
Master's [] Prize Essay []

-) Not necessary
) for Ph.D.
) thesis

or prize essays for a period of no more than ten years.

for security purposes.

- X
yes no

Date _____

Signature of Author

Record

Microfilmed

Date _____

Signature of Library Staff Member

HALAKHIC GUIDANCE FOR THE TERMINALLY ILL

The Rabbis' Concern for the Integrity of the Human Body
and Its Dignity Until Death

by

Gaylia Rooks

Thesis Submitted in Partial Fulfillment
of the Requirements for Ordination

Referee, Prof. Alexander Guttman

Hebrew Union College - Jewish Institute of Religion

Cincinnati, Ohio

1984

DIGEST

This thesis is provided as a guide for liberal Jews who are facing the difficult issues involved in terminal illness. It offers a view of the Halakhic material with which traditional Judaism addresses these problems. Its intent is to confront the tension that exists between the Halakhah and modern life and to investigate possible ways to harmonize them.

The major portion of the thesis contains original translations of fifteen Hebrew responsa dealing with questions related to terminal illness. At the end of each responsum a brief summary is provided which details the significant points of its discussion. Following these responsa, a concluding chapter is presented which thematically reviews issues pertaining to the interplay between Halakhah and modern problems related to terminal illness.

Subjects under discussion in this chapter include:

- A. Informing incurable patients as to the nature of their illness
- B. The option of divorce to avoid chalitsah
- C. Issues regarding the desecration of Shabbat and holidays
- D. The sanctity of life versus the dignity of death
- E. The use of painkillers, experimental drugs, or surgery which might shorten life
- F. Euthanasia
- G. Suicide by the terminally ill
- H. Traditionally accepted criteria of death
- I. The question of donating organs for transplant
- J. Halakhic considerations on the subject of autopsy
- K. Halakhic approval for the hospice movement.

The analysis of these issues draws heavily on external sources as well as the fifteen responsa presented in translation. The purpose of this discussion is not to insist on any particular practice, but rather to lend support for the many painful decisions which need to be made when confronted with the certainty of death.

In Memoriam

Joseph L. Rooks

(1933 - 1983)

"To everything there is a season,
and a time to every purpose under heaven:
A time to be born and a time to die."

Ecclesiastes 3:1-2

TABLE OF CONTENTS

TABLE OF TRANSLITERATIONS.....	iv
PREFACE.....	v

PART ONE: THE RESPONSA

Selection:

I.	ARUKH HASHULCHAN.....	1
	Laws of the Moribund and Laws of <u>Keri'ah</u>	
II.	NOAM 16.....	16
	Six Brief Medical Responsa	
III.	BETSEL HACHOKHMAH.....	21
	Informing the Terminally Ill Patient	
IV.	NOAM 10.....	28
	Defining the Critically Ill Patient	
V.	NOAM 5.....	39
	Suicide on Shabbat	
VI.	ENCYCLOPEDIA TALMUDIT.....	42
	Divorce by the Critically Ill	
VII.	IGROT MOSHE.....	51
	Operating on the Dangerously Ill	
VIII.	NOAM 10.....	57
	Hastening Death	
IX.	NOAM 16.....	60
	A Thing Which Delays Death	
X.	NOAM 6.....	76
	Three Short Medical Responsa	
XI.	NOAM 15.....	84
	Traditionally Accepted Criteria of Death	

XII.	ŞERIDEI EISH.....	89
	Donating Corneas for Transplant	
XIII.	IGROT MOSHE.....	95
	The Prohibition of Autopsy for the Purpose of Medical Study	
XIV.	NOAM 15.....	101
	The Sick Person Before Us	
XV.	ŞERIDEI EISH.....	107
	Performing an Autopsy for Medical Purposes	

PART TWO: THE CONCLUSIONS

I.	Introduction.....	109
II.	Informing the Incurable Patient.....	110
III.	Divorce to Avoid <u>Chalitsah</u>	112
IV.	Desecrating Shabbat and Holidays.....	112
V.	The Sanctity of Life Versus the Dignity of Death.....	113
VI.	Painkillers, Experimental Drugs, or Surgery That Could Shorten Life.....	121
VII.	Euthanasia.....	122
VIII.	Suicide.....	128
IX.	Determination of Death.....	130
X.	Donating Organs.....	131
XI.	Autopsy.....	133
XII.	Acceptability of the Hospice.....	136
.....		
TABLE OF AUTHORITIES CITED BY ACRONYM.....		140
SELECTED BIBLIOGRAPHY.....		141

Table of Transliteration

<u>CONSONANTS</u>	<u>VOWELS</u>
א ב except at the beginning of a word	
ב b	א, א, א a
ב v	
ג, ג g	
ד, ד d	א, א, א e
ה h	
ו v	
ז z	א, א e or ei*
ח ch	
ט t	(vocal) א e or disre- gard*
י y	
ך, כ k	
ך, כ kh	
ל l	א, א i
מ, מ m	
נ, נ n	א, א, א, א, א o
ס s	
ע e	
פ p	א, א u
ף, פ f	
ץ, צ ts	א, א ay
ק k	
ר r	
שׁ sh	* depending on pro- nunciation
שׂ s	
ת, ת t	** kamats katan

PREFACE

In preparing this thesis I have endeavored to follow the advice of my teacher and rabbi, Dr. Alexander Guttmann, may his light shine. His approach to scholarly translation is to render the text "as literally as possible and as freely as necessary." For me, "as freely as necessary" includes the avoidance of sexist language. Throughout this thesis, the third person indefinite pronoun has not been translated as he, his or him. In such cases the passive voice or third person plural is used despite the gendered nature of the Hebrew original. All Biblical quotations have been drawn from the 1955 Jewish Publication Society translation, The Holy Scriptures According to the Masoretic Text. Biblical quotations which included sexist language have been changed where necessary to follow this same system.

Intrusions into the text by the original author are found in square brackets, while my own explanatory material can be identified by parentheses. Following each Section, a summary has been provided which highlights the significant aspects found in the responsum. The system of transliteration follows the More Exact Table of the

Proposed Standard Romanization of Hebrew developed by Professor Werner Weinberg for the American National Standards Institute.

I would like to thank the following people for their help and guidance throughout this project. First, and always, my help-mate, Joe Rooks Rapport. No two Rabbinic theses should ever have to be written in the same house at the same time. And it certainly wasn't my patience and optimism that made this an enjoyable and stimulating experience.

I would also like to express my appreciation to Juliann Brumleve for the patience, hospitality and nimble fingers which produced the final copies of this thesis.

Dr. Stephen Passamaneck, my first Talmud and Codes professor, convinced me that my great-great-grandparents were no smarter than I and thereby enabled me to approach Rabbinic texts with confidence and eagerness. To this teacher and also to his teacher, Dr. Alexander Guttmann, I owe a debt of gratitude. Without the help and guidance of Dr. Guttmann and his willingness to dedicate untold hours as my study partner, this thesis would not have been possible.

Selection #1

ARUKH HASHULCHAN

Yoreh Deah, Chapter 339 Yechiel Mikhal Epstein

LAWS OF THE MORIBUND (CONTAINING 9 PARAGRAPHS)

1. We are taught at the beginning of tractate Semachot that moribund people are (considered) as living (people) in every respect; subject to Levirate marriage¹ and able to release a sister-in-law from Levirate marriage (through the Chalitsah² ritual), etc. It is forbidden to do anything which would hasten their death and thus the Sages taught in Mishnah Shabbat [151b] that one who closes the eyes of a dead person at the same time as the soul departs, behold, this (person is considered as) a murderer. And even if we see that the dying person is suffering greatly in this moribund condition and death would be good, nonetheless we are forbidden to do anything which might hasten death. The world and all that is in it belongs to the Holy One, Blessed Be, and thus is God's will, may God be blessed. How much the more so is it prohibited to work in behalf of the moribund person on (obtaining) a coffin or shrouds or (preparing) the burial.

2. Because of this, one must not tie up the cheeks of moribund people to prevent them from opening their mouths wide, and one must not annoint them or stuff

their orifices in the manner that is done with dead people, and one must not remove the pillow from underneath them the way that one does with the dead. How much the less should one place them on sand or on clay or on earth (as one does to the dead to slow down the process of decay). One should not place a plate, a shovel, or a flask of water or a kernel of salt on their stomach as was the custom (to prevent their bodies from swelling). How much the more so should one not announce their death in the cities in order to eulogize them and one should not hire pipers to mourn or wailing women and one must not close their eyes until the soul has departed. How much the more so must one not perform keri'ah (rending the garment) or bear the shoulder according to the custom in former days. One does not eulogize them or bring a coffin into the house until they have died. And, one does not begin reciting Tsiduk Hadin³ until they have died. Only Kohanim ("priests") need to leave the house when they are moribund and this is clarified in Chapter 370 of the Shulchan Arukh.

3. Our Rabbi Moshe Isserless wrote that it is likewise forbidden to cause them to die faster. For example, in the case of those who have been moribund for a long time but are unable to depart, it 's forbidden to remove the pillow and the mattress from under them because people say that (the pillow and mattress) containing feathers from certain birds causes this (delay of death).

Likewise, it is forbidden to move them from their place or to place the keys of the synagogue under their head in order that they may depart. However, if there is something which causes a delay of the departing of their soul, for example, near that house is a banging sound like that of a woodchopper or if there is salt on the person's tongue and these things delay the departure of the soul (i.e., prevent the person from dying sooner) then it is permissible to remove them (these obstacles) because this is not a positive action of hastening death, but rather removing that which prevents (i.e., delays) it. Up to here are the words of Isserless.

4. An explanation of his words is: first he clarifies that one must not do anything by means of which death is hastened, like removing the pillow. He adds to this that even if they believe it to be a mitsvah to hasten death, because it is for their good, for example if they have been moribund for a long time and one sees that they are suffering greatly, nonetheless it is forbidden to do any action, for it is the will of God, may God be praised. Needless to say, it is forbidden to remove the pillow because their head would move a lot from on high to a low (position), but even to move it a little is forbidden and even performing an action which does not move their body at all (for example) only placing the keys to the synagogue under their head, this too is forbidden.

After all, this is still action that hastens death even though it is not done on the body itself. However, if there is something external (lit: from outside of the body) which delays death, it is permissible to remove it no matter what the reason is. If the delay is due to such an external cause, why should they suffer, for behold, the delay is not because of (the condition of) the body itself. And if the delay is not externally caused, behold, it will not help (to remove it) at all. Also, removing the salt from a moribund person's tongue is not considered a positive action as it involves so little movement and also it is generally put there to prolong life. It is understood that it is permissible to remove it, but there are those who doubt this [see Turei Zahav, Se'if Katan Bet and Nekudot Hakesef and in Lekef Yosef] but in truth there is no need to worry about this.

5. Further on he wrote that there are those who say that one must not dig a grave until the person has died even though the grave is not with the sick person in the house. It is forbidden to dig any grave that will remain open until the next day without burying the dead person in it on that same day and there is danger in this matter, up to here are his words. With respect to this, that one must not dig a grave, the later authorities wrote that it is permissible, according to law, as long as the

sick person has no knowledge of (lit: does not feel) the matter. However, one needs to be cautious on Erev Shabbat near the Sabbath lest there not be sufficient time to bury the person without desecrating the Sabbath and desecration of the Sabbath is forbidden. There is no question that one must not bury the person (on Shabbat) and then it becomes necessary to leave the grave open, and there is danger in this (that someone might fall in). Therefore, it is forbidden to dig a grave while a person is still alive on Erev Shabbat unless one can estimate that even if there will not remain (sufficient) time to bury the person, in any case there will remain time to fill the grave with dirt [Bayit Chadash and Siftei Kohein, note indicator six]. It requires further scrutiny to see if after all the precautions sufficient time will not remain before Shabbat if it is permissible to have non-Jews fill in the grave with earth on Shabbat since there is danger in the matter. Or, on the other hand, since the danger is not explicitly stated in the Talmud, perhaps it is forbidden to ask the Gentiles (to do this). In my humble opinion, one should permit this in a time of urgency (lit: pressing time) because this is the tradition from Rabbi Judah the Pious, that there is danger in the matter, and his words were certainly the tradition from the earlier authorities. But the matter has to be settled in each case

by the Bet Din (Rabbinic court for practical application) according to the law. [And there is no problem for living people to prepare shrouds for themselves if this is done while they are healthy, but when they are dangerously ill, this is like inviting Satan, God forbid.]

6. That which was explained (above), that the moribund are (to be treated) like living people in all matters, refers to (the case) when they are before us. But one who is told, "we saw your relative in a moribund condition three days ago" needs to mourn, for the relative has certainly died because most moribund people die (this is an application of the majority principle). However, that person's wife is forbidden to remarry and we forbid her to mourn and also the children should not recite Kaddish lest it serve as a stumbling block that she remarry because the Rabbis are strict concerning a married woman and do not follow the majority principle like "waters that have no end" and the like.⁴ [See Beit Shmuel, Chapter 17, note 18, and many great authorities have already attacked this.]

7. If, heaven forbid, there is a fire in a house, it is necessary to remove the moribund body so that it doesn't burn. Likewise, the dead must be taken out before the fire is extinguished, and the dead (must be saved) before saving the holy books. But a living child (must be saved) before saving the dead and a healthy living person

before a dangerously ill person [Notes of Rabbi Akiba Eiger in the name of Sefer Chasidim].

8. One says Tsiduk Hadin at the moment the soul departs and the mourners say the blessing, "Barukh, etc., the true Judge", after the soul departs, and one performs keri'ah (rending the garment). The laws of keri'ah are explained in paragraph 340. When a person is about to die one is not allowed to leave them lest the soul depart while they are alone because the soul is desolate if it leaves the body and doesn't see pious people. It is even better if there are ten Jews (present) at the time of the departing of the soul when it meets the Shechinah (the presence of God). Besides this, it is a mitsvah (commandment) to be present at the time of death, as it is said, "That they shall still live always that they should not see the pit. For they seeth that the wise die..." (Isaiah 49:10-11). How much the more so if the departed is learned (lit: great) in Torah and others are blessed by this person before death (e.g., like Jacob). This is a very important matter and the one who is present at the time of another's death and there is no one else there with them is forbidden to leave (the dying person) even if it becomes necessary to postpone the time of prayer [Ibid.]

9. Our Rabbi, Bet Yosef, wrote that "it is the custom to pour out all the drawn water that is in the

neighborhood of the dead person," up to here are his words. (The definition of) a neighborhood is two houses, except the house of the dead (i.e., all three houses). The early authorities wrote that the reason for this is that people know that someone died and it will not be necessary to inform them (verbally) because, "Whoever uttereth a slander is a fool" (Proverbs 10:18). (Note: "slander is here understood as synonymous for "bad news".) This is hinted (in the quote), "And Miriam died there...and there was no water for the congregation" (Numbers 20:1-2).

According to this, on Shabbat and holidays it is forbidden to pour out (water) because it is forbidden to inform (people) of any sorrow. Therefore, the widespread custom among us is not to pour out the water on Shabbat and holidays. Also, in a similar vein, it is understood that it is not necessary to pour out all the water. The source of the law is from Kolbo who wrote that this is the true reason and after that he wrote that there are those who say that the reason is because the angel of death makes a drop of deadly poison fall into the water. He cites also a case about this, see there. But this reason is definitely inferior to the first reason (i.e., to inform others of the death) and I wonder about those who are very strict in this matter as if it were an explicit law

in the Talmud. There are those who want to forbid (the eating of) food if it is cooked in this water. These are perplexing explanations and behold, even with respect to dangers which are explicitly stated in the Talmud, our Sages, may their memories be for a blessing, also said, "Nowadays many interpreted (cited) the words, 'The Lord preserveth the simple.'" (Psalm 116:6) [end Chapter 18, Shabbat and Yevamot, page 72.] How much the more so in a matter like this. What do the big cities do where in three courtyards there are hundreds of homes and what should the poor person do in the winter when it is difficult to obtain water? Therefore, it seems to me, in my humble opinion, (lit: in the poverty of my opinion) that one should be very lenient in this matter, and thus have I seen it from the great authorities. In winter time when the water is covered, and it is with great effort that one draws water because it is covered, one should be lenient. On Shabbat and holidays one should not pour out the water at all, and any water that is used for a mitsvah (for the purpose of fulfilling a commandment), "Whoso keepeth the commandment shall know no evil thing" (Ecclesiastes 8:5). [One must be careful at the time of death that a limb (of the dying person) does not stick out of the bed and those who stand there should see and supervise this. It is proper that they should be engaged in matters of holiness

(e.g., study or prayer) as it is written in the book Ma'avar Yabok.]

ARUKH HASHULCHAN loc. cit., Chapter 340
 LAWS OF KERI'AH (containing 38 paragraphs)

1. If a relative of a person dies who is among those for whom the person is obligated to mourn,⁵ as it is written in Chapter 374, the rending of a garment is an obligation. This is a Rabbinical requirement which is associated with a Biblical verse. Thus our Sages, may their memories be for a blessing, said in Moed Katan [24a] a mourner who does not cut is deserving of death⁶ as it is written (for the Kohanim), "neither rend your clothes that ye die not..." (Leviticus 10:6). This implies that another person (i.e., who is not a Kohen, "priest") who does not rend is deserving of death. This is similar to the matter about which it is said "one who trespasses the words of the sages is deserving of death" [Beit Yosef]. This is merely offered as a support⁷ because the Scriptural verse refers (only) to the children of Aaron, that if they (the children of Aaron) rend, they are deserving of death. [Tosefot, Ibid.]

2. In truth, in all the Holy Scriptures it is found that one rends for this case (the death of a relative) and in similar cases. Behold, David rent his garment for his dead son, as it is written, "Then the King arose and rent his garments" [II Samuel 13:31] and in Job it is written, "Then Job arose, and rent his mantle" [Job 1:20]. It (death) should not be inferior (i.e., less calamitous) to other bad tidings whereupon one rends, as we have found with Hezekiah [Isaiah 19] and Jeremiah [Jeremiah 41] and as will be explained in this chapter. One rends only while standing and if it was done while sitting, the mourner has not fulfilled this obligation [Moed Katan 21] and they must rend again. We learn this from David, as it is written, "Then the King arose" [II Samuel 13:31] and in the Palestinian Talmud [Chapter 3, Halakhah 7]. We learn from Job, as it is written, "Then Job arose" [Job 1:20], see there. But our Talmud (i.e., Babylonian) rejected this teaching, see there. [And the opinion of Rabbi Isaac of Fez and Rabbi Abraham ben David is that after the fact, one has fulfilled the obligation if the rending was done while sitting, see in the Tur].

3. The best way to fulfill the mitsvah of rending the garment is to do so (immediately) after the person has died because that is the time of the most intense grief, or at least before covering the face of the dead with dust

in the grave. However, if one did not rend then, one can do so during all of the week of mourning for that also is a time of intense grief. But after the week of mourning has passed, if one did not rend one's garments, it becomes no longer necessary to do so except for one's mother and father for whom one always must rend out of honor to them.

4. At what place on the garment should one tear? In the front of it specifically high up opposite the heart. The Gemara says: (rending it) lower down or from the sides does not fulfill (the obligation) [Moed Katan 26]. The later authorities who used the expression "in the region of the collar in front" (e.g., like a turtle-neck), their intention was also the same. With our clothes which are entirely open in front, this term, "in the region of the collar" does not apply. They used clothing that was not entirely open in the front, like our undershirt, so they called it the "area of the collar". Therefore, if one rends at the (lower) edge of the garment or in the back of it or from the sides, one has not fulfilled (the obligation). This applies to those people who are obligated from the Torah to mourn. But further on, it will be clarified that all people who are present at the moment of death and all others who are obligated to rend their garments for the dead (e.g., a student for a teacher) have fulfilled (the obligation) if they rend the (lower) edge of the garment because they are not obligated to

mourn for these dead people (as relatives). Likewise, it has been the custom to be lenient beforehand (i.e., in principle) with these obligations of rending a garment. [The obligation of rending a garment is not for the width but for the length of a garment.]

Translator's Notes:

¹Levirate marriage is a Biblical law (Deuteronomy 25:5-10) commanding a brother to marry the widow of his deceased brother in the case where the dead brother left no children. According to the Torah, the purpose is to perpetuate the name of the deceased brother. Rabbinical authorities have since limited this law such that it is permitted only in very exceptional cases.

²Chalitsah is an unpleasant ceremony that involves the woman spitting in the face or in front of the brother-in-law in order to express her contempt for his not fulfilling the commandment of Levirate marriage. See Deuteronomy 25:5-10 and Ruth 3:12-13.

³Tsiduk Hadin is a short prayer said immediately after a person's death which expresses acceptance of God's righteous judgment.

⁴"Waters that have no end" implies a large body of water where one cannot see all the banks. If a person was swimming or fell overboard into a small lake where all banks are visible and did not surface after a certain time (i.e., a few minutes), the person is then presumed to be dead. However, in a large body of water where all the banks are not visible, it is possible that the person swam under water to a shore that cannot be seen and therefore could still be alive. In such a case, the wife is not allowed to remarry and the husband is never legally declared dead. (Yevamot 121a, in Mishnah and Gemara (ch. 16); Even Ha'ezer 17:26; Mishne Torah, Gerushin 13:22)

⁵One is obligated to mourn for a father, mother, sister, brother, son, daughter, and spouse.

⁶The expression "deserving of death" is used for emphasis. It does not imply that the person should be executed.

⁷Esmakhta--an association with a Biblical passage although it is not implied in the passage. This Scriptural verse refers only to the direct children of Aaron and the association has been made indicating all the descendants of Aaron. A detailed treatise on Esmakhta: Yechiel Mikhal Guttmann, Breslau, 1924 (48 p.).

ARUKH HASHULCHANLAWS OF THE MORIBUND AND LAWS OF ḲERI'AH

Selection Number One summarizes a myriad of laws concerning the moribund as well as the laws for ḲERI'AH (rending a garment) after death. Moribund people are considered as living people in every respect and must be treated accordingly. It is forbidden to do anything that would hasten their death; however, it is permissible to remove any external thing which may be causing a delay in the departing of their soul. Laws for remaining present at the time of death, for reciting Tsiduḳ Hadin, and for the pouring out of water from the house are clarified. Several laws for ḲERI'AH are reviewed including: an explanation of those who are obligated, the requirement to be standing, and the location and direction of the tear.

Selection #2

NOAM 16 1973 Medical Section pp. 25-48

(MEDICAL) STUDY BASED ON THE LIMB OF A LIVING PERSON
(p. 25)

In Tsits Eliezer, volume 10, page 133, after he discusses the law concerning burial of a limb from a living person, he writes: It is permissible to benefit from a limb that has been separated from a living person, and it is permissible for doctors to learn from it the ways of healing. But it is understood that it must not be thrown away afterwards in disgrace, rather it must be hidden or buried.

REFRAINING FROM PERFORMING AN ABORTION
ON A CRITICALLY ILL WOMAN (p. 27)

A woman who is ill with a dangerous disease who is going to die from it; and her pregnancy, if allowed to continue will hasten her death, but the woman begs not to have an abortion and it doesn't matter to her if it will hasten her death as long as there will remain after her a memory (i.e., a child), this can be allowed (based on the Halakhic principle to) "remain passive" (lit: stay and do

nothing). (i.e., By remaining passive you do not commit a sin in spite of the calamitous consequences.) [Tsits Eliezer, *ibid*, p. 201, note 17.]

FOR WHOM ONE TRANSGRESSES SHABBAT (p. 39)

I. One must transgress the Shabbat for the moribund person by removing a heap (i.e., of debris off a person under a collapsed building) or if a doctor says that certain drugs will help to prolong the patient's moments of life (lit: the very short expectancy of life). And likewise, for a mute, deaf, or insane person or a minor [Beur Halakhah, end of Chapter 329], but at the end of Chapter 330 the opinion is brought that one desecrates (the Shabbat) even for danger to a fetus, see there. And see in the book Shmirat Shabbat Kehilkhatah Chapter 19, sections 5 and 58 and in Tsits Eliezer Volume 9, Chapter 28. And in Noam Volume 9, page 197 by Rabbi Yechiel Ya'akov Weinberg, and Noam 6, by the great authority Rabbi Isser Yehudah Untermann.

V. The Degree of Temperature for Which One Desecrates the Shabbat (p. 41)

In the Medical Section of Noam, Volume 10, page 292, it was written in the name of Igrot Moshe, Orach

Chayim, Chapter 129, that one should be concerned also with a fever of 39 degrees C (102.2 degrees F). However, the authority Rabbi Pinchas Epstein in Siddur Minchat Yerushalayim, page 113, note number 17, wrote: I myself don't agree (lit: my heart doesn't say so) that (a patient with) a high fever today is not still considered a dangerously ill person; and (another opinion) today there are pills like aspirin and the like which lower a fever after a short time. And many times it has happened that young children had temperatures close to 40 (degrees C, 104 degrees F) and after aspirin the fever went down.

FURTHER MEDICAL PROBLEMS

REGARDING A CONTAGIOUS DISEASE (p. 47)

It is permissible for doctors to endanger themselves by treating patients stricken with contagious diseases of all types and of all kinds, and also the matter is considered to be a great mitzvah for them...[Tsits Eliezer Volume 9, Chapter 17, section 5] and see Noam 10, page 301.

INFORMING SICK PEOPLE ABOUT THEIR ILLNESSES

Patients who are seriously ill and request from their children that they tell them the truth concerning their illness, the author (named below) writes: it is fitting in this (case) to conceal the doctor's opinion from the patient, and it is forbidden for the children to inform the patient even if the parent commands them to tell the truth in fulfillment of the law "Honor thy father (and thy mother)" (Exodus 20:12) [Noam 11, page 240 in the name of Betsel Hachokhmah, Volume 2, Chapter 55].

INFORMING ANOTHER PERSON ABOUT THE ILLNESS OF A CERTAIN PERSON (p. 48)

In Noam 13, page 317, the question is whether it is permissible to inform the fiancée of a bachelor who is dangerously ill and will not live more than two years. Answer: It is certainly obligatory to inform her of this and if she is not told, behold this transgresses (the prohibition) "Thou shalt not stand idly by the blood of thy neighbor" (Leviticus 19:16) and the prohibition "Thou shalt not put a stumbling-block before the blind" (Leviticus 19:14).

NOAM 16

SIX BRIEF MEDICAL RESPONSA

Selection Number Two contains six excerpts from the brief responsa of the medical section of Noam 16. The first responsum grants permission to do medical study on a limb that has been severed from a living body. The second responsum allows one not to perform an abortion on a critically ill woman even though bearing the child will shorten her life. Responsum number three deals with the question for whom one transgresses the Shabbat, and the degree of temperature required before one may do so. The next responsum falls under the category of further medical problems and declares it a mitsvah for doctors to endanger their own lives by treating patients with contagious diseases. Number five deems it appropriate for children to withhold the truth concerning the nature of their parents' illness (see also Selection Number Three). The last responsum states that it is obligatory to inform a person that their intended marriage partner is terminally ill.

Selection #3SEFER BETSEL HACHOKHMAH Betsalel Stern (1967)

Volume 2 (Chapter 55, p. 119ff) including questions and answers and Halakhic clarifications pertaining to the four sections of the Shulchan Arukh.

THE LAW PERTAINING TO THE SICK AFFLICTED WITH CANCER WHO REQUEST FROM OTHERS, AND COMMAND THEIR CHILDREN, TO TELL THEM WHAT THEIR DISEASE IS, AND WHETHER (ONE SHOULD) OBEY THEM.

A patient has been suffering terrible pains for some time and according to the doctor's diagnosis is afflicted with cancer, may God save us (from that sickness). However, the doctor's opinion has been, understandably, concealed from the patient. But now, apparently, the sick person has lost patience and requests from others, and commands the children, to tell the truth regarding the nature of the illness. (The question is) whether it is proper for others to tell (the patient the truth) and whether the children are obligated to obey (and disclose the nature of the disease) because of the commandment "Honor thy father (and thy mother)" (Exodus 20:12)?

I. There is (the following passage) in tractate Horayot (12a which states) that people who want to go out

to the way (want to take a trip) and want to know whether they will return home, or not (i.e., whether they will return safely) should stay in a dark house. (This implies either that some light comes in through the window or indirectly from an adjacent room or that a candle is lit. The house is mostly dark, but there is enough light to see reflections.) If they see the shadow of a shadow (a double reflection), then they will know that they will come back to their house, but this is not so (lit: but this is not the matter, i.e., this is not a reliable method to determine the answer). Perhaps they will be upset (by the prediction) and their luck will go bad. Up to here (is quoted from tractate Horayot). And Rashi explains it [the catch word is yelay milta]. Sometimes they don't have a double shadow and yet they still come back. Or, if they don't see the double shadow they will be upset and their luck will go bad and they will not return (i.e., what causes their bad luck is their being upset, not the actual absence of the double shadow) etc., up to here are Rashi's words. And so it is also in our case, sometimes that the doctors make a mistake and it was not cancer, and medication would help the patient. But if the doctors said that they are suffering from cancer and they (the patients) know, as it is well known, that there is no cure for this disease, they will be upset and their luck will

go bad (i.e., they will die from fear and resignation that they have cancer)...

III. Obviously it seems that also the children are not obligated to fulfill the parent's command in this (case) and must not reveal the doctors' opinion on the nature of the illness, because in a case like this the commandment of honoring father (and mother) does not apply as will be clarified...

VII. However, the truth of the matter, in my humble opinion (lit: it appears due to the poverty of my mind) with the help of God, is that in our case according to all Halakhic authorities (lit: according to all the world) it is not necessary to obey a parent's command because neither the commandment of "honor thy father (and thy mother)" (Exodus 20:12) nor the commandment of "fear (thy mother and thy father)" (Leviticus 19:3) apply in our case. As is explained in Sh'eltot of Rabbi Achay [the end of responsum 60], parents who forgo their honor, their honor is forgone (one need not honor them). This applies (if) their honor is involved, but (if a parent says to a child--you may) beat me or curse me--the child is not allowed to do it. Until here (are the words of Rabbi Achay). And see "Shi'urei Brakhah" in the book Birkhei Yosef [section Yoreh Deah, Chapter 240, paragraph 8, catch word yeod] where he cites a version in Sh'eltot (which

states also) that causing them (parents) pain may not be forgone, see there. And (this does) not (refer to) physical pain (lit: pain of the body) by means of (afflicting) injury or by beating alone, rather the same applies (lit: the same is the law) for pain to the soul. And on the contrary, (causing) pain to the soul is more serious, see there [catchword ela]. (The implication here is that the psychological pain inflicted by children in telling their parents that they have cancer, is worse than beating them.) And if so, in our case, if the children were to tell the parents the bitter truth concerning the nature of their illness, the parents would certainly suffer very much. Therefore, even though the parents command their children thus (to tell them the truth) it is forbidden for the children to obey in this case. For behold, (causing) them pain is not forgiven and the consequence is that the parents are commanding their children to commit a transgression and how much the more so in our case in which the parent did not forgive (the child causing) pain explicitly, which is much worse. See Mishne Lemelekh [Chapter 6 on Hilkhot Ishut, Halakhah 10].

THE HALAKHIC CONCLUSION: I. (Regarding) a sick person whom the doctors have diagnosed as suffering from cancer, may God spare us (from it), one must conceal the doctors' opinion from the patient [sections 1 and 2].

II. If a parent commands a child by the law "Honor thy father (and thy mother)" (Exodus 20:12) to tell the truth concerning the nature of the illness, it is forbidden for the child to do so [sections 3, 7-9]. III. It appears to be the opinion of most of the authorities that whenever a parent orders a child to do something that would not be beneficial to the parent, this is not included in the category of the mitsvah of honoring a father (and mother). However, without cause and without a weighty reason, the child must not transgress the parent's command [section 3]. IV. It seems that whenever (a parent) commands a child to do something that would not give the parent physical benefit, even if the child would not lose anything (i.e., money or effort) by doing so, when the child does not fulfill the parent's request, this is not violating (lit: nullifying) the commandment to fear one's father (and mother). This needs some more study (i.e., this may not be quite certain and therefore requires further study) [section 6)]. V. Parents who forgive (forgo) their children's shaming of them or causing them pain, their shame and their pain is not forgiven even if they (the parents) have forgiven it in advance (lit: even if they forgive them before they shamed them and caused them pain). [sections 7 and 8]. VI. Even if a parent orders a child (to do something) to cause (the parent) pain, it is

forbidden to obey and there is no difference here between pain to the body like beating or injuring and pain to the soul. (It is forbidden to cause both physical and mental pain. Informing a patient that he or she has cancer is afflicting pain to the soul.) [Ibid]. VII. Something that the very action of which proves that it (was done) for the sake of honor and esteem, is included in (lit: there is in this) the commandment of honoring father and mother even if father and mother don't know about it at all (do not know that the child did something good for them) [section 10].

BETSEL HACHOKHMAH

INFORMING THE TERMINALLY ILL PATIENT

Selection Number Three answers the question of whether one is required to conceal the terminal prognosis of a patient even when requested by the patient not to do so. Specifically, when parents command their children to tell them the truth, are the children then obligated to do so under the law of "Honor thy father and thy mother"? The responsum indicates that this law does not apply in such a case because one may not forgo one's honor if it would cause the other person to commit a transgression. Therefore, since a child is prohibited from afflicting a parent with physical or psychological pain, it is forbidden for them to reveal the true nature of the illness because this would undoubtedly cause the parent psychological pain.

Selection #4

NOAM 10 (1966) Medical Section

Rabbi Chanokh Sondel Grossberg

DEFINING THE CRITICALLY ILL PATIENT

(lit: Definition of a sick person who is in danger)

(i.e., whose life is in danger)

I. REGARDING THE SICK PERSON WHOSE LIFE IS IN DANGER FOR WHOM ONE OVERRIDES THE (PROHIBITIONS OF) SHABBAT, WHAT IS CONSIDERED DANGEROUS?

It appears that the matter depends on whether the illness as it is can cause death. Although many people overcome the illness and live, it is still called a sick person who is in danger. The reason is because the thing that causes death, God forbid, is already present there in the body of the sick person and it brings the danger of death in one in a thousand instances. However, if the illness itself, if no complications occur (lit: if no new thing is created there), may lead to danger, in this instance we decide that if it is frequent that this happens (i.e., that complications arise) behold, this is also called danger...(no deletion) Accordingly, we may also consider an infectious (contagious) disease that continuously spreads and if nothing is done to prevent the spread

of this illness it is likely to spread to others and endanger them. Behold, this is like a flame which starts (on Shabbat) in a house that cannot be saved except by extinguishing the fire, even though the fire has not yet spread there (we are allowed to extinguish it)...(no deletion) And from here comes the answer to that which Dr. Ya'akov Levy called attention based on The Words of the Chazon Ish concerning immediate danger and remote danger according to the words of the Gemarah Eruvin 45b. But this is not remote danger at all, rather this is not considered to be danger because it is not frequent, the instance occurs only exceptionally (lit: except in an instance out of the ordinary)...(no deletion)

However, in Bet Yosef Chapter 328, from the words of Rabbeinu Yerucham section 12 in Halakhah 9 he (Karo) cites, in the name of an anonymous authority, that for anything that does not entail immediate danger, even though it might result in danger, one may only transgress the Rabbinical prohibition of Shevut (lowest type of prohibitions for Shabbat) but not Toraitic prohibitions. This seems to indicate that whenever there is no immediate danger now, even though it might come to danger, it is forbidden to transgress the Shabbat. But I have not seen any authorities other than Bet Yosef that would cite these words of Rabbeinu Yerucham. And even Rabbeinu Yerucham did not decide this but wrote 'there is an anonymous

authority that says so'. It seems that even according to this opinion this was only said if the danger was not likely to come and frequently it does not come. But if the danger is frequent, this is not less serious than the case where it is permitted to extinguish the fire (on Shabbat) even if the danger is (only) that it might spread to another house (i.e., material damage, not life threatening)...(no deletion) But it is certain since the danger might come they consider it and prevent it from coming.

Furthermore, I have seen with respect to the essence of the matter, that the Halakhah has already been determined whether one may transgress the Shabbat when the danger is not yet present but is likely to come. In Chapter 328, paragraph 5 regarding an illness that is not internal, one asks an expert and the patient until one of them says that the patient needs (the Shabbat) to be transgressed or that danger to life would be the consequence to such a patient. In Magen Avraham, reference is made to someone who disagrees with Olat Shabbat who cites the words of the Riv, that is to say, what the Riv cites in the name of an anonymous authority, that one must not transgress the Shabbat whenever there is not danger present as it was written in Peri Megadim to explain his (Riv's) words. This (view cited in Magen Avraham) is in agreement with what was explained above that the Halakhah

is not according to the anonymous authority whom the Riv cites. Rather, one should transgress the Shabbat even for danger that might come [Rabbi Benjamin Rabinowitz in Noam 5, pp. 281-291].

II. THE DEFINITION OF "A SICK PERSON WHOSE LIFE IS IN DANGER".

According to the definition of the Halakhah as Rabbi Rabinowitz-Teomim has explained it in Noam, Volume 5, any disease which might cause (lit: bring) death even to one (person) in a thousand, is called a disease that is dangerous. However, (if death results) only if a complication (lit: a new thing) arises which causes death but the disease itself is not likely to cause death, this is called a disease that is not dangerous.

Doctors also agree with this last explanation, but according to the medical definition there are also simple illnesses which, without complications, are, (though) very infrequently, able to endanger life. These illnesses are called in medical terminology: non-life-threatening diseases. For example: the common cold. In the eyes of the doctors it is a contagious disease [by means of germs or a virus]. This contagious disease can spread internally and cause, infrequently, dangerous pneumonia, even without

complications (lit: a new cause) if, for example, the ill person is weak by nature. But usually the cold is called, in medical terms, an illness that is not dangerous. I define an illness such as this by the name "remote danger"....

But as opposed to this (what was deleted above), my opinion is (lit: I stand on my opinion) that something which already endangers the body, even though many people overcome it and live, is called a disease that is dangerous. For example, a woman in childbirth (even though complications are rare)...(no deletion) [Noam 6, pages 240-243 from Rabbi Benjamin Rabinowitz-Teomim.]

III. A SICK PERSON WHO IS NOT IN ANY DANGER ACCORDING TO THE PRESENT SITUATION [FOR EXAMPLE ONE WHO HAS A COLD] AND ONLY VERY INFREQUENTLY DO COMPLICATIONS ARISE AND THE PATIENT BECOMES DANGEROUSLY ILL.

It seems that in such a case one must not desecrate the Shabbat at the hands of a Jew-- only if it is possible by means of an unusual manner¹ or by means of a non-Jew. For dangerously ill patients, one must not ask non-Jews to do the essential work. All the work that can be done earlier before the Shabbat, one is obligated to do before the Shabbat. (In the case of) dangerously ill patients

for whom one must desecrate the Shabbat, it is permitted also to do such work (normally prohibited on the Sabbath) where there is no danger (to the patient) if done after the Shabbat, but nonetheless is necessary to do in order to remove the patient from (later) danger. It is permissible to do this type of work on Shabbat since it has already been permitted to override the Shabbat for them with respect to that work which cannot be delayed.

However, it is forbidden to desecrate the Shabbat for dangerously ill patients with such work as is not definitely required to remove the patient from danger. [For example to prepare sterile syringes and not to boil them on Shabbat or fitting bandages and not to cut them on Shabbat. Also, the routine register of temperature, pulse, the weight of an infant, and regular medicine instructions. It is preferable to do them by means of little signs (i.e., letters, numbers or notes written on little tablets) that can be prepared before the Sabbath (Erev Shabbat). See problems of this sort on page 219 by Dr. Y. Levy]. It is understood that all this needs to pass the scrutiny and approval of the great Halakhic authorities. [Rabbi Yitschak Glickman in Noam 6, pages 220-237.]

In Tsits Eliezer, Volume 8, Chapter 15, section 8, he (the author) cites, in the name of Mitspeh Arie Part 1, Chapter 4, someone whose opinion is that if, in

any case, one needs to desecrate the Shabbat for a person because of other (more important) matters and it has already been permitted to override Shabbat, then one does all the medical matters (even the less urgent things) and there is no need to wait until after Shabbat (Motsei Shabbat).

**TYPES OF ILLNESSES WHICH MIGHT BE LIFE THREATENING
THE DEGREE OF TEMPERATURE FOR WHICH
ONE TRANSGRESSES THE SHABBAT.**

Igrot Moshe, Orach Chayim section 129 wrote that this is not a clear-cut matter, but there is no need to say that it should be clear that there is danger. Even if there is doubt one should also transgress (the Shabbat). Whenever people worry that a patient might have a very high temperature, they should transgress (the Shabbat). And people in general worry when it is close to 38.8/9 degrees Celsius [102 degrees according to Fahrenheit]... (no deletion) And with young children even when it is only more than 100 [Fahrenheit] one should transgress. Finally, if it is not clear to them (those who take care of the sick person) whether to consider this a slight fever, one should transgress.

TRANSPORTATION OF AN ILL PERSON

Concerning an ambulance that is used on Shabbat to transport critically ill patients to the doctor or to the hospital [according to Halakhah and not for practice]², it is permissible for the ambulance to return to its place to be ready in case it is needed again. Also, if the vehicle does not return to its place, it is permissible to turn off the engine for fear of loss or danger if it is left on and also in order not to make anyone stumble in the future (i.e., to make the vehicle not available in the future because it was not taken care of properly). As is mentioned above, this is according to Halakhah and not for practice (for theory and not for practice) [Noam 4, pp. 175-178 by Rabbi Yehudah Isser Zalmanovitch]. In Tsits Eliezer, Volume 8, Chapter 15, sub-section 7, the author wrote that one need not refrain from traveling in a car with a critically ill person even if afterwards the driver or the doctor will return to their homes in their cars. Regarding the turning off of the motor, it is advisable to do so at the same moment as one brakes to a stop.³

See also, in the book Shomer Shabbat Kehilchetah, paragraph 23 and paragraphs 29-32, details pertaining to this by the authority, Rabbi Shmuel Zalman Auerbach. In paragraph 27 the author wrote [quoting a doctor], one who

transports a sick person and stops in this manner might injure the patient, for example, one who is suffering from broken bones or a pregnant woman. Therefore, one should not do this (i.e., come to a stop and turn off the motor simultaneously). It was written in the name of Chazon Ish that if the driver stopped the vehicle and the engine continued to run and they couldn't find a minor who was able to turn it off, it would be permissible for the driver to do so.

Medication on Passover. For a person who is not critically ill, pills that contain flour, if they are only mixed with (i.e., contain) fruit juice, are not prohibited as being hard chamets (i.e., hard to bite which is not as strictly prohibited as other chamets) and is still forbidden. If the drugs themselves are not fit for a person to eat (normally), and is also unfit for a dog to eat, and flour is mixed with these drugs, it is permissible to take them on Passover. [Noam 6, page 337, Chazon Ish, Orach Chayim, Chapter 116, note 8.]

Medication on Yom Kippur. Pills which lessen (lit: quiet) hunger are forbidden to be taken on Yom Kippur, but on the day before Yom Kippur they are permissible even to healthy people. It is permissible to insert suppositories on Yom Kippur because they do not lessen one's hunger, only prevent headaches. [Noam 5, Sha'ar

Hahalakhah, page 311, Responsa of Chelkat Ya'akov, Volume 2, Chapter 58, sub-section 3.]

It is permissible to take a (medicinal) powder without water if one is sick in any part of the body but not critically ill because this is not the way one normally uses (lit: enjoys) it. However, this must be done within a certain measure of time, less than it takes to eat half of a little loaf of bread [Noam 5, Sha'ar Hahalakhah, page 323, Responsa of Shemen Hamaor, Orach Chayim, Chapter 34].

Eye Disease. Washing the eyes for medicinal purposes is permitted on Yom Kippur even if one is not sick in the entire body. [Responsa of our teacher, Rabbi Ya'akov Levi Diskin, Kontrus Acharon, paragraph 89].

Translator's Notes:

¹Desecrating Shabbat in an unusual manner--for example carrying a key on Shabbat is prohibited, but if one does it in an unusual manner, like carrying it on the back of the hand instead of in the palm of the hand or in a pocket, then the person does not transgress the law.

²This is an apologetic statement to prevent attack from ultra-Orthodox Rabbis.

³This is not the normal manner of stopping (usually one comes to a complete stop and then turns off the engine) and therefore, it is not considered a serious desecration of the Shabbat.

NOAM 10

DEFINING THE CRITICALLY ILL PATIENT

Selection Number Four evaluates the definition of a critically ill patient for whom one may desecrate the Shabbat. Several points are considered including the possibility of death or the contagious nature of the illness. Another aspect is to ask both the doctor and the patient until either one says that the Shabbat must be transgressed. Some authorities state that for patients who are dangerously ill, work that is not required to remove the patient from danger is not permitted. Likewise, the authorities are not in agreement regarding the degree of temperature required before one may transgress the Shabbat, but if there is concern or doubt it is permitted. One is permitted to drive, to turn off the engine, and to drive the car or ambulance back on Shabbat in order to transport a dangerously ill person to a doctor or hospital. The last section of the responsum answers questions concerning various types of medication on Passover and Yom Kippur.

Selection #5NOAM 5 Sha'ar Hahalakhah 1962

Question: (IN THE CASE OF) THOSE WHO COMMIT SUICIDE ON SHABBAT AND IT IS POSSIBLE TO SAVE THEM BY DESECRATING THE SHABBAT, WHETHER IT IS PERMISSIBLE OR OBLIGATORY TO SAVE THEM BY DESECRATING THE SHABBAT.

Answer: The later great Halakhic authorities are divided between the opinions of Haminchah [according to the collection Haminchah Mitsvah, number 237] and Chokhmat Shlomoh [notes from our teacher the Rabbi, Shlomoh Kaidenower on the Shulchan Arukh, Orach Chayim, Chapter 329, paragraph 1] (who say that) one must not save them by means of desecrating the Shabbat and the opinions of Birkhei Yosef [Section Orach Chayim, Chapter 301, note 6] and the responsa of our teacher, Rabbi Ya'akov Levi Diskin [section 1, last sub-section, paragraph 5, note 34] (who say that) one must save them. Because for most people who commit suicide, the law of the suicide does not apply (the concept of suicide being interpreted away whenever possible) for we do not call it suicide except if done when the person says, 'behold, I am going to kill myself' and immediately this person goes in anger and (climbs up onto a roof or tree and) falls down and dies [In Avot Derabbi

Natan, Chapter 2, Halakhah 2; Rabbeinu Moshe ben Maimon, end of Chapter 1 from Hilkhoh Aveil (Laws of the Mourner); and the Shulchan Arukh, Yoreh Deah, Chapter 345, paragraph 2]. Whenever we can assume that it was not done intentionally [even if they said previously, 'I am going to commit suicide'] this is not judged as suicide (lit: this person does not fall under the law of suicide) because an evil spirit scared the person or a stupor got hold of them, [Responsa Chatam Sofer, section Yoreh Deah, responsum 326, and Parashat Mordechai section Yoreh Deah, responsum 26]. In any event, suicides are not exceptions to the law that one must save a person whose life is in danger. Therefore, one must save them on Shabbat even by means of complete desecration of the Shabbat. (See more sources Ibid.)

NOAM 5

SUICIDE ON SHABBAT

Selection Number Five comes from Sha'ar Hahalakhah which contains brief summaries of major responsa. One of the issues concerns the question of whether one is allowed or obligated to help save the life of a person who has attempted suicide on Shabbat. The authorities are divided in their opinions; but because the definition of suicide has been defined so narrowly by the Rabbis, one can always assume that the attempt was not intentional or not done in a sound state of mind, thereby obligating one to desecrate the Shabbat to help save them.

Selection #6ENCYCLOPEDIA TALMUDIT

Vol. 5, pp. 742-758

DIVORCE BY A CRITICALLY ILL PERSON

A BILL OF DIVORCE THAT A SICK PERSON GIVES TO HIS WIFE¹ FOR HER BENEFIT SO THAT SHE WILL NOT BE SUBJECTED TO LEVIRATE MARRIAGE² OR CHALITSAH (RITUAL RELEASE FROM OBLIGATION OF LEVIRATE MARRIAGE)³ WHEN HE DIES.

The sections (of the article are): the validity of the bill of divorce upon the death of the divorcing husband; if the husband recovers from his illness; the period between giving (the divorce) and death; examining the critically ill patient; leniencies as compared with other bills of divorce.

THE VALIDITY OF THE BILL OF DIVORCE
UPON THE DEATH OF THE DIVORCING HUSBAND

Just as a man may divorce his wife because she does not find favor in his eyes, because of hatred, etc.--and this is what is referred to in the Torah in the section on divorce (Parashat Gerushin): "If she finds no favour in

his eyes...and the latter husband hateth her, etc. (Deuteronomy 24:1-2)--so also may he divorce her because of love, because he wants what is best for her. For example, (consider the case of) a critically ill person who releases his wife by divorce in order that she not be subjected to Levirate marriage or Chalitsah when he dies with no children. As to the basic validity (lit: essence) of the bill of divorce (get) there is no difference for what reason he divorces his wife, whether because of hatred or because of love. The Torah is concerned (lit: strict) that a man should not divorce his wife without cause since this would be an insult (disgrace) for the woman. However, (even if done for no reason) this does not invalidate the get (lit: this does not touch the essence of the get.)

Since there is no divorce after death, a critically ill person who wants his divorce contingent upon his death, cannot place the time of the divorce at the time of death. If he says, 'behold, this is your get from this illness', or 'behold, this is your get if I have died', this would mean that (the divorce is in effect) from the time this illness ends (with his death). Hence this is not within the realm of (an acceptable) condition (for divorce, which is to say the divorce has no validity.)⁴ Moreover, if he said explicitly, 'this is your get to be

valid after (my) death', he has said nothing; (it has no validity). Rabbi Yehudah Hanasi and his court said, 'behold, this is a valid get' because they hold, as does Rabbi Yosi, that the date of the document proves that it was intended from that day (i.e., from the day when it was written and the man was then still alive), and that is as if he said 'from this day if I die and from this day on after death.' There are those who maintain that even Rabbi Yosi--who held that the date of the document proves (from what day on the man wanted to divorce his wife)--admits that if the man said explicitly 'this is your get after my death', then this is not a valid get because he certainly did not intend it to be valid from this day (i.e., the day the get was written). Rabbi Yosi disagrees only if the man said 'if I die'. (It is ambiguous whether "if I die" implies that the man wanted to divorce his wife from the date stated on the document or only after his death. Therefore, because of the ambiguity, Rabbi Yosi judges the case with leniency and the get is valid.)

The early authorities were divided on the halakhic validity (of such a get): even if he said, 'if I die'. There are those who decided that it is not a valid get and there are those who decided that the matter is doubtful. Therefore, if he dies, his wife is subject to the Chalitsah ritual and cannot enter a Levirate marriage.

And there are those who decided that it is a fully valid get.

If he divorced his wife conditionally (i.e., if I don't recover, then you are divorced) and he dies, she does not need to mourn for him but there is no prohibition if it is her desire to be strict with herself, to cry for him, and to follow his funeral bier. And this does not invalidate the divorce because the get does not depend on it (the get cannot be invalidated after death). But there are those who forbid her to mourn for him lest people spread rumors about this conditional get that it is not valid (lit: there is no substance in it) and permit her to (marry) a Kohen (a "priest" who is forbidden by Toraitic law to marry a divorcee but may marry a widow).⁵ (p. 747)

WHEN HE RECOVERS FROM HIS ILLNESS

Concerning a critically ill person who wrote a get for his wife and divorced her and recovered, the Amoraim disagreed: Rav Hunah said, his get is like his gift, just as the gift of a critically ill person who recovers is not valid (lit: returns), so also his get if he recovers is not valid (lit: returns). And the get is invalid automatically when he recovers and there is no need for him to

say 'I retract it'. But Rabah and Ravah said, his get is not like his gift and even though from a legal viewpoint he may invalidate it when he recovers, there is a negative decree (i.e., this is Rabbinically prohibited) lest people say that divorce is possible after death [author's footnote: Gitin 73a]...

If he said, 'this is your get from this day if I die from this illness' and a house fell on him or a snake bit him--or a lion ate him--the get is not valid because he did not die from that illness. And even if the cause of his death (while he was critically ill) was a frequent one, since he didn't die because of the illness, the get is not valid. But there are those who say that this is only so because it (i.e., being bitten by a snake or eaten by a lion) was an infrequent (i.e., unusual) accident and it didn't occur to him (lit: it didn't enter into his mind) at the time when he made the stipulations that if he would die it should be a valid get even because of death by such (unusual) a cause...(p. 750)

BETWEEN GIVING THE GET AND DEATH (p. 752)

What is her (marital status) during those days--between the giving of the get into the woman's hand and the death of the critically ill (husband)--Rabbi Yehudah

says that she is as a married woman in every respect. Another man who has intercourse with her intentionally (i.e., knowing that her husband is still alive and that he is therefore breaking the law) is (subject to the punishment of death by) strangulation. Unintentionally, (i.e., if another man has intercourse with her not knowing that her husband is still alive) he has to bring a sin offering. Her husband has the right to whatever she finds and to her earnings (lit: the work of her hands) and the annulment of her vows. He inherits her property, and can defile himself for her (if she dies) if he is a Kohen ("priest"). The essence of the matter (i.e., the law) is, behold, she is like his wife in every respect except that she does not require a second bill of divorce from him if he dies because close to death the get becomes valid...

E'AMINING THE CRITICALLY ILL PERSON (p. 755)

A critically ill person who requests that a get be written must be examined (to insure) that his mind will be lucid at the time of the writing (of the get) because the sick person sometimes does not have a clear mind (lit: his mind is not settled upon him). And likewise, one must watch out particularly to see if he is lucid at the time of the giving (of the get). How much the more so is it

necessary to see if he is lucid at the time when he requests that it be written and the time when he requests that it be signed, because if he is found not to be lucid at any one of these times, the get is invalid. And there are those who wrote that even at the time of the signing it is necessary that he be lucid.

LENIENCIES AS COMPARED WITH OTHER BILLS OF DIVORCE (p.755)

Even though the sages prohibited divorce on Shabbat or holidays, a critically ill person who wrote a get for his wife but didn't have enough time to give it to her before the day became holy (i.e., before the onset of Shabbat or a holiday) and they (concerned or interested persons) fear that he might die (i.e., before the get was handed to his wife) (the Rabbis) permitted divorce on Shabbat in order that she not be obligated to submit to (lit: not fall before) the Levirate marriage or not to upset the critically ill person because they did not do according to his will...

One need not look for precision concerning the get of a critically ill person... (p. 756)

But some of the later authorities wrote that in these days when Levirate marriage is not performed at all,

but only Chalitsah, it is certainly an advantage to her (to have a valid get). (Note: Then she will not need to undergo the unpleasant ritual of Chalitsah which is not merely unpleasant because she despises her brother-in-law but according to the Torah is an undesirable alternative to Levirate marriage.)

Translator's Notes:

¹Since Jewish law states that only a husband may divorce his wife, the gendered language here is intentional.

²Levirate marriage is a Biblical law (Deuteronomy 25:5-10) commanding a brother to marry the widow of his deceased brother in the case where the dead brother left no children. According to the Torah, the purpose is to perpetuate the name of the deceased brother. Rabbinical authorities have since limited this law such that it is permitted only in very exceptional cases.

³Chalitsah is an unpleasant ceremony that involves the woman spitting in the face or in front of the brother-in-law in order to express her contempt for his not fulfilling the commandment of Levirate marriage. See Deuteronomy 25:5-10 and Ruth 3:12-13.

⁴Ein get leachar mitah - there is no divorce after death.

⁵Leviticus 21:7.

ENCYCLOPEDIA TALMUDIT

DIVORCE BY THE CRITICALLY ILL

Selection Number Six reviews the requirements for a critically ill person who wishes to divorce his wife lest she be subjected to Levirate marriage or Chalitsah. The first section determines the validity of the bill of divorce upon the death of the husband and the specific wording required. The second part considers the validity of a bill of divorce if the husband recovers from his illness or if he dies from an accident unrelated to his illness. The next section is devoted to the marital status of the couple during the period between the giving of the divorce and the death of the husband. The fourth aspect is concerned with examining the critically ill patient to insure that he is lucid at the time of the writing, the giving, and the signing of the bill of divorce. Finally, the responsum indicates the leniencies concerning divorce by a critically ill person as compared with other bills of divorce.

Selection #7IGROT MOSHEYoreh Deah

14 Sivan 5721

Section 58

May 29, 1961

CONCERNING A SICK PERSON WHOSE PROGNOSIS IS CERTAIN DEATH. WHETHER IT IS PERMISSIBLE TO PERFORM AN OPERATION THAT HAS THE RISK, GOD FORBID, OF HASTENING DEATH IF THE PATIENT IS NOT CURED BY IT.

Your High Honor, my friend, the great Rabbi and famous authority, our teacher and Rabbi, our master Rabbi Yehoshu'a Halevi Hirschhorn, may you live a long and good life, Amen, the author of the important book Mimaynei Yeshu'a.

Concerning the matter of operations that have a possibility of danger and a possibility of cure, the latter being less than an equal possibility (i.e., the success is less likely than the failure) but without the operation it is certain that the patient would die within a short time, it is true that I have agreed to permit what was said to your highly esteemed honor by our friend, the authority, our teacher, the Rabbi, our master Yosef Eliyahu Henkin, may he live a long and good life, Amen. The reason (that I permit the operation in this case) is

that the entire matter under discussion pertains to the issue of the "short life" (lit: the life of the hour, i.e., whether the possible slight shortening of life by the operation should decide the issue against the operation). Perhaps the sick person will die sooner because of the operation rather than the way the patient would die without it, but it is explicitly stated in Avodah Zarah, page 27, that Rabah said that Rabbi Yochanan said, and some say Rabbi Chisdah said that Rabbi Yochanan said, that a person who is certain to die may be treated by Gentiles (lit: them) for concerning the "short life", one need not worry. See Rashi at the catch word (opening phrase) "safek" that a non-Jew certainly would kill the patient, and when it is doubtful (i.e., an equal possibility) whether the person would live or die, they may not be treated by them because the fear of the non-Jew (killing the Jewish patient) is much greater than the possibility of an equal chance. But, in any event, if they would certainly die, one need not worry about the "short life" and it is permissible to be treated by a non-Jew even though it is nearly certain that the non-Jew would kill the sick Jew, because of the small possibility that the Gentile might cure the Jew. And similarly, in the Tur, Yoreh Deah Chapter 155, it is written that the reason that one who is critically ill may not be cured by Gentiles (lit: them)

is because it is certain that they would kill the Jew. But, in any event, if the patient would certainly die (anyway), then it is permissible. Consequently, one need not be concerned with the "short life" even if the cure (by the Gentile) is a thing which is more likely to hasten death (because of the slight possibility that the Gentile might cure the Jew). And, in addition, the matter is proven by the Talmud which brings evidence from the quote, "If we say: We will enter into the city, then the famine is in the city, and we shall die there". Therefore it is permitted for them to go to the camp of Aram even though it is considerably more likely that they will kill them in the war.¹ Consequently, one need not consider the "short life" even if a cure is very doubtful and it is more likely that they would kill them instantly.

And it appears that this is the intention of the author in the Shulchan Arukh who wrote (Ibid.), "but if they will certainly die they may be treated by a non-Jew, for the "short life" one need not worry in such a case". Seemingly, the word "beha" (in such a case) has no explanation, but see in the notes of Rabbi Eliyahu, note number five which discusses this and explains that his intention in writing the catch word "lechayei" (for the life) was to say that only here one need not worry, but regarding Shabbat one must be concerned even for the "short life" in

order to desecrate the Sabbath. But this is quite a forced interpretation. In "Orach Chayim", Chapter 329, the law in the Shulchan Arukh is explicit that one must transgress the Sabbath even if they find someone crushed (under a fallen building) who is only able to live for a short time. Why does he make this inference about this fact? In order to inform us that if there is a possibility of being cured, one need not worry at all about the "short life" even if the chance is very remote that the patient will be healed and more likely that they will die sooner. We learn from this that it is permissible (to be healed by a Gentile doctor).

In any case, it is explained in the Talmud according to Rashi and the Tur, that if a diagnosis was made that if the sick person was not cured by the non-Jew it is certain that the patient would die within a short time, one need not worry about the "short life"; even if it is more likely that the non-Jew would kill the patient. And we have never seen anyone who disagrees with this. This being the case, we learn that sick people may be operated on, if, without surgery, they would certainly die. This is so even if there is only a remote chance that they will be cured by the operation and if they are not cured by it that they will die sooner. One need not worry about the "short life" because it is for the patients' own good on

the chance that they would be cured by the surgery and live a fitting (normal) life....

This is the reason that I gave a Halakhic decision to allow this and the authority, Rabbi Yehudah Arie Henkin, may he live a long and good life, Amen, agreed with this. But this was an oral decision and not in writing until now, when I am writing to your honorable great illustrious personality at your request.

And behold, I am your friend who honors you very much,

Moshe Feinstein

Translator's Notes:

¹II Kings 7:4ff. The situation is the following: a group of lepers who had no food outside the city walls where they had to stay, were forced to choose between two evils--to go back into the city of Jerusalem and die of famine (because of the seige of Aram) or to go to the enemy camp where they would be killed immediately. They chose to go to the enemy and did not care for the "short life" whereby they could live a little longer and die more slowly of famine.

IGROT MOSHE

OPERATING ON THE DANGEROUSLY ILL

Selection Number Seven investigates the question whether it is permissible to perform an operation on a patient when the operation, if not successful, will shorten the patient's life. In a case where the person is definitely going to die if the operation is not performed, it is permitted, even if the chance of failure is greater than that of success. The issue focuses on the Halakhic category of 'the short life', literally: "the life of the hour." The decision is based on the Talmudic passage which states that a person facing certain death may be treated by a Gentile doctor, in spite of the risk that the Gentile might intentionally kill rather than cure the patient. For the possibility of a cure, one need not consider the short life. There is no question, however, as to the greater importance of the short life regarding the injunction against the desecration of the Shabbat.

Selection #8

NOAM 10 1966 Medical Section

Editor: Rabbi Chanokh Sondel Grossberg

HASTENING DEATH

In (the case of) a critically ill person, whether --according to Moshe Isserles in Yoreh Deah, Chapter 339, paragraph 1, (who holds) that if there is something which causes a delay in the departing of the soul, it is permitted to remove it; for this is not a positive action (of hastening death) but rather removing that which prevents (i.e., delays) it--it is permissible to stop giving the patient those drugs which are prolonging life and to allow the sick person to die in a natural way. I have already discussed this in depth in my article on this subject in Hapardes [Kislev, 1957]. In any event, what I wrote there was only to clarify the Halakhah (i.e., in theory) and not for practice (and is not to be applied).¹ In this serious problem which, to our regret, is in the area of daily occurrences, we are required (to have) a clear and definite decision by the great Halakhic authorities [Noam 6, page 273 by Rabbi Doctor Israel Jakobowitz].

Rabbi Nisan Toloshkin [in Or Hamizrach, Nisan, 1961, page 24] wrote about a critically ill patient for

whom there is no cure and who is suffering from diabetes, and by withholding the shots (it is possible) to hasten the person's death. His conclusion is that it is forbidden to do so (lit: the law of a murderer applies).

There is no permission to accelerate the death of a sick person because of compassion and the one who does hasten death is judged a murderer. [Noam 4, Sha'ar Halakhah page 16 by Rabbi Jacob Miskin, Hapardes, Cheshvan, 1959, and see Noam 6, page 289].

GOSEIS (Moribund) For the sake of medical treatment it is permissible to touch a dying person. [Tsits Eliezer, Volume 8, Chapter 15, section 3, number 16, according to Shevut Ya'akov, Volume 1, Orach Chayim, Chapter 13, and Chatam Sofer, Yoreh Deah, Chapter 338].

Translator's Notes:

¹This is a frequent form of apologetics to prevent attack from more orthodox authorities.

NOAM 10

HASTENING DEATH

Selection Number Eight deals with the sensitive issue of hastening death. A question is raised regarding the interpretation of the statement of Moshe Isserless which allows for indirect action to be taken to remove that which delays a person's death. An attempt is made to equate this permission to the withholding of certain drugs which prolong the life of the critically ill patient. By the analysis given here, it is concluded that such application is forbidden.

Selection #9NOAM 16

1973 pp. 53-63

Dr. Jacob Levy

**A THING WHICH DELAYS DEATH:
A MEDICAL CHAPTER FOR HALAKHIC PROBLEMS**

AMONG THE LAWS CONCERNING THE MORIBUND, MOSHE ISSERLESS WRITES IN THE "GLOSS" [SHULCHAN ARUKH, YOREH DEAH 339:1]: IF THERE IS SOMETHING WHICH CAUSES A DELAY IN THE DEPARTING OF THE SOUL, FOR EXAMPLE, IF THERE IS CLOSE TO THE HOUSE A BANGING SOUND LIKE THAT OF A WOOD CHOPPER, OR IF THERE IS SALT ON THE PERSON'S TONGUE, AND THESE THINGS ARE DELAYING DEATH, IT IS PERMITTED TO REMOVE THEM FOR THIS IS NOT A POSITIVE ACTION OF HASTENING DEATH, BUT RATHER REMOVING THAT WHICH PREVENTS (i.e., DELAYS) IT.

It is my intention to find here, if possible--based on this law--a Halakhic solution to practical problems of modern medicine. As a doctor, my intention is only to describe the facts and to present the medical opinions. The Halkhic sources that I cite are necessary only as background to describe this. Whether the Halakhic authorities will derive any benefit from my words and how they will use the medical description--those authorized for Halakhic matters, the Rabbis, shall decide.

A. THE SICK PERSON IN A COMA

In the periodical Hadarom, Rabbi Rabinowitz and Dr. Koenigsberg write in their article about "The Definition of Death and Establishment of its Time in Light of the Halakhah": there are incidents in which the brain deteriorates so much that the ability of recognizing (people) is lost and it is impossible for the body to move from its place and also, according to medical appraisal, it is impossible to improve their condition. But, in spite of this, they are able to exist in this condition many days (a long time) [if supplied with nourishment] since some movements of vegetative life [for example complex reflexes, blood circulation, breathing, and the like] still function.

The medical authorities (lit: authors) judge this sick person as dead, on the basis of the new thought (medical concept) of "brain death" and "irreversible coma", which makes it possible to remove an organ for transplant from this "person who is considered dead" even if the heart is still beating as usual.

In another place I have dealt extensively with this topic ["Hama'yan", Tishri, 1969, p. 3 and "Hama'yan", Nisan, 1972, p. 24] and have proven on the basis of the new international professional literature that there are

many experts who disagree with these modern opinions. They hold on to the traditional approach that only on the basis of the final stopping of brain functions, blood circulation, and breathing is it permissible to determine death. They reject the new approach for reasons of principle and also for reasons of practicality.

The medical authorities (lit: authors) ignore these contrary opinions and don't even mention them. They rely on (i.e., accept) the new opinion of "irreversible coma" as if it were the "true Torah of Moses" (i.e., the absolute truth), and decide accordingly: It is permissible to starve or thirst sick people until their bitter, definite end. As we have explained above, there is well-founded (i.e., sound) medical opinion to judge this sick person as a living person. It is for the Rabbis to decide whether we should judge unfavorably the one who follows the advice of the medical authorities in causing a person's death.

Concerning killing by means of starvation we find the following sources: Rava said, one who binds a person who then dies of hunger is not guilty [Sanhedrin 77a]. In a similar incident, one who binds a person in a place where ultimately sun will come, Rashi writes there: this is causation (of death, but not killing), and no punishment is given by a Bet Din (Rabbinic court of law) but

rather from heaven (from God). And thus decided Maimonides: But one who forces another person and leaves them to starve to death, or who forces another person and leaves them in a place that cold or heat will come there, and it comes and kills them, etc., in all of these cases, they (the court) do not kill (sentence to death) that person, but this is still considered murder and will be punished by God.

Indeed, it is crystal clear that from a medical standpoint one cannot equate killing a sick person in a coma by hunger with removing something that delays death as in the case in which Isserless speaks about a moribund person.

The language of Moshe Isserless already emphasizes this distinction. The clear sign (proof) for his permission is that "there is no positive action in this". It is possible to say this regarding the removal of a banging sound because it does not have any physiological connection with causing the death of a sick person. But certainly one cannot say this regarding the action of stopping the flow of nourishment in an active way. [If the flow of nourishment stops automatically and the one who is taking care of the sick person leaves the patient alone and abstains from renewing and continuing the life-giving flow, this is a different Halakhic problem and it can be

clarified in another way: whether the person is judged like one who transgressed the law "Thou shalt not...stand idly by the blood of thy neighbor" (Leviticus 19:16) because he or she is not actively trying to save the sick person. But this does not touch upon our case, the case of Isserless' permission upon which the medical authorities wish to base their opinion.]

The medical authorities assume that by starving these sick people, something good is done to them. From a physiological standpoint it seems to me that this assumption is questionable. It is possible that all the time sick people lie in a coma they do not feel any pain from their illness, but who knows whether they do not feel precisely the pain of hunger and of thirst?

In contrast to the advice of the medical authorities to shorten life by means of hunger and thirst, it seems to me that the ethical view of Professor Gerstenbrand which was expressed at the International Symposium of Brain Specialists is more humane. He said: also a sick person like this, as a human being, is naturally entitled to all rights of caretaking...(no deletion from translation).

The international scientific debate on evaluating the signs of brain death about which I have dealt extensively in my above-mentioned article [author's footnote:

"Hama'yan", Tishri, 1969, p. 3 and "Hama'yan", Nisan, 1972, p. 24] showed that we do not have accepted definite criteria on the cessation of brain activity according to the present state (of medical science). This being so, who would dare tell us the future of a sick person who is suffering from serious brain damage. I recall an incident of a seriously ill person for whom they called a famous neurologist in Israel for consultation. The condition of the sick person was similar to that which the authors in Hadarom described. They asked the expert if there were prospects that the sick person would recover. He answered, "There certainly are. We still do not have definite signs (criteria) whether some sick people (like this one) will recover".

To summarize part I of the article: There is no physiological equality between the incident of prolonged deep com and the incident of Moshe Isserless. Therefore, there is no medical basis to advise the Rabbis to permit the causing of death of a sick person in a coma on the basis of the gloss by Isserless.

B. CARING FOR THE DANGEROUSLY ILL

Serious problems arise in the heart of the doctor who is caring for a sick person who already stands at the threshold of death, whose hours of life are numbered. In

the language of our Sages, there are still prospects for a "short life". The doctor sits next to the bed of the sick person and gives up hope because all efforts to save the patient have failed. The doctor sees that the movements of the patient are due to pain, but there is nothing that can be done to ease the pains. The doctor searches for a way to reduce the pains but knows that it is forbidden even by treatment to shorten the patient's life. Then, the thought occurs to the doctor that perhaps a way will be found which will cause to accelerate the process of death indirectly. Perhaps it is possible to stop treating (caring for) the sick person; not to give more of the nourishment that has been made to flow until now in an artificial manner by means of a plastic tube in the vein. Perhaps it is possible to see in this artificial nourishment a "thing which prevents death". When the doctor takes out the tube, it is only removing that which prevents (i.e., delays) death. Thus, we have arrived at the matter concerning the permission of Moshe Isserless, as we wrote in the beginning of this article.

In part I of the article we already clarified this problem and we reached the conclusion that from the medical standpoint it is not possible to compare stopping nourishment to stopping the sound of a woodchopper. And therefore, we did not find a medical basis to advise the

Halakhic authorities--on the support of Isserless--to permit stopping the flow of liquids.

But, another matter is in the instance where nourishing fluids are already gone from the container. Is the doctor obligated to refill the container? In the eyes of the doctor there is no difference, from a physiological standpoint, between stopping the flow and refraining from renewing the source of the liquids. However, from a Halakhic standpoint it appears that there is a basic difference between the two matters. If one stops the life-giving flow, this is a question of killing--as we have explained. But, if the doctor does not refill the container, granted this is not committing murder, but perhaps the commandment of saving a life is mandatory (lit: rests upon the doctor). The doctor who refrains from fulfilling the obligation to save the sick person perhaps transgresses that prohibition, "Thou shalt not...stand idly by the blood of thy neighbor" (Leviticus 19:16).

There is an important practical difference between the prohibition of murdering and the commandment of saving. The prohibition against murdering does not depend on any evaluation of the doctor. All the time that a person is alive, it is forbidden to kill them, even if their prospects for life are null, even if they are moribund.

In contradistinction to this, the commandment to save depends on the condition "if they are able to be saved". If the prospects for life are null, the obligation to save does not rest upon the doctor. The commandment depends, however, on the evaluation of the doctor.

In part I of this article we emphasized that according to doctors' experience we must not rely on the prognosis of no hope for the future. To what does this refer? To the sick person in a coma who is still able to live for weeks or months, or might even recover. Not so with the person who is about to die, on whose bed the doctor sits, and after all the attempts to save them, has given up hope. Then, according to the way of doctors, it is permissible to stop treatment and nourishment.

Our Sages, may their memories be for a blessing, establish that a sick person like this, whose prospects are only for a very short life (lit: "life of the hour"), is considered as a lost person [Author's footnote: Avodah Zarah 27b. According to Rashi, a day or two.] And thus, the Halakhic question comes up whether it is permissible for the doctor--as in the manner of doctors--to stop the treatment of saving the life of the sick person who would live only for a very short time. Is this type of treatment also called (lit: also come under the category of) "able to be saved"? The answer will perhaps depend on

the question whether people are obligated to return a lost "object" that is damaged (Sanhedrin 73a states that the requirement to return a lost item includes returning life to a person whose life is about to be lost.) when it is in such a condition that it will cause the owner (in our case the sick person) suffering or burden.

It is clear, then, that the answer will be different for every individual patient according to their condition and that individual clarification is necessary. Whether the sick person is still interested in living, for example in order to meditate further about repentance or in order to have sufficient time to make a will for their children. Or, whether they are suffering from severe pains and are interested in the doctor stopping their sorrow which the physician is unable to reduce.

The progress of medical science and technology has opened before the physician additional new ways to prolong life, even for the hopelessly ill, and therefore the answers will be even more diversified.

Different opinions are found in the Halakhic literature whether it is commanded or prohibited to prolong the hours of life. Therefore, it is good if the doctor will consult with a Halakhic authority as far as possible.

It is possible to learn my basic view from the conclusion of the words of Rabbi Chaninah ben Teradyon

[author's footnote: Avodah Zarah 18a] that even in great pain one should not shorten life. But, on the other hand, we are also able to conclude that there is no obligation to prolong a life of pain. "Better that the One (God) should take it, Who gave it."

On the basis of all this clarification, we are made aware that for the sake of saving the very sick person for a short time the doctor has modern care-taking devices, if they are needed--but they are not relevant to the problem of our article, which is the opinion of Moshe Isserless, pertaining to the issue of delaying death.

C. A SICK PERSON WHO IS CONNECTED TO A HEART-LUNG MACHINE

The progress of medical science and of modern technology raises for us Halakhic problems without number. It makes possible the revival (keeping alive) of a human being now considered to be dead, as we have mentioned above. One of these modern devices is the heart-lung machine. If, for example after an accident, the heart and lungs stopped activity for a while, there exists in our days the possibility to cause the blood to circulate (again) and (to start) the breathing in an artificial way, with the hope that in the meantime the body will gain strength and the activity of the heart and lungs will start on their own. Sometimes the patient is connected to

the machine for a long time. This condition of questionable life or death can continue for days and weeks and it is difficult to determine when this patient passes over the line of life-death. And precisely this determination is of practical importance if it is our intention to use an organ from the dead person to transplant (into) another sick patient in order to save a life.

The doctor recognizes the fatal consequences which might come as a result of an error in judgment. The doctor might consider the patient connected to the machine already dead, when in truth there were still signs of life. This doctor causes the patient's death by stopping the machine's activity. On the other hand, the physician does not want to postpone the determination of death because, for the sake of transplanting, it is especially suitable to use fresh organs of the dead person. 'It is bad if I say the one opinion and bad if I say the other' (i.e., whatever I say, I'll be attacked by certain authorities who disagree) [Kelim, Chapter 17, Mishna 16 and in Baba Batra 89b].

In order to extricate the Jewish physician from this dilemma, Rabbi Moshe Munk, may his memory be for a blessing, expressed the opinion that it is possible, perhaps, to use for Halakhic clarification, the permission of Moshe Isserless that was referred to above in order to

avoid the prohibition of murdering [Author's footnote: "Sh'arim" 24, Kislev 1968]. Perhaps it is possible to see in the heart-lung machine only something which delays death, and if the physician stops its activity, it is only removing that which delays this (i.e., which delays the soul from departing).

Some time ago, Rabbi Barukh Rabinowitz also wanted to equate the question of the heart-lung machine to the permission of Moshe Isserless [author's footnote: "Asya", Sha'arei Tzedek Hospital, issue 3, 1971]. He saw in this an opening (i.e., permission) to the problem of fresh organs for transplant.

However, as a doctor, I see basic biological differences between the situation which Moshe Isserless describes and that of the heart-lung machine, with respect to the situation of the patient and the actions of the doctor differences similar to those that we mentioned in the first two sections of this article. The sick person that Moshe Isserless speaks about is unquestionably (lit: stands certainly) at the last moment before death. But the sick person who is connected to a machine is in a questionable situation of life and death (lit: situation of doubtful life-doubtful death). The doctors are not able to determine with certainty whether the patient will die. Perhaps it is still possible to save this person,

for, behold, for this purpose the patient was attached to the machine.

NOAM 16

A THING WHICH DELAYS DEATH

Selection Number Nine reviews the attempt by medical authorities to use the gloss of Moshe Isserless to the Shulchan Arukh which permits the removal of that which delays the death of a moribund person. In cases of irreversible coma and "brain-death", withholding nourishment and medication is defined as causing death rather than killing. This is a lesser offense and is not punishable by Rabbinic authority. There is, then, a Halakhic distinction between stopping the flow of nourishment and merely not renewing the source when the nourishment runs out. Moreover, there is a clear difference between the prohibition against murder and the commandment of saving a life. The key issue involved is the determination that the life is "able to be saved", a condition not met in many instances of critical illness. The responsum considers the example of the heart-lung machine and the physician's conflict over whether to sustain the body beyond all hope for recovery or allow it to die and give life to others by providing fresh organs for transplant.

Isserless' gloss permits indirect action in removing a thing which delays death. Because the moribund person he refers to is in the last days before death, this should not be compared to a heart-lung machine which is able to prolong this period indefinitely.

Selection #10NOAM 6

1963

pp. 271-275

NOTES AND CLARIFICATIONS

The Rabbi Doctor Israel Jacobovitz

**QUESTIONS AND EXPLANATIONS CONCERNING
VARIOUS MEDICAL MATTERS**

With this I want to place before those who know religion and law, experts in making Halakhic decisions, many questions that I have been asked about medical problems and specifically, those which concern modern treatments which up until now did not have the good fortune to be expressed clearly on the basis of Halakhah.

A. TRANSFUSING THE BLOOD OF A DEAD PERSON TO A SICK PERSON

Not long ago the practice began to use blood taken from the bodies of dead people immediately after their death in order to inject it into the veins of a sick person who requires a blood transfusion. The need to use the blood of dead people like this came from the fact that frequently there is not sufficient blood from the living

to fill the need, especially in the instance of rare blood types that are needed for some sick people.

With respect to grafting the cornea of an eye from a dead person to a blind person (lit: one who is full of light, a euphamism used to refer to one who is blind), many have already ruled to permit this because a blind person is considered as one who is dead and therefore this pertains to the concept of pekuach nefesh (saving a life).¹ There are opinions that it is not forbidden by the Torah to derive benefit from the skin of a dead person. Furthermore, there is a new explanation by the authority, Rabbi Avraham Yitschak Untermann, may he live a long and good life, Amen, that when part of a dead person is revived by means of organic connection to a living person, the prohibition of benefit from the dead ceases to exist. Consequently, grafting the cornea will be permitted as it originally was (when the person was not dead). See the articles on this subject in Noam, sections three and four.

The question now is whether one may make an analogy (lit: make use of this permission) between grafting a cornea from the dead and transfusing blood from the dead. On the one hand, there is no analogy between using the skin (i.e., cornea) and using the blood of a dead person (lit: there is no permission) and furthermore, the amount

of blood that is necessary for this procedure is much greater than that of the cornea of an eye. If so, there is more objection because of the consideration of defilement and disgrace to the dead. But, on the other hand, transfusing blood certainly falls under the category of saving a life because one usually does not perform a blood transfusion unless a person is critically ill.

B. AUTOPSY

Consider the case where, according to the decision of Nodah Bihudah and the rest of the latter authorities (after 1500), it is possible to permit an autopsy. Is such a permission merely optional, or is it a commandment; an obligation, like the laws concerning saving a life, to which applies the verse, "Thou shalt not...stand idly by the blood of thy neighbor" (Leviticus 19:16)? It is said regarding the desecration of Shabbat on behalf of someone who is critically ill, behold, this diligence is praiseworthy; and those who ask (whether to desecrate Shabbat to save this person), behold they are murderers (or like murderers).² And those who are asked, are they despicable (Yoma 84b)?

(This means that the case is so clear that one should not even ask; it is so clear that a Rabbi would be despicable if his or her congregation were so unlearned as

to not recognize this clarity. If this is true, then the question is whether the autopsy issue) in a case where there is no hope that any sick person before us will be saved (is not equally clear. That is to say,) is it not a commandment for the Rabbis to make a Halakhic decision to forbid autopsy in such cases and to warn the relatives not to permit it to be performed on their dead? So too, are the Rabbis not commanded to demand this of the relatives with all urgency (lit: strength); to teach this publicly lest they (the relatives) be "murderers", lest they (the Rabbis) fall in the category of "those who are asked, behold they are despicable?" Nevertheless, they should give permission for an autopsy in any case where there is the least possibility of saving a life. This is true even though there are many doubts discussed in Orach Chayim, Chapter 329, paragraphs two and three with respect to the matter of desecrating the Shabbat.

D. EUTHANASIA BY MEANS OF WITHOLDING MEDICATION

Thanks to medical development and the invention of modern drugs, it is frequently possible today to prolong the life of a gravely ill patient by artificial means for hours, for days, for months, and even for years. However, frequently this kind of life is no life but only continual pain and terrible suffering for the sick person and for

their family as well. It is understood that it is absolutely forbidden to actively hasten death, and that anyone who kills a naturally moribund person (lit: a person moribund by the hands of heaven) is considered like all other murderers and deserves death. However, the question is whether it is permissible in such cases to stop giving the sick person certain drugs and to allow them to die in a natural way according to the decision of the authority, Rabbi Moshe Isserless in Yoreh Deah, Chapter 339, paragraph one, that if there is a thing that causes the delay of the departing of a person's soul, for example if there is next to the house a banging sound, for example a wood chopper or if there is salt on the sick person's tongue and these things are delaying the departing of the soul, it is permissible to remove them for this is not a positive action of hastening death, but rather removing that which delays (lit: prevents) it, see there. And since I have already discussed this subject extensively in my article in Hapardes (Kislev, 1956), I do not wish to be lengthy here. In any event, what I wrote there because of my limited understanding is only to clarify the Halakhah (in theory) and not for actual practice (note: this is an apologetic phrase used to prevent attack for a lenient decision from those more orthodox) and with a serious

problem such as this which to our regret is in the realm of daily occurrence, we are bound to follow the clear and definite decision of the great Halakhic authorities.

Translator's Notes:

¹By preventing someone from being blind which is equated to being dead, one thereby saves their life by granting them sight.

²For example, if somebody fell into the water and a person ran to ask the Rabbi whether it is permitted to jump in to save them, the person would already have drowned.

NOAM 6

THREE SHORT MEDICAL RESPONSA

Selection Number Ten contains three responsa dealing with the Halakhic aspects of several medical matters. The first raises the issue of transfusing blood from a dead person into a sick person. When compared to the permission granted for using the cornea of a dead person, it is noted that the amount of blood taken is much greater than that of a cornea and thereby causes greater desecration to the dead. However, the result is not merely restored vision but the saving of a life, since blood transfusions are performed only on critically ill patients. The second responsum analyzes the permission of Nodah Bihudah to perform an autopsy when it could help save someone else's life. Is this an optional permission, or does it fall under the heading of an obligation as do all other laws regarding the possibility of saving a person's life? The final section notes that modern medical technology has progressed to the point where a human life can

be maintained artificially far beyond its natural ability. In such cases where the life of a moribund person is so prolonged, is it permissible to withhold certain medications in order to allow the patient to die naturally? It is understood that this would follow Isserless' permission to remove that which delays death but not involve any positive action of hastening death.

Selection #11

NOAM 15 (1972) p. 294-296 Dr. Jacob Levy

TRADITIONALLY ACCEPTED CRITERIA OF DEATH

FROM WHAT HAS BEEN SAID, WE MUST CONCLUDE THAT IT IS OUR TASK (LIT: IT IS IN OUR HANDS) TO SEARCH FOR OTHER CRITERIA OF DEATH--OTHER THAN THE STOPPAGE OF BREATHING WHICH IS THE BASIC CRITERION (LIT: SIGN) ACCORDING TO THE GEMARA IN YOMA CONCERNING THE MATTER OF DESECRATING THE SABBATH [Yoma 85].

Later Halakhic authorities paved the way for us with their responsa in this area. The determination (of death) is important in several laws, for example with regards to the matter of burial (Jewish law prohibits the burial of a person who is not definitely dead). Here, there is already before us a clear decision of Chatam Sofer. In his responsum [author's footnote: Responsa Chatam Sofer, Yoreh Deah, Responsum 338] he writes a classical description of the criteria of death: "anyone who is lying like a silent stone, and there is no pulse, and if after this the breathing ceases, we have to accept (lit: we have only) the words of our holy Torah that the

person is dead." In this description three mechanics (i.e., functions) of life are outstanding:

- a. "like a silent stone"--without movement and without reaction--the stoppage of the activities of the nervous system.
- b. "there is no pulse"--stoppage of the blood circulation.
- c. "the breathing ceases"--stoppage of the activity of the respiratory system (lit: apparatus).

Rashi already mentions these criteria [author's footnote: Yoma 85a. Likewise there is an opinion in the Palestinian Talmud (Yoma, Chapter 8, Halakhah 5) that the activity of the heart is important in the determination of death. See also, Noam 12, page 301]: (the person who is under discussion is dead if he or she) "resembles a dead person who does not move any part of the body (lit: limbs)". "One Rabbi said, one must examine the person's heart¹ to see whether there is life because the soul beats there, and another Rabbi said, until (you reach) the person's nose² because occasionally there is no recognizable life in the person's heart (i.e., no heartbeat can be observed) but it is recognizable at the person's nose (i.e., by holding up a feather which would move at the slightest breath)."

In the course of time the Halakhic authorities became accustomed to imposing the determination of death--in special cases--on the doctors. We read in Tsits Eliezer [author's footnote: Tsits Eliezer, Volume 10, page 120]: "How much the more so do the doctors know how to distinguish this (whether a person has died) now in our days, because in their hands are all the most modern instruments by means of which they are able to give (lit: to stand on) a clear determination if indeed there is before us already a definite stoppage of the breathing and the beating of the heart which prove certain death."

However, in the medical literature of recent years, medical outlooks appeared which compel us to make a definite departure from the establishing of death by doctors (lit: to make a fence between us and the doctors). The opinion is spread (widely accepted among doctors) that a person is called "dead" if only the brain no longer functions ["brain death"] even if, at the same time, the heart still beats independently. [Author's footnote: see Hama'yan, Tishrei 1969: "From What Time is it Permissible to Remove an Organ for Transplant?" See also Hama'yan, Tishrei 1968.] In official medical circles the opinion even exists that a coma (lit: a deep faint) is considered as death if the damage to the brain is irreversible (lit: cannot be changed).

In order that we may be certain that the doctors will determine death--in a special case--according to the Halakhah and not according to their (own) viewpoints about death which they invented arbitrarily (lit: now made up in their hearts), the Rabbis, the Halakhic authorities, need to give (lit: into the hands of) the doctors, guidelines as to what extent and under what conditions they are able to use modern instruments [electrocardiogram, for example, is unacceptable (lit: negative in every respect)] in the determination of death, so that their determination will be according to the Halakhah described in the responsum of Chatam Sofer.

Translator's Notes:

¹In the case of a person who is under a collapsed building on Shabbat, when it is forbidden to remove the debris unless the person's life can be saved, one must dig until one reaches the person's heart to check for any sign of life. If there is no sign of life, they are not allowed to desecrate the Shabbat by continuing to remove the rest of the debris. (Yoma 85a)

²Dig the person up out of the debris until the nose is clear.

NOAM 15

TRADITIONALLY ACCEPTED CRITERIA OF DEATH

Selection Number Eleven is a review of the various possible criteria of death and the necessity for them to be clearly defined. The discussion begins with the Talmudic definition that death has occurred when the breathing stops. The responsum then establishes three necessary signs: the stoppage of movement, heartbeat, and breathing. The tradition of allowing physicians to determine death, however, has recently come under scrutiny with the advent of modern definitions of "brain-death" after irreversible brain damage.

Selection #12RESPONSA ŞERIDEI EISH

Responsum 120 Vol. 2, p. 276-277 Yechiel Y. Weinberg

Friday, Erev Shabbat Kodesh Shelach, 1956

Montreux (Switzerland)

My dear good friend, the Rabbi, the authority, one with a keen mind and an expert, of great knowledge and a good arguer, etc., our teacher, the Rabbi I. Apfel, may he live a long and good life, Amen, a member of the just court of Lidz.

I received your letter but because of my illness, insomnia, I did not answer you immediately. Now I see that it is not possible to delay (my answer) any further and therefore, I am writing briefly.

In essence, the question is whether it is permissible to graft the cornea of an eye from a dead person onto the eye of a blind person in order to cure the blindness. This has already been discussed in the monthly "Kol Torah" which is published in Jerusalem, and then in "Hapardes". These issues are not available to me right now (lit: do not presently exist in my possession) and I only remember that the authority, our teacher, Rabbi Isser Yehudah

Untermann, the Chief Rabbi of Tel Aviv, decided to permit it. As it is impressed in my memory (i.e., according to my memory), he touched upon all the passages that your great honor mentioned in your letter, as to the reason of saving a life; and as to the skin of the dead--according to many of the earlier authorities it is not forbidden from the Torah to derive benefit (from the dead), and a third reason--it is forbidden to use the flesh of a dead person only as long as it is dead, but when it is attached to a living body and life spreads into it, the prohibition ceases (to apply) because it is no longer dead flesh.

But there is a refutation to each of these reasons. The saving of a life pertains only to situations where there is danger to the whole body, like an inflamed eye. It is stated in Avodah Zarah 28b that something which effects the eyesight is connected with (i.e., has influence on) the heart (i.e., if something goes wrong with the eye, the heart will be endangered because the eye and the heart are connected). But this is not so with a healthy person who is blind for whom the doctors wish to return the power of sight. This does not apply (to the Talmudic statement) that eyesight effects the heart.

However, in Tosefot Baba Metsia 114b, catch word "amar", they wrote that Elijah revived the child of the

widow because of (the principle of) saving a life. However, there (in that case), it is different because by means of that action he restored life, which is not the case with respect to an eye. The permission (to do something for a person which otherwise would be prohibited) is because of danger and in the case of a blind person, danger does not apply because many blind people live for many years. And even if one said: a blind person is considered like a dead person, it is also said that a poor person is considered like a dead person and anyone who has no children is considered like a dead person and this has no application to the issue of saving a life.

Against the second reason we have to point out that most of the early authorities maintain that it is forbidden from the Torah to benefit from the skin of a dead person. See in the Tosefot Sanhedrin 48a, catch word "meshamshin", and in Tosefot Kidushin 57a, catch word "kaparah", which bring another interpretation to the calf whose neck has to be broken.¹ It is clearly understood that the skin of the calf with its neck broken is forbidden to be used.

Against the third reason it must be pointed out that the skin of a dead person is forbidden to be used for any benefit and what of the fact (i.e., what does it matter) that the flesh which is separated becomes living

flesh. In any event, it is deriving benefit from the flesh of a dead person who remains dead.

In any case there is a (Halakhic) way to permit (this) based on what is written in the notes to Maimonides' Hilkhos Ma'akhalot Asurot (the Laws of Forbidden Foods), Chapter 14 (which states that) it is permissible to feed crawling things (i.e., non-Kosher foods) to a person suffering from epilepsy based on the requirement to save a life, because the person might fall "into fire or water" (i.e., become upset and act irresponsibly) and it can be said that the same applies to a blind person (i.e., if sight is not restored, the blind person might fall into fire or water). But that is only regarding a person who is blind in both eyes, but not one who is blind in one eye. Besides the prohibition of deriving benefit (from the dead) there is also the prohibition against disfiguring the dead. However, since outstanding Rabbis have already permitted this and there are some of the early authorities who hold that it is permissible to benefit from the skin of a dead person, as your high honor wrote, and because of the opinion of Rabbeinu Yerucham that it is permissible to follow the minority opinion and be lenient in order to save a life, see what is written in the book

Yad Sha'ul, page 382--therefore the one who permits it,
makes no mistake (lit: did no harm).

Your friend who honors you very much,
Yechiel Ya'akov Weinberg

Translator's Notes:

¹Toraitic Law, Deuteronomy 21:1-9, states that if one finds a murdered person between two cities, a calf must be brought from the nearer city, its neck broken for sacrifice. It is forbidden to derive benefit from the animal.

ŞERIDEI EISH

DONATING CORNEAS FOR TRANSPLANT

Selection Number Twelve evaluates the question whether it is permissible to graft the cornea of an eye from a dead person onto the eye of a blind person in order to cure blindness. The author lists and refutes the three proffered suggestions to permit this: saving a life applies only to those situations where danger to the whole body is involved; while some early authorities allow one to benefit from the skin of a dead person, most maintain that this is forbidden from the Torah; and in spite of the fact that once the tissue from the dead person is attached to a living body it is revived, the dead person remains dead so it is still deriving benefit from the dead. Following this, the author provides a different Halakhic way to permit such a graft based on the fear that the blind person might act irresponsibly if sight was able to be restored but was not.

Selection #13

IGROT MOSHE Vol. 2, Yoreh Deah Chapter 151, p. 259-263

Moshe Feinstein 13 Tamuz 1964

**THE MATTER OF THE PROHIBITION OF AUTOPSY
FOR THE PURPOSE OF MEDICAL STUDY**

My highly honorable son-in-law who is like my son, the Rabbi, the authority, Rabbi Moshe David Tendler, may he live a long and good life, Amen.

In the second series of responsa, section Yoreh Deah, Chapter 210, Nodah Bihudah deals at length with the matter of performing an autopsy to see the cause of the disease in order to gain knowledge.

He concludes that it is forbidden when there is not a sick person with the same disease before them (the medical examine.s) that it might be possible to know how to cure (this patient with the same disease) because of (the information gained from) this autopsy. Because of the possibility that there might be a sick person who will need this (information), we certainly do not override any Halakhic injunction for the sake of such a slight concern, see there. And I add that even if this would be a concern serious enough to override other prohibitions, it still

would not override the prohibition against autopsy because there is no obligation upon a person to learn to heal. We have not found that there is an obligation on everyone to learn the science of medicine in order to heal the sick which are now before us (lit: there) and which will be (later before us) even though such sick people are frequently found and we should have concern for them. But the obligation on people is only to save other people with whatever they are able to. If they are already doctors, there is an obligation upon them to save other people who are sick, and if they are able to swim in the water they are obligated to swim in a river and save a person who is drowning in the river. But, there is no obligation upon people to learn how to swim or how to heal the sick in order that if there should be the occasion to save (someone) or to cure (someone) they will be able to save or to cure them. This is similar to the case that there is no obligation on people to work and to earn a lot of money in order that they be able to fulfill the commandment of tsedaqah (charity) and to save people, because the obligation upon people is only to do in accordance with the way they are presently able to do (lit: in the manner as they are found). On the contrary, we see that those whose occupation was the study of Torah, like Rabbi Shimon ben Yochay and his colleagues, did not busy themselves in

their (secular) work except as much as was needed for their livelihood. This was considered the highest degree (of human endeavor) although if they had busied themselves with their work (i.e., if they had worked much more) they would have become rich and would have been able to save people (i.e., by means of tsedakah) which is an obligation also on those whose occupation is the study of Torah. Rather it is certain that the obligation is on people only according to the way they are (exist) presently and not that they should be required to work and to become wealthy which would mean to change that which they are now (their way of life) for the sake of saving lives. Likewise, people are also not obligated to study to be doctors in order that they be able to heal the sick. Therefore, there is no obligation upon people to perform autopsies in order to learn from them certain cures, and consequently, (since it is not obligatory) it is forbidden because it is disgracing the dead (against which there is a clear prohibition).

And therefore, in spite of the reasoning of Nodah Bihudah that we do not override prohibitions because of this slight concern that perhaps such a sick person will happen to be before us, this is a forced reasoning because there are many sick people frequently found in the world and especially in this age when it is possible to know

from all the hospitals in the world where there are sick people like these. And also when the medicine that is invented (lit: found) by means of this (autopsy) can easily be sent there quickly, it (the autopsy) is still forbidden because there is no obligation to study medicine (lit: to learn to cure) and consequently it is forbidden because of (the prohibition against) disgracing the dead....

The prohibition against disgracing the dead is not more serious than other prohibitions and it may be overridden even because of a slight possibility of saving life as (prohibitions may be overridden) on Shabbat. Other prohibitions (may be overridden to save a life) which are obvious to Nodah Bihudah, but it is clarified here that there is no obligation to study medicine (lit: learn to cure). Consequently one does not override the prohibition of disgracing the dead.

However, in my humble opinion (lit: it appears to the poverty of my mind) if they (the doctors) do not cut the organs (or limbs) and do not open the neck and the torso, but only want to insert a needle to extract certain fluid from the dead person to learn from this certain things pertaining to the disease, this cannot be considered as disgrace for such a thing is very frequently done in our time also to living people and this may be permitted as a matter of course. Likewise, to withdraw a

bit of blood by means of a needle to examine it and the like is not disgracing the dead and may be permitted. And even though I have not found this explicitly (i.e., in the Halakhic literature), it appears, in my humble opinion (lit: to the poverty of my mind) obvious. Therefore, if what you heard is true, that it is possible, by means of a special needle inserted into the body of the dead person, to see all the sickness that is inside, whatever the doctors need to know, it seems that there is no prohibition in it because there is no disgrace in it.

And I remain your father-in-law who
is like your father,

Moshe Feinstein

IGROT MOSHE

THE PROHIBITION OF AUTOPSY FOR THE PURPOSE OF MEDICAL STUDY

Selection Number Thirteen investigates the injunction that prevents one from performing an autopsy unless there is a sick person present who is suffering from the same disease and could therefore benefit from the information gained. The possibility of learning something that could, in the future, save other unknown lives is not sufficient cause to override the prohibition of autopsy because one is not under any obligation to learn to heal. One is obligated to help another person only insofar as one is presently able to do so. Just as one is not required to work harder in order to earn more money to give more tsedaqah, one is not required to learn new cures from autopsies. Therefore, since one is not obligated to do an autopsy, it is forbidden because it clearly violates the commandment against disfiguring or disgracing the dead. It is, however, permissible to withdraw a sample of blood or tissue by inserting a needle because this is not disfiguring the dead and is frequently done on living people.

Selection #14

NOAM 15 pp. 284-285 1972 Dr. Jacob Levy

"THE SICK PERSON BEFORE US"

(REFLECTIONS OF A DOCTOR
IN THE MATTER OF PERMITTING AUTOPSIES)

Everybody who studies intensively (lit: goes after) the Halakhic literature on the subject of autopsies stumbles, at times, on medical opinions that are not accurate. This matter may even cause erroneous conclusions about the Halakhah. Therefore, a medical critique is desirable on these medical opinions (lit: explanations).

The far-reaching influence of medical matters on Halakhah stands out in the debate on the conditions for permitting autopsies. Opinions have already been heard that it is possible in our day to disregard the conditions--which have been fixed (i.e., applied) until today --to perform an autopsy in order to save a dangerously ill person who is before us (suffering from the disease). The development of instruments of communication and transportation nullifies, if one may say so, the influence (i.e., impediments) of distance of place and time.

For the sake of a Halakhic decision on this important subject, there is need for the critical eye of a doctor to warn and to keep away from exaggerated changes in Halakhic conclusions. And therefore, it is my intention to try to contribute my part to this critical examination as a physician--it is understood, from within the framework of the Halakhot which I learned from the books of the great Halakhic authorities.

I. THE SICK PERSON BEFORE US

Among the great Halakhic authorities is heard, as it is known, one opinion not to permit autopsies at all, even in the case of danger to life (to another person suffering from the same disease) [author's footnote: Binyan Tsion, Chapter 170]. But, most Halakhic authorities--as I learn from their writings--agree that in special conditions of danger to life (pikuach nefesh), it is possible to permit an autopsy. At the head of those who are lenient (in this situation) stands Nodah Bihudah [author's footnote: Nodah Bihudah, Second Series, section Yoreh Deah, Chapter 210]. He decides that it is permissible to perform an autopsy if "there is possible danger to someone before us, for example a sick person or (someone buried under) fallen debris (from a collapsed building)..." [Author's footnote: In the literature, this condition is

called, in short, "the sick person before us" (hacholeh lefaneinu). In the United States of America, the Assembly of Rabbis and Physicians found a corresponding expression in a foreign language (i.e., English) for this condition--the dangerously ill person needs to be "here in this place and now". "Here and Now": a Hospital Compendium, N. Y., 1969, p. 33.] "But in our case there is not before us (lit: here) any sick person (with the same disease) who needs this (information from an autopsy), only that they (the physicians) want to learn this wisdom (because) it might happen that there will be a sick person in the future who will need this (i.e., information that was learned from the earlier autopsy). We certainly must not override any (Halakhic) prohibition because of this slight fear (that someone else might need it at some future time)...." Close to the idea of Nodah Bihudah we find also Chazon Ish [author's footnote: Chazon Ish, Ohalot, Chapter 22, paragraph 32] in another formulation. The dangerously ill person does not stand in the focus (i.e., is not actually present at the time). Even if there is no sick person before us but the dangerous disease is frequently found before us--that is to say now and here in this place--behold, this is considered (lit: called) danger to life. In the instance of an epidemic [a contagious disease], even if there is still not a dangerously ill

patient (i.e., before us), we judge this as danger to life, because all the people of the city are in agony and in danger "this is like enemies who are besieging a city that is close to a border"¹ (not everyone is in immediate danger but it could spread so everyone must go to war even on the Sabbath). Contrary to this we do not consider it to be danger to life when something occurs only periodically. We see clearly that the position of Chazon Ish is essentially equal to that of Nodah Bihudah in that he also talks about "danger to life", the sick person before us is, in his eyes, merely an example....

I see an additional welcomed result (aid) to this topic--autopsies and the Halakhah--in the function of a computer. Its work is based on data from millions of examinations. The data of several thousands of Jewish autopsies, what would they give, what would they add--even if they were collected in a computer, they would be null and void in the (statistical population of the non-Jewish) majority. They would not add a thing to the progress of science and the perfection (quality) of doctors, and (therefore) it is possible to disregard them completely.

If somebody objects (lit: but the plaintiff complains): it is not honorable for us if only non-Jews will advance medical science by means of their autopsies. Don't worry! The research of Jews--in medicine as well as

in other sciences--has already acquired a reputation in the great scientific world. This small part in the science of pathology that requires research from autopsies the (other) nations of the world will advance, because their worldview does not command them to be strict concerning the honor of their dead (whose autopsies would promote science) as the Jewish people are commanded, whose task it is to be a "holy nation". Rav Kook, of blessed memory, writes [author's footnote: Da'at Kohen, 199]: "The righteous among them will understand, after all, that this nation which was chosen to bring the light of holiness of the true knowledge of God into the world, and endures because of this many sufferings without measure, is entitled also to certain privileges of holiness."

These words of Rav Kook, of blessed memory, should be taken to heart (lit: place upon their hearts) also by those among us who are looking for new permissions--in the name of (for the sake of) advancing medicine--for performing autopsies with the claim "as if" there were a sick person before us (while in fact there is none).

Translator's Notes:

¹Tosefta Eruvin IV (III) 5, p. 142.

NOAM 15

THE SICK PERSON BEFORE US

Selection Number Fourteen is a medical review of the matter of permitting autopsies. The traditional statement on the subject holds that one may perform an autopsy under the condition that it is to help save the life of another sick person "before us" who is suffering from the same disease. But, modern telecommunication and transportation serve to render meaningless the Halakhic term "the sick person before us". Furthermore, the issue of autopsy for more general medical knowledge is raised, regarding both those who will later be stricken with the same disease as well as contagious diseases that cause epidemics. Discussing the advent of the computer and its help in the area of pathology, the author then rejects the need for autopsies on Jewish bodies on the basis of the insignificant numbers it would represent compared to the larger non-Jewish population.

Selection #15RESPONSA ŞERIDEI EISH Vol. 2, p. 276 Responsum 119

With the help of God. To my dear friend, Dr. Wislitski, may his light shine, head of the hospital in Manchester (England), may his Rock and Redeemer protect him.

Your question on (performing) an autopsy for medical purposes (lit: needs), was discussed in the following sources: Nodah Bihudah, second series, Yoreh Deah, Chapter 210; Sh'eilat Yavets, Volume one; Chatam Sofer, Yoreh Deah, Chapter 336; our teacher, the Rabbi Moshe Shik, Yoreh Deah, Chapters 344 and 347; Responsa Binyan Tsion 170 and 171; and Nachal Eshkol, "The Laws of Circumcision."

And in summary, Nodah Bihudah permits (autopsy) when necessary to save a life but only when there is a sick person before us who may be saved by (information gained from) the autopsy. There are cases of people who sold themselves (i.e., their bodies) while alive. The author Binyan Tsion permits this, but our teacher, Rabbi Moshe Shik forbids it. The essence of his words are two prohibitions: disgrace to the dead and deriving benefit from the dead.

Your friend and one who honors you,
Yechiel Ya'akov Weinberg

SERIDEI EISH

PERFORMING AN AUTOPSY FOR MEDICAL PURPOSES

Selection Number Fifteen lists the available sources which discuss the question of performing an autopsy for medical purposes. In conclusion it states that this is permitted only when necessary to help save the life of a sick person present who is suffering from the same disease and could be cured by information gained from the autopsy. Normally, autopsy entails two prohibitions: disgrace to the dead and deriving benefit from the dead.

CONCLUSIONS

This thesis is provided as a guide for liberal Jews who are facing the difficult issues involved in terminal illness. It offers a view of the Halakhic material with which traditional Judaism confronts these problems. Its hope is to give comfort and insight based on the wisdom of a 4,000 year old tradition. Its intention is not to insist on any particular practice, but rather to lend support for the many painful decisions which need to be made when confronted with the certainty of death.

Halakhah itself says that life is more important than observance of Halakhah. Therefore, Halakhah is not the ultimate goal, but merely a means of sanctifying life. The root word, halakh, means to walk, to go in a certain direction in hopes of arriving at a certain goal. The intent of this thesis is to confront the tension that exists between the Halakhah and modern life and to investigate possible ways to harmonize them. It presents the values of the Halakhah for daily Jewish living and considers how modern, liberal Jews can draw from this to enhance their lives religiously. Even if we do not feel compelled to follow the letter of Jewish law, we can still draw from

its essence the teachings and ethical principles upon which Judaism is based.

The on-going tradition of reinterpreting Halakhah seems to be dwindling among Orthodox authorities in light of the fear of being accused of reform. Many Rabbis will simply leave a problem open, seemingly in hopes that the absence of a strict, definite statement will provide an opportunity for leniency. Others are willing to be more radical by offering a "theoretical" possibility while quickly adding that their conclusions are for academic discussion only; they insist that in practice one must, of course, consult the great Halakhic authorities for judgment on each important case.

With regard to terminal illness, the various tendencies of the Rabbis all point in the same general direction. They seek to find the most humane ways of dealing with the difficult aspects of life. They hope to be able to alleviate pain wherever possible and to lift the spirits of all who are involved. In their attempt to give confidence and comfort, they portray a trust in God and a faith that always leaves room for hope.

INFORMING THE INCURABLE PATIENT

The first issue under discussion is informing critically ill patients concerning the nature of their ill-

ness. The question is whether to be open and honest in revealing their prognosis or to protect them by withholding the information. The Halakhah is clear: it is forbidden to tell a person that they are facing certain death. Even when one must encourage an ill person to recite their confession (yidui), it should be done with the qualification that "many make confession and do not die";¹ it is not an acceptance of fatality. The Halakhah seems to have two points. One is that it is forbidden to cause a person to lose all hope, and the other is that the possibility for a miracle is always maintained. The Rabbis remain open to the idea of God's intervention until the very end.

It is my belief, however, that critically ill patients should be apprised of their condition. Neither physicians nor family should deny such patients' rights by withholding this crucial information. Their lives are their own and they should be told about the nature of their illness as well as their prognosis. Who would bear the responsibility of determining how another person would choose to live out their last remaining weeks or months of life?

The Halakhah demonstrates a similar concern for honesty and openness. The last responsum in Selection Two indicates that it is obligatory to inform a person who is

betrothed if their intended is terminally ill. This is clearly a more progressive element in the Halakhah which the liberal Jew can emphasize and extend even for the general case of informing an ill patient. In the attempt to harmonize the differences between the needs of the Halakhah and the needs of the modern Jew, it seems consonant with both to stress this aspect of openness.

DIVORCE TO AVOID CHALITSAH

From a modern, liberal standpoint, the issue of divorce to avoid Chalitsah is the least of the problems which will face a person who is terminally ill. In spite of the Rabbis' obvious concern to provide an opportunity to avoid great unpleasantness, it is also the least of the problems facing the spouse of a terminally ill patient. In the time frame and world-view of Orthodoxy, it should be regarded as highly laudable, but for the liberal Jew today, the Rabbis' attempt at sensitivity here has the opposite effect. To suggest such a procedure would undoubtedly be very painful and serve only to remove a major source of support and comfort from both people involved.

DESECRATING SHABBAT AND HOLIDAYS

The many responsa dealing with various aspects of desecrating Shabbat and holidays indicate the significance

of this issue to the Rabbis. The answer, however, is always the same--piquach nefesh, the preservation of life, always takes precedence. The commandment to preserve life is even stronger than the commandment to observe the Shabbat. The intricacies of these responsa only serve to demonstrate the importance of life, even the "short life", in light of one of the most weighty commandments.

THE SANCTITY OF LIFE VERSUS THE DIGNITY OF DEATH

The balance between the sanctity of life versus the dignity of death is a difficult and complex problem. Maimonides distinguishes between the act of killing a person and that of causing someone to die.² It is helpful to further delineate between the category of causing a person to die and allowing a person to die. While the former will be discussed under the heading "Euthanasia", it is the latter concern, allowing someone to die, which is considered here in its various aspects.

The Shulchan Arukh clearly states that a moribund person should be treated as if alive in all respects. One may not do anything to hasten the person's death. However, the gloss by Moshe Isserless to the Shulchan Arukh permits one to remove something which may be causing a delay in the departing of the soul of a moribund person. The example he cites of the noise of a woodchopper suggests that

the moribund person's soul has fixated on this repetitious banging sound. By removing this hindrance the soul is then free to depart in peace. This is permissible because it is not a positive action of hastening death, but merely the indirect action of removing an obstacle that artificially prolongs life.

Many Rabbis have attempted to use this gloss by Isserless in the endeavor to permit a patient to die with dignity rather than prolonging a life of pain. In this light one should remember that Rashi's commentary in Avodah Zarah³ defines the condition of being moribund as lasting a day or two. This is understandable as a comatose person in Rashi's day would not be receiving fluids or nourishment of any kind. Modern medicine, however, can sustain such a person physically by means of intravenous feeding making the modern condition of being moribund a different concept altogether.

The only exception to the Rabbis' firm refusal to hasten death can be found in the case where a person who is certain to die may undergo great risk for the sake of a possible cure. Although the example used in Selection Seven is particularly distasteful in the image it portrays of non-Jews, the Rabbis are able to draw from it a truly progressive policy based purely on its argumentation, irrespective of its specific details. The determination

that one may forgo the "short life" of a terminal patient in the pursuit of a cure even by means of surgery that will kill the patient if unsuccessful, indicates that the use of experimental drugs or surgery is an acceptable option. Even where the chance for failure is greater than that of success, if the patient would undoubtedly die if left untreated, such treatment is within the Halakhah.

This responsum, however, refers only to those cases where the illness would be cured were the treatment successful. The key issue involves the question of whether the life is "able to be saved". The context indicates that such extremes are to be taken to save the life entirely. It is not intended to imply that one need sacrifice the quality of the "short life" merely to prolong it. Although the Rabbis discuss the need to pursue even the slightest possibility for a cure, today's medical knowledge can diagnose and estimate the remaining length of one's life with amazing accuracy. A cancer patient, for example, might be informed that he or she had only three to six months left to live. If chemotherapy were administered, that could be extended to six to twelve months. It would not, however, afford a total cure. The question then becomes one of quality versus quantity of life. Because chemotherapy would only prolong the time

before death, it should not be seen as a necessary requirement, but rather as a personal choice. The example does not fall into the category of "able to be saved" and therefore does not require taking great risks or undergoing great difficulties.

Dr. Jacob Levy indicates that there is evidence on both sides of the discussion of prolonging a life of pain.⁴ There is further support that one need not actively lengthen life against a person's wishes based on the principle of remaining passive.⁵ From these two concepts a case can be made for the decision not to undergo chemotherapy or attach a heart-lung machine when doing so would only serve to prolong a life of pain.

Jacob Levy argues in Selection Nine that one cannot condone turning off a heart-lung machine based on the gloss by Moshe Isserless. His interpretation, however, is based solely on the case of a patient in a coma who could, theoretically, continue to live indefinitely with the help of modern medical techniques. According to Dr. Levy, Isserless' gloss cannot be applied to such circumstances because it allows only for indirect, external action. The turning off of a heart-lung machine in such a case cannot be equated with indirect action according to this definition. His analysis, however, only pertains to a patient in a coma. Terminal illness is an inherently different

situation. Isserless speaks of a moribund person as one who faces certain death within a clear and definable future. While this may not apply to a person in a coma, it clearly speaks of one who is terminally ill. The modern medical pronouncement of fatality is like an extended period of being moribund. Isserless' gloss can therefore be applied in the decision not to go to heroic measures to prolong a life of pain. Terminally ill patients who have reached the final stage of their illness need not be attached to life-support when doing so would only serve to prolong the period before their death. Similarly, once attached to life-support, a patient should be allowed to die when it is clear that their condition is no longer able to be improved.

Allowing a terminally ill patient to die is inherently different than causing the death of a viable life. The Arukh Hashulchan states that a moribund person must be treated "as a living person" (kechay) in every respect.⁶ At the same time, however, it is clear that the Halakhah recognizes that their status is not actually the same. In the instance of a fire, one is required to save a healthy person before attempting to rescue a dangerously ill person.⁷ By investigating the examples cited it becomes evident that the operating factor behind the Halakhah is the honor which is to be given those who are

moribund. One may not treat them as one would treat a dead person by tying their cheeks, stuffing their orifices, or placing a shovel or plate on their body to prevent it from bloating. All these prohibitions indicate the need for tact concerning the treatment of the moribund. To this end it is stated that they should be treated as if they were living people, while in fact, the Halakhah acknowledges that they do not merit this status. If they were indeed to be treated like other living people, it would not be forbidden for them to work on preparing their own shrouds, which healthy people are permitted to do. Because the intent of the law is to create an environment of sensitivity towards the terminally ill, they are not allowed to work on their own shrouds once they are in a critical condition.

The only conclusion which can be drawn from these two apparently antithetical statements is that the operating principle here is sensitivity and not status. A moribund person should be treated as if alive. A moribund person is not to be considered the same or equal to one who is alive.

The determination of whether to prolong the last stage of life of a terminally ill patient should therefore be considered separately from any issues of euthanasia which would imply the active shortening of the life of a

terminally ill patient in order to avoid a long and painful death. A person for whom there is no opportunity to return to a self-sustained life falls within the category which Isserless defines as moribund. The spirit of the law is clearly to allow for sensitivity toward a dying person. The use of artificial means to extend this period may be following the letter of the law and yet it is not allowing the natural process towards death to continue. The spirit of sensitivity, behind the law, allows one to remove the obstacle which delays the departing of the moribund person's soul.

Given the lack of actual medical procedures to save a person's life in Rabbinic times, some would like to equate the power of prayer in those days to the power of technology in our own day to find the true Jewish law concerning this issue. Where medicine and prayer are both seen as effective means of healing the sick, Brakhot 60a raises the question of whether one must necessarily use the power of prayer to sustain a dying person.

The story of the death of Yehudah Hanasi (Ketubot 104a) lends clarity to this problem. The famous Rabbi was dying in great pain yet his colleagues and students refused to accept this. They surrounded his house with incessant prayers for his recovery. When Hanasi's handmaid realized how her master was suffering, she went up to the

roof and threw a jar down to the ground in order to disrupt their prayers so that he might die in peace. They ceased their praying for a surprised moment during which time the soul of Yehudah Hanasi was given eternal rest. This sensitive woman is regarded by the Talmud and Sages as a wise and honorable person.

A more direct approach to this problem might be found in a re-evaluation of the basic Halakhic determinants of death.⁸ In contradistinction to the modern definition of "brain death", the Halakhah, as set forth by Chatam Sofer, indicates three accepted criteria: pulse, respiration, and movement. Based on this definition of death, a person on full life-support may well not be considered alive. Without the use of machines, the body itself would be unable to move, circulate blood, or breathe. The machine can be seen as merely sustaining a body which is already dead. In Selection One, the Arukh Hashulchan clearly indicates the prohibition against disgracing the dead. If the body will never be able to sustain itself alone, it is dead by Halakhic standards and keeping such a body alive may well be seen as defacing the dignity of its death. From a Jewish point of view one honors the dead by burying them at the soonest possible time. Maintaining a dead body on full life-support can be

considered as disrespect for a person that deserves the honor of burial.

PAINKILLERS, EXPERIMENTAL DRUGS, OR SURGERY THAT COULD SHORTEN LIFE

The use of cures which, if not effective would shorten life, is expressly endorsed by the Halakhah. Section Seven indicates that one may operate on a person whose prognosis is certain death even if the operation, if not successful, will hasten the patient's death. The Halakhic concept of the "short life", or the life of the hour, allows one to risk hastening death even if the possibility for cure is much less than the possibility of failure.

Unfortunately, this decision is based on the Talmudic policy which allows Gentile doctors to treat Jewish patients facing certain death. The underlying assumption is that there is great likelihood that the Gentile will intentionally kill rather than cure the Jew. Often, when a point in Halakhah has been effectively circumvented because it represents a world-view which is no longer tenable, the Rabbis suggest that the material still be studied 'for the edification it might provide'. Such is the case in the example of the laws for stoning a "stubborn and rebellious child" (ben sorer umoreh).⁹ The

responsum in Selection Seven is another example where the basis of the Halakhic argument is clearly distasteful in that it portrays the Gentile doctor as suspect of murder. Although this may have fit in a former time, the Rabbis obviously do not intend to imply such a possibility here. Ironically, this regressive text can be used for the development of an extremely progressive law. The argumentation it provides has become the basis of the Halakhah on this issue which allows one to risk the "short life" for the small chance of a cure.

Although the Halakhah might not sanction such application, perhaps this option to disregard the "short life" for the possibility of great gain could be used in the question of participation in experimental studies for the advancement of medical knowledge. In this regard, it can be seen as a matter of conscience whether to sacrifice the "short life" when faced with certain death, in the pursuit of a greater cause.

EUTHANASIA

The general thrust of the Halakhic authorities presented is to be as flexible as possible with regard to the question of euthanasia. The strict Halakhah is most definitive in its limitation of Isserless' gloss so as not to include any active effort the effect of which would

shorten a person's life. Under the heading The Sanctity of Life Versus the Dignity of Death, allowing a person to die was distinguished from that of causing a person's death. In that discussion such issues as withholding medication and life-support from a moribund patient were presented as options which can allow a person to die with dignity. The following analysis is distinct in the respect that it discusses the question of euthanasia; intentionally shortening the life of terminally ill patients either by depriving them of their basic needs or by administering something which actually causes death.

Israel Jackobovitz, in Selection Ten, demonstrates the flexibility with which some Halakhic authorities interpret Isserless' gloss. His willingness to broaden the scope for which Isserless' decision may be applied indicates the possibilities for permission inherent within the gloss. And yet, he does so with the qualification that this is intended only for theoretical discussion of the Halakhah and not for actual practice.

In a brilliant and insightful analysis of this argumentation, Dr. Jacob Levy effectively eliminates any possibility of using the Isserless gloss as a basis for permission to cause a person's death by withholding nourishment or by any active means which would shorten life. Levy demonstrates that the context of the gloss can only

allow for passive, external means which permit the natural passing of the soul. He thereby indicates that one is not Halakhically justified in actively stopping the flow of nourishment to a moribund patient. He further argues that the passive decision to allow the source of intravenous nourishment to deplete without replacing it may well be a transgression of the prohibition not to "stand idly by the blood of thy neighbor" (Leviticus 19:16).

In a separate section, however, Dr. Levy presents another valid approach to the question of euthanasia. Sanhedrin 73a states that the requirement to return a lost item includes returning life to a person whose life is about to be lost. Levy questions whether this obligation also applies in the case of returning a lost object that is damaged, when it is in such a condition that it will cause the owner, in this case the sick person, suffering or burden.¹⁰ He suggests that the answer will vary depending on the individual situation; the condition of the sick person and the value they place on their remaining days of life.

Concerning the issue of withholding nourishment by passive means--not replacing or refilling the intravenous source--Levy again questions the traditional response. If the doctor has made the determination that there is no hope, the doctor is then free from the obligation to save

the patient who has been diagnosed "not able to be saved". There is then no transgression of the Biblical law, "Thou shalt not...stand idly by the blood of thy neighbor" (Leviticus 19:16).

Levy also cites the Talmudic discussion concerning someone who binds a person to a tree and leaves them to die of exposure or hunger.¹¹ Rashi and Maimonides concur in their decision that this is causation of death but not killing and therefore is not subject to punishment by Rabbinic authority. Perhaps they are suggesting that this category represents a sin of a lesser degree. Or possibly they are creating a legal loophole in order that one be able to use this distinction to cause a person's death without fear of direct consequences. The examples they use all involve the death of a normal, healthy person. How much the more so, then, should this be considered acceptable with one who is terminally ill with no chance for recovery. If Maimonides presents causation of death in the case of a healthy person as a lesser offense than killing, it can be seen as even less an offense in the case of a terminally ill patient. From a liberal perspective, it can be seen as a mitsvah to allow a person to die with dignity.

From this discussion arises the issue of hastening a person's death by withholding food or intravenous nourishment. This must be distinguished from the issue of

withholding medication which was discussed under the heading of The Sanctity of Life Versus the Dignity of Death because normal, healthy people require food to sustain their lives as well. Although it is clear that physiologically there is no difference between stopping the flow of intravenous liquids and refraining from refilling the source, Halakhically the two are distinct.¹² While actively stopping the flow is considered killing, the passive decision not to replace the bottle once it is empty, is defined as causing death. A person who does not replenish the intravenous supply can be seen as violating the commandment, "Thou shalt not...stand idly by the blood of thy neighbor" (Leviticus 19:16). This verse is only applicable, however, where the life of the patient is "able to be saved".

This analysis is distinct from the earlier material which allows for the turning off of life-support based on Isserless' gloss. Withholding food or water which is necessary for all living beings cannot be sanctioned by means of the gloss. In such a case the Halakhic approach would have to follow that of Maimonides and Rashi by limiting the offense to one standing by idly while a neighbor bleeds. When the diagnosis indicates that the life of the patient is not able to be saved, this injunction is no longer an issue.

The clearest Halakhic parallel to the question of euthanasia is the discussion of options available to those who fall into the category of "not able to be saved". It has previously been shown that the Halakhah recognizes a difference in status between a healthy person and a moribund person. This is demonstrated in the law requiring one to save a healthy person caught in a fire before one saves a moribund person.¹³ This distinction is narrowed even further in Selection Two, responsum B, where permission is given not to abort the pregnancy of a terminally ill woman even though carrying the child would assuredly hasten the mother's death. Under usual circumstances, were the pregnancy to threaten the woman's life, abortion would be mandatory. The Halakhah is lenient in this case because of the positive nature of this extreme situation. For the sake of a living memorial, a child, the Rabbis permit the hastening of the terminal patient's death. A re-evaluation of the permission could lead one to a similar conclusion due to the negative nature of an extreme situation. By extending this concept, one could allow for the hastening of a terminal patient's death in order to avoid prolonged pain and suffering.

More directly to the point is the material from II Kings 7:4 ff. which is mentioned in Selection Seven, but never developed in detail.¹⁴ During the siege of

Aram, a group of lepers had to choose whether to go back into Jerusalem where they would die slowly of famine, or to go to the enemy camp where they would be killed immediately. They chose to go to the enemy and die more quickly rather than face a slow, tortuous death within the walls of the city. The Halakhah uses this text only to justify the risk of a dangerous cure. From the Biblical context, however, it is clear that the lepers had no positive expectations other than a quick death. Although it is never used this way in the Halakhic literature, this can be seen as a Biblical basis for choosing a shorter, less painful death in the case where no hope for cure remains.

SUICIDE

Suicide by the terminally ill is distinct from euthanasia in that the patient chooses to take their own life rather than face a slow and painful death. The Halakhah is quite strict in this matter. In Semachot, the beginning of chapter two, we are told that for those who destroy themselves consciously we do not engage ourselves with their funeral in any way. Sanhedrin 74a lists only three instances when suicide is acceptable: to avoid idolatry, immortality, or murder. Nevertheless, the tendency of the later authorities is to limit the problem by defining suicide almost out of existence. In order to

qualify as a suicide, one must clearly announce their intention before hand and then immediately go and carry out the act. Even in this case the Rabbis are willing to accept the possibility of repentance and consider it an accident.¹⁵

Despite the strict view taken by the early authorities, there is, in fact, no specific injunction against suicide in either the Bible or the Talmud. The post-Talmudic passage in Semachot is the first reference against suicide to be found in the Halakhic literature. There are three cases of intentional suicide recorded in the Bible. The account of the death of King Saul is the earliest of these references. When Saul was on Mount Gilboa he was afraid of being captured and tortured by the Philistines. Because he faced certain death, he chose to fall on his own sword and die a quicker death. Jewish tradition has never assigned any blame to King Saul for his action. In fact a legal category evolved based on such extenuating circumstances, onus keShaul, an understandable offense. In cases where the Rabbis are not willing to allow for a given action in advance, lekhatilah, they are often able to accept its consequences after the fact, bedi'avad. The Rabbis cannot condone Saul's suicide a priori and yet, after the fact, it can be forgiven.

Suicide by the terminally ill clearly cannot be condoned by Jewish law. Nevertheless, there is a certain ambiguity in the Biblical and Talmudic sources. In addition, a terminal patient facing a slow and painful death would easily be excluded from the category of intentional suicide and, after the fact, they should be accorded all honors due the dead of Israel.¹⁶

DETERMINATION OF DEATH

As was discussed under the heading, The Sanctity of Life Versus the Dignity of Death, the traditional definition of death is based on two primary criteria, pulse and respiration, to which Chatam Sofer adds a third criterion, movement. A person is dead by Halakhic standards when they are no longer capable of breathing, heartbeat, and movement. Brain death is an issue which is largely irrelevant to the Halakhah on terminal illness since its use by medical authorities post-dates most of the Halakhic literature. The question as to the determination of death for a patient in an irreversible coma, as distinct from one who is terminally ill, is a difficult one to make on the basis of the standard Halakhic criteria. Because the patient could theoretically live indefinitely, if provided with full life-support, the Halakhah in this case will

need to respond to the issue of brain death more directly. No thorough analysis of the situation has yet emerged, but the eventual interpretation, in any event, will stand outside the realm of this thesis.

DONATING ORGANS

The determination of death becomes a crucial issue in the question of donating organs for transplant. In Selection Nine, Dr. Levy comments that "precisely this determination is of a practical importance if it is our intention to use an organ from the dead person to transplant (into) another sick patient in order to save a life."¹⁷

In this statement, Levy highlights the two basic Halakhic points involved in the issue of organ transplants. The fundamental Halakhic position stresses two necessary elements: the saving of a life (pikuach nefesh) and a sick person before us (choleh lefaneinu). If there is a sick person "here and now" whose life could be saved by an organ transplanted from one who has died, the Halakhah would clearly support such an action. Even if there is only a slight possibility for success, this is permitted.

The difficulty arises when the sick person involved is not immediately present. Because modern telecommunication allows a physician to know of the need for particular organs and the technology exists to preserve and transport available organs anywhere in the world, the "here and now" concept of a "sick person before us" is no longer an appropriate qualification. Although the recipient may not be physically present, the force of the law remains intact since the organ is donated to save the life of a specific individual.

The issue becomes even more complex when there is no known person for whom the organ is intended. Such is the case with donations to an organ bank. In this situation, it is not at all clear that the donation will actually save a life. Organs for transplant can only be preserved for a certain amount of time. If an organ was donated but never used, the donor's body would have been defaced without having saved a life. The Halakhah could not condone this procedure, and yet, it is clear that the intent to save a life is still present. Saving a life is considered the highest mitsvah. From a Reform perspective, even the intent to save a life should be seen as sufficient.

A separate consideration is the question of helping a "sick person who is before us", but whose life is not in

danger. The most common example of this situation is the donation of a cornea for grafting. The ability to restore sight is clearly a mitzvah and yet the Halakhic requirement to save a life has not been fulfilled. Some authorities have attempted to make an analogy between restoring sight to the blind and saving a life based on the statement that 'a blind person is like one who is dead.'¹⁸ Other authorities, however, have made valid objections to this approach.¹⁹ A stronger case can be built by using the Talmudic reference from Pesachim 25a which states that "we may use any material for healing except that which is connected with idolatry, immorality, and bloodshed." While divided on their approach to the problem, since the disfigurement is minor, most Halakhic authorities have been lenient with regard to the donating of a cornea for transplant.

The final and most difficult category is the donation of the body or its organs purely for the sake of medical research. The issues involved in the use of the body without the saving of a life or healing any individual person, are essentially the same as those to be dealt with under the following heading of autopsy.

AUTOPSY

The Halakhic issues involved in autopsy are similar in many ways to those put forth in the previous discussion

of organ transplant. If a sick person "here and now" could be saved by the autopsy, it is definitely permissible; but few autopsies can provide such definitive knowledge. Though valuable information can often be gained which may lead to the saving of lives, one individual autopsy cannot be expected to save one individual life. Because of the injunctions against disgracing the dead, Jewish law clearly forbids the performing of an autopsy for the sake of general medical knowledge. To the degree that it can be argued that lives may be saved, as in the case of an epidemic, this stricture can be minimized based on the analysis of Chazon Ish in Selection Fourteen.²⁰ Nevertheless, where lives are not in danger, an autopsy cannot be permitted.

There is a fundamental difference in the way that Jewish sources deal with the question of autopsy. The advancement of medical science is not a commandment while the prohibitions against defacing the dead clearly are.²¹ Judaism is not against the study of the body for medical purposes per se. The severed limb of a living person can be studied for whatever medical knowledge it might reveal as long as it is treated with respect and buried afterwards.²² In the case of autopsy, though, the issues are entirely different. Unlike the case of a discarded limb or organ that could be used if it could

offer anyone benefit, an autopsy entails the defacing of a human body that is no longer living. Once a person dies, the body has specific rights concerning the respect with which it must be treated. The concept of preserving the dignity of one's body after death is taken very seriously by the Halakhic authorities and the body is not allowed to be cut even for the sake of embalming.

There are certain cases where an autopsy is required by civil law. This would include any instance of death by an unknown cause as well as possible homicide or suicide, or the threat of epidemic. Under these conditions, though the Halakhah still opposes the practice, it recognizes civil authority in the overarching statement that 'the law of the land is the law' (dina demalkhuta dina). Whenever civil law conflicts with Jewish law, one is obligated to fulfill the civil requirements.

When presented with a legal request for autopsy, one may comply without fear of transgression. If there is no legal requirement, however, a Jewish person is completely justified in denying an autopsy on religious grounds. Despite the leniency with which the law is interpreted in cases where a life can be saved, Judaism considers the body to be sacred and a Reform Jew should feel comfortable in saying they will not allow an autopsy for routine purposes.

Such circumstances will often become a matter of personal choice since the medical knowledge which might be gained from an autopsy will vary widely from case to case. The primary considerations in such decisions should be the evaluation of the possible gain in reference to saving other lives, the real possibilities for the advancement of medical knowledge, the wishes of the person who died, and the degree of comfort with which the survivors could grant the request. From a liberal perspective, the advancement of medical science in the hopes of saving a life is a worthwhile cause and an opportunity to fulfill a mitsvah even after death.

ACCEPTABILITY OF THE HOSPICE

The question of "whether the motivations and the methods of the hospice idea are in conformity with the spirit of Jewish legal tradition"²³ could potentially be a troubling one for a Jewish family faced with the imminent death of a loved one. A brief review of the history and purpose of the hospice movement can shed much light on this issue. In 1967, Dr. Cecily Saunders founded St. Christopher's Hospice in Great Britain. Her contention was that hospitals are institutions for curable, not terminal patients. Anyone familiar with hospital set-ups and procedures will recognize this fact based on a number

of realizations. First, a hospital revolves around the medical treatments, tubes, machines, and therapies it provides. None of these will save the terminal patient. Also, a hospital enforces set visiting hours to insure a patient's rest and recuperation. A dying patient needs the company and support of their friends as well as their family. Finally, in a hospital, where the goal is life, death is seen as a form of failure. As a result, the terminal ward is often an isolated, removed, lonely place. But terminal patients and their families need therapy and guidance to help them deal with their inevitable future.

A hospital is often not the right place for a dying person. Extension of chemotherapy, drugs, tests, tubes, and machines do not help, they merely prolong. A hospice provides the opportunity for a person to die with dignity with their loved ones by their sides throughout the whole ordeal, sharing. The concept is indeed very Jewish. The Shulchan Arukh states very clearly that when a person is dying, one may not leave them. They should not die alone.²⁴ Isserless adds the gloss that it is a mitzvah to be with a person when they die and the Be'er Hagolah explains that this is so they won't die in a state of sorrow. In the Talmud, Rabbi Akiba admonishes that "one who fails to visit the sick is as one who has shed blood".²⁵ The ideal behind the hospice, then, that family and

friends should be present and help to the last minute of a person's life, is most definitely Jewish.

Having reviewed the previous issues, it becomes even more apparent that the answer to the first question, Halakhic approval of the hospice movement, is affirmative. The ability to do serious counseling on issues of the Jewish view of death, after-life, divine judgment, reward and punishment, and a myriad of other topics indicate the benefit of the hospice movement's environment for both the dying person as well as their family. As Maimonides tells us in his Guide for the Perplexed in Chapter 51, "Increased proximity to death sensitizes our awareness of God"--if we will only enable this to happen.

¹Shabbat 32a.

²See Selection Nine.

³See Selection Nine, page 68.

⁴See Selection Nine, page 69.

⁵See Selection Two, responsum 2, page 16.

⁶See Selection One, 339:1, page 1.

⁷See Selection One, 339:7, page 6.

⁸See Selection Eleven.

⁹Deuteronomy 21:21.

¹⁰See Selection Nine, page 69.

- ¹¹See Selection Nine, page 62, quoting Sanhedrin 77a.
- ¹²See Selection Nine, page 67.
- ¹³See Selection One, subsection 7, page 6.
- ¹⁴See Selection Seven, page 53.
- ¹⁵See Selection Five.
- ¹⁶Gitin 57b and Yoreh Deah 25.
- ¹⁷See Selection Nine, page 71.
- ¹⁸See Selection Ten, responsum A, page 77.
- ¹⁹See Selection Twelve.
- ²⁰See Selection Fourteen, page 103.
- ²¹See Selection Thirteen, page 98.
- ²²See Selection Two, responsum A, page 16.
- ²³Solomon B. Freehof, New Reform Responsa,
(Cincinnati: Hebrew Union College Press, 1980), p. 67.
- ²⁴Yoreh Deah 339:4.
- ²⁵Nedarim 40a.

TABLE OF AUTHORITIES CITED BY ACRONYM

Bet Yosef.....	Yosef ben Ephraim Karo	(1488-1575)
Binyan Tsion.....	Ya'akov Ettlinger	(1798-1871)
Birkhei Yosef.....	Chayim Yosef David Azulay	(1724-1806)
Chatam Sofer.....	Moshe Sofer	(1763-1839)
Chazon Ish.....	Avraham Yeshayahu Karlits	(20th century)
Da'at Kohen.....	Avraham Yitschak Kook	(20th century)
Igrot Moshe.....	Moshe Feinstein	(20th century)
Isser Yehudah.....	Avraham Yitschak Untermann	(20th century)
Magen Avraham.....	Avraham Gumbiner	(1635-1683)
Maimonides.....	Moses ben Maimon	(1135-1204)
Mimaynei Yeshu'ah...	Yehoshua Halevy Hirschhorn	(20th century)
Mitspeh Ariele.....	Arye Leib Brode	(19th century)
Nodah Bihudah.....	Ezekiel Landau	(1713-1793)
Olat Shabbat.....	Samuel ben Yosef of Krakow	(17th century)
Parashat Mordekhay..	Mordechai Bennet	(1753-1829)
Peri Megadim.....	Joseph Teomim	(18th century)
Rabah.....	Rabah bar Nachmani	(4th century)
Rabbi Eliyahu.....	Elijah Gaon of Vilna	(1720-1797)
Ramah.....	Moshe Isserless	(1520-1572)
Rashi.....	Shlomoh ben Yitschak of Troyes	(1040-1105) ¹⁰²⁸ ₁₀₃₀
Riy (Mahariy).....	Jacob Weil	(15th century)
Shevut Ya'akov.....	Ya'akov ben Yosef Reischer	(18th century)
Sh'eilat Yavets.....	Jacob Emden ben Tsvi	(1697-1776)
Shulchan Arukh.....	Yosef ben Ephraim Karo	(1488-1575)
Seidei Eish.....	Yechiel Ya'akov Weinberg	(1885-1966)
Tsits Eliezer.....	Eliezer Waldenberg	(20th century)
Tur.....	Jacob ben Asher	(1269-1340) ¹¹³
Yad Shaul.....	Yosef Saul Halevy Natansohn	(20th century)
Yehudah Hana'asi.....	Judah the Prince	(2nd century)

BIBLIOGRAPHY

- American National Standards Institute, Standards Committee Z-39, Subcommittee for the Romanization of Hebrew. "Proposed Standard Romanization of Hebrew." Hebrew Union College: Unpublished paper, revised 1972.
- Berlin, Meir, ed. Encyclopedia Talmudit Le'inylenei Halakhah. Tel Aviv: Sefer, 1947.
- Epstein, Yechiel Mikhal. Arukh Hashulchan. Tel Aviv: Yalkut, 1945.
- Feinstein, Eliezer. Tsits Eliezer. Jerusalem: 1945-1970.
- Freehof, Solomon B. Contemporary Reform Responsa. Cincinnati: Hebrew Union College Press, 1974.
- _____. Current Reform Responsa. Cincinnati: Hebrew Union College Press, 1969.
- _____. Modern Reform Responsa. Cincinnati: Hebrew Union College Press, 1971.
- _____. New Reform Responsa. Cincinnati: Hebrew Union College Press, 1980.
- _____. Reform Jewish Practice. New York: KTAV, 1976.
- _____. Reform Responsa and Recent Reform Responsa. New York: KTAV, 1973.
- _____. Reform Responsa for Our Time. Cincinnati: Hebrew Union College Press, 1977.
- _____. The Responsa Literature and a Treasury of Responsa. New York: KTAV, 1973.
- Grollman, Earl A. Concerning Death: A Practical Guide for the Living. Boston: Beacon Press, 1974.
- Guttmann, Alexander. The Struggle over Reform in Rabbinic Literature: During the Last Century and a Half. New York: The World Union for Progressive Judaism, 1971.

Holy Scriptures, The: According to the Masoretic Text.
2 Vols. Philadelphia: Jewish Publication Society of
America, 1955.

Jacob, Walter, ed. American Reform Responsa: Collected
Responsa of the Central Conference of American Rabbis
1889-1983. New York: Central Conference of American
Rabbis, 1983.

Jakobovits, Immanuel. Jewish Medical Ethics: A Comparative
and Historical Study of the Jewish Religious Attitude
to Medicine and Its Practice. New York: Bloch, 1959.

_____. Studies in Torah Judaism: Jewish Law Faces
Modern Problems. New York: Bloch, 1962.

Karo, Yosef ben Ephraim. Shulchan Arukh. Brooklyn:
Shraga, 1945.

Klein, Isaac. A Guide to Jewish Religious Practice. New
York: Jewish Theological Suminary, 1969.

Lamm, Maurice. The Jewish Way in Death and Mourning. New
York: Jonathan David, 1969.

Maimonides, Moses. The Guide for the Perplexed.
Michael Friedlander, tr. New York: Pardes, 1946.

Marcus, Jacob Rader. Communal Sick-Care in the German
Ghetto. Cincinnati: Hebrew Union College Press, 1978.

Maslin, Simeon J. Gates of Mitzvah. New York: Central
Conference of American Rabbis, 1979.

NOAM. Jerusalem: Torah Sheleimah Institute, 1962-1973.

Stern, Betsalel, Betsel Hachokhmah, Vol. II, Jerusalem:
1967.

Waldensberg, Eliezer. Tsits Eliezer. Jerusalem,
1945-1970. Weinberg, Yechiel Ya'akov. Şeredei Eish.
4 vols. Jerusalem: Kook, 1961-1969.