whether or not to remove nutrition and hydration from a patient, the key questions relevant to this discussion are: Are nutrition and hydration medicine or life giving food/water that are essential? Is this person a *goses* and what are the implications either way? What are the potential risks and benefits of nutrition and hydration? The answers to these questions have various implications and once the rabbi asks these questions, s/he should walk the family through the different implications. The rabbi should be an active listener to understand how the family thinks of these questions and their own loved one and help them to frame the discussion.

In many cases families will engage in conversations about nutrition and hydration when the patient is not aware of such discussions. If there is a chance to discuss these issues with the patient before a situation occurs where one might need nutrition and hydration, one should do so. Mishnah *Yoma* 8:5, which specifically discusses the patient's right to determine his/her need for nutrition, could be helpful in these conversations.

If the family or individual considers nutrition and hydration, provided intravenously, life sustaining, like food and water, whether or not the patient is a *goses*, to remove them would be active euthanasia. There is a debate with the Reform movement as to whether active euthanasia is permitted. While the CCAR Responsa prohibit active euthanasia, some rabbis in the field have written articles that condone it in certain circumstances.

If the family considers nutrition and hydration medicine, then there is a question of whether or not the person is a *goses.*[236] If one considers nutrition and hydration medicine and the person is a *goses*, then there is a debate as to whether or not one can remove them.

Traditional Jewish texts discuss the difference between removing impediments to death and hastening death for a *goses*. If nutrition and hydration are medicine, they could be viewed as impediments to death. The story of Rabbi Haninah Ben Teradion illuminates the distinction between hastening death and removing impediments that prolong dying and provides a context to understand nutrition and hydration. There is some debate among the CCAR Responsa committee as to the application of this story since Rabbi Haninah was a martyr.[237] Rabbi Jakobovits' responsum, *Shiltei HaGiborim*, and the earlier text, *Sefer Hasidim*, assert that one is permitted to remove impediments to death though one cannot hasten death. When one views nutrition and hydration as medicine, they can be viewed as impediments to death.

The words of Mishnah *Semachot* 1:1-4, *Mishneh Torah Hilkhot Evel* 4:5, and the *Shulhan Arukh* also enumerate the prohibitions against hastening the death of a *goses*. Since, according to these texts, one cannot touch a *goses*, one may apply this to nutrition and hydration, which require touching the patient. As one considers whether nutrition and hydration are life giving or medicinal, and determines whether one is a *goses*, these rules may help one come to a deeper understanding of the issues.

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[236] See the appendix on *halakhic* terms for more information and discussion of how one determines the beginning of the *gesisut* stage. Also, consider Dorff's understanding of *terefah* and *goses* given recent medical technological advances.
[237] *Avodah Zarah* 18a

The Orthodox community is divided on such issues. In the Guidelines to the new Halakhic Living Will, published by the RCA in 2009, the authors explain that nutrition is necessary to life but can be removed, in certain cases. The section on nutrition and hydration reads, "While secular wills include the option to refuse nutrition and hydration, generally Halacha [sic] assumes that nutrition should be delivered to all patients. Halachic [sic] authorities consider nutrition to be essential, and generally recommend its provision to all patients, whether conscious or comatose. However, there may be circumstances when artificial nutrition and hydration may be discontinued, in accordance with Halacha [sic]." This section does not explicitly define these exceptions nor does it draw distinctions between those classified as *goses* and other patients.[238]

According to Mark N. Staitman[239], in his article, "Withdrawing or Withholding Nutrition, Hydration or Oxygen From Patients," the *Tzitz Eliezer*[240], "argues that even with respect to a *goses* one cannot withhold nutrition or hydration."[241] According to Rabbi Zlotowitz, the *Tel Talpiyot* responsum instructs that one should not withhold nourishment, even if the person is dying and in great pain. This approach does not view nutrition as an impediment to death but rather a life saving measure.

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[238] Rabbinical Council of America

[239] Rabbi Mark N. Staitman was the Associate Rabbi of the Rodef Shalom Congregation in Pittsburgh and served on the Bio-Medical Institutional Review Board of the University of Pittsburgh Medical Canter and was a Visiting Fellow in its Center for Medical Ethics.

[240] Rabbi Eliezer Yehuda Waldenberg (1915-2006) wrote the *Tzitz Eliezer*, a collection of responsa with halakhic authority that addresses Jewish medical ethics, including end-of-life decisions. Rabbi Waldenberg served as a rabbi in the Supreme Rabbinical Court in Jerusalem and was the rabbi of Shaare Zedek Medical Center in Jerusalem.

[241] "Withdrawing or Withholding Nutrition, Hydration or Oxygen From Patients," by Rabbi Mark Staitman in Walter Jacob and Moshe Zemer, eds., *Death and Euthanasia in Jewish Law: Essays and Responsa* (Pittsburgh: Freehof Institute of Progressive Halakhah, Rodef Shalom P, 1995), 4.

The Reform authors of the 1991 CCAR Responsum "Nutrition and Incurable Cancer," however, say that if one is a *goses* and nutrition and hydration are considered medicine, it is not prohibited to remove them, though they caution people to be careful with this ruling and treat each specific case separately.

If the person is not a *goses,* most rabbis rule that to remove these interventions is considered active euthanasia. One of the most common situations would be someone who doctors determine is in a persistent vegetative state, faces a terminal illness or is in the advanced stages of Alzheimer's disease and is not a *goses*, but requires hydration and nutrition to live. In general, Judaism does not permit the removal of these interventions for such a person. Dorff notes that, "While most rabbis would agree that, at least at some stage, withdrawing or withholding machines and medications from the terminally ill is halakhically justifiable, there is considerably more debate concerning artificial nutrition and hydration."[242] In his article, Staitman says that while secular medical ethics do not do so, Jewish sources differentiate between nutrition and hydration and a ventilator for patients in a persistent vegetative state. According to Staitman, from a theological point of view, a ventilator provides breath, which one cannot live without. Therefore, if one cannot breathe on his/her own, to provide a ventilator would delay death. It is permitted then, according to traditional Judaism (from Staitman) to withhold the ventilator.

Since nutrition and hydration fall in a different theological category and are "not criteria for determining death,"[243] most rabbis say that it is not permitted to remove them because it would be active euthanasia, a positive act of killing. According to Staitman, regarding terminally ill patients (who are not necessarily a *goses),* Rabbi Moshe Feinstein

[242] Dorff, 209.
[243] Staitman, 5

says that, "it is also clear that such a patient who cannot eat normally must be fed intravenously, since feeding strengthens the patient somewhat even if the patient does not feel anything."[244] The CCAR Responsum "Hospital Beyond Recovery" in 5750 (1989/90) also determines that one must not remove nutrition and hydration for one who is not a *goses.*[245]

Staitman however interprets the texts differently to find that it is permissible to remove nutrition and hydration (as well as ventilation) from a person in a persistent vegetative state. Staitman draws a parallel between the Talmudic story of a person who broke his neck and Maimonides' description of care for a decapitated person and a person in a persistent vegetative state. Since according to *halakhah,* a decapitated person has no chance of revival and therefore does not require medical care, a person in a persistent vegetative state also has no chance of revival and therefore also does not require medical care, including nutrition and hydration.[246]

Dorff suggests that in the case of someone with a terminal illness, one must prove the need for medications but justify the removal of nutrition and hydration. Dorff says that nutrition and hydration are medicine. He uses the example of blood transfusions to prove that when one receives anything through tubes, it is not the same as taking something orally. Judaism permits one to receive blood intravenously though it is forbidden to eat blood because when one accepts blood through a tube, it is medicine, not food. Therefore, nutrition and hydration that one administers through tubes are medicine,

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[244] Staitman, 5 (as quoted in Fred Rosner, *Modern Medicine and Jewish Ethics* (Hoboken, N.J: Ktav Pub. House, Yeshiva UP, 1991), 240.)
[245] "Hospital Patient Beyond Recovery, 5750.5," in *Teshuvot,* 365-70.
[246] Staitman, 7-10 (using b. *Hullin* 21a and *Mishneh Torah, Hilkhot Tuman HaMet* 1:15)

not food and water. Since they are medicine, doctors must help a family decide how beneficial it would be to the patient. In addition, when one provides medicine to a patient, in certain circumstances, it is not required because it could prolong death. As with any medical procedure, doctors must determine the benefits and risks of such interventions. For example, when doctors insert a feeding tube, there are dangers including infection and the patient's irritability. One must make a decision with the specific person and medical history in mind. In most cases, a family would make these decisions for a loved one who can no longer communicate his/her wishes. The rabbi could help the family members consider what their loved one would have wanted in this situation.

Dorff differentiates between someone with a terminal illness and a patient in a persistent vegetative state, with some brain activity. In either case, according to Dorff, one cannot use the absence of a quality of life to permit the removal of nutrition and hydration. Also, one cannot argue that to end life would be to end pain because someone in a persistent vegetative state does not experience pain. In addition, since the person does not have a terminal illness, to maintain nutrition and hydration does not prolong death. However, Dorff argues that if nutrition and hydration are medicine but do not cure the patient, they can be removed. Even though the patient does not have a terminal illness, if a person cannot swallow on his/her own, according to Dorff, s/he is in the process of dying. Therefore, nutrition and hydration would prolong death.

Another argument is that some medical professionals define death at the point when there is "irreversible cessation of the functions of the neocortex (the upper brain)

rather than of the whole brain. Permanently unconscious people would then be classified as dead, and nutrition and hydration tubes could be removed."[247] Maimonides defines human life according to the intellect, and therefore when someone in a persistent vegetative state does not have mental capacity, doctors can remove medical interventions. However, Dorff and Reisner object to this justification because it would allow one to stop medical treatments for some mentally ill patients and therefore should not be used to justify any cessation of treatment. But Dorff still holds to his original argument that if nutrition and hydration are medicine, doctors can remove them if they do not lead to recovery and prolong death. In conclusion, Dorff reminds us of the sanctity of life and the gravity of such decisions. He believes that one should keep patients who are in a persistent vegetative state on nutrition and hydration for some time in the event that they may recover and to give family members the opportunity to say goodbye. The rabbi's pastoral care through that difficult time when families need to say goodbye to loved ones is extremely important.

These issues are also discussed in the URJ Bio-Ethics Guides, CCAR Responsa and in the CCAR Journal. The 1990 Bio-Ethics Guide entitled, "Termination of Treatment" addresses this issue. In Dr. Gordon's article included in the Guide, he notes that there is at least one medical organization that considers nutrition and hydration a medical procedure that can be removed in certain cases.

The first responsum that addresses this issue is around the same time as the Bio-Ethics Guide and Biennial discussion – in 5750 (1989-1990). The question (in summary)

[247] Dorff, 215

is: Is it possible to remove a feeding tube from a man who suffered from a stroke, was given a feeding tube, and then went into a semi-comatose state? (The patient would not have wanted to live in this way and is not technically in a persistent vegetative state, does not have any quality of life, according to doctor and family).[248] The rabbis decide that since the person is not a *goses,* one cannot remove the nutrition and hydration. Though they do not state it explicitly, the rabbis view nutrition and hydration as life-giving, not as medicine, and therefore forbid its removal. However, if the person was a *goses* and brain dead according to Harvard, then the rabbis would permit the removal of nutrition and hydration because (according to their understanding of the 1980 CCAR Responsum), it is permissible to remove life support when a person has lost "natural independent life."

In 1991, in the "Nutrition and Incurable Cancer" responsum, the committee determined that, because doctors administer the nutrition and hydration intravenously, they are medicine.[249] In addition, because the patient was a *goses,* the rabbis considered these medicines impediments to death and therefore, permitted their removal.

In their 1997 responsum, Washofsky and Plaut return to this issue with more nuance than in earlier responsa.[250] They write that the leaders of Jewish movements (not only Reform leaders), as well as medical professionals are divided on the way to categorize nutrition and hydration. If nutrition and hydration are medicine then they can be moved, "when intervention is no longer medically justified." Washofsky and Plaut reference a number of medical ethicists and doctors who debate the issue of whether nutrition and hydration are medicine or necessary as life-sustaining interventions.

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[248] Hospital Patient Beyond Recovery, 365-70
[249] Walter Jacob, "159. Nutrition and Incurable Cancer, 1991, 263-64.
[250] Mark Washofsky, "On the Treatment of the Terminally Ill, 5754.14," 337-63.

In Saperstein and Mishkin's CCAR Journal article (1997), entitled, "The CCAR Responsum on End ofLife Issues: An American Legal Perspective," they question whether to remove nutrition and hydration.[251] Saperstein and Mishkin explain that in the Cruzan Case, the Supreme Court permitted the removal of these interventions though the ruling did not state whether nutrition and hydration are medicine or life saving.[252] They permitted this removal because a person's right to liberty over medical care took precedence over the state's responsibility to provide medical care.[253] Many states do allow the removal of these interventions. In this responsum, the CCAR rabbis leave the question of whether nutrition and hydration are medicine up to the autonomy of the patient and family.

In the Reform Advance Directive, one can choose whether or not to receive nutrition and hydration when in a coma, persistent vegetative state, facing a terminal illness or an irreversible brain damage. In the Conservative Advance Directive, while one can elect to have nutrition and hydration, there is a difference of opinion between Dorff and Rosner. While Rosner says that one must have nutrition and hydration in all circumstances, Dorff allows for such interventions on a trial basis or not at all. In the Orthodox Advance Directive, nutrition and hydration are not listed at all; they are not a choice and must be provided for the patient.

The *RaN's* commentary on *Nedarim* 40a asserts that while one prays for someone's healing, there comes a point when one can no longer pray for recovery and can

[251] David Saperstein and Douglas Mishkin, 36-45.
[252] Cruzan v. Director, Missouri Department of Health (June 25, 1990).
[253] Dorff, 209

pray for death. As families struggle with how to view nutrition and hydration and the *gesisut* stage, these texts can guide the rabbi and in certain cases, the family as well.

It is clear that there are a variety of ways to think about nutrition and hydration and a plethora of interpretations from the Jewish movements. Clergy are extremely important as they can help people cope with their grief in having to make such decisions, ask important questions and decide the best course of action.

2. Kidney Dialysis

Many of the rabbis that I interviewed commented that they receive many questions about whether or not patients should continue kidney dialysis. Doctors provide kidney dialysis for patients in kidney failure as a result of a variety of illness including some cancers and diabetes. Kidney failure is "the inability of the kidneys to perform their normal function of filtering waste products from the blood."[254] Kidney dialysis[255] cleans the blood by machine or fluid and usually involves treatment for several hours a day, for a couple of times a week, during which the patient is connected a machine. This can be an arduous and painful process, especially for very ill and frail patients. In some cases kidney dialysis can be a temporary treatment for a limited time that results in restored kidney function. In other cases, patients often depend on this treatment for long periods of time when there is little or no chance of recovery.

Some important questions to consider are: What are the chances that the dialysis will reverse the kidney failure? Does the patient have an underlying condition or disease

[254] American Medical Association., *American Medical Association Complete Medical Encyclopedia (American Medical Association (Ama) Complete Medical Encyclopedia)* (New York: Random House Reference, 2003), 759.
[255] See more information about kidney dialysis in the Appendix

that will not go away, even if the dialysis is successful and the kidneys are restored to normal function? What are the potential risks and benefits of kidney dialysis in this specific situation? Once doctors have determined that the dialysis will not help with recovery, but could prolong death and provide some comfort for patients, can patients cease this treatment? When and under what conditions should such a cessation be permitted? How will the dialysis affect the physical and mental state of the patient?

The 1988 CCAR responsum specifically addresses kidney dialysis. In summary, the question is: Can a doctor force a patient (Mrs. M) who has renal disease (among other sicknesses) to undergo kidney dialysis if she refuses? [256] The responsum authors conclude that in this case, the patient has the right to refuse kidney dialysis because it may prolong death or, should medical complications arise, could hasten her death. This case also presents the issue of the patient's autonomy. Since many dialysis patients are cognitively aware of their situation, doctors and family members should listen to the patient's desires. This responsum underscores the autonomy and right of the patient to refuse care, even when the benefits outweigh the risks.

The text from Nedarim 40 and *RaN's* commentary on it, while they are about prayer, can be generalized to include measures that prolong death and do not cure a person. These texts argue that while one should pray for the sick, there are times when one should stop praying for a cure.

Jewish texts draw an important distinction between hastening death and prolonging dying that is relevant for questions of kidney dialysis. Isserles' commentary on *Shulhan Arukh* 339:1 and his original source, *Sefer Hasidim,* outline the distinction

[256] Walter Jacob, "157. An Elderly Patient who Refuses Dialysis," 259-262.

between hastening death and prolonging dying. They forbid one to engage in actions that prolong dying. This text is applicable, since, in many cases, kidney dialysis does not have curative benefits, but prolongs dying. The story of Rabbi Yehudah HaNasi and the handmaiden conveys the actions one might take for a loved one when that loved one faces pain and suffering and the medical interventions (or in the case of the rabbi, the prayers that people believed to have similar saving powers) prolong death.[257]

In 1989, Reform rabbis wrote responses to this responsum in a "Case Study II: Autonomy-My Right to Live or Die."[258] Rabbi Dayle Friedman explains, "Since she is the person who bears the burdens, benefits and risks of the various courses of action before her, Mrs. M is the most appropriate person to decide whether or not to face these risks. Only she can appropriately weight the Jewish values of preservation of life against these risks."[259] Friedman also notes that this decision is not comparable to suicide or euthanasia because stopping dialysis does not hasten death.

Rabbi Bernard Zlotowitz, in the same Bio-Ethics guide, highlights the importance of a living will in this case. The living will ensures that a doctor will uphold the person's desires in medical cases.[260] Indeed, in many of the CCAR Responsa, including one specifically addressing living wills, the authors highly encourage everyone to have such a document. As another aspect of pastoral care, the rabbi can guide people to sign living wills and help them to grapple with the questions within them. While it is difficult to begin to fill out an advance directive once one faces these decisions, rabbis can help people complete these documents earlier in their lives, before the reach this state.

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[257] *Ketubot* 104a
[258] Address, ed., *II. Bio-Ethics Case Study*
[259] ibid, 4
[260] ibid, 8

Many of the Advance Directives of the Jewish movements provide the option of kidney dialysis in certain cases. In all four of the scenarios mentioned in the old Mainstream Orthodox advance directive, one can choose whether or not s/he would want kidney dialysis. While the Conservative movement's AD does not address kidney dialysis directly, in some cases it falls under life-sustaining treatment. When it does, there are two opinions. Rabbi Dorff's opinion allows for one to withhold treatment in cases where someone is terminally ill or permanently unconscious. In Reisner's opinion, one cannot stop care when it extends life. In addition, in the case of the terminally ill patient, one can choose the option that says, "Aggressive medical or surgical procedures, … can be most debilitating and destructive. While I desire to fight my disease with all effective tools at my command, I do not wish to undertake treatments which have not been shown to offer meaningful, measurable results…." In the Reform Advance Directive, one can choose kidney dialysis in all of the scenarios presented.[261]

When doctors question the possibility of a cure, Jewish law does not obligate the doctor to provide such intervention. However, *Avodah Zarah* 27a-b and the *Tosafists'* commentary discuss the extent that a doctor can help a patient in the last hours of life. One may apply this to a patient who decides whether or not to continue kidney dialysis.

Rabbis should encourage family members to ask what the risks are to kidney dialysis for the patient. Because dialysis, in most cases, requires a catheter in the arm,

[261] Permanent coma or persistent vegetative state, coma with chance of survival with brain damage, terminal illness, weeks to live, can't make decisions, have feelings, irreversible brain damage, brain disease, no terminal illness, a scenario left open to be provided by patient and doctor, current state of health (see more details in the chapter on Advance Directives)

such risks could include, among other problems, infection, heart attack, hepatitis, pain.[262] A rabbi could guide family members to consider these risks along with the benefits.

Since kidney failure often occurs when a patient battles another illness or disease, Reform rabbis advise one to treat the whole person rather than specific symptoms of an illness. If someone suffers from a terminal illness, to receive kidney dialysis would not address the primary illness but would only prolong death and is therefore not a required treatment. However, in cases where the kidney dialysis would restore function and strength and could assist in a cure, it is required.

In the "On the Treatment of the Terminally Ill" responsum, Washofsky and Plaut[263] differentiate between "therapeutic and successful" treatments and those that maintain a status quo. In some cases kidney dialysis falls under successful treatments, and these responsum authors require such treatment. In addition, there are times where dialysis does not produce a cure but could control the disease and allow the patient a higher degree of function, even in terminally ill patients. In these cases, the dialysis is also required because the rabbis views the dialysis as *pikuah nefesh*. However, once the dialysis causes suffering or does not have any positive benefits, one can discontinue it. The CCAR responsa that address this issue do not prohibit kidney dialysis when it will not cure, but offer it as a choice.

This discussion illustrates that each question of whether or not to continue kidney dialysis highly depends on the individual case, since there are many different purposes for such treatment. Clergy can help people to ask the right questions and consider different views.

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[262] Address, ed., *II. Bio-Ethics Case Study: Autonomy*, 2
[263] Mark Washofsky, "On the Treatment of the Terminally Ill, 5754.14," 337-63.

3. DNR: DO NOT RESUSCITATE Order

The rabbis in my survey commented that many people ask them about signing DNRs. DNR stands for a "DO NOT RESUSCITATE" order signed by patients and/or family members that instructs doctors as to how to proceed in a situation in which a person stops breathing and goes into cardiac arrest. If one signs the DNR form, doctors will not try to restore the heartbeat. However, if the form is not signed, to restore the heartbeat, doctors use measures that include CPR (Cardio-pulmonary resuscitation) and the use of a class of drugs known as pressers to increase blood pressure. Doctors use either defibrillator paddles or manual chest compressions when they perform CPR.

In addition to CPR, when one stops breathing, there is an option to intubate and restore breathing, mechanically. Doctors do this with mechanical ventilation. They insert a tube in the mouth that is connected to a ventilator, a machine that pushes oxygen through the lungs. Doctors can also restore breathing manually with a self-inflating bag.[264] In addition to the option of signing a DNR form, family members can sign a DNI form, "do not intubate," indicating that they do not want doctors to intubate their loved one with mechanical intubation. Typically, these measures, DNR and DNI, go together.

Some doctors change the DNR form to an "AND" form, "Allow Natural Death." This changes the tone of such a form and though it would have the same results, the AND has a more neutral stance. Clergy can help families learn about this form and reframe the tone of a discussion to think through the goals of the form.

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[264] See Appendix B

There is an important distinction between performing CPR and putting in a ventilator and removing the ventilator at a later time. This section focuses on the decision of whether or not to begin these measures but does not address other issues of removing them.[265]

Some important questions to ask when one decides whether or not to sign a DNR, DNI, or AND are: What is the purpose of such intervention for the patient? How strong is the possibility that these will be temporary measures that will lead to the patient resuming breathing and a heart rate on their own? Does this patient have an underlying terminal illness that will mean that the person will never be able to regain independent control of breathing and heart rate? Is the patient a *goses*?

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[265] With regard to removing respiration, in his article in *Jewish Biomedical Law*, Elon quotes Rav Hayyim David Halevy, the Chief Rabbi of Tel-Aviv Jaffa in his article "Disconnecting a Patient with No Hope of Survival from an Artificial Respirator", *Tehumin* 2 (1981, 297) who compares the permission to remove salt from the tongue to the removal of an artificial respirator. He writes, "Clearly we did not write all of the aforesaid in order to ascertain the law on feathers in a pillow or a grain of salt, but the law of the grain of salt that may be removed from the tongue of a dying man provides the perfect analogy to the artificial respirator. For the permission to remove the grain of salt is agreed and obvious in the unanimous opinion of all the *poskim* of Jewish law, and the main reason given is that this is merely removing an impediment. It has also already been explained that this grain of salt was placed on the tongue of the patient apparently in order to prolong his life, in hope that a cure would be found for his illness (*Bet Lehem Yehuda* on *Shulhan Arukh*). But when we see that he is dying, and the grain of salt is prolonging his pain in dying, it is permissible to remove it. Now, we can see that the respirator is very similar, for the patient, when brought to the hospital in a critical condition, is immediately connected to the artificial respirator, and he is kept alive artificially in an attempt to treat and cure him. When the doctors realize that there is no cure for his injury, it is obvious that it is permissible to disconnect the patient from the machine to which he was connected…. It is my opinion that not only is it permitted to disconnect him from the artificial respirator, but there is even an obligation to do so, for the soul of the man, which is the property of the Holy One, Blessed be He, has already been taken by Him from that man, for as soon as the machine is removed, he will die. On the contrary, by the artificial respiration we are keeping his soul in the body and causing it anguish in that it cannot depart and return to its rest," 224-5.

In 1989, the CCAR responsa committee addressed the question of whether one should administer CPR to the frail elderly. They concluded that since the patient was not a *goses*, and does not have a terminal illness, everything must be done to preserve life. Here, like in other responsa, "quality of life" is not a determining factor and the sanctity of life should be upheld. *Yoma* 83a and 85a support the assertion that doctors should do everything in their power to try to save someone at the end of their life. One could apply these texts to someone who is in cardiac arrest and will die without resuscitation.

In the *Shevut Ya'akov* 1:13, Rabbi Jacob Reisher argues that one should try to save the *goses* for as long as possible to prevent the patient from suspecting that he is in the last hours of his life. One could use this as a basis for permitting CPR and not signing a DNR form. Each unique situation must be considered carefully. In *Shevut Ya'akov* III:75, Reisher says that if one is in *hayyei sha'ah*, doctors should *not* do anything for risk that they will hasten the patient's death. This shows the delicate nature of such situations. Reisher distinguishes between a *goses* and someone who is *hayyei sha'ah*. This distinction could be helpful as people make decisions about their loved ones.

Regarding a *goses*, this 1989 responsum also explains that,

> "Nothing needs to be done for someone who is clearly and obviously dying and whose death is close. At that stage we may not remove life support systems, but we also need not institute any procedures."[266]

In this case, one might use the story of King Saul to illustrate the actions one may take when one faces great pain and suffering. There is, however, tremendous debate over the implications of King Saul's story.[267] In addition, the story of Resh Lakish[268]

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[266] Jacob, Walter. "160. CPR and the Frail Elderly, April 1989."
[267] 1 Samuel 31:1-6, II Samuel 1:1-16, see further discussion in the appendix
[268] *Bava Metzia* 84a

demonstrates that when one is very sick, sometimes the way to show mercy toward the patient is to let that person die. While it is a very hard decision to sign a DNR, this text shows that sometimes, depending on the individual, it might be the best decision.

In the "On the treatment of the Terminally Ill" responsum, Washofsky and Plaut note that the "withholding of either [feeding tubes and other medical procedures, including CPR] will result in death from the very disease which warranted its introduction in the first place."[269] Therefore, though they do not discuss it explicitly, one could argue that they condone the DNR for someone that suffers from a terminal illness.

The "CPR and the Frail Elderly" responsum recommends that one have a living will to convey one's wishes regarding CPR. The Reform Movement's AD provides the option of both CPR and mechanical breathing in each of the scenarios described. In the Conservative Movement's AD provides the option of CPR in the event that the cardiopulmonary system fails in a terminally ill person or the person experiences a permanent loss of consciousness. There is also the option to select the following statement, "I would consider CPR, by whatever means, to be contrary to God's will, and therefore ask that my body not be subjected to such handling. In such case I would consider a DNR order to be appropriate." The Mainstream Orthodox movement lists CPR and mechanical breathing as an option in all of the scenarios they provide. When CPR is administered, it is only in an emergency, while intubations could happen during or after surgery as a necessary part of a medical procedure. There is a distinction then, between choosing not to intubate in an emergency when one stops breathing and permitting the use of mechanical breathing during and after a procedure.

[269] Washofsky, 337-363

In the RCA's guidelines for their Halakhic Living Will, they explain that there are some times when they would permit someone to sign a DNR. The statement says, "Jewish law emphatically emphasizes the preservation of life, though there may be circumstances when a DNR order would be halachically [sic] appropriate."[270]

DNRs, DNIs and ANDs fall into a category all their own, because doctors request that one sign these forms in anticipation of a future emergency and cardiac arrest. It is very important, here, to consider the goals of care, the health of the patient, and the implications of signing or not signing the form.

[270] Rabbinical Council of America

CONCLUSION

Baruch atah, Adonai Eloheinu, Melech haolam asher yatzar et haadam b'chochmah… Praise to You, Adonai, who formed the human body with skill…it is well known…that if one of (my organs) be wrongly opened or closed, it would be impossible to endure and stand before You…

And then what will I do? What will my loved ones do?
How will Reform clergy teach, preach, and counsel about these issues?

This thesis attempts to compile and understand many of the resources available to Reform clergy to help answer these questions. The answers to these questions are never easy and one must always consider the specific situation of each patient. This thesis illuminates the values and concepts that have shaped discussions on end-of-life decisions and may help clergy to frame conversations as they counsel others.

These resources are only a narrow slice of available information that Reform rabbis have written. I focused on those produced by the URJ and CCAR, however, there are other books and articles, written by Reform rabbis, including, but not limited to, Rabbi Cary Kozberg,[271] Rabbi William Cutter[272] and the many books and pamphlets published by Jewish Lights Publishing.

The CCAR responsa and resolutions respond to many end-of-life decisions that people face including euthanasia, surgery, pain medication, and other medical interventions. The Reform rabbis take these issues seriously and respond to questions with support from traditional rabbinic sources while they recognize the influences of ongoing advances in medical technology. They interpret these Jewish texts with a liberal

[271] James Michaels and Rabbi Cary Kozberg, eds., *Flourishing in the Later Years: Jewish Perspectives on Long-Term Pastoral Care* (Mishawaka: Victoria Press, 2009).
[272] Rabbi William Cutter, PhD, ed., *Healing and the Jewish Imagination: Spiritual and Practical Perspectives on Judaism and Health* (Woodstock: Jewish Lights Publishing, 2008).

lens and sensitivity to both the individual nature of each decision and the importance of pastoral care. *Sefer Hasidim* and *Shulhan Arukh, Yoreh Deah* 339:1 and subsequent commentators form the basis of many of the arguments in these responsa.

Over the years, the responsa remain consistent in their values. The rabbis frequently consider the utmost importance of the sanctity of life while they acknowledge the line between hastening death and removing obstacles that prolong death. Many of the responsa highlight the state of *gesisut* as a way to differentiate between levels of permissible medical intervention. Pain and suffering often arise as significant issues in the responsa and the rabbis unfailingly maintain that one should take pain medication, even if there is an indirect effect of hastening death. In the last fifty years, while the values do not change, one can see the development of thought and response to technological advances, the clearest examples being the responsa about organ donation, nutrition and hydration, and the influence over the years of the Harvard Medical School's definition of brain death.

While other Reform writings may express different opinions, the Reform responsa committee always forbids active euthanasia and physician-assisted suicide. Another important way that these responsa differ from other writings of Reform Jews is the refusal to permit a lack of quality of life, not including pain and suffering, as a determinant in care. The authors of the Reform responsa, on a whole, appear to be stricter in their rulings than many other Reform rabbis who respond to these issues in formats other than responsa.

The few CCAR Resolutions that address end-of-life decisions respond to euthanasia, death and dying, hospice care. It is clear that there the resolutions are

connected to the responsa and CCAR journals. The first resolution in 1948 that seeks to tackle issues of euthanasia sets in motion the 1950 responsa on euthanasia. The CCAR wrote the next resolution in 1977 about death and dying, two years after the responsa on reliving pain of a dying patient. The rabbis wrote the resolution on hospice care one year before Moss' 1981 article about hospice care in the CCAR Journal.

The CCAR Journals do not delve into the same depth as do the responsa. In the journals, rabbis and scholars focus on the importance of pastoral care and engage in a rich discussion of many aspects of euthanasia. Few articles mention God's role in suffering and healing, though they do assert that God grants life and some argue that therefore, there is a limit to one's own role in ending one's life.

While the CCAR Responsa and CCAR Journals target a rabbinic audience, the Bio-Ethics guides and *Reform Judaism* Magazine reach a lay audience. There is a strong link between the two; often *Reform Judaism* advertises new Bio-Ethics guides as well as Rabbi Address' book *A Time To Prepare*. The information in the Bio-Ethics guides provide extensive materials for one facing end-of-life decisions, and bring in relevant sources from outside the Jewish community, including *New York Times* articles and information about United States court cases. In addition, these guides are connected to the CCAR Responsa and Journals; they often include relevant responsa and address similar issues. For example, soon after the eighth Bio-Ethics Guide about pain and suffering was published, *Reform Judaism* advertised this guide and provided some discussion about the issue. In addition, Rabbi Address, the Guides' editor, explained that he wrote the guides in response to requests from the field and his discussions with

families.[273] This illustrates that these guides, perhaps more than the journals, respond to real issues that people face in the Movement. However, these Guides do not provide adequate pastoral support for the issues that people face. They rarely provide advice on where people can go to discuss their feelings or validate their concerns. The Guides do not synthesize all of the material presented and rarely provide ways to frame discussions on the issues. A person facing a difficult end-of-life decision should not use one of the Bio-Ethics Guides on his/her own; s/he should consult a clergy member.

With all of the discussion about end-of-life decisions, it is important to acknowledge the right of the individual patient in determining his/her care. The extent of one's rights and control over his/her care differ from one Jewish movement to the next. All of the Jewish movements recommend that one complete an Advance Directive or Halakhic Living Will early in one's life, before one would come into a situation where one's ability to make decisions would be compromised. This document provides guidance to both doctors and loved ones and in some cases, leads doctors to rabbinic authorities that should help in decision making. The advance directives and living wills represent the spectrum of Judaism and highlight the distinctions between each movement. All of these documents recognize that end-of-life decisions are complex and, depending on specific situations, there is more than one way for doctors to administer care that is in adherence with Jewish law.

Reform rabbis in the field receive end-of-life questions that range from kidney dialysis, to DNR to hospice care. The rabbis who responded to the survey demonstrate that they use traditional Jewish texts, resources from the Reform movement and other

[273] Richard F. Address, "A Time To Prepare," e-mail message to author, January 7, 2010.

sources that illuminate these issues. Many of the rabbis also note the importance of pastoral care and spiritual healing as they respond to questions from patients, congregants, and family members of dying individuals. They stress that each case must be looked at individually and with sensitivity to the family and situation. Another important piece of the work of many rabbis is to prepare people to think about these issues in plenty time before they face such issues. This work includes classes on preparing for end-of-life, consultations on advance directives, and sermons that raise important end-of-life questions. People are better able to respond to these issues if they have had adequate time to think about them in calm and thoughtful ways before an urgent situation arises.

While responsa, resolutions, Bio-Ethics Guides, and Advance Directives are pieces of the larger puzzle, the rabbi who works with individuals and families grappling with end-of-life decisions must adopt a comprehensive way of addressing these issues with a combination of pastoral care, key questions to consider, Jewish texts, a variety of opinions on the issues, and references to other sources that further discuss the issues. I addressed all of these areas in the study of nutrition and hydration, kidney dialysis and DNRs; one could apply a similar method to many end-of-life decisions. One important message in this chapter is that, especially in the Reform movement, clergy should not provide one specific answer, but rather help people through the process of making an educated decision.

Amid all of the research that I have done and the chapters that I have written, there are many important lessons regarding end-of-life decisions and the Reform movement. It is important to know that there is a range of opinions about many issues

within the Reform movement, especially with regard to active euthanasia. Reform rabbis give tremendous weight to traditional texts and uphold the sanctity of life and personal autonomy as two very important values. They balance these values with the prohibition of hastening death while also not prolonging dying. The Jewish texts validate many of the emotions around end-of-life, provide insight, and many of them can easily be interpreted in light of advances in medical technology. And, often there is more than one way to legitimately interpret the texts for Reform Jews.

As rabbis address specific decisions, there is always a desire to reconcile traditional Jewish sources with current American trends and court cases as well as advances in medical technology. Reform rabbis highly encourage people to think deeply about these issues before one becomes physically compromised; they recommend the use of living wills and advance directives in addition to learning more about the issues. Many of the CCAR responsa underscore the importance of treating the whole person rather than a specific illness; rather than focus on a treatment for pneumonia, for example, rabbis suggest that one considers the full medical history of a patient.

Many of the rabbis emphasize that one must consider the situation of every individual and cannot universally or blindly apply rules. This issue highlights the importance of clergy to provide context, structure for discussion, good questions, validation of feelings, in some cases use of texts, especially stories. Though the rabbis do not provide extensive information about how to offer pastoral care at the end-of-life, it is clear that it is a necessary part of care.

When I began this thesis, I was motivated to understand the complexity of end-of-life decisions and the ways that the Reform movement has interpreted traditional Jewish

texts. I thought that I would find one way to respond to issues such as euthanasia, those in a persistent vegetative state, Alzheimer's disease, and those questioning the termination of treatment. Instead, I found that all Jewish movements, not only Reform Judaism, address these issues with depth and provide many answers to these questions. As I think about all of the people who I encountered during CPE, I feel an increased sensitivity toward them and their family members and feel knowledgeable enough to understand the issues and respond thoughtfully. As a result of my research, I feel prepared to guide congregants, family members and patients through the end-of-life decision making process.

My research raised my awareness to many questions about God's role in pain and suffering, sickness and dying. Where is God in hospital rooms, hospice care, and as one breathes his/her last breaths? Throughout the traditional and contemporary texts I studied, authors depict God as a healer of the sick, hold God responsible for sickness, and write about God as one who receives our prayers. These texts do not, however, discuss the Godliness of those loved ones who make these difficult decisions.

I believe that God is in the faces, hands, and souls of the people who reach out to their loved ones with love and compassion. We partner with God when we value the sanctity of life and help make decisions for our loved ones that honor them and the choices they would have made. God resides in us when we honor those we love and allow them to die peacefully, with dignity. The end-of-life decisions that many of us are forced to make are not easy, but perhaps we can be comforted by the notion that we are God's partners in creation and in all that life throws our way.

APPENDIX A: An Overview of Halakhic Terms Related to End-Of-Life

Jewish law marks stages of death just as it marks stages at the beginning of life. One's life does not end at one specific moment; it is a process that can include: illness, terminal illness, cessation of breath and heartbeat, brain death, and eventually the departure of the soul.[274] Rabbinic sources speak of the following terms: *goses, terefah, hayyei sha'ah, noteh lamut, shechiv me'ra,* and *yetziat neshama.* While one is commanded to cure,[275] at different stages on this continuum, one is not necessarily commanded to sustain life. Since there are so many ways of sustaining life through the newest medical interventions, it is important to have an understanding of how these terms may inform end-of-life decisions today.

According to the *Encyclopedia of Jewish Medical Ethics,* there are specific definitions for these different stages in rabbinic texts and explanations of various implications of them.[276] However, because of all the medical advances today, it is hard to differentiate between these definitions today and make rulings based on them. These terms can be applied to few people in their natural stages; most often they are medically induced. That said, here is a summary of frequently used terms, the various implications, as they were understood in rabbinic times, as well as some of the ways they are understood today.

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[274] Dorff, 200.
[275] Exodus 21:19
[276] Dr. Avraham Steinberg, ed., *Encyclopedia of Jewish Medical Ethics*, vol. IV (Jerusalem: Makhon Shlezinger le-heker ha-refu'ah 'al pi ha-Torah le-yad ha-merkaz ha-refu'i Sha'are Tsedek, 1994).

Goses

Among these terms, the most commonly used term in the CCAR Responsa is *goses*. The origins of the *halakhah* for the *goses* come from the Mishnah, Talmud and *Shulhan Arukh*. Tradition teaches that one is considered *goses* when one will live for seventy-two hours or less. Mishnah Shabbat 151b instructs that one cannot close the eyes of a *goses,* for it is murder. *Semachot* 1:1 explains that the *goses* is considered a living person, a "flickering candle," in all respects. Rashi (on the Mishnah) argues that, "in such a state, even the slightest movement can hasten his death." One of the most important distinctions for a *goses* that is used by the Reform Responsa comes from Isserles in his commentary on the *Shulhan Arukh*. Ramah (Isserles) notes that, "If there is anything which causes a hindrance to the departure of the soul such as the presence near the patient's house of a knocking noise such as a wood chopping or if there is salt on the patient's tongue and these hinder the soul's departure then it is permissible to remove them from there because there is no act involved in this at all but the removal of the impediment".[277]

Isserles makes a very important ruling for someone in the *gesisah* stage: one cannot do anything to shorten life or hasten death but one may remove stumbling blocks to death so as not to prolong suffering. Should one do something to a patient that hastens death, one is liable for capital punishment.

In more modern writings, rabbis and doctors attempt to apply these rabbinic rulings to medical advances and contemporary situations. Because of medical technology,

[277] Rabbi Moses Isserles, Gloss of Ramah in *Shulhan Arukh, Yoreh Deah*, no 339.1, in Fred Rosner, "Commentary on 'Jewish Law and End-of-Life Decision Making'," *The Journal of Clinical Ethics* 18, no. 4 (2007).

there is a debate as to the exact moment this period known as *gesisah* begins. In his article entitled, *Jewish Medical Ethics and End-of-Life Care*, Dr. Barry Kinzbrunner[278] defines the *goses* as "actively dying."[279] Rabbi J. David Bleich's definition focuses on the doctor's efforts. He explains the *goses* period begins "when all possible medical means are being used in an effort to save the patient and nevertheless the physicians assume that he or she will die within seventy-hours.[280]

Doctor Kinzbrunner notes that today a *goses* is determined, also in the last three days of life, by the breathing of the patient: it is the "last three or so days of a person's life and is recognizable by the heavy, labored, erratic breathing that a patient experiences when death is considered imminent and/or patient's inability to clear secretions from their upper airway, compatible with what is described as 'death rattle.'"[281]

Rabbi Dorff explains that because medicine and technology can keep someone alive who may normally die in 3 days, other rabbis say that someone is a *goses* when they "suffer from an incurable, terminal illness, even if it will be a year or more before the person dies."[282] This means that one could be considered a *goses* for up to a whole year rather than the three-day period of which the traditional texts speak.

Since there is a debate as to when this *goses* period begins, it becomes difficult to apply the specific *halakhah* related to a *goses* to modern situations. Kinzbrunner, like many others, argues that "the recognition of a "*goses"* in modern medicine is somewhat

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[278] Dr. Barry Kinzbrunner is a doctor of oncology, gynecologic oncology, pediatric oncology and internal medicine in Miami, Florida
[279] Barry M. Kinzbrunner, M.D., "Jewish Medical Ethics and End-of-Life Care," *Journal of Palliative Medicine* 7, no. 4 (2004).
[280] Dorff, 199, footnote, 54
[281] Kinzbrunner, 564
[282] Dorff, 200, footnote 55

controversial, since medication and suctioning can effectively clear secretions, and other interventions, if applied, can prolong or delay the dying process to a point where the patient's status as a "*goses"* could be considered in doubt."[283]

In his responsum, Moshe Feinstein responds to the ruling that one cannot touch a patient who is a *goses.* He asserts that "touching does not refer to basic care needs such as cleansing and providing liquids by mouth to overcome dryness…routine hospital procedures, such as drawing blood or even taking temperature, have no place in the final hours of a patient's life."[284] These are new medical technologies that the rabbis could not have predicted when they instructed that one cannot touch a patient. It is important, then, that one draws a distinction between these different kinds of interventions.

Regardless of when one might define the beginning of the *goses* stage, Dorff notes that today, once this stage is reached, it is permissible to cease all medical efforts to save the patient, but one should continue to relieve pain, even if it will hasten death.[285]

Terefah

Terefah refers to someone with an "imperiled life."[286] According to Maimonides, someone is considered a *terefah* when someone presents "the presence of an illness or pathology that 'the physicians say…does not have any remedy for humans, and it will surely cause his death" (Maimonides, MT, Laws Concerning Murder 2:8). Maimonides says, "One who murders a *terefah,* even though he eats and drinks and walks about the

[283] Kinzbrunner, pg. 565 – from Shostak-footnote 6
[284] Fred Rosner, "*Iggeros Moshe, Choshen Mishpat* II:73 [16 Iyyar 5742 (May 9, 1982)]," in *Responsa of Rav Moshe Feinstein: translation and commentary* (Hoboken: KTAV House, 1996). 38-53
[285] Dorff, 199
[286] Dorff, 200

market, he is exempt from human judgment. All human beings are under the presumption of being healthy and one who murders is put to death unless it is known with certainty that the one murdered was a *terefah* and doctors testify that this illness had no cure and the person would have died from this, if not from something else first."[287]

Kinzbrunner clarifies that this means that the patient has a "prognosis of one year or less" to live.[288] However, though a specific illness may have categorized an individual as *terefah* in rabbinic times, it may no longer be *terefah* today, if doctors can cure the illness with new medical interventions.

According to the *Encyclopedia of Jewish Medical Ethics,* the *halakhah* dictates that one is obligated to take care of this person. Though he has a deficiency in his organs, he could walk around like a regular person and one would not necessarily know that he is sick. Unlike the *goses,* one is obligated to try to heal him in all ways, which includes touching him and giving him all that he needs. One is obligated to relieve suffering and try to lengthen his days.

Dorff explains that a person in the *terefah* stage "may choose to undergo experimental therapies in an attempt to overcome the illness. Even if the therapy brings with it the risk of advancing the time of dying, use of it is permissible if the intent is not to bring about death but rather to prolong life."[289]

The category of *terefah* has certain implications with respect to punishment for murder. According to rabbinic sources, if someone murders a *terefah*; the killer may not

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[287] *Mishneh Torah, Hilkhot Rotzeah* 2:8, translation by Staitman in Jacob's *Death,* 6.
[288] Kinzbrunner, 562
[289] Dorff, 201

be executed for murder.[290] This means that, according to Jewish law, rabbis do not consider someone who is in the *terefah* stage fully living. However, if someone causes the death of a *goses*, who is considered living, one is liable for murder. This ruling for the *terefah* allows physicians to attempt to heal a patient or use experimental interventions that may result in death. This highlights a very important difference between the *goses* and *terefah.* Though one may not touch a *goses* to try to heal him, one is permitted and will not be held liable for attempting to heal a *terefah.*

When making decisions about treatment, one is obligated to treat the whole person, not the individual illness. A situation could arise in which treating a specific illness may cure that illness but not change the status of the patient; he is still dying. Therefore, the treatment for other illnesses is viewed as one that prolongs the process of dying. As a result, a person in the *terefah* stage can choose to withdraw or withhold treatment, since such treatment could be viewed as prolonging the process of dying.[291] And, if someone has a terminal illness, and contracts another illness, such as pneumonia, it is permitted to not treat this pneumonia since that could be viewed as prolonging death, and may cause more suffering.

In 1950, Dr. Atlas comments on the similarity between *terefah* and *goses* based on modern technology. He concludes that since these terms are indistinguishable today, both should have the same punishment for murder. Dr. Atlas explains, "Now, according to modern scientific conceptions of medicine, the distinction between *terefah* and *goses* has no validity whatsoever. …While the ancients thought that no organic change occurs in the body of a person dying a natural death, modern medicine maintains that the cause

[290] *Sanhedrin* 78a
[291] Dorff, 201

of death is always, even in the case of a very old man, the result of some deficiency in some of his organs. Consequently, there is no distinction between *goses* and *terefah*… But while we will have to identify *terefah* and *goses*, it means only that there is no consequent punishment for an act of murder in both cases; but the law "*Lo tirtsach*" ("Do not murder") which prohibits the act of cutting short a life which has in it the potentiality of creativity, obtains with regard to *terefah* as well as in respect to *goses*."[292] Dr. Atlas does not address the time frame for which one would be considered *goses* or *terefah.*

Almost sixty years later, Rabbi Dorff understands these terms differently. He explains that the term *goses* differs from the term *terefah*; while a *terefah* has a specific illness, a *goses'* time has come, without necessarily having a specific illness. Dorff notes that while there was a big difference between the terms *goses* and *terefah* in rabbinic Judaism, today, "…with medical technology, [*goses]* only applies to someone in the very last hours of their life. Therefore, someone who is diagnosed with a terminal illness or incurable disease is a *terefah* and it is "permissible to withhold or withdraw medications and machines… as soon as they are in this state."[293]

Dr. Dorff further notes that "if the *terefah* category is to be used to guide our thinking on these issues –and that category does more accurately describe the vast majority of the situations which questions arise nowadays –withholding or withdrawing treatment from the terminally ill represents a permissible failure to act, in the case of withholding treatment, or a permissible act of bloodshed, in the case of withdrawing

[292] Dr. Samuel Atlas in his notes on "78. Euthanasia, 1950," 261-71.
[293] Dorff, 200

treatment, in order to save the life and health of the viable and/or to alleviate the pain of the dying."[294]

Rabbi Dorff highlights the important difference between an understanding of *terefah* and *goses* in rabbinic times and today, with modern medical technology and knowledge. According to him, it used to be that someone entered the *goses* category when he had three days to live and the *terefah* when one was diagnosed with a terminal illness and less than a year to live. Today, a *goses* only refers to someone in the last hours of life (because you can keep someone alive much longer with medical technology, when you remove that technology, they become a *goses* and will die soon – most likely less than 3 days). He argues that *terefah* should now be the term used to describe anyone who is dying of a terminal illness before the last hours of life. In this stage, it is permitted to withhold or withdraw medical treatment so as not to prolong dying, and while nothing can be done to hasten death, one should relieve pain and suffering. This change in determining the start of the *terefah* and *goses* stages has certain implications. Someone who would have been classified as a *goses* in the last three days of his/her life now may be considered a *goses* much later, only during the last hours of life. This lengthens the time that one is considered *terefah,* from the time one is diagnosed with a terminal illness until the last hours of life. While one cannot touch a *goses,* it is permitted to touch and attempt to heal a *terefah,* (and not be held liable for murder) however it is not necessary to use medical

[294] "Terefah, Rather than Goses, as the Operative Category" by Elliot Dorff in Address, *VI. Bio Ethics Case Study,* 32.

interventions in this stage. This means that physicians can use medical interventions with a patient until the last hours of life, as they are considered *terefah.*

Hayyei Sha'ah

According to the *Encyclopedia of Jewish Medical Ethics, hayyei sha'ah* is the last stage of being *goses* when one is closer to death, right before the soul leaves the body[295]. In the Talmud, *Yoma* 85a, the term *hayyei sha'ah* is used when discussing someone who is stuck under rubble. It is permitted to remove the rubble and save this person on Shabbat. It is also permitted to have a non-Jewish physician help this patient. Therefore, it is understood that is permitted to help someone in this stage with medicine and other interventions. While it is possible for someone in *gesisut* to survive and live past that stage, in *hayyei sha'ah* only the fewest of the few recuperate from this stage and live.

Other terms

There are a few other terms enumerated by the *Encyclopedia of Jewish Medical Ethics,* including *noteh lamut, Yitziat N'shama/yitziat hanefesh,and shechiv mera.* The phrase *noteh lamut* means that someone is going to die, in the last stages of life. It seems that this term may encompass all the other terms. The term *Yitziat N'shama/yitziat hanefesh* refers to the time when the soul leaves the body, the very last moment before death. It is not clear exactly when this occurs; it could be the very last moments on the border of the *goses* stage. The term *shechiv mera* refers to someone who needs to lie down because his situation is going from bad to worse, and this is subjective according to the patient.

[295] Steinberg, 343–347.

APPENDIX B: Medical and Legal Definitions of Terms Related to End-of-Life Care

1. Artificial Ventilation of the Lungs

According to *Black's Medical Dictionary*, "When we breathe in, the outward movement of the chest increases the volume of the lungs and the pressure in them falls below that of the outside world. Therefore, air is drawn in automatically. When we breathe out, some air exits because of the normal elastic recoil of the lungs, but we also force air out by using the muscles of the diaphragm. Replicating this artificially involves using a devise to produce intermittent positive or negative pressure ventilation….".

There are several different kinds of artificial ventilation including Intermittent positive pressure (IPP), Negative-pressure ventilation, and Jet ventilation." The most frequently used form, IPP, in its simplest form is mouth-to-mouth resuscitation "where an individual blows his or her own expired gases into the lungs of a non-breathing person via the mouth or nose. Similarly gas may be blown into the lungs via a face mask (or down an endotracheal tube) and a self-inflating bag" or other methods. "For more prolonged artificial ventilation it is usual to use a specially designed machine or ventilator… (they) often consist of bellows which fill with fresh gas and which are then

mechanically emptied…via a circuit or tubes attached to an endotracheal tube into the patient's lungs."[296]

2. Brain-Stem Death, Brain Death according to Harvard Medical School and the Pittsburgh Protocol

Black's Medical Dictionary explains, "Brain damage, resulting in the irreversible loss of brain function, renders the individual incapable of life without the aid of a ventilator. Criteria have been developed to recognize that 'death' has occurred and to allow ventilation to be stopped."[297] According to the American Medical Association's Complete Medical Encyclopedia, the Harvard Medical School developed a definition of brain death in 1968, "Irreversible cessation of all functions of the entire brain, including the brain stem…. While brain death is diagnosed by a careful clinical examination, the diagnosis is confirmed by a variety of tests that determine an absence of reflexes, unresponsiveness to stimuli, a lack of spontaneous respiration or movement, and the absence of electrical activity of the brain as indicated by a flat electroencephalogram (EEG). In addition, it must first be determined that nothing is suppressing the person's responses, such as hypothermia (cold body temperature) or drugs (for example, excessive Phenobarbital levels can result in a coma and suppression of EEG activity). If after 24 hours there is no change in a person's status, he or she is declared dead. This definition of brain death allows for the certification of death even if the lungs and heart continue to

[296] Harvey Marcovitch, *Black's Medical Dictionary, 41st Edition (Black's Medical Dictionary)* (New York: The Scarecrow P, 2006), 56.
[297] Marcovitch, 97

function with machine assistance by electrical activity in the brain has ceased. After brain death has been determined, the person's organs can be donated."[298]

The President's Commission for the Study of Ethical Problems in Medicine at Harvard proposed a newer definition of death in 1981, which is a "modification of a definition developed at Harvard Medical School in 1968." It reads,

> When a person's heartbeat and respiration are being maintained mechanically, death occurs when there is an irreversible cessation of all functions of the entire brain, including the brain stem…. Because of advances in medical technology, death can no longer be defined as it once was, the cessation of heartbeat and respiration, since these bodily functions may be artificially prolonged for a considerable time by medical technology.[299]

In the CCAR responsum, "Hastening the Death of a Potential Organ Donor," the rabbis discuss the criteria needed for organ donation. They explained that the Pittsburgh Protocol for determining death is the cessation of a heartbeat. However, Reform rabbis adhere to the Harvard Medical School definition of brain death, as described above, rather than the Pittsburgh Protocol. According to this responsum, "The 'Pittsburgh protocol' specifies that organs may be retrieved once the patient meets the cardiopulmonary criteria for death, i.e., the irreversible cessation of cardiopulmonary function, "and it determines that "irreversible cessation" has occurred once the patient's pulse has stopped for a period of two minutes.[300]

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[298] American Medical Association., *American Medical Association Complete Medical Encyclopedia (American Medical Association (Ama) Complete Medical Encyclopedia)* (New York: Random House Reference, 2003), 271

[299] American Medical Association, 437-438

[300] According to the footnotes of the CCAR responsum: "Hastening the Death of a Potential Organ Donor," "A text of the protocol is included in Robert M. Arnold, et al., Procuring Organs for Transplant: The Debate Over Non-Heart-Beating Cadaver Protocols (Baltimore: The Johns Hopkins University Press, 1995), 235-249. The quotation in the text is at p. 240, paragraph S. See also Kennedy Institute of Ethics Journal (1993), 3:A-1 to A-15. The "the cardiopulmonary criteria for death" referred to in

3. Cardiac Arrest and Cardiopulmonary Resuscitation (CPR)

According to *Black's Medical Dictionary*, "Cardiac Arrest occurs when the pumping action of the heart stops. This may be because the heart stops beating or because the heart muscle starts contracting too fast to pump effectively."[301]

Cardiopulmonary Resuscitation (CPR) is "The use of life-saving measures of mouth-to-mouth resuscitation and external cardiac compression massage in a person who has collapsed with cardiac arrest." This restores oxygenated blood to the brain and prevents brain damage. "…CPR may include the use of a defibrillator to apply a controlled electric shock to the heart via the chest wall."[302]

4. Kidney Dialysis

> Dialysis is used to treat kidney failure by replacing the functions of the kidneys, which filter out wastes and excess water from the blood. It can be a temporary treatment for an acute kidney failure or a long-term measure used in end-stage kidney failure. There are two forms: peritoneal dialysis, in which the peritoneal membrane in the abdomen is used as a filter; and hemodialysis, in which a kidney machine filters the blood…. In hemodialysis, blood is pumped by a kidney machine though a filter attached to the side of the machine…. Each treatment takes 3-4 hours and is repeated about three times a week.[303]

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the protocol match those set by the Uniform Declaration of Death Act (UDDA), sec. 1, 12 ULA 340 (suppl. 1991): "An individual who has sustained either irreversible cessation of circulatory and respiratory functions, or irreversible cessation of all functions of the entire brain, including the brain stem, is dead."

[301] Marcovitch, 116

[302] ibid, 118

[303] *American College of Physicians Complete Home Medical Guide* (New York, N.Y: DK Pub., 2003), 707

5. Patient Self-Determination Act

Congress passed The Patient Self-Determination Act in 1991.[304] According to the American Bar Association, the Patient Self-Determination Act requires health care institutions to provide patients with certain information and request that patients provide certain information. Their website explains,

> Most hospitals, nursing homes, home health agencies, and HMO's routinely provide information on advance directives at the time of admission. They are required to do so under a federal law called the Patient Self-Determination Act (PSDA). The PSDA simply requires that most health care institutions (but not individual doctors) do the following: 1. Give you at the time of admission a written summary of: your health care decision-making rights (Each state has developed such a summary for hospitals, nursing homes, and home health agencies to use.) the facility's policies with respect to recognizing advance directives. 2. Ask you if you have an advance directive, and document that fact in your medical record if you do. (It is up to you to make sure they get a copy of it). 3. Educate their staff and community about advance directives. 4. Never discriminate against patients based on whether or not they have an advance directive. Thus, it is against the law for them to require either that you have or not have an advance directive.[305]

6. Persistent Vegetative State (PVS)

Black's Medical Dictionary explains that,

> PVS may occur in patients with severe brain damage from hypoxia or injury. Patients do not display any awareness of their surroundings, and are unable to communicate. Sleep alternates with apparent wakefulness, when some reflexes may be present: for example, patients' eyes may reflexly [sic] follow or respond to sound, their limbs can reflexly [sic] withdraw from pain, and their hands can reflexly [sic] grope or grasp. Patients can breathe spontaneously, and retain normal heart and kidney function, although they are doubly incontinent. For a

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[304] "Patient Self-Determination Act," Legal forms, legal documents, legal document service online - Legal Helpmate provides legal forms and legal documents preparation service online, do it yourself legal forms by Legal Helpmate Corp., http://www.legalhelpmate.com/health-care-directive-patient-act.aspx (accessed December 28, 2009).

[305] "Health Care Advance Directives: What is the Patient Self-Determination Act? (ABA Division for Public Education)," American Bar Association - Defending Liberty, Pursuing Justice, http://www.abanet.org/publiced/practical/patient_self_determination_act.html (accessed December 28, 2009).

> diagnosis of PVS to be made, the state should have continued for more than a predefined period, usually one month. Half of patients die within 2-6 months, but some can survive for longer with artificial feeding.[306]

In the interview for the survey of rabbi's, Rabbi Cary Kozberg explained that he does not think rabbis and doctors should use the term PVS because it compares humans to vegetables and could lead to decisions that do not consider the life of the person.

According to Rabbi Staitman, someone who only has "brain stem function" which controls automatic movements but not cognition is considered PVS. He writes, "those in a persistent vegetative state cannot eat, drink, respond to pain, sound or other stimuli, or have the possibility of ever responding to these stimuli."[307] These people are not necessarily in the *gesisut* stage and can live for a long time with artificial nutrition and hydration.

[306] Marcovitch, 547
[307] Jacob, *Death,* 4.

APPENDIX C: Hebrew Texts (follows Chapter 1)

BIBLICAL TEXTS

1. 1 Samuel 31:1-6, Part 1

א וּפְלִשְׁתִּים נִלְחָמִים בְּיִשְׂרָאֵל וַיָּנֻסוּ אַנְשֵׁי יִשְׂרָאֵל מִפְּנֵי פְלִשְׁתִּים וַיִּפְּלוּ חֲלָלִים בְּהַר הַגִּלְבֹּעַ:
ב וַיַּדְבְּקוּ פְלִשְׁתִּים אֶת־שָׁאוּל וְאֶת־בָּנָיו וַיַּכּוּ פְלִשְׁתִּים אֶת־יְהוֹנָתָן וְאֶת־אֲבִינָדָב
וְאֶת־מַלְכִּי־שׁוּעַ בְּנֵי שָׁאוּל: ג וַתִּכְבַּד הַמִּלְחָמָה אֶל־שָׁאוּל וַיִּמְצָאֻהוּ הַמּוֹרִים אַנָשִׁים בַּקָּשֶׁת
וַיָּחֶל מְאֹד מֵהַמּוֹרִים: ד וַיֹּאמֶר שָׁאוּל לְנֹשֵׂא כֵלָיו שְׁלֹף־חַרְבְּךָ | וְדָקְרֵנִי בָהּ פֶּן־יָבוֹאוּ
הָעֲרֵלִים הָאֵלֶּה וּדְקָרֻנִי וְהִתְעַלְּלוּ־בִי וְלֹא אָבָה נֹשֵׂא כֵלָיו כִּי יָרֵא מְאֹד וַיִּקַּח שָׁאוּל אֶת־הַחֶרֶב
וַיִּפֹּל עָלֶיהָ: ה וַיַּרְא נֹשֵׂא־כֵלָיו כִּי־מֵת שָׁאוּל וַיִּפֹּל גַּם־הוּא עַל־חַרְבּוֹ וַיָּמָת עִמּוֹ: ו וַיָּמָת שָׁאוּל
וּשְׁלֹשֶׁת בָּנָיו וְנֹשֵׂא כֵלָיו גַּם כָּל־אֲנָשָׁיו בַּיּוֹם הַהוּא יַחְדָּו:

2. II Samuel 1:1-16 (King Saul on Mount Gilboa), Part 2

א וַיְהִי אִישׁ אֶחָד מִן־הָרָמָתַיִם צוֹפִים מֵהַר אֶפְרָיִם וּשְׁמוֹ אֵלְקָנָה בֶּן־יְרֹחָם בֶּן־אֱלִיהוּא בֶּן־תֹּחוּ
בֶּן־צוּף אֶפְרָתִי: ב וְלוֹ שְׁתֵּי נָשִׁים שֵׁם אַחַת חַנָּה וְשֵׁם הַשֵּׁנִית פְּנִנָּה וַיְהִי לִפְנִנָּה יְלָדִים וּלְחַנָּה
אֵין יְלָדִים: ג וְעָלָה הָאִישׁ הַהוּא מֵעִירוֹ מִיָּמִים | יָמִימָה לְהִשְׁתַּחֲוֹת וְלִזְבֹּחַ לַיהוָה צְבָאוֹת
בְּשִׁלֹה וְשָׁם שְׁנֵי בְנֵי־עֵלִי חָפְנִי וּפִנְחָס כֹּהֲנִים לַיהוָה: ד וַיְהִי הַיּוֹם וַיִּזְבַּח אֶלְקָנָה וְנָתַן לִפְנִנָּה
אִשְׁתּוֹ וּלְכָל־בָּנֶיהָ וּבְנוֹתֶיהָ מָנוֹת: ה וּלְחַנָּה יִתֵּן מָנָה אַחַת אַפַּיִם כִּי אֶת־חַנָּה אָהֵב וַיהוָה סָגַר
רַחְמָהּ: ו וְכִעַסַּתָּה צָרָתָהּ גַּם־כַּעַס בַּעֲבוּר הַרְּעִמָהּ כִּי־סָגַר יְהוָה בְּעַד רַחְמָהּ: ז וְכֵן יַעֲשֶׂה שָׁנָה
בְּשָׁנָה מִדֵּי עֲלֹתָהּ בְּבֵית יְהוָה כֵּן תַּכְעִסֶנָּה וַתִּבְכֶּה וְלֹא תֹאכַל: ח וַיֹּאמֶר לָהּ אֶלְקָנָה אִישָׁהּ
חַנָּה לָמָּה תִבְכִּי וְלָמָּה לֹא תֹאכְלִי וְלָמָּה יֵרַע לִבָּבֵךְ הֲלוֹא אָנֹכִי טוֹב לָךְ מֵעֲשָׂרָה בָנִים:
ט וַתָּקָם חַנָּה אַחֲרֵי אָכְלָה בְשִׁלֹה וְאַחֲרֵי שָׁתֹה וְעֵלִי הַכֹּהֵן יֹשֵׁב עַל־הַכִּסֵּא עַל־מְזוּזַת הֵיכַל
יְהוָה: י וְהִיא מָרַת נָפֶשׁ וַתִּתְפַּלֵּל עַל־יְהוָה וּבָכֹה תִבְכֶּה: יא וַתִּדֹּר נֶדֶר וַתֹּאמַר יְהוָה צְבָאוֹת
אִם־רָאֹה תִרְאֶה | בָּעֳנִי אֲמָתֶךָ וּזְכַרְתַּנִי וְלֹא־תִשְׁכַּח אֶת־אֲמָתֶךָ וְנָתַתָּה לַאֲמָתְךָ זֶרַע אֲנָשִׁים
וּנְתַתִּיו לַיהוָה כָּל־יְמֵי חַיָּיו וּמוֹרָה לֹא־יַעֲלֶה עַל־רֹאשׁוֹ: יב וְהָיָה כִּי הִרְבְּתָה לְהִתְפַּלֵּל לִפְנֵי
יְהוָה וְעֵלִי שֹׁמֵר אֶת־פִּיהָ: יג וְחַנָּה הִיא מְדַבֶּרֶת עַל־לִבָּהּ רַק שְׂפָתֶיהָ נָעוֹת וְקוֹלָהּ לֹא יִשָּׁמֵעַ
וַיַּחְשְׁבֶהָ עֵלִי לְשִׁכֹּרָה: יד וַיֹּאמֶר אֵלֶיהָ עֵלִי עַד־מָתַי תִּשְׁתַּכָּרִין הָסִירִי אֶת־יֵינֵךְ מֵעָלָיִךְ:
טו וַתַּעַן חַנָּה וַתֹּאמֶר לֹא אֲדֹנִי אִשָּׁה קְשַׁת־רוּחַ אָנֹכִי וְיַיִן וְשֵׁכָר לֹא שָׁתִיתִי וָאֶשְׁפֹּךְ אֶת־נַפְשִׁי
לִפְנֵי יְהוָה: טז אַל־תִּתֵּן אֶת־אֲמָתְךָ לִפְנֵי בַת־בְּלִיָּעַל כִּי מֵרֹב שִׂיחִי וְכַעְסִי דִּבַּרְתִּי עַד־הֵנָּה:

MISHNAH/TALMUD TEXTS AND THEIR COMMENTARIES

3. *Avodah Zarah* 18a תלמוד בבלי מסכת עבודה זרה דף יח עמוד א

לא היו ימים מועטים עד שנפטר רבי יוסי בן קיסמא, והלכו כל גדולי רומי לקברו והספידוהו הספד גדול, ובחזרתן מצאוהו לרבי חנינא בן תרדיון שהיה יושב ועוסק בתורה ומקהיל קהלות ברבים וס"ת מונח לו בחיקו. הביאוהו וכרכוהו בס"ת, והקיפוהו בחבילי

זמורות והציתו בהן את האור, והביאו ספוגין של צמר ושראום במים והניחום על לבו, כדי שלא תצא נשמתו מהרה. אמרה לו בתו: אבא, אראך בכך? אמר לה: אילמלי אני נשרפתי לבדי היה הדבר קשה לי, עכשיו שאני נשרף וס"ת עמי, מי שמבקש עלבונה של ס"ת הוא יבקש עלבוני. אמרו לו תלמידיו: רבי, מה אתה רואה? אמר להן: גליון נשרפין ואותיות פורחות. אף אתה פתח פיך ותכנס [בך] האש! אמר להן: מוטב שיטלנה מי שנתנה ואל יחבל הוא בעצמו. אמר לו קלצטונירי: רבי, אם אני מרבה בשלהבת ונוטל ספוגין של צמר מעל לבך, אתה מביאני לחיי העולם הבא? אמר לו: הן. השבע לי! נשבע לו. מיד הרבה בשלהבת ונטל ספוגין של צמר מעל לבו, יצאה נשמתו במהרה. אף הוא קפץ ונפל לתוך האור. יצאה בת קול ואמרה: רבי חנינא בן תרדיון וקלצטונירי מזומנין הן לחיי העולם הבא. בכה רבי ואמר: יש קונה עולמו בשעה אחת, ויש קונה עולמו בכמה שנים.

4. *Avodah Zarah* 27a-b תלמוד בבלי מסכת עבודה זרה דף כז עמוד א- ב

אמר רבא א"ר יוחנן, ואמרי לה אמר רב חסדא אמר ר' יוחנן: ספק חי ספק מת - אין מתרפאין מהן, ודאי מת - מתרפאין מהן. מת, האיכא חיי שעה! לחיי שעה לא חיישינן. ומנא תימרא דלחיי שעה לא חיישינן? דכתיב: (מלכים ב' ז) אם אמרנו נבוא העיר והרעב בעיר ומתנו שם, והאיכא חיי שעה! אלא לאו לחיי שעה לא חיישינן.

5.*Tosafot* to *Avodah Zarah* 27b תוספות מסכת עבודה זרה דף כז עמוד ב

לחיי שעה לא חיישינן - והא דאמרינן ביומא (דף פה.) מפקחין עליו את הגל בשבת לחוש לחיי שעה אלמא חיישינן דאיכא למימר דהכא והתם עבדינן לטובתו דהתם אם לא תחוש ימות והכא אם תחוש ולא יתרפא מן העובד כוכבים ודאי ימות וכאן וכאן שבקינן הודאי למיעבד הספק.

6. *Bava Metzia* 84a תלמוד בבלי מסכת בבא מציעא דף פד עמוד א

יומא חד הוה קא סחי רבי יוחנן בירדנא, חזייה ריש לקיש ושוור לירדנא אבתריה, אמר ליה: חילך לאורייתא! - אמר ליה: שופרך לנשי! - אמר ליה: אי הדרת בך - יהיבנא לך אחותי, דשפירא מינאי. קביל עליה. בעי למיהדר לאתויי מאניה - ולא מצי הדר. אקרייה ואתנייה, ושוייה גברא רבא. יומא חד הוו מפלגי בי מדרשא: הסייף והסכין והפניון והרומח ומגל יד ומגל קציר מאימתי מקבלין טומאה - משעת גמר מלאכתן, ומאימתי גמר מלאכתן? רבי יוחנן אומר: משיצרפם בכבשן, ריש לקיש אמר: משיצחצחן במים. - אמר ליה: לסטאה בלסטיותיה ידע! - אמר ליה: ומאי אהנת לי? התם רבי קרו לי, הכא רבי קרו לי. אמר ליה: אהנאי לך דאקרבינך תחת כנפי השכינה. חלש דעתיה דרבי יוחנן, חלש ריש לקיש. אתאי אחתיה קא בכיא, אמרה ליה: עשה בשביל בני! אמר לה: (ירמיהו מ"ט) עזבה יתמיך אני

אחיה. - עשה בשביל אלמנותי! - אמר לה: (ירמיהו מ"ט) ואלמנותיך עלי תבטחו. נח נפשיה דרבי שמעון בן לקיש, והוה קא מצטער רבי יוחנן בתריה טובא. אמרו רבנן: מאן ליזיל ליתביה לדעתיה - ניזיל רבי אלעזר בן פדת, דמחדדין שמעתתיה. אזל יתיב קמיה, כל מילתא דהוה אמר רבי יוחנן אמר ליה: תניא דמסייעא לך. אמר: את כבר לקישא? בר לקישא, כי הוה אמינא מילתא - הוה מקשי לי עשרין וארבע קושייתא, ומפרקינא ליה עשרין וארבעה פרוקי, וממילא רווחא שמעתא. ואת אמרת תניא דמסייע לך, אטו לא ידענא דשפיר קאמינא? הוה קא אזיל וקרע מאניה, וקא בכי ואמר: היכא את בר לקישא, היכא את בר לקישא, והוה קא צוח עד דשף דעתיה [מיניה]. בעו רבנן רחמי עליה ונח נפשיה.

7. *Ketubot* 104a <u>תלמוד בבלי מסכת כתובות דף קד עמוד א</u>

ההוא יומא דנח נפשיה דרבי, גזרו רבנן תעניתא ובעו רחמי, ואמרי: כל מאן דאמר נח נפשיה דר', ידקר בחרב. סליקא אמתיה דרבי לאיגרא, אמרה: עליוני' מבקשין את רבי והתחתוני' מבקשין את רבי, יהי רצון שיכופו תחתונים את העליונים. כיון דחזאי כמה זימני דעייל לבית הכסא, וחלץ תפילין ומנח להו וקמצטער, אמרה: יהי רצון שיכופו עליונים את התחתונים. ולא הוו שתקי רבנן מלמיבעי רחמי, שקלה כוזא שדייא מאיגרא [לארעא], אישתיקו מרחמי ונח נפשיה דרבי.

8. Midrash *Mishlei* Chapter 14 (I do not have this text)

9. *Nedarim* 40a and the *RaN* Commentary (Rabbi Nissim Gerondi)
<u>תלמוד בבלי מסכת נדרים דף מ עמוד א</u>

רב חלבו באיש, לא איכא דקא אתי, אמר להו: לא כך היה מעשה? בתלמיד אחד מתלמידי ר' עקיבא שחלה, לא נכנסו חכמים לבקרו, ונכנס ר' עקיבא לבקרו, ובשביל שכיבדו וריבצו לפניו חיה, א"ל: רבי, החייתני! יצא ר' עקיבא ודרש: כל מי שאין מבקר חולים - כאילו שופך דמים.
כי אתא רב דימי אמר: כל המבקר את החולה - גורם לו שיחיה, וכל שאינו מבקר את החולה - גורם לו שימות. מאי גרמא? אילימא כל המבקר את החולה - מבקש עליו רחמים שיחיה, וכל שאין מבקר את החולה - מבקש עליו רחמים שימות, שימות ס"ד? אלא, כל שאין מבקר חולה - אין מבקש עליו רחמים לא שיחיה ולא שימות. רבא, יומא קדמאה דחליש אמר להון: לא תיגלו לאיניש, דלא לתרע מזליה, מכאן ואילך, אמר להון: פוקו ואכריזו בשוקא, דכל דסני לי ליחדי לי, וכתיב: (משלי כד) בנפול אויבך אל תשמח וגו', ודרחים לי ליבעי עלי רחמי. אמר רב: כל המבקר את החולה - ניצול מדינה של גיהנם, שנאמר: (תהלים מא) אשרי משכיל אל דל ביום רעה ימלטהו יי', אין דל אלא חולה,...

אמר רב שישא בריה דרב אידי: לא ליסעוד איניש קצירא לא בתלת שעי קדמייתא ולא בתלת שעי בתרייתא דיומא, כי היכי דלא ליסח דעתיה מן רחמי, תלת שעי קדמייתא - רווחא דעתיה, בתרייתא - תקיף חולשיה. אמר רבין אמר רב: מניין שהקב"ה זן את החולה? שנאמר: (תהלים מא) יי' יסעדנו על ערש דוי וגו'. ואמר רבין אמר רב: מניין שהשכינה שרויה למעלה ממטתו של חולה? שנאמר: יי' יסעדנו על ערש דוי. תניא נמי הכי: הנכנס לבקר את החולה, לא ישב לא על גבי מטה ולא ע"ג ספסל ולא על גבי כסא, אלא מתעטף ויושב ע"ג קרקע, מפני שהשכינה שרויה למעלה ממטתו של חולה, שנאמר: יי' יסעדנו על ערש דוי. ואמר רבין אמר רב: מטרא במערבא סהדא רבה פרת. ופליגא דשמואל, דאמר שמואל: נהרא מכיפיה מתבריך. ופליגא דשמואל אדשמואל, דאמר שמואל: אין המים מטהרין בזוחלין -

RaN's Commentary: ר"ן מסכת נדרים דף מ עמוד א

אין מבקש עליו רחמים לא שיחיה ולא שימות - נראה בעיני דה"ק פעמים שצריך לבקש רחמים על החולה שימות כגון שמצטער החולה בחליו הרבה ואי אפשר לו שיחיה כדאמרינן בפרק הנושא (כתובות קד) דכיון דחזאי אמתיה דרבי דעל כמה זימנין לבית הכסא ואנח תפילין וקא מצטער אמרה יהי רצון שיכופו העליונים את התחתונים כלומר דלימות רבי ומש"ה קאמר דהמבקר חולה מועילו בתפלתו אפי' לחיות מפני שהיא תפלה יותר מועלת ומי שאינו מבקרו אין צריך לומר שאינו מועילו לחיות אלא אפי' היכא דאיכא ליה הנאה במיתה אפי' אותה זוטרתי אינו מהנהו.

10. *Sanhedrin* 43a תלמוד בבלי מסכת סנהדרין דף מג עמוד א

היוצא ליהרג משקין אותו קורט של לבונה בכוס של יין כדי שתטרף דעתו, שנאמר (משלי ל"א) תנו שכר לאובד ויין למרי נפש.

11. Mishnah *Semachot* 1:1 מסכתות קטנות מסכת שמחות פרק א הלכה א

הנוסס הרי הוא כחי לכל דבר

12. Mishnah *Semachot* 1.2 מסכתות קטנות מסכת שמחות פרק א הלכה ב

אין קושרין את לחייו, ואין פוקקין את נקביו, ואין נותנין עליו כלי של מתכות ולא כל דבר שהוא מיקר על טיבורו, עד שעה שימות.

13. Mishnah *Semachot* 1:3 מסכתות קטנות מסכת שמחות פרק א הלכה ג

אין מזיזין אותו, ואין מדיחין אותו, ואין מטילין אותו לא על גבי החול ולא על גבי המלח, עד שעה שימות.

14. Mishnah *Semachot* 1:4 מסכתות קטנות מסכת שמחות פרק א הלכה ג

אין מזיזין אותו, ואין מדיחין אותו, ואין מטילין אותו לא על גבי החול ולא על גבי המלח, עד שעה שימות.

15. Mishnah – *Shabbat* 23:5 משנה מסכת שבת פרק כג משנה ה

[ה] עושין כל צורכי המת סכין ומדיחין אותו ובלבד שלא יזיזו בו אבר שומטין את הכר מתחתיו ומטילין אותו על החול בשביל שימתין קושרים את הלחי לא שיעלה אלא שלא יוסיף וכן קורה שנשברה סומכין אותה בספסל או בארוכות המטה לא שתעלה אלא שלא תוסיף אין מעמצין את המת בשבת ולא בחול עם יציאת נפש והמעמץ עם יציאת נפש הרי זה שופך דמים:

16. *Shabbat* 55a תלמוד בבלי מסכת שבת דף נה עמוד א

אמר רב אמי: אין מיתה בלא חטא ואין יסורין בלא עון. אין מיתה בלא חטא - דכתיב (יחזקאל יח) הנפש החטאת היא תמות בן לא ישא בעון האב ואב לא ישא בעון הבן, צדקת הצדיק עליו תהיה ורשעת הרשע עליו תהיה וגו'. אין יסורין בלא עון דכתיב (תהלים פט) ופקדתי בשבט פשעם ובנגעים עונם.

17. *Shabbat* 151b תלמוד בבלי מסכת שבת דף קנא עמוד ב

משנה. אין מעצמין את המת בשבת, ולא בחול עם יציאת נפש. והמעצים עם יציאת הנפש - הרי זה שופך דמים.
גמרא. תנו רבנן: המעצמו עם יציאת הנפש - הרי זה שופך דמים. משל לנר שכבה והולכת, אדם מניח אצבעו עליה - מיד כבתה. תניא, רבן שמעון בן גמליאל אומר: הרוצה שיתעצמו עיניו של מת – ניפח לו יין בחוטמו, ונותן שמן בין ריסי עיניו, ואוחז בשני גודלי רגליו– והן מתעצמין מאליהן.

18. *Taanit* 23a תלמוד בבלי מסכת תענית דף כג עמוד א

מעשה ששלחו לחוני המעגל וכו'. תנו רבנן: פעם אחת יצא רוב אדר ולא ירדו גשמים. שלחו לחוני המעגל: התפלל וירדו גשמים! התפלל ולא ירדו גשמים. עג עוגה ועמד בתוכה, כדרך שעשה חבקוק הנביא, שנאמר (חבקוק ב') על משמרתי אעמדה ואתיצבה על מצור וגו'. אמר לפניו: רבונו של עולם! בניך שמו פניהם עלי שאני כבן בית לפניך, נשבע אני בשמך הגדול שאיני זז מכאן עד שתרחם על בניך. התחילו גשמים מנטפין, אמרו לו תלמידיו: רבי, ראינוך ולא נמות. כמדומין אנו שאין גשמים יורדין אלא להתיר שבועתך. אמר: לא כך שאלתי, אלא גשמי בורות שיחין ומערות. ירדו בזעף, עד שכל טפה וטפה כמלא פי חבית. ושיערו חכמים שאין טפה פחותה מלוג. אמרו לו תלמידיו: רבי, ראינוך ולא נמות. כמדומין אנו שאין גשמים יורדין אלא לאבד העולם. אמר לפניו: לא כך שאלתי, אלא גשמי רצון ברכה ונדבה. ירדו כתיקנן, עד שעלו כל העם להר הבית מפני הגשמים. אמרו לו: רבי, כשם שהתפללת שירדו, כך התפלל וילכו להם. אמר להם: כך מקובלני שאין מתפללין על רוב הטובה. אף על פי כן, הביאו לי פר הודאה. הביאו לו פר הודאה. סמך שתי ידיו עליו, ואמר לפניו: רבונו של עולם! עמך ישראל שהוצאת ממצרים אינן יכולין לא ברוב טובה ולא ברוב פורענות, כעסת עליהם - אינן יכולין לעמוד, השפעת עליהם טובה - אינן יכולין לעמוד, יהי רצון מלפניך שיפסקו הגשמים ויהא ריוח בעולם. מיד נשבה הרוח ונתפזרו העבים, וזרחה החמה, ויצאו העם לשדה והביאו להם כמהין ופטריות. שלח לו שמעון בן שטח: אלמלא חוני אתה - גוזרני עליך נידוי. שאילו שנים כשני אליהו שמפתחות גשמים בידו של אליהו לא נמצא שם שמים מתחלל על ידך? אבל מה אעשה לך שאתה מתחטא לפני המקום ועושה לך רצונך, כבן שמתחטא על אביו ועושה לו רצונו. ואומר לו: אבא, הוליכני לרחצני בחמין, שטפני בצונן, תן לי אגוזים, שקדים, אפרסקים, ורמונים - ונותן לו. ועליך הכתוב אומר (משלי כ"ג) ישמח אביך ואמך ותגל יולדתיך. תנו רבנן: מה שלחו בני לשכת הגזית לחוני המעגל: (איוב כ"ב) ותגזר אמר ויקם לך ועל דרכיך נגה אור. ותגזר אמר - אתה גזרת מלמטה, והקדוש ברוך הוא מקיים מאמרך מלמעלה. ועל דרכיך נגה אור - דור שהיה אפל הארת בתפלתך, כי השפילו ותאמר גוה - דור שהיה שפל הגבהתו בתפלתך, ושח עינים יושע - דור ששח בעונו הושעתו בתפלתך, ימלט אי נקי - דור שלא היה נקי מלטתו בתפלתך, ונמלט בבר כפיך - מלטתו במעשה ידיך הברורין.

19. Mishnah *Yoma* 8:5 משנה מסכת יומא פרק ח משנה ה

[ג] עוברה שהריחה מאכילין אותה עד שתשיב נפשה חולה מאכילין אותו על פי בקיאין ואם אין שם בקיאין מאכילין אותו על פי עצמו עד שיאמר די:

20. *Yoma* 83a תלמוד בבלי מסכת יומא דף פג עמוד א

משנה. מי שאחזו בולמוס - מאכילין אותו אפילו דברים טמאים, עד שיאורו עיניו. מי שנשכו כלב שוטה - אין מאכילין אותו מחצר כבד שלו, ורבי מתיא בן חרש מתיר. ועוד אמר רבי מתיא בן חרש: החושש בגרונו מטילין לו סם בתוך פיו בשבת, מפני שהוא ספק נפשות, וכל ספק נפשות דוחה את השבת. מי שנפלה עליו מפולת, ספק הוא שם ספק אינו שם, ספק חי ספק מת, ספק נכרי ספק ישראל - מפקחין עליו את הגל. מצאוהו חי - מפקחין, ואם מת - יניחוהו.

21. *Yoma* 85a תלמוד בבלי מסכת יומא דף פה עמוד א

מי שנפל עליו מפולת וכו'. מאי קאמר? - לא מיבעיא קאמר: לא מיבעיא ספק הוא שם ספק אינו שם, דאי איתיה חי הוא - דמפקחין, אלא אפילו ספק חי ספק מת - מפקחין, ולא מיבעיא ספק חי ספק מת דישראל, אלא אפילו ספק נכרי ספק ישראל - מפקחין. מצאוהו חי מפקחין. מצאוהו חי פשיטא! - לא צריכא, דאפילו לחיי שעה

CODES AND THEIR COMMENTARIES

22. Maimonides *Mishneh Torah, Hilkhot Avel* 4:5

רמב"ם הלכות אבל פרק ד הלכה ה

הנוסס הרי א הוא כחי לכל דבר, אין קושרין לחייו, ואין פוקקין נקביו ואין מניחין כלי מתכות וכלי מיקר על טבורו שלא יתפח, ולא סכין אותו, ולא מדיחין אותו, ולא מטילין אותו על החול ולא על המלח עד שעה שימות והנוגע בו הרי זה שופך דמים, למה זה דומה לנר שמטפטף כיון שיגע בו אדם יכבה, וכל המאמץ עיניו עם יציאת נפש הרי זה שופך דמים אלא ישהא מעט שמא נתעלף, וכן אין קורעין עליו, ולא חולצין כתף, ולא מספידין, ולא מכניסין עמו ארון ותכריכין בבית עד שימות.

23. Maimonides *Mishneh Torah, Hilchot Shabbat* 2:19

רמב"ם הלכות שבת פרק ב הלכה יט

בדקו עד חטמו ולא מצאו בו נשמה מניחין אותו שם שכבר מת. בדקו ומצאו עליונים מתים לא יאמרו כבר מתו תחתונים אלא מפקחין על הכל שאפשר במפולת שימות העליון ויהיה התחתון חי.

24. *Shulhan Arukh, Yoreh Deah* 335

שולחן ערוך יורה דעה סימן שלה סעיף א-ט

א–א] מצוה לבקר חולים. ב] הקרובים והחברים נכנסים מיד; והרחוקים, אחר ג' ימים. ואם קפץ עליו החולי, אלו ואלו נכנסים מיד. (טור בקיצור מס' ת"ה =תורת האדם= להרמב"ן).

ב אפילו הגדול ילך לבקר הקטן, ואפילו כמה פעמים ביום, א ואפילו בן גילו. ג] וכל המוסיף ה"ז משובח, ד] ובלבד שלא יטריח לו. הגה: י"א דשונא יכול לילך לבקר חולה (מהרי"ל קצ"ז), ה] ולא נראה לי, ב אלא לא יבקר חולה, ולא ינחם האבל שהוא שונאו, שלא יחשב ששמח לאידו, ואינו לו אלא צער, כן נראה לי (ש"ס פ' כ"ג).

ג המבקר את החולה לא ישב ע"ג מטה ולא ע"ג כסא ולא ע"ג ספסל, אלא מתעטף ויושב לפניו, שהשכינה למעלה מראשותיו. הגה: ו] ודוקא כשהחולה שוכב על הארץ, דהיושב גבוה ממנו, אבל כששוכב על המטה מותר לישב על כסא וספסל (ב"י בשם הר"ן, וכן נוהגין).

ד אין מבקרין החולה בג' שעות ראשונות של יום, מפני שכל חולה מיקל עליו חליו בבקר, ולא יחוש לבקש עליו רחמים. ולא בג' שעות אחרונות של יום, שאז מכביד עליו חליו ויתייאש מלבקש עליו רחמים. (ז] וכל שביקר ולא ביקש עליו רחמים, לא קיים המצוה) (ב"י בשם הרמב"ן).

ה כשמבקש עליו רחמים, ג אם מבקש לפניו, יכול לבקש בכל לשון שירצה. ואם מבקש שלא בפניו, לא יבקש אלא בלשון הקדש.

ז ט] אומרים לו שיתן דעתו על ענייניו, אם הלוה או הפקיד אצל אחרים, או אחרים הלוו או הפקידו אצלו, ואל יפחד מפני זה מהמות.

ח אין מבקרין ו לא לחולי מעים ולא לחולי העין ז ולא לחולי הראש. י] וכן כל חולי דתקיף ליה עלמא וקשה ליה דיבורא אין מבקרין אותו בפניו, יא] אלא נכנסין בבית החיצון ושואלין ודורשין בו אם צריכין לכבד ולרבץ לפניו, וכיוצא בו, ושומעין צערו ומבקשים עליו רחמים.

ט ח יב] מבקרין חולי עובדי כוכבים, מפני דרכי שלום.

י ט (א) בחולי מעים אין האיש משמש את האשה, אבל האשה משמשת את האיש. הגה: יג] י"א שמי שיש לו חולה בביתו, ילך אצל חכם שבעיר שיבקש עליו רחמים (ני"י פרק י"נ), י וכן נהגו (ב) לברך חולים בבהכ"נ, לקרא להם שם חדש, יד] כי שנוי השם קורע גזר דינו. יא טו] ניחום אבלים, קודם לביקור חולים (כל בו).

25. *Shulhan Arukh, Yoreh Deah* 337 שולחן ערוך יורה דעה סימן שלז

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א] חולה שמת לו מת, אין מודיעין אותו, שמא תטרף דעתו עליו. א ואין קורעין חלוקו, ב ואין בוכין ואין מספידין בפניו, שלא ישבר לבו; ומשתיקין את המנחמין מפניו.

26. *Shulhan Arukh, Yoreh Deah* 338

שולחן ערוך יורה דעה סימן שלח סעיף א–ב

א–נטה למות, א אומרים לו: התודה, א] ואומרים לו: הרבה התודו ולא מתו, והרבה שלא התודו, מתו, ובשכר שאתה מתודה אתה חי, ב] וכל המתודה יש לו חלק לעולם הבא. ג] ואם אינו יכול להתודות בפיו, יתודה בלבו. (ד] ואם אינו יודע להתודות, אומרים לו: אמור: מיתתי תהא כפרה על כל עונותי) (טור). וכל אלו הדברים אין אומרין לו בפני ע"ה, ולא בפני נשים, ולא בפני קטנים, שמא יבכו וישברו לבו.

ב–סדר וידוי שכיב מרע: מודה אני לפניך ה' אלהי ואלהי אבותי שרפואתי ומיתתי בידך, יהי רצון מלפניך שתרפאני רפואה שלמה, ואם אמות תהא מיתתי כפרה על כל ה] חטאים ועונות ופשעים שחטאתי ושעויתי ושפשעתי לפניך, ותן חלקי בגן עדן, וזכני לעולם הבא הצפון לצדיקים. (ו] ואם רוצה להאריך כוידוי יו"כ, הרשות בידו) (כל בו).

27. *Shulhan Arukh, Yoreh Deah* 339:1 (see Hebrew text for the Shach below)

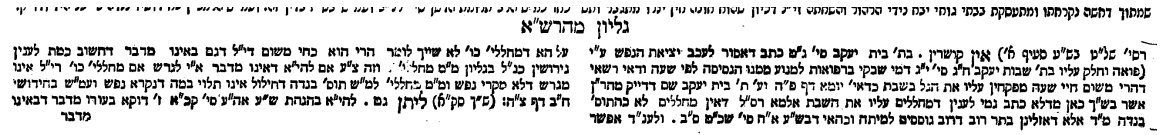
שולחן ערוך יורה דעה סימן שלט סעיף א

א] הגוסס, א הרי הוא (א) כחי לכל דבריו. ב אין קושרין לחייו, ג ואין סכין אותו, ואין מדיחין אותו, ואין פוקקין את נקביו, ד ואין שומטין הכר מתחתיו, ואין נותנין אותו על גבי חול, ולא על גבי חרסית ולא על גבי אדמה, ואין נותנין על כריסו לא קערה ולא מגריפה ולא צלוחית של מים ולא גרגיר של מלח, ואין משמיעין עליו עיירות, ואין שוכרין חלילין ומקוננות, ואין מעמצין עיניו עד שתצא נפשו. ה וכל המעמץ עם יציאת הנפש, ה"ז שופך דמים. ואין קורעין ולא חולצין ולא מספידין עליו, ולא מכניסין עמו ארון לבית, עד שימות. ב] ואין פותחין עליו בצדוק הדין, עד שתצא נפשו.

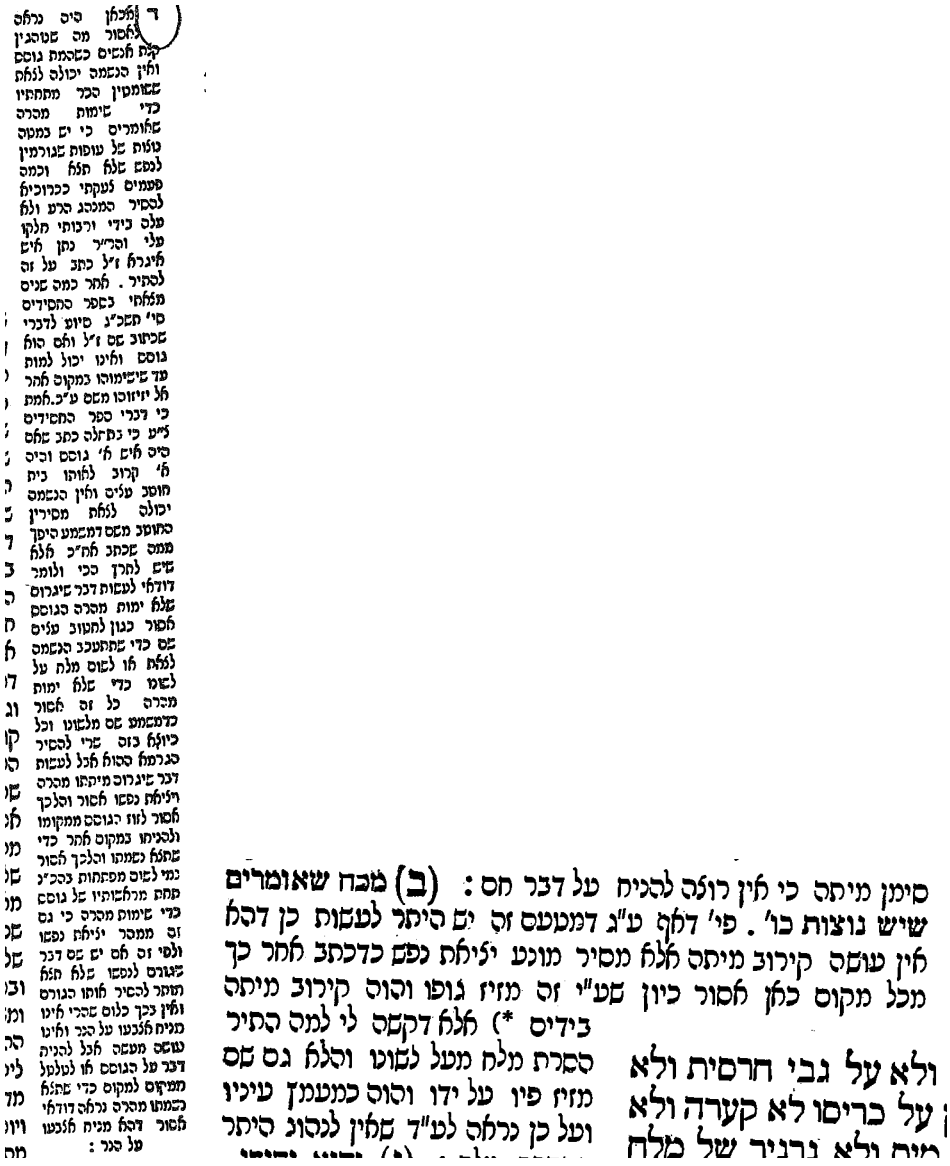
28. Moses Isserles to *Yoreh Deah* 339:1 in *Shulhan Arukh* 1600CE (source is *Sefer Hasidim*)

הגה: ו ג] וי"א דאין חוצבין לו (ב) קבר אע"פ שאינו עמו בבית, עד אחר שימות (ריב"ש סימן קי"ד). אסור לחצוב שום קבר להיות פתוח עד למחר שלא יקברו בו המת באותו היום, ויש סכנה בדבר (רבינו ירוחם בשם הר"י החסיד ז"ל). וכן אסור לגרום למת שימות מהרה, כגון מי שהוא גוסס זמן ארוך ולא יוכל להפרד, ז אסור להשמט הכר והכסת מתחתיו, מכח שאומרין שיש נוצות מקצת עופות שנורמים זה וכן לא יזיזנו ממקומו. וכן אסור לשום מפתחות ב"ה תחת ראשו, כדי שיפרד. אבל אם יש שם דבר שגורם עכוב יציאת הנפש, כגון שיש סמוך לאותו בית קול דופק כגון חוטב עצים או שיש מלח על לשונו ואלו מעכבים יציאת הנפש, מותר להסירו משם, דאין בזה מעשה כלל, אלא שמסיר המונע (הכל בהגהת אלפסי פרק אלו מגלחין).

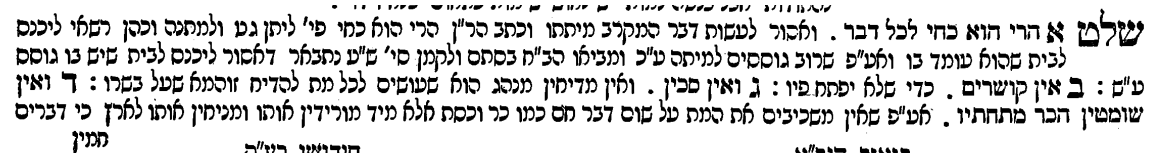
29. Rabbi Solomon Eiger on *Yoreh Deah* 339:1 based on *Beit Ya'akov*, 59



30. *Taz's* comment on *Shuhan Arukh, Yoreh Deah*, 339:1 (see Hebrew text below - after the *bet*)
31. *Shiltei Hagiborim* (Joshua Boaz) to *Moed Katan*, third chapter (in Wilna edition, Alfasi, 16b (see Hebrew text below - at the *dalet*)



27. *Shach*:


שלט א הרי הוא כחי לכל דבר . ולכאורה לעשות דבר המקלב מיתתו וכתב הר"ן הרי הוא כמי פי' ליתן גט ולמתנה וכהן הבאי ליכנס
לבית שהוא שומד בו ולע"פ שהוא גוססים למיתה ע"כ ומציאתו הכ"מ בסתם ולקמן סי' ס"ע מתבאר דלכאורה ליכנס לבית שיש בו גוסס
ע"ש : ב אין קושרים . כדי שלא יפתח פיו : ג ואין סכין . ולין מדיחין מהגג הוא שעושים לכל מת להדיח זוהמת שעל בשרו : ד ואין
שומטין הכר מתחתיו . לע"פ שלין מכניסים את המת על שום דבר אם כמו כר וכסת אלא מיד מורידין לארזו ומניחין לאחו ללרץ כי דבריס
ממין

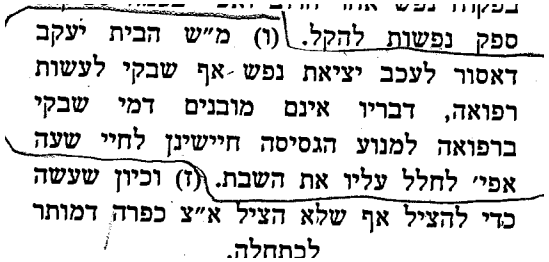
RESPONSA

I do not have the Hebrew texts for the following:

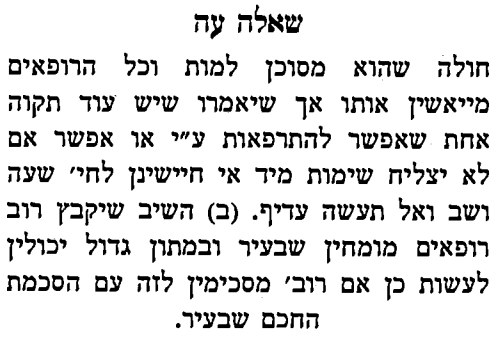
32. R. Immanuel Jakobovits in *HaPardes* 31:3 (1957), pp. 18-19

33. Dr. Jacob Levy *Hama-a-yan*, Tamuz, 5731

34. Jacob Reisher of Metz d. 1733, *Shevut Ya'akov*, 1:13


ספק נפשות להקל. (ו) מ"ש הבית יעקב
דאסור לעכב יציאת נפש אף שבקי לעשות
רפואה, דבריו אינם מובנים דמי שבקי
ברפואה למנוע הגסיסה חיישינן לחיי שעה
אפי' לחלל עליו את השבת. (ז) וכיון שעשה
כדי להציל אף שלא הציל א"צ כפרה דמותר
לכתחלה.

35. Jacob Reisher of Metz: *Shevut Ya'akov* 111:75


שאלה עה

חולה שהוא מסוכן למות וכל הרופאים
מייאשין אותו אך שיאמרו שיש עוד תקוה
אחת שאפשר להתרפאות ע"י או אפשר אם
לא יצליח שימות מיד אי חיישינן לחי' שעה
ושב ואל תעשה עדיף. (ב) השיב שיקבץ רוב
רופאים מומחין שבעיר ובמתון גדול יכולין
לעשות כן אם רוב' מסכימין לזה עם הסכמת
החכם שבעיר.

36. Chatam Sofer, *Yoreh Deah*, #338

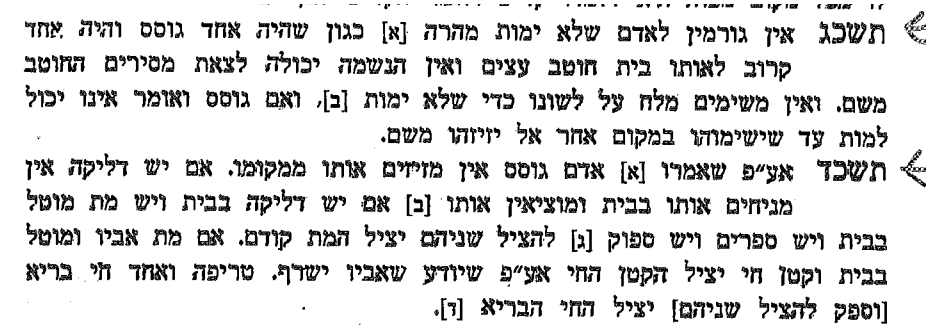
שו"ת חתם סופר חלק ב (יו"ד) סימן שלח

והנה הריב"ש בתשו' סוף סי' מ"ה תפס קצת על הרמב"ם במ"ש מבן הצרפת /הצרפית/ ואני לא ידעתי שום תפיסה עליו כי ז"ל בספר המורה ח"א פמ"ב שם המיתה הוא מיתה ממש גם החולי החזק וימת לבו בקרבו והוא היה לאבן [גבי נבל]

37. *Tel Talpiyot*, Letter 42, vol. 30, 1923, Budapest (I do not have the Hebrew texts)

OTHER WORKS

38. *Sefer Hasidim* (#315-318, edition Frankfurt), #723 and #724



תשכג אין גורמין לאדם שלא ימות מהרה [א] כגון שהיה אחד גוסס והיה אחד קרוב לאותו בית חוטב עצים ואין הנשמה יכולה לצאת מסירים החוטב משם. ואין משימים מלח על לשונו כדי שלא ימות [ב], ואם גוסס ואומר אינו יכול למות עד שישימוהו במקום אחר אל יזיזהו משם.

תשכד אע"פ שאמרו [א] אדם גוסס אין מזיזים אותו ממקומו. אם יש דליקה אין מניחים אותו בבית ומוציאין אותו [ב] אם יש דליקה בבית ויש מת מוטל בבית ויש ספרים ויש ספוק [ג] להציל שניהם יציל המת קודם. אם מת אביו ומוטל בבית וקטן חי יציל הקטן החי אע"פ שיודע שאביו ישרף. טריפה ואחד חי בריא [וספק להציל שניהם] יציל החי הבריא [ד].

39. *Avodat Yisrael* (I do not have the Hebrew texts)
40. *Yesod Haolam* 4:2 (I do not have the Hebrew texts)
41. “God’s Partner” (I do not have the Hebrew texts)

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