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THE LIVING WILL: A JEWISH ANALYSIS BASED ON HALACHIC AND CONTEMPORARY ETHICAL PERSPECTIVES

by

David S. Wolfman

Thesis submitted in partial fulfillment
of the requirements for Ordination

Hebrew Union College-
Jewish Institute of Religion
Cincinnati, Ohio
1987

Referee, Rabbi Mark Warshofsky

Dedication

To my two favorite people on earth:
to my wife Jane, my best friend,
who held my hand, made me laugh when I needed to most,
and has shared with me throughout the past five years;
and to our darling Jennifer Shira for blessing us with her life.

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I would like to thank Dr. Mark S. Dine, Clinical Professor of Pediatrics and Family Medicine at the University of Cincinnati School of Medicine, for his time and interest in this thesis. Dr. Dine introduced me to the vast resources the Medical School Library has to offer and for this I am grateful.

A sincere todah rabbah to Rabbi Mark Warshofsky (soon to be Dr. Warshofsky), who encouraged me to enter the ancient world of rabbinic literature. When I first approached Rabbi Warshofsky and told him of my proposal to study euthanasia in Jewish law, he pulled a volume of the Shulchan Aruch from his shelf and began to read from the precise chapter and verse regarding this subject. Since that day, I have come to learn that he is truly a master of rabbinic literature.

And finally, a word of appreciation and love for my family. Two of the most demanding responsibilities are writing a thesis and having a baby. I could not have completed this thesis on time without the constant support of my wife who took on more than half of the responsibility of taking care of our daughter. Even with her added responsibilities, she still found time to read rough drafts, provide valuable feedback, and be an amazing mother. I also want to express my most heart-felt thanks, respect, and love to my parents for caring about my future and providing me with an outstanding education.

DIGEST

"THE LIVING WILL: A JEWISH ANALYSIS BASED ON HALACHIC AND CONTEMPORARY ETHICAL PERSPECTIVES"

One of the most pressing topics of our time is passive euthanasia. This issue is clouded with two inherent Jewish values: 1) the basic sanctity of life and the preservation of the soul, and 2) the responsibility to show compassion on our fellow human beings and to relieve needless suffering. This thesis examines the issues related to the conflict between these two values and addresses the question of whether or not the Living Will concurs with Jewish law and values.

Chapter One examines the classical source materials which directly address the status of the gosses, the person who is facing imminent death. We find unanimity in the opinion that the gosses is to be considered a living being in every respect. In addition, it is agreed that it is forbidden to hasten the death of a gosses, for the one who has hastened the death of a gosses is likened to one who has shed blood. Later texts maintain that it is also forbidden to prolong the dying process, therefore allowing the removal of any impediment to death.

Chapter Two examines current halachic thinking regarding this issue. The two Responsa discussed examine this issue from a contemporary standpoint utilizing the introduction of modern technological advancements. Rabbi Waldenberg carefully uses the sources to draw the distinction between acts that hasten death, which are forbidden, and acts that impede death, which are also forbidden. Waldenberg concludes that in cases when the artificial respirator acts as an impediment to death, the removal of the

device is permitted. Ya'akov Weinberger, on the other hand, maintains that any life, even a short span filled with suffering, is sacred. In addition, although he agrees that it is permissible to remove an impediment to death when death is imminent, it is impossible to determine the precise time of the "departure of the soul". For these reasons, Weinberger is opposed to removing the artificial life-support.

Chapter Three surveys contemporary medical and bio-ethical literature relating to this issue. This chapter reveals that an overwhelming majority of this material supports passive euthanasia in certain cases. The President's commission report, "Deciding to Forego Life-Sustaining Treatment", concludes that the voluntary choice of a competent and informed patient, or his surrogate, should determine whether or not life-sustaining measures are to be used in cases when the prognosis confirms a terminal condition.

This thesis concludes that the Living Will concurs with Jewish law and values in cases when a terminal prognosis is made.

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INTRODUCTION

Few topics in the field of bio-medical ethics are more complicated, more controversial, and more emotionally charged than that of euthanasia. The term "euthanasia" was first coined by Sir Thomas More (1478-1535) to describe the painless and merciful killings of incurable patients. The Greeks used the term *euthanatos* to mean a good, pleasant or happy death. Indeed, the Talmud uses the exact Hebrew equivalent mitah yafah, a pleasant death, to describe the least painful and most merciful type of death hardened criminals faced.[1]

The issue of euthanasia has become even more controversial with the constant and gigantic advances of modern medical science: the more advanced medical science becomes, the more heated grows the debate over euthanasia. We are now in an age where C.P.R., intubation, transplantation, and artificial respiration are no longer extra-ordinary procedures but common practice. We now have the means to keep terminal patients alive for extended periods of time where ten years ago they would most certainly have died. With the advancement of medical science, the average life expectancy has increased and people are living longer.

Yet along with the blessing of longer life often comes the curse of longer death. Since our medical knowledge has expanded over the new horizons of life-sustaining treatments, the dying process has been lengthened in sometimes vain attempts to save a life. While endeavoring to prolong life, we often prolong only the process of dying.

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[1] Goldman, Alex J. Judaism Confronts Contemporary Issues. New York, Shengold Pub. 1978. p. 171. (Sanhedrin 43a, 45a)

While the human race has most certainly come a long way in the field of life resuscitation, the practice of resuscitation is nothing new. The first example of this is found in the Bible in Second Kings when we read about Elisha's attempt of reviving a young Shunammite boy:

> Gehazi had gone on before them and had placed the staff on the boy's face; but there was no sound or response. He turned back to meet Elisha and said, "The boy has not awakened!" Elisha came into the house and saw the boy dead on the couch. He went in, shut the door behind the two of them and prayed to God. Then he mounted the couch and placed himself on the lad. He placed his mouth over the boy's mouth, his eyes over the boy's eyes, and his hands over the boy's hands. As he bent over him the body of the child became warm. He stepped down, walked up and down the room and mounted and bent over him again. The boy then sneezed seven times and the boy opened his eyes! [2]

We read in II Kings about the first recorded attempt of artificial resuscitation. While this is seemingly a case of reviving the dead, it actually is an ancient account of what often occurs today. Often times an emergency life squad will arrive at a scene where a person will have no vital signs as his heart has stopped and he has stopped breathing. The life squad will revive him and place him on artificial life-support. To be sure, many people are alive and living happy and fulfilled lives because of the advancement of the emergency life-squad.

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[2] II Kings 4:31-35.

We now have the knowledge and technique to restart a heart once it has stopped with charges of electricity and manual heart massage together with the introduction of drugs. Once the person's body has been revived, we also have the means to keep the heart pumping and the lungs expanding and contracting if the patient cannot perform these vital actions for himself.

The issue of euthanasia is clouded with two inherent values in Jewish tradition. On the one hand we affirm the basic sanctity of life and the preservation of the soul; and on the other we recognize the responsibility to have compassion on our fellow human beings and to relieve unnecessary and needless suffering.[3] The Jewish ethicist has long struggled with the conflict between these two inherent values when faced with the terminal patient in great pain. Whereas we are mandated to go to every extent to save even one soul, often that requires us to place the dying person on artificial life support when there is no chance for his recovery and when he is suffering greatly. This action results in discord between the two values: placing the pain-striken dying person on artificial life support does nothing to relieve the suffering and certainly shows no compassion.

All too often physicians are faced with this very situation. A person is admitted into the hospital and is found to have advanced cancer. The patient falls into a deep coma that doctors agree seems irreversible; in addition, the patient loses all means of independent life and is placed on an artificial respirator. The family is now faced with the dilemma of whether or not to continue life support.

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[3] Steinberg, Avraham. "Retzach M'toch Rachamim L'or Hahalacha" Sefer Assia: Original Articles, Abstracts and Reports on Matters of Halacha and Medicine, #19, 5th year, 3rd pamphlet; January 1978.

And what of the patient who does not fall into a coma; what of the patient who is also dying of a terminal disease and is in great agony for whom the doctors agree there is no hope for recovery? Are the doctors permitted to administer pain killing drugs to the patient knowing that these drugs, in turn, may hasten death?

There are no easy answers to these complex and controversial questions. At the very least, the patient and doctor have three possibilities from which to choose.

The first possibility is to cause the suffering patient to die in an active way. This might mean injecting an air bubble or large doses of drugs into his bloodstream. This possibility advocates actively hastening the death of the suffering patient in a merciful way.

The second possibility is completely opposed to the first. This possibility advocates taking every effort to save the dying patient and to lengthen his life, regardless of any pain he might be enduring. Once the patient is stabilized by artificial means, every effort should be made to search for new cures in hope of prolonging his life.

The final possibility available to the doctor and the terminal patient advocates a middle stand; that of passive euthanasia. It in no way advocates active means to hasten death but rather affirms the patient's right to decide to forego any life-sustaining treatment once he is diagnosed as being in a terminal state with no chance for recovery. [4]

It is to this end that this thesis will address itself. The issue of passive euthanasia and the decision to forego life-sustaining treatment has become more and more relevant to our society. It is especially important in light of the fact that the vast majority of people who die each year die of predictable

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[4] ibid.

and foreseeable deaths as opposed to the infrequent sudden, catastrophic or traumatic death.[5]

In response to the dichotomy between the values of prolonging life and relieving incurable pain, the Living Will was developed by Concern For Dying in 1968. [6] It started as a compilation of several letters written by proponents of this concept to express their strong beliefs in the event they should find themselves dying. Since that time it has been revised to meet the needs of society and changes in civil law. Over 7 million copies have been distributed. Below is the text of a Living Will:

> 'TO MY FAMILY, PHYSICIAN, LAWYER, RABBI AND ALL OTHERS WHOM IT MAY CONCERN: [7]
>
> "Death is as much a reality as birth, growth, maturity and old age - it is the one certainty of life. If the time comes when I can no longer take part in decisions for my own future, let this statement stand as an expression of my wishes and directions, while I am still of sound mind.
>
> "If such a time the situation should arise in which there is no reasonable expectation of my recovery from extreme physical or mental disability, I direct that I be allowed to die and not be kept alive by medications, artificial means or 'heroic meanures'. I do, however, ask that medication be mercifully administered to me to alleviate suffering even though this may shorten my remaining life.
>
> 'This statement is made after careful consideration and is in accordance with my strong convictions and beliefs. I want the wishes and directions here expressed carried out to the extent permitted by law. Insofar as they are not leagally enforceable,

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[5] Department of Health Education and Welfare, Facts of Life and Death. Washington D.C., U.S. Government Printing Office,1978.

[6] Concern For Dying, 250 West 57th St., N.Y., N.Y.

[7] note: Each Living Will is addressed to the people central to the individual's life. Therefore, the addition of rabbi or minister depends on each individual case.

I hope that those to whom this Will is addressed with regard themselves as morally bound by these provisions."

To be sure, this document raises many questions in light of Jewish law and Jewish values. Is it permissable to allow a terminal patient to die or is it considered to be an act of homicide? May drugs be mercifully administered to alleviate pain even though this might hasten death, or is this to be considered homicide? And finally, to whom does life belong? Does the human being have the right to give such permission or is that right reserved exclusively for God, the Maker of all?

In an attempt to resolve these issues we will first see what the classical Jewish sources have to say on the subject. From there we will examine a sample of current halachic thinking in the twentieth century; and finally, we will survey contemporary medical and bio-ethical literature to determine if a document like the Living Will can exist in harmony with Jewish law and the values of the modern Jew; a Jew who might approach this problem differently than the halachic Jew.

CHAPTER ONE: THE SOURCES

(1.1): NIVI'IM - THE PROPHETS. FIRST AND SECOND SAMUEL.

The first mention we have concerning what seems to be a case of euthanasia comes from the Second Samuel of the Bible when we learn of the manner of Saul's death. To understand the text we must refer to the preceeding paragraph from First Samuel:

> Now the Philistines fought against Israel, and the men of Israel fled from the Philistines, and fell down slain in mount Gilboa. And the Philistines followed hard upon Saul and upon his sons; and the Philistines slew Jonathan and Abinadab, and Malchiahua, the sons of Saul. And the battle raged against Saul, and the archers hit him; and he was severely wounded. Then Saul said to his arms-bearer: "Draw your sword and thrust it through me lest these uncircumcised come and thrust me through and make a mock of me." But his arms-bearer would not for he was afraid. Therefore Saul took his sword and fell upon it. And when his armour-bearer saw that Saul was dead, he likewise fell upon his sword and fell upon it, and he died with him. So Saul died, and his three sons, and his arms-bearer, and all his men, that same day together.[1]

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[1] I Samuel 31:1-6.

Saul's death appears to be a suicide. Saul had lost his men in battle, he had lost all of his pride, and perhaps he had lost what means most to him, his three sons. When all seemed to be lost and when Saul thought himself to be at life's end, that life was no longer worth living, he asked his armor-bearer to end his life. He preferred "death with dignity" or a "merciful release". Yet we see from the text that his armor-bearer would not follow his wish to end his life, so Saul took his life into his own hands and attempted to commit suicide.

Second Samuel, however, tells us that Saul did not die from his self inflicted wounds but that another put an end to his life. As we will see from the passage below, Saul's self inflicted wounds did not mortally wound him but did, nonetheless, place him in a fatal condition and in great pain. A passerby saw this and carried out Saul's bid to put an end to his painful dying condition thus granting Saul a "merciful release" from his pain. The text below depicts the scene of the passerby telling David of Saul and Jonathan's death:

> And David said to the young man that told him (of Saul and Jonathan's death): "How do you know that Saul and Jonathan are dead?" And the young man that told him said: "As I happened by chance upon mount Gilboa, I saw Saul leaning on his spear; also, I noticed the chariots and horsemen were closing in upon him. And when he looked behind him, he saw me, and called to me. And I answered: Here am I. And he asked me: Who are you? And I answered him: I am an Amalekite. And he said to me: Stand, I ask of you, beside me, and slay me, for the agony is too much and I am barely alive. So I stood beside him, and killed him, because I was sure that he could not live after that he

> was fallen; and I took the crown that was upon his head, and the bracelet that was on his arm, and have brought them here unto my lord."[2]

Clearly there is a discrepancy in the two texts. In the former, the scene depicts a suicide and in the latter, euthanasia. Furthermore, we read in Second Samuel [3] that David was not at all pleased of Saul's death, even if it was "merciful", and has the Amalekite boy put to death. The traditional Jewish commentators recognize this discrepency and approach the differences in the textual stories in varied ways.

Abrabanel (d. 1508), for example, deals with the various problems of David's ordering the Amalekite's execution on the basis of self-incrimination. Radak (d. 1235) claims that the Amalekite boy was only following the directive of Saul. Saul did not die immediately upon falling on his sword but was mortally wounded; he asked the Amalekite boy to aid him in a "merciful release."[4] Finally, Gersonidies in his commentary[5] provides an explanation for David's execution of the Amelikite boy for killing Saul not only with his consent but at his request. He claims that the command of a king cannot override God's commandment prohibiting murder.[6]

Regardless of authenticity, we nonetheless have a documented and cannonized tale of a case of euthanasia concerning a major character in the

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[2] II Samuel 1:5-10.

[3] II Samuel 1:11-16.

[4] Ralbag (d. 1344) and Rashi (d. 1105) support Radak's commentary. See commentaries loc. cit.

[5] Gersonidies loc. cit.

[6] Rosner, Fred. "Jewish Attitude Toward Euthanasia." Medica Judaica: Journal of Medicine Past and Present. vol. 11, no. 1, 1972; p.30.

Bible. This is an interesting point, a *Pitchon Peh* if you will, as we begin our investigation into the rabbinic sources that follow.

(1.2): MASEHET SEMAHOT - EVEL RABBATI:

Semahot, also called Evel Rabbati, is one of the minor tractates of the Babylonian Talmud and is the classic talmudic text on death and mourning. This is the first text which deals directly with our topic: the acts that one is allowed or forbidden to perform concerning the gosses (גוסס), the one who is in a dying condition. It is to be noted that a person who is considered to be a gosses is a person whose death is imminent and whose soul, in the language of the rabbis, is about to depart.

As we shall see, the talmudic text, as with most subsequent texts concerning the gosses, considers the dying person as a living being in all respects. Semahot is basically concerned with law. For the authors of Evel Rabbati, the gosses is to be considered a living person: he is alive and is subject to all of the priestly, ritual, civil and medical laws as is the healthy person:

> A dying person is to be considered as a living person in all matters of the world. He is bound by the Leverite marriage[1] and can free (his mother) from the obligation of the Leverite marriage and enables her to eat of the terumah, and (likewise) he can make her unfit to eat of the terumah. He can inherit and bequeath[2]. If one of his limbs is

[1] Even though he is dying and death is imminent, if his brother should die while he himself is dying, his brother's wife is nonetheless bound to him by the institution of Leverite marriage. Should she want to remarry, she must perform the act of halitza as her brother-in-law, the gosses, is still to be regarded as a living being in all matters.

[2] property or an estate.

> severed, it is regarded as a limb cut off from the living. If it is flesh, it is regarded as flesh cut off from the living[3]. And the blood of his sin offering and guilt offering is (still) sprinkled for him until he dies.[4]

It is clear for the authors of Semahot that the gosses is to be treated in the same manner as the healthy, living person in regard to matters of priestly, ritual and civil and medical law. Despite his weakened condition and his imminent death, he is not only bound by laws that concern him alone, but by laws that concern others as well. The fate of his deceased brother's wife is determined by the gosses, as is the fate of his mother in the case of his father's death. In addition, the sin and guilt offerings made by a gosses are to be carried out as if he were a living person. This is noteworthy as offerings prepared by a person who dies before the offerings are discontinued. Here, in the case of a dying person, the offering is carried out as if he were living a normal and healthy life.

Below, Halacha 2 concerning the gosses, forbids the actions that are performed on a dead body. We are taught not to perform these actions to prepare for his death because again, he is not yet dead and is to be considered a living person.

> We may not bind up his jaws[5] nor stop up his organs nor place a metallic object or anything that chills on his stomach;[6] as it is

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[3] There is a legal difference between limbs cut off from a living and a dead person. Again, the point is that he is to be considered to be a living person in all respects.

[4] Masehet Semahot, Chapter 1; Halacha 1.

[5] to prevent his jaw from dropping

[6] to prevent swelling.

> said,[7] "Before the silver cord is snapped asunder and the golden bowl is shattered and the pitcher is broken at the fountain."[8]

In all of the above, we have seen that we are prohibited from treating the gosses differently from a living person. In addition, we are prohibited from doing any action that is done to a person who has already died.

Below, in Halacha 3 and Halacha 4, in addition to the above prohibitions we see for the first time the prohibition of moving the dying person, lest by doing so we hasten death.

> We may not move him nor place him on sand or salt until he dies.[9]
> We may not close the eyes of a gosses. Whoever touches him is as if he sheds blood. For R. Meir used to say: It can be compared to a lamp which is going out; if a man touches it, it will go out. So, too, whoever closes the eyes of a gosses is considered as if he has taken a life.[10]

From this we can infer that we are fobidden to touch the dying person. We are not to move him from one room to another and are not to close his eyes. We are forbidden from doing these things to the gosses because these actions involve touching the body, which may hasten his death.

Rabbi Meir compares touching the body of a man who is about to die, i.e. a gosses, to touching or placing your finger upon a candle that is about to go out. If you move it or even touch it, the weak, faltering flame

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[7] Eccl. 12:6.
[8] Masehet Semahot, Chapter 1; Halacha 2.
[9] ibid. Halacha 3.
[10] ibid. Halacha 4.

will become extinguished. Since this action directly results in the end of the flame, or to the end of the life, the one who has done this is considered a murderer.

Finally in Halacha 5, the last paragraph in Semahot dealing directly with our subject, we return to the theme of the prohibition of performing any actions that we would ordinarily do after one has already died:

> We do not rend the garments, bare the shoulder, deliver a memorial address, or bring the coffin into the house until he dies.[11]

We note from the study of Evel Rabbati that first and foremost we are to treat the dying person, the gosses, as a living being in all respects. He is obligated to fulfill his duties and is still bound by priestly, ritual, civil and medical laws. We learn that we are not to hasten his death in any way whatsoever, for if we do, we have shed blood and have taken a life. It is also interesting to note that nowhere in this early text do we find the permission to remove any impediments to death . Thus, Evel Rabbati serves as a springing board to later prohibitions but does not yet introduce the idea of there being a distinction between "active" and "passive" euthanasia. We shall now examine these themes further in later texts.

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[11] Masehet Semahot, Chapter 1; Halacha 5.

(1.3): ALFASI - RABEYNU NISSIM:

The next source that addresses itself to the laws of the gosses was written by Rabbi Issac Ben Jacob (1013-1103), known also as the RIF or Alfasi.[1] The RIF's work, known as the Sefer Ha-Halakhot dates back to the 11th century.

The RIF felt that the Talmud, the basis of Jewish law, lacked practicality of ready and quick reference. In his Sefer Ha-Halakhot Alfasi took it upon himself to attempt to simplify much of the great Talmud. His aims were clear: to extract much of the halachic material from the Talmud, to ascertain a decision from the talmudic discussion, and to provide a compendium for ready and easy reference. By doing this the RIF hoped to prepare an abridgement of the Talmud thereby facilitating its study. Alfasi's compendium remained to be a significant work in halacha in subsequent generations.

The text basically reiterates the 5th century Evel Rabbati in Masachet Semachot:

> It is taught in Evel Rabbati[2] that a person in a dying condition is to be considered a living person in all respects. We do not bind up his jaws nor do we stop up his organs nor place metallic vessels or cooling objects upon his stomach until the time of his death. As it is said: Until the silver cord is snapped

[1] RIF = Rabbi Issac of Fez.
[2] See chapt. 1.2

> asunder.[3] And we do not annoint him nor do we wash him or place him on sand or salt until he dies. And we do not close his eyes. And whoever touches him, behold, it is as if he sheds blood. To what can this be compared? To a candle that flickers. If a person touches it, it immediately goes out.[4]

While Alfasi does not advance beyond the earlier text, one of his commentators does. For the first time we read that though we must not hasten the death of the gosses, it is also forbidden to prolong the dying process. That is to say, we are permitted to remove any impediment to death. We turn to the Sheltei Gibborim, a 16th century work by Joshua Boaz Baruch on this passage:

> And from here it appears to me that it is forbidden to do the practice of some people, which is, when they see that death is imminent for the gosses and the soul can not exit the body, they remove the pillow from under the head of the gosses so he will die quickly; for there are those who maintain that there is something in the feathers of some fowl that causes the soul not to depart.[5]

The Sheltei Gibborim finds the act of removing the pillow forbidden for it involves moving the body. He finds support for his view in Sefer Hasidim :

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[3] Eccl. 12:6

[4] Alfasi, Moed Katan, 32a

[5] Sheltei Gibborim to ALFASI; 32a, note 4.

> And there are times when I yelled out like a crane to stop this evil act[6], but I was not successful. And even my teachers disagreed with me. And Rabbi Natan from Igra wrote that it was permitted. But after a few years I found support for my premise[7] in the Sefer Hasidim[8]. "If the gosses can not die until you move him to another place, do not move him from there. [9]

While we do not know whether Joshua Boaz Baruch believed in the magical powers of the feathers or not, we can clearly see that he forbids touching or moving the body lest this hastens death: it is certain for the Sheltei Gibborim that the act of removing the feather pillow must be prohibited because it involves touching and moving the gosses, an act which hastens death. He sees the Sefer Hasidim as making a similar prohibition. He notes, however, a problem in that text:

> It is true that the words of the Sefer Hasidim require careful study. First it states that if a woodchopper is close by to the house of the gosses and his soul can not depart (he can not die) it is permissible to remove the woodchopper from there because of the sound.[10] That is opposite of what is written later on in Hasidim (i.e. that it is forbidden to take action which hastens death.) Rather it explains that anything that causes a prolongation of death is forbidden, i.e. to chop wood to delay the departure of the soul, or to place salt on his tongue so he will

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[6] of removing the pillows.

[7] that the removal of the pillow is in fact forbidden.

[8] #723 ג'שוחן

[9] op. cit. Sheltei Gibborim note 4.

[10] It was maintained that the steady, staccato beat of the chopping provided the gosses' soul with a focal point thus prolonging the dying process as the soul could not depart from the body while concentrating on the sound.

> not die quickly.[11] All of this is forbidden. It is therefore permissible to remove any such impediments.[12]

The text differentiates between the actions of hastening death and hindering or prolonging it. Immediately after permitting the removal of any impediment to death, the commentary continues:

> But to do anything that will cause the hastening of his death and will cause his soul to depart quickly is forbidden. Therefore it is forbidden to move the gosses from his place and to rest him in another place in order for his soul to depart. It is likewise forbidden to place the keys to the Synagogue under the head of the gosses so he will die sooner for this also hastens the soul's departure.[13] And according to this, if there is something that prolongs his death and draws it out, it is permissible to remove that cause (impediment). And there is no objection to this. It is not as if you are placing your finger upon the candle (that is about to go out.) But, to rest something upon the gosses or to move him from place to place in order that his soul may depart quickly, is most certainly forbidden. This kind of action is indeed as though you are placing your finger upon the candle (that is about to go out.)[14]

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[11] The same idea as in #10: concentrating on the sharp taste.

[12] op. cit. Sheltei Gibborim, note 4.

[13] Placing the keys to the Synagogue under his head makes it a neccessity ro move his head to retrieve them for daily prayers. This is an indirect way to facilitate moving the gosses, which is clearly forbidden.

[14] op. cit. Sheltei Gibborim, note 4.

The Sheltei Gibborim sums up his opinion and commentary on Alfasi by alluding to the 5th century Masechet Semachot. The removal of any impediment to death is not analogous to moving or touching the flickering candle and is therefore permitted. Likewise, any action that will hasten death is forbidden as it is certainly analogous to moving or touching the flickering candle. This certainly causes death and is therefore forbidden.

In his attempt to resolve a contradiction within the Sefer Hasidim, therefore, the Sheltei Gibborim draws a clear distinction between hastening death ("active" euthanasia) and removing an impediment to death ("passive" euthanasia).

(1.4): SHULCHAN ARUCH - YOREH DEAH 339:1 :

We now turn to the 16th century Shulchan Aruch, a compendium of Jewish law penned by Joseph Caro (1488-1575) and later glossed by the RAMA, Moses Isserless (1530-1572). Caro's Shulchan Aruch is basically a concise synopsis of his Beit Yosef, a commentary on the Arbah Turim. Isserless had great respect for Caro's work but saw the need to add the customs of the Ashkenazim which Caro omitted. The book was first published in 1565 and following the addition of Isserless and other commentaries it became the book on Jewish law par excellence.

Our chapter, Yoreh De'ah 339:1 repeats and restates the rulings of the sources we have examined thus far, including Masechet Semachot, Alfasi, Sefer Hasidim and Sheltei Gibborim, but adds more throughout the text. Indeed it opens new doors into the discussion of the prohibition of hastening and hampering the death of the gosses. Our text begins with the classic and undisputed claim:

> One in a dying condition is considered a living being in all respects.[1]

The Beit Lechem Yehudah and the SHaKH, a 17th century commentary written by Shabbetai ben Meir ha-Kohen, also referred to as the Siftei Kohen (1621-1633), underline that there can be no distinction between a healthy, living person and a gosses. He is living and therefore is obligated by priestly, religious, and civil laws. He can still issue a divorce to his wife (get),

[1] Shulchan Aruch, Yoreh Deah 339:1

give and receive gifts, and offer prayers. We even are told that he is to be considered a living being so much so that a Cohen is permitted to enter the house of a gosses.[2] This is quite significant as a Cohen, a High priest, is absolutely forbidden from entering a house if a dead body is present and is likewise forbidden from entering a cemetery.

The text continues:

> We may not tie up his jaws nor may we annoint him with oil nor wash him nor stop up his organs of the extremities, nor may we remove the pillow from under him nor place him on sand, clay ground or earth. We may not place a dish, shovel, flask of water or a gobule of salt upon his stomach. We may not summon the townspeople on his behalf nor may we hire pipers and lamenting women[3], nor may we close his eyes before his soul departs. And whosoever closes the dying person's eyes before his death is regarded as one who sheds blood.[4]

We can see how Caro brings together the sources we have examined. We see that we may not do anything that is ordinarily done to one who is already dead, nor may we do anything that will hasten his death.

The Sifte Kohen mentions that we may not remove the pillow from under his head because this action would involve moving the Gosses which we already know is forbidden. The removal of the pillow is not to be understood as the removal of an impediment (i.e. because of the feathers). Moving the body is a direct action which would lead to the hastening of his

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[2] Beit Lechem Yehudah and SHaKH. ad loc.

[3] in preparation of his death.

[4] op. cit. Sh. Ar. 339:1

death. He uses this example to try to further draw the thin line of distinction between hastening and hindering death.

> ...the point is because all of these things involve moving him from his place. This is how the acts are distinguished.[5]

The Turei Zahav (TAZ), Rabbi David ben Shmuel Ha-Levi (1586-1667), a 17th century commentator to the Shulchan Aruch from Poland likewise mentions that the Shulchan Aruch speaks about those actions that actually cause death to be hastened.[6] Thus far for all of the commentators actions that hasten death are clearly forbidden.

Joseph Caro carefully points out that in addition to not being permitted to take any action that will hasten death, we are likewise forbidden from taking any action that we would ordinarily do in preparation for his death. Acts like calling the townspeople on his behalf, hiring pipers and mourners were commonplace for that time when someone in the community died. In addition, as is still practiced today, the eyes of the dead person are closed. This is an act that would be done to a body that was already dead. All of these actions are clearly forbidden and is underlined by likening the one who closes the eyes of a person still alive to one who has taken a life. In his commentary to this specific analogy, Siftei Kohen adds:

> And whosoever closes the eyes of a gosses before the soul departs is as if he has spilled blood; rather you should check and make sure he is dead because it is quite possible that he has only fainted. This is according to

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[5] SHaKH, note 4. ad loc.
[6] TAZ, note 1. ad loc.

> Maimonidies.[7] This is also in Masechet Semachot[8] that it is as if he has shed blood. it is to be compared to a lamp that is about to go out. If one places his finger upon it, it will be immediately extinguished.[9]

Caro completes his words on this subject by prohibiting other acts commonly done for the dead. All of these actions, and action likes them, are prohibited because the gosses might inadvertently see the preparations for his death and be frightened by his impending fate. This would hasten his death.

> One may not rend garments nor bare the shoulder in mourning nor make a lamentation for him nor bring a coffin into the house in his (the gosses') presence before he dies. Nor may we begin the recital of Tzidduk ha-Din before his soul departs.[10]

We can see from the viewpoint of Caro that anything done to the gosses that would hasten his death is forbidden. It must be understood that what we have thus far are examples of Sephardic custom. The text continues with the gloss written by Moses Isserless, also known as RAMA.[11] As mentioned above, Isserless' gloss contains explanations, additions, supplements, and customs of Ashkenazic Jewry previously ignored by Caro. This gloss to Caro's Shulchan Aruch has been known as the Mappah, as Rabbi Shlomo Tal, Director of the Ze'ev Gold Institute in Jerusalem wrote: "By

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[7] Maimonidies, beside being a Jewish scholar, was a medical doctor.
[8] Halacha 7.
[9] SHaKH, note 5. ad loc.
[10] Schulchan Aruch 339:1 .
[11] acronym for Rabbi Moses Isserless.

spreading his Mappah (tablecloth), so to speak, over the Shulchan Aruch (prepared table) - which had codified Jewish practice - he in fact made that work acceptable to Ashkenazim as well as Sephardim."[12]

We begin our examination of Isserles' gloss to Caro's Shulchan Aruch by noting that Isserless begins by mentioning additional customs, presumably from the Ashkenazic rite, which he clearly forbids.

> Some say that we may not dig out a grave for him (the gosses) even though it is not done in his presence, near his house, before he dies. It is likewise forbidden to dig out any grave for him that might be left open over night until the next day; and there is danger in this.[13]

Sifte Cohen adds a provisional clause in his commentary. For the SHaKH, "it indeed is allowed to dig a grave for him as long as the gosses does not know about it."[14] He does warn, however, that if it is too close to Shabbat you are not to dig the grave until he dies lest his death come later rather than sooner and the grave remains open over the Shabbat.[15]

Continuing with Isserles' gloss we find a list of prohibitions which fall under the catagory of hastening death. In it we find much of the material we have studied thus far including the prohibition of placing the keys to the Synagogue under his head lest you move the body to retrieve them. In addition, it is again mentioned that it is forbidden to remove the pillow from

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[12] "Isserless, Moses ben Israel", Rabbi Shlomom Tal; Encyclopedia Judaica, col.1083.
[13] Isserless to Sh. Ar. Y.D. 339:1 .
[14] SHaKH, note 6. ad loc.
[15] ibid.

under his head. While Isserless simply restates what past scholars have stated, (Sefer Hasidim, in fact, is listed as one of his sources), his commentators have much to say, especially considering the removal of the salt.

We continue with the gloss:

> It is likewise forbidden to cause to hasten the death of one who is in a dying condition, that is one who has been in a dying condition for a long time and whose soul could not depart. We may not remove the pillow or the mattress from under him just because some say that there are feathers from some fowl which cause the prolongation of death.[16] He (the gosses) may likewise not be moved from his place. It is also forbidden to place the keys to the Synagogue under his head so his soul may depart. However, if there is aught which causes a hinderance to the departure of the soul, for example, if there is close to the house a knocking sound from a wood chopper, or if there is salt on his tongue, and these hinder the departure of the soul, it is permitted to remove them for there is no (direct) act involved since he is merely removing the impediments.[17]

Isserless seems to contradict himself in much the same way as did the Sefer Hasidim.[18] It is most interesting to see how the commentaries deal with this evident contradiction.

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[16] which is forbidden.

[17] op. cit. Isserless to Sh. Ar. Y.D. 339:1

[18] see discussion of Sheltei Gibborim .

The SHaKH is astonished concerning Isserless' comment. He maintains that while it is permissible to remove the knocking sound it is not permissible to remove the salt. Why is it permissible to remove the knocking and not the pillow and the salt if they are all seemingly impediments to death?

According to the SHaKH the feathers in the pillow do not represent an impediment to death. Even if the belief in the magical powers in the feathers of some fowl was true, removing the pillow from under the head of the gosses would involve moving him which is clearly forbidden. So too with the salt; while he it is quite possible that the salt is an impediment to death and it is seemingly permitted to remove it, doing so would involve touching the lips and thus facilitates moving the body. For the same reason this act is forbidden. The SHaKH feels that the RAMA contradicts himself by prohibiting one act and permitting the other.

The TAZ agrees with the SHaKH in that removing the pillow from under his head would involve moving his body. Concerning Isserless' ruling that the removal of the salt upon the tongue of the gosses is permitted, he writes that since both the pillow and the salt involve moving the body they both should therefore be forbidden:

> It is hard for me to understand why it is allowed to remove the salt from upon his tongue because you actually have to move his mouth with your hands."[19]

He continues to state that whoever does this act is just like one who closes the eyes of a gosses which we already know is forbidden and is likened to

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[19] TAZ, note 2. ad loc.

one who has shed blood. He concludes; "It is therefore why, in my opinion, we do not follow the ruling permitting the removal of the salt."[20]

Finally, the Beit Lechem Yehudah concludes this discussion with what seems to be a compromise. He begins by citing the TAZ's opinion rejecting Isserless' permission to remove the salt. With that he recalls several rulings we have learned thus far: it is forbidden to lengthen the dying process, and it is forbidden to place salt upon his tongue so that he will not die. He points out the fact that if by chance some salt is found upon the tongue of the gosses it should not have been there in the first place and therefore it is permitted to remove it, again pointing out that it is forbidden to lengthen his death. Tactfully, he adds to be careful not to touch or move the body! [21]

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[20] ibid.

[21] Beit Lechem Yehudah. ad loc.

(1.5): SUMMARY:

From the 5th to the 16th century we have seen that a person in a dying condition, a gosses, is to be considered as a living person in all respects. He is bound by ritual, civil and priestly laws and other than his medical care, he is not to be treated as anything less than as a living, healthy person.

We find total agreement that it is forbidden to do anything to the gosses that would hasten his death. This includes, above all, touching or moving the person from one place to another so he will die.

In later texts, in addition to the prohibition of hastening the death of a gosses, we also find the prohibition of lengthening or prolonging his death. This means that for the first time we find permission given to remove any factor that, in fact, impedes his death.

In Caro's 16th century code we find an example of the discrepancy already shown in the Shiltei Gibborim. Wheras it was understood that anything that involved moving or touching the body was strictly forbidden, we see a contradiction in RAMA's Mappah when he states that it is permitted to remove the salt. We notice how the commentators deal with the discrepancy in their different ways and in using different tactics.

Now that we have an understanding of what the source material has to say on this subject, we can turn to more current and contemporary halachic thinking.

CHAPTER TWO:
CURRENT HALACHIC THINKING - THE RESPONSA LITERATURE

(2.1): AN INTRODUCTION TO THE RESPONSA LITERATURE.

She'elot V'Tshuvot, or "questions and answers", is the Hebrew name given to the next type of literature we will examine dealing with the treatment of the gosses. This type of literature will prove to be most interesting as the authors we will study will have two tasks in front of them that the authors of the sources we have previously studied did not have.

Up to now we have been discussing the ramifications of removing feather pillows, salt, and noises made by a wood chopper. For the authors of Masechet Semachot, let us say, these methods of sustaining life were the only medical technology they had. For us, today, it is quite a different matter.

We now have the ability to keep a body functioning, that is , we can keep the heart beating and the lungs working for an almost indefinite period of time, as long as we connect the patient to modern machinery. The question then arises: to what can the life sustaining machines be compared? Is the heart-lung machine to be compared to the staccato sound of the wood chopper, in which case the machine would be considered an impediment to death and we would be permitted to "pull the plug"; or is removing the machine analogous to moving or touching the gosses in which case we would be hastening the death of the gosses, which is clearly forbidden?

The authorities of halacha in the twentieth century are compelled and often requested to address these issues. Therefore, the two tasks the

halachic authorities of today have are to translate the halachic material into today's terms and situations, and to arrive at a decisive judgement.

In this chapter I will present two different points of view within the halacha. We will see two very different and separate ways of looking at this issue that is becoming more relevant as modern medical technology progresses, and how these two halachic scholars utilize the sources.

(2.2): Tzitz Eliezer - Rabbi Eliezer Yehudah Waldenberg (v.13, no.89)

Rabbi Eliezer Yehudah ben Ya'acov Gedaliah Waldenberg (1917 -) has perhaps become known as one of the world's reknown authorities in medical-ethical halacha. He lives in Israel and often responds to halachic questions that arise from Jerusalem's Sharei Tzedek Hospital. He is the author of a monumental work of halachic responsa, in sixteen volumes, entitled Tzitz Eliezer (1945 - 1985) from which our responsa appears.[1]

Waldenberg addresses three main issues in his responsa. These modern issues directly stem out of the discussions portrayed in the source materials and it is from these same materials that Waldenberg will answer his questions: Is it permissible for a doctor to remove a patient from an artificial respirator if the patient lacks all independent and viable life and there is no chance for his recovery? If not, is the doctor obligated to restart the respirator with automatic timers which will activate the machine for several time intervals? And if this be the case, is the doctor permitted not to reactivate the machine once it stops by itself?

Waldenberg responds to these issues in his responsum by answering a written request (sheila) presented by Professor David M. Meir, the executive administrator of Sharei Tzedek Hospital in Jerusalem. In his letter to Waldenberg, Meir raises the question of the ramifications of the removal of treatment and of not giving treatment to seriously ill individuals who have no chance for recovery. He states that in cases like these, many doctors feel that their responsibility to the patient is to prevent needless pain and

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[1]Waldenberg, Rabbi Eliezer Yehudah; Tzitz Elizer, vol. 13, no. 89.

suffering. He also mentions that in addition to the alleviation of unnecessary and prolonged suffering, the doctor often needs to recognize that this prolonged condition can often lead to extreme financial strains for the family, often to the point of poverty.

If the patient has to die at all, Meir maintains, the physician wants the death to be a painless and honorable one. Meir suggests that he considers the human body to be holy and sacred. A death with tubes, and all that goes with it, actually desecrates that holy and sacred God-given body.

Before Professor Meir presents his problem to Rabbi Waldenberg, he states a few "givens" that pertain to his situation. He begins by mentioning the ruling by Moshe Isserless[2] that while it is forbidden to hasten death it is permissible to remove an impediment to death. He does this to prove that the removal of treatment, or not rendering treatment to a terminally ill person in the first place, is a case of "sit and do nothing"[3]. According to the RAMA, the removal of the knocking noise, as well as the salt from upon his tongue[4], are not direct actions performed to the patient and therefore are permissible as they are only removing impediments to death.

In the generations of the source material, the examples of knocking noises and the presence of salt upon the tongue of a dying person were satisfactory for discussion. Because of modern medical advances mentioned in the introduction to this chapter, Prof. Meir raises another question which is clearly far more complex:

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[2] Isserless to Sh. Ar. Y.D. 339:1. (see also chapter 1.4)

[3] Tzitz Eliezer, loc. cit. The phrase "sit and do nothing" implies the passive course of action in situations of terminal care. When the situation exists that a certain medical intervention may prolong life for a short time at the expense of great pain, the patient and physician may opt to "sit and do nothing" and let the disease, and thus death, run its natural course.

[4] op. cit Isserless to Sh. Ar. Y.D. 339:1.

A man is brought into a hospital Emergency Room after a severe traffic accident and it appears that his skull is severely wounded. The doctors try in vain to save him and to quickly implement life-saving actions and connect him to an artificial respirator because there is no respiration and it seems that there is no independant heart beat. The machine supplies him with oxygen and because of charges of electricity the heart begins to beat. This artificial resusitation is merely technical actions that inflate the lungs like one inflates a balloon. The machine presses oxygen into the lungs: they expand and the mucus absorbs the oxygen. The pressure of the machine reduces and the balloon (lungs) collapse. This action repeats itself. Here, there is no control over the lungs by the brain center like there exists in normal and healthy situations. This can be checked in many ways. Among them - by stopping the respirator for a few minutes to check and see if the patient begins to breathe independently. If there is no independent respiration, the patient is returned to the machine. Now, after hours or days, it becomes clear that the patient lacks all independent viability. The question here is if in these situations the machine is an "impediment" in which case to stop it and to remove the breathing tubes from the patient is permissible. At the time when treatment is given to the patient in the Emergency Room it is impossible to consider and evaluate exactly what the situation of the patient is and the doctors are obligated to do every effort to save him, and to use every medical machine possible. Only after they clairify during the treatment, for example, that the skull is crushed or the neck is broken, does the doctor face the problem of stopping treatment.[5]

- A) There are doctors that in no way dare to remove treatment from patients that are

[5] Thus, according to Meir, we do not have the option of not connecting the artificial respirating machine at all.

> unconscious and in deep comas for a long period of time. There are cases known where the patient exists after long periods in a vegetative state without reflexes and without any responses to external stimuli. Does the halacha require this?
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> - B) There are doctors who check the possibilities of the patient to function independently by disconnecting the patient from the machine for five or ten minutes in order to see if the patient begins to breathe independently. In cases where the patient can not do this, after several tests like this, the machine is not reactivated. Do they have the right to do this? Is this only an indirect action called "the removal of an impediment"? [6]

Professor Meir raises several other questions in addition to the above. If the artificial respirating machine happens to stop because of a lack of power, or if it by chance runs out of oxygen, is the doctor obligated to resuscitate that patient by other means or is the approach of "sit and do nothing" an acceptable practice if the patient has no chance for recovery?

If such is the case, Prof. Meir has a suggestion that he presents to Waldenberg for his apporval. He emphasizes that this suggestion deals exclusively with patients who clearly have no possibility of survival.

> Every patient that is brought into the E.R. after an accident, poisoning, etc., even if he has a crushed skull - it is necessary to immediately perform every available life-saving action available, including attaching him to every existing machine. These machines will be attached to clocks which are similar to Shabbat clocks, that will work for certain periods of time: for example for 12 or 24 hours. During this time the doctors can determine the situation with the help of clinical findings and

[6] Tzitz Eliezer loc. cit. (question submitted by Prof. D. Meir).

> different tests, and can check lab tests, X-rays, etc.. If the patient does in fact have a chance to remain alive, then when the machine stops they immediately reactivcate it. In the case when it is clear, for example, that there is a crushed skull and the patient has no hope for survival, or when there is a broken back and there is a complete detachment between the brain and the rest of the body, in those cases, when the machine stops operating the doctor will not be obligated to reactivate it.

We can see from Prof. Meir's suggestion that the doctors are not presented with the option of not connecting the respirator in the first place when faced with a victim in a hospital emergency room. From a medical standpoint, the doctor's must attach a patient to life-support. No terminal diagnosis can be made unless the patient is kept alive long enough to examine him. Moreover, we must assume that each patient can indeed be cured until we know otherwise. He understands the necessity of immediately tending to the patient's needs without reservation and time for moral debate. It is only after a person is connected to the life-sustaining machines that a responsible decision can be made.

Prof. Meir is familiar with the halacha found in the source material and cites Isserless's gloss to the Shulchan Aruch. He understands that it is forbidden to move or to touch a patient who is in a dying state as this can hasten his death. He also knows and obviously subscribes strongly to the prohibition of prolonging the dying process. He accepts the permissibility of removing an impediment to death.[7]

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[7] op. cit. Isserless to Sh. Ar. Y.D. 339:1.

With this in mind, Prof. Meir suggests the use of timing devices that can be attached to the artificial resuscitators which will turn the machine off, and then on again, at intervals. While the life-support machine is off, the physicians can observe the patient and determine if the machine is acting as a therapeutic device, in which case the patient would be breathing by himself, or if in fact the machine is acting as an impediment to death.[8] If such is the case, the machine would not be reactivated and the patient would die a natural death. The timing devices Meir describes permits the machine to be turned off without a doctor himself performing the task. Should the patient need the machine reactivated because it is actually acting as a therapeutic device and helping him, the timer would automatically reactivate the machine.

To aid in our discussion, Prof. Meir has provided a description of the normal functioning of human respiration. Because this description is medical in nature, yet quite relevant to our discussion, I shall quote from Prof. Meir directly.

"Lung functions are divided into two parts:
A) Functions that are tied into inflating the lungs and inhaling oxygen into the space in the lungs, and
B) Functions that absorb the oxygen from the air in the blood stream.

"The first function is brought about by the constriction of muscles in the chest cavity that cause an enlargement of the lungs and let the air in (inhaling). When the muscles relax the volume lessens in the chest cavity and the air which was brought inside, leaves (exhaling). These functions are controlled by the brain, which in an automatic way regulates the muscles.

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[8] This point is critical to the issue. If the artificial resusciator is deemed as a threapeutic device, the removal of the machine would be considered as hastening death and, therefore, forbidden. Conversely, should the artificial resusciator prove to be of no therapeutic value and only acts as an impediment to death, the removal of the machine is permitted.

"Sometimes certain diseases, poisonings, brain injury, and accidents cause the removal of this connection between the brain and the lungs and it becomes impossible to breathe without the aid of a machine which is used as a pump which sends oxygen into the lungs. When the pressure builds up, the lungs expand and fill; when the pressure of the machine lessens, they collapse like a balloon losing all of its air. This type of action is not regulated by the brain, as is normally the case, but rather by the machine.

"The second functioning of the lungs is the absorption of oxygen through the fine mucus of the lungs inside of the capillaries interwoven in the lungs. This function is possible as long as the blood is circulating. This is a direct action of the the beating of the heart. The heart is able to pump as long as there is a supply of oxygen. Unlike the lungs, the heart is not dependent upon the brain in relation to its operation. It is possible that after the connection between the brain and the heart is severed, the heart can continue to pump independently or with the insertion of a pacemaker. This is because there is independence in the heart muscles that cause contractions and blood circulation. Clearly, without breathing and without oxygen entering through the lungs to the blood, the heart will cease to beat. That is how there is the possibility that the heart will continue to beat when the respiration is artificial, only by the means of a machine, without brain functioning [9], and when the machine stops - the heart will stop.

"Even though the cases above regarding brain cessation after severe traffic accidents, fractures, head injury, etc., there are cases where the brain works but loses control over some parts of the body, specifically the lungs. This is because of neural degeneration in the chest muscles (polio), and the artifical respirator (iron lung) is necessary to continue the life of the patient whose situation is fine in all other respects." [10]

Rabbi Waldenberg begins his response (T'shuva) by summarizing Prof. Meir's inquiry. He focuses on Meir's use of the RAMA's words in which he allows the removal of any impediment to death. Waldenberg, therefore, begins with that very text.[11]

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[9] i.e., "brain death" may be irrelevant to heart function.

[10] Tzitz Eliezer loc. cit. (question submitted by Prof. D. Meir).

[11] Isserless to Sh. Ar. 339:1 See Chapter 1.4.

Waldenberg states the lesson from RAMA, that it is permissible to remove anything that impedes the departure of the soul of the dying person. This, then, would not be considered an action which hastens death.

Still, for Waldenberg, the distinction the RAMA makes between the prohibition of removing the pillow and mattress from under the head of the gosses because of the feathers, and the permission to remove the salt from upon his tongue, is unclear. Both of these actions involve touching and even moving the gosses. It further puzzles Waldenberg that he can not find the logic of Isserless in that removing the salt, which is permitted, involves even more contact with the body than removing a pillow.

Waldenberg then turns to several commentators to help him clarify this distinction. He begins with the commentary written by one of Isserless' students, Mordecai Jaffe (1535-1612). Jaffe wrote a commentary to Issereless' Mappah to the Shulchan Aruch because he felt that both Caro and Isserless excessively abbreviated the halacha. [12]

In his commentary, also known as the Levush, Jaffe tries to understand why the RAMA prohibited the removal of the pillow and the mattress. Although he himself admits that his explanation is forced, he concluded that the RAMA considered the removal of the feathers to be hastening death as the feathers had some power that sustained life.

Jaffe does not subscribe to Isserless' commentary and explains that the removal of the feather pillow and mattress is only the removal of an impediment and therefore should be permitted.

Waldenberg compares Jaffe's explanation with our specific situation, that of the removal of the artificial respirator. If after several tests are

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[12] "Jaffee, Mordecai Ben Abraham", Kupfer, Ephraim; Encyclopedia Judaica. col. 1263.

performed on the patient it is found that there is no independent heart beat and the brain has no control over the inflation of the lungs, the removal of the respirator is considered to be the removal of an impediment to death and is therefore permitted. The removal of the artificial respirator is a matter of removing the influence that is delaying the departure of the soul and is not a matter of hastening death. Waldenberg suggests that according to the explanation of the Levush, this can be done even if it means touching the body of the patient.

Waldenberg next turns to the 17th century commentaries of Rabbi David ben Shmuel (1586-1667) and Shabbetai ben Meir Ha-Kohen (1621-1633) whose commentaries are known as TAZ and SHaKH, respectively. Both of the commentaries are not content with the distinction drawn by the LEVUSH.

The TAZ[13] claims that removing the salt can be likened to closing the eyes of a gosses which is clearly forbidden. Therefore, according to the TAZ, the removal of the salt can never be permitted because it involves moving the patient's mouth.

The SHaKH[14] maintains that the removal of the pillow is not forbidden because of the feathers; rather, it is forbidden because it, too, involves moving the body. Nevertheless, because the removal of the salt involves only a slight touch to the body, it is therefore permitted.

Both commentators agree that the actions are prohibited because they involve moving the body. Waldenberg concludes from this that it must be permissible to stop and remove the artificial respirator if it can be done without touching or moving the body. He explains that this can easily be

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[13] Shulchan Aruch Y.D. 339, note 2.
[14] Shulchan Aruch Y.D. 339, note 7.

done by pulling the plug out of the wall or by turning off the power switch. Meir's "Shabbat clock" method would also be acceptable.

Waldenberg points out that this issue concerning the removal of the pillow was a subject of dispute among the early authorities. To show this, he refers back to the source of RAMA's words which are found in the 16th century commentary on the Alfasi[15], the Shiltei Gibborim, penned by Joshua Boaz Baruch.

Baruch mentions that he never accepted the practice of some to remove the pillow. Even his teacher, Rabbi Natan of Igra, disagreed with him. He mentions that he finally found some textual support to his claim not to remove the pillow in a text called the Sefer Hasidim[16] where it states that it is forbidden to move the gosses from place to place. From this, Waldenberg points out that we can understand the Shiltei Gibborim's objection to removing the pillow from under the dying person as it involves moving him.

Waldenberg introduces another commentary which comes to the contrary conclusion of the Sheitei Gibborim, although ironically, it uses it as a prooftext. The author of the Kenesset ha-Gedolah[17] writes that as a young child he remembers seeing people removing pillows from under the head of a dying person because of their feathers. He protested this because it was forbidden. Then he saw the words of the Shiltei Gibborim, which, although it too forbids it, mentions the fact that Rabbi Natan of Igra approved of this act. He retracted his objection and writes to explain why some people adhered to this practice. All the acts forbidden by Evel Rabbati refer to a case when

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[15] Isaac Alfasi (11th c.) Moed Katan, ch. 3. See chapter 1.3 .
[16] Sefer Hasidim, #723.
[17] Y.D. 339; note 9, part 4.

"the soul is not ready to depart." This means that there is no impediment at all and therefore moving the pillow constitutes murder.

The Sefer Hasidim clearly forbids the act of moving the body. The Kenesset ha-Gedolah writes that this seems to contradict the rest of the Sefer Hasidim's ruling. The Kenesset ha-Gedolah resolves this in two ways. First, he makes a distinction between an act which involves touching the body and one that does not touch the body. This distinction does not seem to be solid as it apparently contradicts its own explanation of the baraita in Eyel Rabbati.

The second way he tries to resolve the conflict is by stating his opinion that moving the body causes pain to the patient. This implies that even if the act of moving the body does not in itself hasten death, it is nonetheless forbidden as it causes pain to the patient. Besides, moving the patient does not remove any impediment; it only causes pain and that hastens death.

We can see then, how the Kenesset ha-Gedolah cites Sefer Hasidim in order to permit the removal of the pillow, and how the Sheltei Gibborim cites the same source in order to prohibit the same.

To tie this discussion to our situation of disconnecting an artificial respirator, Waldenberg explains that according to both explanations of the Kenesset ha-Gedolah we are allowed to remove the machine. The difference occurs when the patient is connected to the machine in such a way that we must move the body in order to disconnect the machine. According to the first explanation, describing the difference between direct contact and indirect contact, it is forbidden to disconnect the machine. According to the second explanation, describing the difference between acts that cause pain to the gosses and those that do not, it is most certainly permitted to disconnect the artificial respirator.

Waldenberg next points to the Derisha on the TUR[15] who writes that that since the Shiltei Gibborim points to the contradiction in the Sefer Hasidim and then resolves it, although he first permitted the removal of the feather pillow, at the end he prohibits only the moving of the dying person from place to place.

The Tzitz Eliezer then explains that in the Mappah to the Shulchan Aruch, Isserless reads the Shiltei Gibborim as drawing a distinction between two cases according to the Sefer Hasidim. If the impediment to death is either upon the patient or nearby him, and, if that impediment in question is forbidden to be there in the first place (i.e. salt upon his tongue or the sound of chopping wood) then it is permitted to remove it. On the other hand, if there is nothing present that is prohibited to be present (i.e. a feather pillow or mattress), it is forbidden to change the situation by moving or touching the patient.

By reading the Isserless, one might assume the permitted acts are permitted because they do not consist of a direct act. This implies that the distinction rests on whether or not the act involves touching the gosses.

Waldenberg resolves the conflict between the RAMA in his Darkei Moshe and his Mappah by stating that there is only one distinction to be found. It is permitted to remove an impediment to death if that impediment should not be there in the first place. The removal of this impediment should take place to remove the factor that is impeding the natural departure of the soul. If, however, there is nothing impeding his death but rather there is something that, if performed, will hasten his death, i.e. placing the keys to the Synagogue under his head or moving him from one place to another, this is clearly forbidden as it indeed hastens death. If a

[15] TUR, Yoreh Deah 339:1 .

mere impediment to death is removed, one which does not contribute to a patient's spontaneous viability and independent life, such an act is permitted because the impediment was not supposed to be there in the first place. It is permitted to remove the impediment, even if it involves touching the patient, because there is no act of hastening his death.

For a further clarification of the RAMA's words, Waldenberg turns to the Aruch ha-Shulchan which provides some additional support to the thesis he is advancing. He concludes from this text that there are three things that can be learned concerning the meaning of the RAMA.

First, the Aruch ha-Shulcahan, as do other authorities, forbids any action that will hasten the death of a dying person who has some signs of independent life. All actions that will hasten his death, whether done to the body in a direct or indirect manner, are strictly forbidden.

If, however, the patient does not have any kind of independent and viable life, and it is possible that any life remaining stems from an external factor, it is permissible to remove this factor. If this factor is the impediment to death, it is unnecessary to let the patient suffer since his life is not self-sustaining. Furthermore, if this factor is removed and is found not to be an impediment at all, then the removal will have no ill effect.

Finally, this permission to remove this factor does not apply to external life support alone, but also to factors which someone might have placed on the body with the intent of prolonging the patient's life, e.g. salt upon his tongue and the sound of wood chopping. In these cases it is permitted to remove these factors if you see that they cause the patient pain. The removal of the salt, for example, is not considered an "action" because it involves only a slight movement. Because it was placed on the gosses with the intent of prolonging his life, it is permitted to remove it.

Since it can be concluded, Waldenberg maintains, that it is absolutely forbidden to introduce a factor that will prolong the dying person's life when it is clear that he is not going to gain any independent viability from it, if one connects an artificial respirator and later sees that the patient is in great pain, it would be permitted - and perhaps even commanded - to remove that external factor. Any provisional life that the gosses will have in such a circumstance certainly comes from an external and unnatural source and would be against the will of God. To be sure, this external and unnatural source is actually an impediment to death. To underline this premise, Waldenberg points again to the Sefer Hasadim:

> And we should not shout at him at the time when his soul is departing so his soul will not return and cause him pain until he dies. Why did Kohelet say, "There is a time to die"?[19] Because when a person is dying and the soul departs, you should not yell, because if you do the soul will come back and the person will then live but for a few short days and in great pain. Why did he not say, "There is a time to live"? Because that is not something for humans to decide because, "there is no control over the day of death."[20]

Waldenberg mentions that the commentator to the Sefer Hasidim[21] points out that Kohelet's "A time to die" is interpreted to mean that one should not undertake an act to prevent a person from dying if that is his destiny. In again trying to make this material germane to our discussion, Waldenberg concludes that we should not take any action to resuscitate when it is very clear that the patient is near death and that any actions we

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[19] Ecclesiastes 3:2

[20] Sefer Hasidim, #234.

[21] note 7.

might be able to do will only "suspend" his soul somewhere in between life and death. We are not entitled, Waldenberg would maintain, to "scream out", i.e. resuscitate, even though we can impede and postpone death by doing so.

Concerning the definition of death and the entire debate as to whether the determination of life and death is connected to the heart or to the brain, Eliezer Waldenberg reminds the reader that the halacha has determined that it is directly connected to the heart. He points out that there is a great difference between the body "living" and a person being alive (i.e. a "living" body and a "living" person.) He suggests that the reader consult his own work[22] and a responsum of Moses Sofer (1762-1839), otherwise known as Hatam Sofer[23].

The Hatam Sofer writes that if one sees a person lying down looking like a stone, with no pulse or respiration, then he can assume that the person is dead. Furthermore the Hatam Sofer writes that the breath that comes through the nostrils is that which determines life and death, whether the death is natural or unnatural.

Waldenberg tells us that a twentieth century rabbi and a leader of American Orthodoxy, Moses Feinstein (1895-1986), in an unpublished responsum[24], agrees with the view of the Hatam Sofer in that mechanical respiration is not the same as natural respiration. Waldenberg does not understand why Rabbi Feinstein wrote that as long as the artificial respirator in functioning while attached to a person, it is forbidden to remove it because the person is still alive. Removing it, claims Feinstein, actually kills the dying person.

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[22] Tzitz Eliezer; vol. 9, no. 46.
[23] Hatam Sofer, Yoreh Deah, no. 338.
[24] made available to Waldenberg by Dr. Meir, who apparently sought several rabbinic opinions.

Waldenberg rectifies this by claiming that this situation is only when the patient has not been checked and rechecked to see if he has any independent viability. If, after the patient is reexamined several times and after the diagnosis is made, the patient is nonetheless placed on the machine, then it is allowed to remove the patient from that machine even if it is still operating. Feinstein's prohibition must apply only if the patient has not yet been carefully examined.

After consulting all of the above source and contemporary halachic material, Rabbi Eliezer Waldenberg now considers Prof. Meir's suggestion. Again, we see Meir's suggestion in scenario:

> Every patient that is brought into the E.R. after an accident, poisoning, etc., even if he has a crushed skull - it is necessary to immediately do every life-saving action available: including attaching him to every existing machine. These machines will be attached to clocks which are similar to Shabbat clocks, that will work for certain periods of time: for example for 12 or 24 hours. During this time the doctors can determine the situation with the help of clinical findings and different tests, and can check lab tests, X-rays, etc.. If the patient does in fact have a chance to remain alive, then when the machine stops they immediately reactivate it. In the case when it is clear, for example, that there is a crushed skull and the patient has no hope for survival, or when there is a broken back and there is a complete detachment between the brain and the rest of the body, in those cases, when the machine stops operating the doctor will not be obligated to reactivate it.[25]

[25] Tzitz Eliezer; v. 13, no. 89; (question submitted by Prof. D. Meir.)

Rabbi Waldenberg highly praises Prof. Meir's suggestion, claiming that, according to halacha, it perhaps is the best approach to this very difficult situation. Waldenberg, nonetheless, has one addition to Meir's suggestion for the guidlines of removing the artificial respirator. In addition to the tests Meir prescribes in his suggestion, Waldenberg states that when the artificial respirator stops functioning because of the timing device, another check-up examination should be performed to see whether the patient can breathe indepentently from one to twenty minutes, and then to repeat the check-up examination. If after doing so the doctor concludes that the patient is not capable of independent breathing, the doctor is not only not obligated to reactivate the respirator, he is actually forbidden to do so. Since the only acceptable determination of death by the halacha is by the breath that comes through the nostrils, such an examination is sufficient to permit disconnecting the respirator; connecting the patient again will only cause artificial activity in the body that will not give him any kind of independent life. Since this will only cause the gosses undue and prolonged pain and suffering, this must be prohibited. According to Waldenberg, this can be likened to Isserless' prohibition of placing salt upon the tongue of the gosses so he will not die quickly. In the case when the artificial respirator acts only as an impediment to death, and not as a therapeutic instrument, it is a mitzvah to disconnect it.

In conclusion, Rabbi Eliezer Yehudah Waldenberg, in his Tzitz Eliezer, condones the removal of the artificial respirator in cases when there is no independent viability in the patient. He proves this statement by using the sources to confirm that it is a prohibition to impede the departure of the soul in any way. While we have the obligation to honor and prolong independent

and viable life in every way possible, once the time comes for a persons death, the human being has no right to intervene in God's plan.

Waldenberg concludes his responsum on this matter of euthanasia by sanctioning the suggestion of Professor David Meir. He adds that one should not ignore Meir's other argument, that being that sustaining a person on an artificial respirator today can run into the hundreds of thousands of dollars. This can cause the family of the patient a great financial expense to the point of poverty, and clearly, he concludes, this is without any benefit.

(2.3): "Murder With Compassion in Jewish Law" by Ya'akov Weinberger
Dine' Israel: An Annual of Jewish Law and Israeli Family Law
vol. vii. 1976 (pp.99-127.)

Ya'akov Weinberger (1885-1966) begins by acknowledging the vast development and advancement of medical science. Because of this advancement of new technologies it is now possible to prolong the life of a gosses for an almost indefinate period of time which often leaves the dying patient in a continuing state of pain, suffering and sorrow.

Weinberger proceeds to raise two questions central to this issue. First, is it forbidden by Jewish Law to stop administering drugs to a patient in this state and to let him die as if these advancements were not available? And second, is there an obligation in any event to connect such a patient to advanced life support machines?

To answer these questions, Weinberger first points to the Sefer Hasidim[1] where it is written that it is forbidden to cause a patient to die slowly and to prolong the dying process. It is likewise forbidden, Hasidim claims, to place salt upon his tongue so he will not die. Furthermore, Mateh Yehudah, quoting Darkei Moshe, Isserless' commentary of the TUR,[2] explains that it is forbidden to do something that will cause the dying person not to die quickly. To this end, the example of chopping wood or placing salt upon the patient's tongue is again cited. These actions, it is claimed, will only cause him pain and sorrow when the soul finds it can not depart.

It is clear that it is forbidden to place any impediment to death in relation to the one who is about to die. What is the ruling, then, in cases when there is already an impediment in place? Is it permissible to remove

[1] Chapter 723.
[2] Yoreh Deah 339.

the impediment that is already there? In other words, can the salt be removed when it is already in place?

Weinberger brings the RAMA [3] to address this issue:

> If there is something that is impeding the soul from departing, for example, if there is a sound of a woodchopper nearby to the house, or if there is salt upon his tongue and these delay the departure of the soul, it is permissible to remove them from there because there is no action involved except for the removal of an impediment.

Rabbi Moshe Walner[4] citing RAMA's ruling writes that the main point is the prohibition of touching the gosses, or "placing your finger upon the flickering candle"; by doing so you are weakening the force of natural life. On the other hand, removing an unnatural impediment, regardless if it prolongs life or not, is permitted because it does not diminish the force of natural life but only removes the unnatural. Weinberger brings us Rabbi Walner's halachic conclusion:

> The terminally ill person who according to doctors does not have a chance for recovery may stop taking his medication.

Weinberger points out that the Beit Lechem Yehudah discusses the fact that while on the one hand there is a prohibition of placing salt upon the patient's tongue to prolong his life, there is also permission given to remove the salt if it is there so he will die quicker. In other words, these two laws are interdependent. Concerning this interdependency the Beit Lechem Yehudah writes[5]:

> And it seems to me that it is allowed to remove the salt because it was not supposed to be there in the

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[3] Mappah to Shulchan Aruch, Yoreh Deah 339:1 .
[4] Ha-Torah V'ha-m'dinah; vol.7-8, p. 318.
[5] ad. loc. Shulchan Aruch, Y.D. 339:1 .

> first place. It is forbidden to delay his death and therefore it is forbidden to place salt upon his tongue so he will not die. Therefore from the start they did not act properly by placing the salt upon his tongue. And it is permissible to remove the salt in such a manner that you do not have to move any part of his body. And Hasidim wrote that you do not yell at the time of the departure of the soul so his soul will not return and therefore suffer great pain.[6]

At this point, Weinberger begins his argument claiming that modern life support should not be removed from the dying patient. He begins by stating that according to the Beit Lechem Yehudah cited above, there is no evidence for Walner's conclusion that it is permissible to withhold medication from a terminally ill patient. Contrary to Walner, Weinberger maintains that the law of the departure of the soul is not the same as the law of a terminally ill patient who has not yet reached the condition of "the departure of the soul", a time when it is forbidden, even for Weinberger, to prolong life.

Weinberger also claims that according to the RAMA no evidence can be found concerning the gosses who is connected to artificial life support who is near death but whose death is not imminent. The RAMA himself talks about the time of "the departure of the soul" at which time there is no prohibition of removing the impediment. Weinberger's concern, however, is with the patient who has not yet reached this stage. There is no prohibition against lengthening his life; as a matter of fact, he claims, there may even be an obligation to do so.

Weinberger brings additional support from Rabbi Hayim Benveniste[7]:

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[6] It was believed by some that shouting out at the time of death could bring back the soul if the soul heard the shout.

[7] Sheurey Kenesset Ha-Gedolah Y.D. 339:2 .

> It appear to me that they mention in Evel Rabbati (Masechet Semachot) that you do not bind his jaws, and the like only when the soul does not want to depart so quickly and there is not an impeding factor that prevents the soul from departing: (in other words) the time has not yet come for its departure. If this be the case, then you may not do any of these things that will hasten death. Nonetheless, when the soul wants to depart (it is the proper time) and there is an impediment there, you are allowed to remove it. By doing this you are not hastening death because if the impeding factor was not there at all, the soul would have already left.

The point Weinberger makes is that all of the poskim who allow the removal of the impediment are speaking of the precise moment of the soul's departure which, he reminds the reader, is not related to our situation mentioned above.[8]

Weinberger now draws on sources that deal with the removal of the impediment to further his argument. He draws on opinions form both sides of the argument and then uses them the substantiate his machmier viewpoint.

In the same publication in which Weinberger's article appears[9], Rabbi Baruch Y. Rabbinovitch writes concerning RAMA's allowing the removal of the impediment, that this halacha is very important in the process of modern medicine. In efforts to save a person's life, he is immediately connected to any modern life support machines available. These machines supply the patient with oxygen which is vital for his survival. As long as he is connected to these machines his body remains alive. The question raised is

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[8] Weinberger, Y. "Murder With Compassion in Jewish Law" Dine Israel p. 120.
[9] Assia pamphlet 3; 1971.

whether the doctor is permitted to remove these modern forms of life support if the patient shows any vital signs. For Rabbinovitch, the halacha is is clear:

> The machine is impeding the soul from departing the body in an artificial manner. It is an obligation, therefore, to remove the patient from this machine and to leave him in his natural condition until his soul departs.[10]

Dr. Ya'akov Levy,[11] a physician, wrote in responce to Rabbinovitch that as a physician he sees essential biological differences between the condition that the RAMA describes and using the respirator. The patient of which the RAMA speaks is virtually at the end of his life and is indeed at the moment of the departure of his soul. "But the patient who is connected to the machine is in the condition of being in a state of in-between and it is doubtful if he is alive or dead."[12] According to Levy, the doctors can not determine that he will certainly die. They might even be able to save him; for that reason he was connected to the respirator in the first place.

The Aroch ha-Shulchan[13] states that it is allowable to remove the impediment by explaining that if the impediment is due to an external factor (such as a respirator) there is no reason for the patient to suffer because the impediment is not internal to him.

We can now raise the following questions: first, how does Weinberger define the respirator - is it an internal or external factor? And second, how

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[10] ibid.
[11] No'am; vol. 16 p. 61 .
[12] ibid.
[13] Y.D. 339:4 .

will Weinberger differ from Waldenberg on the interpretation of the Aroch ha-Shulchan?

In relation to the juxtaposition of internal and external impediments, Weinberger asks if modern technological implements such as drugs, electric shocks, the heart-lung machine, and the like are to be defined as internal or external factors. While they are all seemingly external in nature, Weinberger points to Dr. Ya'akov Levy who claims the contrary:[14]

> The heart-lung machine is vital to each part of the patient's body as it supplies him with needed oxygen and brings him nutritional fluids to the body cells. Stopping the machine, therefore, stops these essential materials to the body; and stopping nutrition is the physiological cause of death, which is not the same case with removing salt from upon the patient's tongue.

With this in mind Weinberger now addresses the question regarding the definition of modern life support machines: are they internal or external factors?

According to the Aroch ha-Shulchan food and drink are defined as internal because they are essential to the body's survival. For Weinberger, it is clear that one must continue to supply food and drink and to continue to administer medical treatments to a terminal patient. He points out that according to the opinions of Walner and Rabbinovitch, who both bring evidence from that RAMA that it is permissible to stop the machine, it would seemingly be permitted to hasten death by withholding nourishment. For Levy, because the artificial life support machine supplies oxygen and nutrients to the body, the machine is a form of food and drink and is thereby internal in nature.[15]

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[14] No'am loc. cit.
[15] ibid.

Regarding our issue of passive euthanasia, Weinberger brings the ruling of Rabbi David Tzvi Katzburg who was asked the following halachic question:[16]

> We have a terminally ill patient and the doctors say that there is no chance to save him. They do not administer drugs but do give him food to keep him alive; then they leave the rest to God. Are the doctors obligated to feed him when they see that this causes him to suffer when they know that by not feeding him he will not suffer?

Weinberger underlines that this question raised to Rabbi Katzburg involves three given conditions: first, there is no chance at all of saving the patient; second, the factor which impedes his death (food) is the very factor which is causing him to suffer; and finally, the removal of this impediment (by not feeding him) can be achieved simply without touching the body. Rabbi Katzburg responds to the question:

> We know that medical science is inexact (safek) inasmuch as physicians draw it inductively from their experiments. Why then do we rely on their opinion, even when this means violating the law of the Torah? The reason is because of the halachic principle that even a possible (safek) threat to life overrides all else. In our case, however, if we stop giving the patient food, he will certainly die. Therefore, the inexact medical opinion does not override the fact of certain death. God forbid that we kill this patient by withholding food, merely because of medical opinion.[17]

In short, Weinberger brings Katzburg to point out that all medical knowledge, as modern and as advanced as it is, is nonetheless inexact. Starvation, on the other hand, is certain death.

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[16] Tel Talpiot; 1923, p. 66.
[17] ibid.

Weinberger concludes that the same can be said in the case he addresses. If the machine is disconnected, the patient will certainly die. A doctor's statement that a patient will die even while connected to life support is only a matter of medical science and is therefore a matter of doubt as the science is inexact. Weinberger reminds us: safek does not override certainty. The machine, therefore, must remain operational with the hope that slight possibility of recovery is realized.

It can certainly be argued that this ruling applies to all people who want to remain alive at all costs, regardless of the quality of life. What of the case of a person who signs a Living Will stating that he wishes to die a natural death and not be kept alive by artificial means? Weinberger asks, does the prohibition of mercy killing only apply to the patient who does not want it, or can it be permitted if a patient requests this action?

To address this question we come to the issue of a person's ownership of his body and life. Weinberger begins this discussion by citing the Rambam:[18]

> The Beit Din is forbidden from taking ransom from a murderer, even if he offers all the treasures of the world and even if the Goel ha-Dam (Blood Redeemer) wishes to excuse him from execution; he can not do that because the soul of the one who has been murdered does not belong to the Blood Redeemer, rather, to the Holy One blessed be He.

[18] Hilchot Rozeyach 1:4

Similarly the RADBAZ[19] wrote that the reason one is not executed or beaten on the basis of his own confession is because the soul of a man is not his own but rather belongs to his Maker.

The RAMBAM again discusses this issue[20] by stating that it is forbidden to injure oneself or another, nor is it permissible for one to give permission to injure oneself because one does not have the authority to allow himself to be beaten. In short, the human is not the owner of his body and is therefore not permitted to injure himself nor to allow another to injure him.[21]

In regard to the specific issue of a person's ownership over his body and life, Weinberger points to R. Efraim Weinberger in his Yad Efraim[22]

> ...every living soul in Israel is endeared before the Holy One blessed be He equally: one soul is no more precious than another nor less precious. And just as it is forbidden to injure the life of another, so too is it forbidden to injure your own life. And if it happens that one has injured his own life, it is like he has injured the entire life of Israel. Because of this, there is no permission given to do this.

Weinberger thus concludes that a patient has no right to give physicians permission to put an end to his life as the patient is not the owner of his body or his life. If he does give permission, it is as if he is giving permission to bring injury to another's body, which is clearly forbidden. Therefore, according to Weinberger, it is contrary to halacha to allow the

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[19] in his commentary to the Rambam; Hilchot Sanhedrin 8:6.
[20] Hilchot Chovel U'mazik 5:1.
[21] Shukh Aruch of R. Shneur Zalman of Liady; part 5, Hilchot Nizekey/Goof V'nefesh, paragraph 4.
[22] Yad Efraim, ch. 14. (quotes rashi to Pesachim 25b.)

hastening of the death of a gosses regardless if he gives his permission or not, for such permission is not his to give.

Before Ya'akov Weinberger begins his summary on the subject of murder with compassion, or mercy killing, he brings a sampling of opinions of contemporary rabbis. He claims that all come to the conclusion that it is forbidden to hasten the death of as gosses even if he is suffering greatly; one who does so can be compared to one who has murdered. To this end, he cites Rabbi Eliezer Yehudah Waldenberg[23] who states that there is no warrant for the active killing of a gosses - even if the patient is in great pain. The person who does this, Waldenberg writes, is thought to be a murderer.[24]

Like Waldenberg, who prohibits active euthanasia but sanctions forms of passive euthanasia, Rabbi Dov Villner[25] writes that it is allowed to withhold treatment from a patient who, according to the doctors, have no hope for survival. In addition, it is forbidden to administer any drugs to the gosses that might prolong the dying process.

Likewise, Weinberger brings opinions of rabbis who have judged that not only is the hastening of death by active means forbidden, but so too is the hastening of death by passive means: that is to say, the removal of treatment even without touching the body. To this end, he brings the opinion of Rabbi Israel Jacobovitz[26] who maintains that it is forbidden to

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[23] Tzitz Eliezer part 5, Ramat Rachel, section 29.

[24] Waldenberg, nonetheless, does sanction certain forms of "passive" euthanasia. Since it is forbidden to introduce a factor to prolong the dying process when it is clear, that by doing so, the patient will not gain any independent viability from it, Waldenberg claims that it is permitted, and perhaps even obligatory, to remove that factor. (see discussion in chapt. 2.2)

[25] Ha-Torah V'ha-medinah 7-8 p. 706.

[26] Ha-Pardes; vol. 31, no. 3, p. 16.

administer pain killing drugs to a dying person in great pain if the drugs will ultimately hasten his death. To further this point he concludes with the opinion of Rabbi Nathan Tzvi Friedman[27]:

> Not only is it forbidden to hasten the death of one who is about to die, it is also the duty of every person to search for remedies to try to make the patient better and to keep him alive; even if it prolongs his suffering and not his life, because you always have to hope for the help of God until the patient's very last breath.

Weinberger concludes all are of one opinion that active euthanasia is forbidden - it is equated with bloodshed. It is in the case of passive euthanasia, of withholding treatment without touching the body, that the poskim disagree.

Ya'akov Weinberger summarizes his article by underlining the two main points to his argument. The first, which is undisputed by the poskim we have studied, holds that it is absolutely forbidden to kill a terminally-ill patient by active means, even if he is in great pain.

His second conclusion is more controversial and is indeed contrary to that of Waldenberg[28]. Weinberger concludes that if a terminally-ill patient can still perform even one of the mitzvot, our duty and obligation is to prolong his life. But even if the gosses can perform none of the mitzvot, it is nonetheless the duty of the physician to do everything in his power to prolong his life for as long as possible. Today there is no longer a reason for a person, even in such a condition, to be in great pain as we now have the

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[27] Netzer M'tai: 30.

[28] See chapter 2.2 for a discussion of his views.

means to reduce much of the discomfort through medication. It is also quite possible that while the patient's life is prolonged, science will develop new medications and techniques that could possibly cure him.

Weinberger's main point, however, is twofold. First, even if it is agreed that any impediment to death may be removed at the time of the "departure of the soul", there are very few, if any, doctors who can precisely tell when that is. Second, and perhaps more compelling, medicine as advanced as it is is nonetheless an inexact science. Indeed much of it is based on speculation and conjecture. On the other hand, the discontinuation of life support means certain death. When faced with the decision of whether to forego life sustaining treatment because health professionals see little or no hope for survival, Weinberger maintains that the slight possibility of life overrides the certainty of death. His decision: the machines must remain operational. He concludes his article with the following words: "For as long as there is a breath of life in a person - he is as important as any other person."[29]

[29] Weinberger, "Murder with Compassion" in Assia vol. 7, 1976 p. 127.

(2.4): SUMMARY:

It is indeed interesting to see how two scholars from the traditionalist school can come to two opposite conclusions while utilizing the same source materials. Rabbi Eliezer Yehudah Waldenberg carefully uses the sources to draw the distinction between acts that hasten death, which are forbidden, and acts that impede death and prolong the dying process, which also are forbidden. Waldenberg in his Tzitz Eliezer concludes that in cases when the artificial respirator acts only as an impediment to death, and not as a therapeutic instrument, it not only is permitted to remove it but is a mitzvah to do so. Clearly, for Waldenberg, in such cases the respirator can be likened to the woodchopper near the home of a gosses; the machine acts as an impediment to death and therefore can be removed.

Ya'akov Weinberger, on the other hand, relies heavily upon the argument that no person has the right to shorten his or anyone else's life. While Waldenberg would agree with this, Weinberger adds that any life, even a short span of life filled with pain and suffering, is sacred. In addition, as advanced as medical science is, it is still an inexact science and it is still impossible to pinpoint the precise time of the "departure of the soul". For this reason, Weinberger maintains that RAMA'a distinction in Y.D. 339 is impossible to apply to our contemporary technological situations.

Though they use the same sources, the two rabbinical scholars arrive at two opposed conclusions. Nonetheless, their convictions and values stem from the same tradition and teachings, and this they share in common.

Let us now examine the views of modern medical and ethical literature. While the contemporary thinkers in the field of bio-medical ethics have no "**halacha**" from which to draw, we will see how they arrive at their conclusions and what differecnes and distinctions, if any, they show.

CHAPTER THREE:
CONTEMPORARY MEDICAL AND BIO-ETHICAL THINKING

(3.1): AN INTRODUCTION TO CONTEMPORARY MEDICAL AND BIO-ETHICAL LITERATURE:

With the advancement of medical technology we find that it is now possible to prolong life for an almost indefinite period of time. Frequent medical and technological breakthroughs such as insulin, C.P.R., chemotherapy, kidney dialysis, by-pass surgery, organ transplantation, and artificial organ replacements like the new Jarvik 7 artificial heart have made it possible to retard or even reverse many conditions that were once considered to be fatal. Because of this, members of the medical professional community are forced to respond to questions that are posed from these new developments: to what limits, if any, should we adhere concerning what one human can do to another or himself when life is at stake? Should human beings even have the right to refuse medical treatment or even to ask that their lives be terminated? If so, under what circumstances should others be permitted to assist them in dying?

Chapter three will examine a selection of this literature through a study of what has become recognized as the landmark report on this subject, The President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research: Deciding to Forego Life-Sustaining Treatment, issued in March of 1983. This report has already laid much of the groundwork for a national consensus regarding the rights of terminally ill patients to direct their own treatment, whether it is to forego or to elect life-sustaining treatment. We will also examine articles written in current leading medical journals such as The New England Journal of Medicine, The

New York State Journal of Medicine, and The Hastings Center Report which deal with this issue.

(3.2): President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research: "Deciding to Forego Life-Sustaining Treatment" and Related Bio-medical Literature:

"Deciding to Forego Life-Sustaining Treatment"[1] is the landmark report that was researched and written under the auspices of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research issued in March of 1983. Since its release, the 300 page report has been recognized as one of the major authorities on the subject of active and passive euthanasia and is widely circulated among medical and legal professionals as well as health care institutions.[2] The Commission was comprised of health, legal, and religious professionals under the chairmanship of Morris B. Abram, M.A., J.D., L.L.D. Also serving on the commission was Dr. Seymour Siegel, D.H.L. from the Jewish Theological Seminary of America to provide a Jewish viewpoint.

In his letter of March 21, 1983 to President Reagan, Dr. Abram presented the Commission's findings with regard to the issue of deciding to forego life-sustaining treatment, or euthanasia. He writes:

> We have concluded that the authority of competent, informed patients to decide about their health care encompasses the decision to forego treatment and allow death

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[1] President's Commission for the Study of Ethical Problems in Medicine and Biomedical Research; "Deciding to Forego Life-Sustaining Treatment: A Report on the Ethical, Medical, and Legal Issues in Treatment Decisions", March 1983.

[2] information gained by address delivered by Mark S. Dine, M.D., Clinical Professor of Pediatrics and family Medicine at University of Cincinnati School of Medcine; 1986.

> to occur. We note, however, that all patients, including those who reject various forms of life-support, should receive other appropriate medical care to preserve their dignity and minimize suffering to the greatest extent possible.[3]

During the time since this report was issued in March 1983, the above conclusion has become widely accepted as a moral and ethical solution to the question of passive euthanasia. Indeed, just one year after the release of the Commission's findings the New England Journal of Medicine published an article stating that it is ethically and morally proper to withhold medication, nutrition and hydration from hopelessly ill patients who desire such a course.[4] To this end, the American Medical Association has also endorsed the patient's right to decide to forego life-sustaining treatment with the understanding that the patient fully understands all of the options and consequences of doing the same.

> For humane reasons, with informed concent, a physician may do what is medically necessary to alleviate severe pain,[5] or cease to omit treatment to permit a terminally ill patient whose death is imminent to die. However, he should not intentionally cause death.
> ...even if death is not imminent but a patient's coma is beyond doubt irreversible

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[3] "President's Commission..." op. cit. reprinted by Concern For Dying - An Educational Council.

[4] Wanzer, Sidney H., et. al. New England Journal of Medicine Ap. '84; vol. 310, no. 15; pp.955-959. (Note: A large number of letters sent to the journal were printed in subsequent editions of the publication praising and applauding its statement.)

[5] The A.M.A. also endorses the principle that the management of pain relief in terminal patients should be a medical decision and should take priority over concerns about drug addiction. - adopted 6/80.

> and there are adequate safeguards to confirm the accuracy of the diagnosis and with the concurrence of those who have responsibility for the care of the patient, it is not unethical to discontinue all means of life-prolonging medical treatment.[6]

What follows is a summary of the report with glosses of insights provided by other current leading medical and bio-ethical literature..

The Commission begins by defining the terminology used in its report. This is significant, it claims, as words like "treatment" and "therapy" can imply different definitions. While "treatment" may imply an action or plan prescribed to a patient, "therapy" may imply the same but with the intention of producing a cure of the specific illness or disability. For the purposes of the report the words "treatment", "therapy", and the like are used synonymously. "Life-sustaining treatment", as used in the report, includes all interventions that can prolong the body's functions during an otherwise terminal condition. The term, "to forego life-sustaining treatment", then, means to do without this medical intervention, either by non-initiation or by discontinuation of a prescribed treatment.

This question has virtually exploded in recent years. The 1980's have seen the fading of the practice among physicians to ignore the personal views and values of the individual patient. This practice, often referred to as "paternalism", permitted attending physicians to make all health care decisions for the patient. As of late, very few physicians subcribe to this

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[6] American Medical Association statement of the Council on Ethical and Judicial Affairs. - adopted March,1986.

practice as most support and maintain the patient's autonomy as central to proper health care intervention.[7]

In a 1981 article appearing in the Hastings Center Report, a leading and respected medical journal, Bruce L. Miller wrote:

> In bio-medical ethics the concept of a person as an autonomous agent places an obligation on physicians and other health care professionals to respect the values of patients and not to let their own values influence decisions about treatment.[8]

This new philosophy has lead to the norm of medical practice today: informed consent. Informed consent underlines informed. The Commission states that health professionals should ensure that their patients understand their current medical status including the likely course if no treatment is pursued; the interventions that are available and might be helpful, including descriptions of procedures involved and the likelihood and nature of any side-effects; and finally, the physician, if at all possible, should give his professional opinion as to the best alternative[9]. Decisions regarding health care, however, ultimately rest with the competent patient, or their surrogate, after health-care professionals have carefully informed him of all the options and possible results.[10] Problems often arise for the physician when after the physician explains the patient's condition and recommends a certain life-sustaining treatment, the patient chooses to forego this treatment. In such

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[7] information gained by address delivered by Mark S. Dine, M.D., Clinical Professor of Pediatrics and family Medicine at University of Cincinnati School of Medcine; 1986.

[8] Miller, Bruce L., "Autonomy and Refusing Lifesaving Treatment" The Hastings Center Report; vol. 11, no. 4; Aug. '81.

[9] "President's Commission..." op. cit. pp. 51-52.

[10] ibid, p.2.

cases the attending physician must work together with the patient to find common ground on which to work or refer the case to another physician who will accomodate the situation.

This rule of informed consent is quickly becoming standard practice not only because of the issue of this report but because of rising costs and frequency of malpractice suits against attending physicians. It is upon this premise, that of informed consent, that the Commission rests much of its conclusion. It is important to note, however, that while informed consent is sufficient authority in civil law for medical intervention, as we shall see later, consent is never accepted as a defense to the crime of murder. The premise that any and all forms of active euthanasia is clearly prohibited is also maintained by the Commission and its report:

> An individual who seeks death at the hands of another, regardless of the reason, does not confer immunity from prosecution on the one who takes the life, because the taking of innocent human life is seen as a wrong to the entire society, not just to the dead person. A physician's shooting or poisoning of a dying patient, even at the patient's request and for merciful motives, falls within the definition of murder.[11, 12]

It is agreed that questions concerning the implementation of life-sustaining treatment arise not out of the immediate and unanticipated emergency that many doctors encounter in a hospital Emergency Room but also in situations where death is anticipated and the patient is suffering

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[11] ibid. 33.

[12] This statement is also in agreement with that of Weinberg in Dine Israel. According to both, the human being does not have the right to give another permission to kill or even injure himself. See discussion in chapter 2.3.

during a long dying process such as in the case of advanced forms of cancer.[13] According to a 1978 report from the Department of Health, Education and Welfare over two million people die each year in the United States, mostly of foreseeable and anticipated deaths.[14] When faced with the situation of an emergency such as an automobile accident, however, the primary concern of the physicians must be to stabilize the patient. Decisions to forego life-sustaining treatment in such cases can not be made with haste and must be thought out carefully as the decision to do so makes the time of death sooner rather than later.

The report recognizes the agony the physicians experience in their decision-making process. Often the drive to sustain life can conflict with another fundamental goal of medicine, the relief of suffering. In the treatise entitled "The Act" in the Hippocratic Corpus[15] medicine is defined as having three major roles in addition to healing the ill. It states that besides having the responsibility of healing the ill the physician also must eliminate the suffering of the sick, lessen the violence of their disease, and finally, to refuse to treat those who are "overmastered" by their disease, realizing that in such cases medicine is powerless.

Nonetheless, with the advancement of medicine we find that the process of dying is prolonged and is increasingly institutionalized. In 1949 50% of all deaths in the United States occurred in health care institutions as

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[13] To this end the Commission is in agreement with the IZITZ ELIEZER. See chapter 2.2 .

[14] According to the findings, 34% died of heart disease, 22% of malignancies, and 7% of cerebrovascular disease. Only 13% died unexpected and traumatic deaths. (Department of Health, Education and Welfare; "Facts of Life and Death", U.S. Govt. Printing Office, Wash. D.C. 1978.)

[15] Admundsen, Darrell W., "The Physician's Obligation to Prolong Life: A Medical Duty with Classical Roots"; 8 Hastings Center Report 23, 24 Aug. 78.

compared with 61% in 1958, over 70% in 1977, and well over 80% at the time of the writing of the report in 1983.[16] Dying patients are often segregated in health care facilities due to the taboo our society has placed over dying, a part of life that was once a very familiar event.

Another interesting note raised in the report is the fact that many of the terminal patients are not treated for their pain because of justifiable standards set for the healthy population. Many terminal patients report that they are most afraid of the uncontrollable, overwhelming and chronic pain they may experience. The report maintains that people at the forefront of the Hospice movement have demonstrated that drugs can help. One hospice, for example, reports complete pain control in 99% of their patients. Yet some doctors refuse prescribing drugs to combat this pain out of fear of addiction, a fear unwarranted with dying patients.[17]

In attempting to outline guidelines of ethical decision-making the authors of the report have stressed the fact that it is very difficult to make decisions regarding medical intervention for others; each person has different philosophical concepts of the meaning of life and death. These views can range from one pole to the other. Immanuel Jakobovitz, for example, mentions that life is infinitely important and is beyond all measure. A hundred years, the report quotes, is equally precious as one second.[18] A subcriber to this philosophy might feel that all modes of intervention should be implemented to preserve life.

Another view is that life is the norm and death is the oddity. A person maintaining this view feels that since we have the means to save and

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16 "President's Commission..." op. cit., p.17.

17 ibid. p.19.

18 ibid. p. 21; also - Jakobovitz, Immanuel Jewish Medical Ethics Bloch Pub. New York. 1956.

prolong life, death is the result of our failures, whether they be technological failures or tragic failures. Cancer can be cured; however, we have yet to find the answer. Thus, this death, too, is a failure on our part.[19]

There are other views of the meaning of death. Some may feel that the inevitability of death is what gives life its meaning and that death is a natural and expected part of a person's life. The point the report strives to make is that the perspectives and philosophies of life and death are as numerous as the religions and philosophers that gave birth to them. Someone who subscribes to one philosophy would make a different choice as to his terminal medical care than would someone who subscribes to another. It is for this reason the report makes no presumptions or generalizations about the human person and at no point makes a recommendation whether to have a blanket policy of permitting or rejecting passive euthanasia. By neither affirming nor condemning passive euthanasia, however, the Commission supports the individual's moral right to choose that option. In a footnote in this section the report quotes, "An appropriate death, in brief, is a death that someone might choose for himself."[20]

One of the most convincing arguments opposing passive euthanasia is what the report calls the "slippery slope" argument. This argument cautions against taking the first step that is itself ethically justified when doing so is expected to lead to the acceptance and practice of other actions that are unjustifed and unethical. "If the slope is indeed too slippery, then the wisest course may be to avoid taking the first step."[21]

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[19] ibid. p. 21.

[20] Weisman, Avery D., "Appropriate and Appropriated Death" in On Dying and Denying: A Psychiatric Study in Terminality, Behavioral Publications, New York. 1972. (footnote found on p. 22 of President's Commission...)

[21] "President's Commission..." op. cit., p. 28.

The proponents of the "slippery slope" argument claim that when some urge the intentional killing of, or the permission for terminally ill patients to die, this may lead to killing or not saving a life in unjustifiable circumstances. What this argument does not show, however, is how society might slide from ethical to non-ethical practices. The report claims:

> For such an argument to be persuasive, however, much more is needed than merely pointing out that allowing one kind of action (itself justified) could conceivably increase the tendency to allow another action (unjustified). Rather, it must be shown that pressures to allow the unjustified action will become so strong once the initial step is taken that the further steps are likely to occur. Such evidence is commonly quite limited, slippery slope arguments are themselves subject to abuse in social and legal policy debate.[22]

Before the report gets into the main topic of good decision-making it supplies some needed background information on American law on this topic. The Commission points out that first and foremost, law recognizes privacy. In 1976 the New Jersey Supreme Court laid the foundation for this right during the landmark Quinlin case. It stated:

> It is the issue of the constitutional right of privacy that has given us most concern, in the exceptional circumstances in this case...Supreme Court decisions have recognized that a right of personal privacy exists...Presumably this right is broad enough to encompass a patient's decision to

[22] ibid. p. 29.

> decline medical treatment under certain circumstances.[23]

With this in mind the report examines "the elements of good decision-making" as it is related to the premise of "informed consent". The Commission's report mandates that the informed patient and the attending physician must together make the decision. Because there can be so many variables in this situation, the report focuses much of its attention upon the elements of good decision making. Introducing this notion the report states:

> Patients whose medical conditions require treatment to sustain life usually want the treatment and benefit from it. Sometimes, however, a treatment is so undesirable in itself or the life it sustains is so brief and burdened that a patient - or a surrogate acting on the patient's behalf - decides that it would be better to forego the treatment.[24]

Because of the myriad of different types of people with different religious, philosophical, and socio-economic backgrounds there can be no blanket policy regarding the issue of foregoing life sustaining treatment. Decisions about treatment that best promote a patient's future must be

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[23] ibid. p.31. (in re: Quinlin, 70 N.J. 10, 355 A.2nd 647, 662-63, cert denied, 429 U.S. 922; 1976).

[24] ibid. p. 43.

based on the particular patient's values and goals.[25] Most patients make their decisions about the alternative courses available to them in light of such factors as how many days or months will be added to their lives, the nature, quality, and limitations of that life, and the consensus of their family and religious beliefs.

The report claims that this decision-making process remains justified in both the decisions to forego or discontinue life-sustaining treatment. "A justification that is adequate for not commencing a treatment, " the report says, "is also sufficient for ceasing it."[26] The Commission rejects the view that withdrawing treatment, which can be regarded as an "act", is morally more serious than not starting it in the first place, which is regarded as an "omission". In fact, not starting treatment that might be helpful is more likely to be held in civil or criminal wrong than stopping a treatment that has proved not worthwhile.[27]

This raises the question of acting to withdraw treatment versus omitting to act in the first place, or, commission versus omission. The distinction between commission and omission is often debated yet several distinctions can be generalized. "Commission" (an act) implies that death is actively brought about whereas "omission" (the failure to act) implies that

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[25] A jewish person might, for example, look to the Shulchan Aruch for guidance. Yet it is possible, even for people subscribing to the same religion and to the same religious source, to draw different conclusions as did Waldenberg and Weinberger in Tzitz Eliezer and Dine Yisrael respectively. It is most interesting to note, however, that while the Commission concentrates on "informed consent" and is not in faor of a blanket policy dealing with this issue, both Waldenberg and Weinberger believe in such a policy. Their concern does not consentrate with "informed consent" but on whether this act is permissable or forbidden. (see discussion in chapter 2.)

[26] op. cit. "President's Commission..." p. 61.

[27] ibid. p. 77.

death comes through the leaving out or neglecting of life-preserving measures. To shoot someone, it can be said, is an act while not helping someone in a shooting is an omission.[28]

It can also be maintained that a parallel can be drawn between commission and omission, and active and passive euthanasia respectively. However, it is still unclear whether turning off the respirator is an act or an omission. In addition, regarding the argument of the shooting, some raise the point that standing by and neglecting the bleeding victim is actually an action and not simply an omission.

Nonetheless, according to the report,[29] lawyers, health care professionals and policy makers today generally agree that treatment refusals by competent patients have to be honored. Doctors often consent to their patients' wishes not to receive certain specific treatments even if that decision will lessen the patient's chance for survival. An overwhelming majority of hospitals today accept "No Code Blue" or "D.N.R. (do not resuscitate) orders issued by attending physicians which order not to resuscitate a specified patient in the case of arrest.

This adds yet another facet to this issue: is the "No Code Blue" or D.N.R. an order to let die or to kill? In an overwhelming number of cases each year,terminal patients are repeatedly resuscitated when the physicians agree that this act has no long term effect on the patient and often prolongs the painful dying process. One oncologist writes:

> I view a No-Code or D.N.R. order as essentially the last service I can perform for my patient. You have probably heard of a

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[28] Bok, Sissela et al. "Death and Dying: Euthanasia and Sustaining Life" Encyclopedia of Bio Ethics. 1978; p. 269.

[29] "President's Commission..." op. cit. p. 63.

> LeBoyer Birth[30]; I believe in the concept of a LeBoyer death - a peaceful, quiet, undramatic, untechnologic death. I do not favor besetting the last few minutes of a persons's life with pumping on the chest, intubation, and all that sort of useless drama.[31]

Many believe that since we have the ability to "save" that life, not resuscitating means actively killing the patient. The example is often given of a child drowning in a lake: if a person sees this happening and does not act to save him, it is as if he has killed the child. The difference here is when "A" omits the act to cause "B" to die versus when "A" omits the act so "B" can die. More specific to our subject, the report writes concerning hastening death as opposed to removing an impediment to death:

> Sometimes deciding whether a particular course involves an act or an omission is less clear. Stopping a respirator at the request of a competent patient who could have lived with it a few years but who will die without it in a few hours is such an ambiguous case. Does the physician omit continuing the treatment, or act to disconnect it?[32]

The discussion of permitting or letting one die raises the question of introducing drugs to relieve massive pain the terminal patient often has when the pain-relieving drug might in itself hasten death. The report draws a large distinction between "intended" and "unintended but foreseeable"

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[30] A LeBoyer birth is a natural birthing process that is experienced in a calm, warm, and peaceful environment.

[31] Doudera, A. Edwards and Peters, J. Douglas ed. Legal and Ethical Aspects of Treating Critically and Terminally Ill Patients; "An Oncologist's Case For No-Code Orders" - Michael van Scoy-Mosier.

[32] op. cit. "President's Commission...". pp. 65-5.

consequences. There are few who will argue that active euthanasia is an acceptable route to follow and to be sure, many link active euthanasia to killing. The question arises if a doctor should be allowed to administer pain-killing drugs knowing that the drugs may cause the hastening of death. The Commission rules clearly:

> The prohibition against active killing does not ban the use of appropriate medical treatment, such as morphine for pain.[33]

To justify this end the report points out that medical treatments that may help the patient often include high risk: surgery often incurs the risk of mortality and chemotherapy often causes many uncomfortable and often disabling side-effects. The report reminds the reader that according to the American Medical Association[34] one of the roles of the physician is to relieve the pain of the suffering.[35] The Commission therefore concludes that the distinction between "intended" and "unintended but foreseeable" deaths separates "unacceptable" and "acceptable" acts that may hasten or even lead to death.

There are additional constraints on a patient's and physician's decision. What is ordinary and what is extra-ordinary medical intervention? Is the use of an artificial respirator an ordinary treatment? Is by-pass surgery extra-ordinary? Where ten years ago the very thought of removing veins from a man's leg and replacing them in the very spot where once lay decaying arteries to the heart certainly was extra-ordinary; that procedure today is common and is responsible for saving a myriad of lives each year.

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33 ibid. p. 77.

34 Judicial Council, "Current Opinions of the Judicial Council of the A.M.A. 1982.

35 op. cit. "President's Commission...". p. 79.

The report suggests that there can be no one definition of ordinary and extra-ordinary treatments. While one doctor was quoted as saying that he deals with respirators everyday and for him it is not a heroic act but a standard procedure,[36] others maintain that cutting a hole in a man's throat and inserting a tube to a mechanical respirator is indeed an extra-ordinary means of sustaining life.[37]

Another additional constraint regarding the decision whether or not to undertake life-sustaining treatment is when the patient cannot assess the options and make a choice. In the case of patients who lack decision-making capacity the Commission suggests the appointment of surrogates as decision-makers in the place of the incompetent patient.[38] In ideal situations this person should be the next of kin or a close relative or friend. It is also the opinion of the Commission that this decision should be kept as much as possible out of the courts.

In cases where a person is unable to make decisions because he is unconscious or in a coma, much of the weight of the decision-making rests upon the surrogate and attending physicians. In March 1981, the Los Angeles County Bar and Medical Associations published a set of guidelines to follow in such situations.

> Cardiopulmonary life-support systems may be discontinued if <u>all</u> of the following conditions are present:
> a) The medical record contains a written diagnosis of irreversible coma, confirmed by a physician who by training or experience is qualified to assist in making such decisions.

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[36] ibid. p.83. Testimony of Dr. Marshal Brumer before the Commission.
[37] ibid. Testimony of Judge John G. Ferris before the Commission.
[38] ibid. p. 126.

> The medical record must include adequate medical evidence to support the diagnosis;
> b) The medical record indicates that there has been no expressed intention on the part of the patient that life-support systems be initiated or maintained in such circumstances; and
> c) The medical record indicates that the patient's family or guardian or conservator (surrogate) concurs in the decision to discontinue such support.[39]

This policy is widely accepted throughout the country. Indeed, the American Medical Association maintains that "where a terminally ill patient's coma is beyond doubt irreversible and there are adequate safeguards to confirm the accuracy of the diagnosis, all means of life support may be discontinued."[40]

The report favors a presumption of resuscitation unless there is a "No Code" or a D.N.R. order in the patient's medical charts. It is clear that in situations where there is little or no time to look for a report or to debate the issues, as in an Emergency Room, the presumption must be to resuscitate and use every means possible to sustain life. In cases where the patient is competent, or a competent surrogate has made the views of the patient clear, the Commission has presented this simple chart as a guideline.[41]

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[39] ibid. p. 187. (Joint Ad Hoc Committee on Biomedical Ethics of the L.A. County Medical and Bar Associations - adopted March, 1981.)
[40] ibid. p. 186. (American Medical Association Judicial Council, 1982.)
[41] ibid. p. 244 (Table 2).

Patient's assessment / Doctor's assessment	Patient favors CPR	Patient has no preference	Patient opposes CPR
CPR would benefit patient	Try CPR	Try CPR	Do not try CPR-review decision
Benefit of CPR is uncertain	Try CPR	Try CPR	Do not try CPR
CPR would not benefit patient	Try CPR-review decision	Do not try CPR	Do not try CPR

In conclusion, the Commission presumes to address only life-threatening situations that are anticipated and not immediate. In such situations, the voluntary choice of a competent and informed patient should determine whether or not life-sustaining treatment is used. In cases when the patient is not competent to make such decisions, a surrogate should be appointed, preferably beforehand by the patient himself, to make the decisions in the stead of the patient. When faced with life-threatening situations that must be acted upon immediately, however, the presumption is to resuscitate, while recognizing that competent patients are entitled to choose to forego any treatment, including those that are life-sustaining. The President's Commission concludes:

> The Commission has found that a decision to forego treatment is ethically acceptable when it has been made by suitably qualified decision-makers who have found the risk of

death to be justified in light of all the circumstances.[42]

[42] ibid. p. 89.

(3.3) SUMMARY:

An overwhelming majority of this material seems to point in the direction of accepting passive euthanasia in certain cases. Indeed the President's Commission's Report, which has quickly become the study on this issue par exellence, concludes that the voluntary choice of a competent and informed patient, or his surrogate, should determine whether or not life-sustaining measures are to be used in cases when the prognosis is in doubt or confirms a terminal condition.

When faced with life threatening situations in an emergency, or when the wishes of the patient are not known, the presumption is always in favor of the resuscitation of life. The physician often finds himself caught between decisions that cause him to reflect on his medical science background, his values, the patient's values and sadly enough, mal-practice law suits. For this reason, the report strongly suggests that health care institutions take responsibility and inform patients of all the possibilities and potential results of every route. It is then, and only then, that the patient and his attending physician can together make an individual intervention decision.

CHAPTER 4:

A CONCLUSION - THE LIVING WILL: A JEWISH ANALYSIS BASED ON HALACHIC AND CONTEMPORARY ETHICAL PERSPECTIVES

-How does the twentieth century reform rabbi, who stands with one foot in the door of halacha and the other foot in the door of reform, synthesize and use this information?

(4.1) INTRODUCTION:

As we have seen, the problem of euthanasia has many facets and dimensions and at best is unclear. It is quite easy to simply state that this issue is black and white - that there is a pro and con - but the fact of the matter is that this issue is clouded with many different rationales based on religious and civil law, values and emotions. As one scholar put it, the entire issue of euthanasia in Jewish law is one of safek[1]: doubt. While we know that it is absolutely forbidden to actively kill another human being, even the most traditional of scholars are not in agreement whether it is permissible to sanction certain acts of passive euthanasia. In theory, the tradition permits the removal of the impediment to death. The problem is: what is an impediment, given modern technology?

As modern and contemporary Jews we find ourselves standing between two worlds: the world of Judaism and the world of science. The world of Judaism has given us millennia of rich traditions, values and teachings which, to be sure, is one of the greatest reasons we have survived so long as a people. The world of science, relatively speaking, is rather new to our species. Yet the human being has been separated and distinguished

[1] Novak, David. Law and Theology in Judaism: Second Series. New York, KTAV Pub, 1976 p. 98.

from all of the other animals on this earth by the gift of reason. We have the power of reason and thought. As the human species grows and matures, so does his mind, and with that growth and maturity the amount of knowledge gained has and will continue to help the human to better understand his body and how to improve and prolong his life. It is important to keep in mind, however, that the two worlds, the world of religion and the world of science, are really one world made by the same God[2].

We are now living in an age where virtually nothing is impossible. What was extra-ordinary ten years ago is commonplace today. The very thought, just one decade ago, that it would be possible to take veins from a person's leg and use them to replace decaying arteries to the heart was only a fantasy, a dream. Yet today triple and even quadruple by-pass heart surgery is a common life saving operation.

Modern medical science and technology have now made it possible to keep a body alive for an almost indefinite period of time. In a world of C.P.R., the artificial respirator, and the Jarvik 7 artifical heart the issue of passive euthanasia, and thus the Living Will, is becoming even more heated as our God-given gifts of reason and thought delve into the possibilities of the unknown and discover even more technology.

(4.2) THE VALUE OF HUMAN LIFE:

Modern medical and bio-ethical literature is far less clear-cut than is the rabbinical literature we have studied as it does not have the millennia of religious ethical and legal material from from which to draw. Although

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[2] Tendler, Rabbi Moshe. "Halacha and Care of the Terminally Ill"; in The Mount Sinai Hospital and Medical Center Symposia on Medicine and Halacha, Part 1, October, 1985.

the field of ethics is not new and has a rich history of thinkers such as Plato, Aristotle, and Kant, the problems of today's technological world make the use of their writings difficult. Yet, together with the religious literature, modern medical and bio-ethical literature can help the contemporary person to arrive at an ethical decision.

There are many dimensions to this issue. On the one hand the physician has the duty and obligation to preserve life just as the individual human being has the obligation to preserve his own life; and on the other hand the physician has also taken an oath to relieve pain and suffering just as one is taught to be merciful to his fellow human beings. So what of the situation of the terminally-ill person who is suffering great pain? What is the physician to do knowing one treatment might lead to a prolongation of a life in great pain while another treatment might lead to the discontinuation of all pain but might hasten death as a result? What of the situation when such a patient requests no medical intervention save that of pain relief? Does the patient have the right to make such a request? Does the physician have to comply?

Generally there are three responses to euthanasia and mercy killing. The first view recognizes the right of a person to choose whether to live or to die. This school of thought claims that every person has the right to a peaceful and dignified death and to escape the artifically prolonged pain that accompanies much of medical intervention. The proponents of this view have coined the phrase "death with dignity" which implies that the patient may even choose the time of death, thus condoning what has become known as active euthanasia, i.e. death occurring by active means. This might be achieved by injecting an air bubble or other fatal doses of drugs into the blood stream of the dying patient.

The second view is directly opposed to the first. This view argues against the withholding or withdrawing of treatment that might sustain life and especially against any active means of achieving death. Those claiming a religious rationale to this view, claim that life has supreme value and is holy as God is holy. It is not up to humans to end life but rather is the decision of the One who gave all life. Those claiming a scientific rationale argue that medical science is advancing daily: by preserving life for as long as possible there is a chance that some cure can be found for the patient.

Finally, the third response to euthanasia maintains that certain forms of a passive euthanasia can be condoned and sanctioned such as the withholding or withdrawal of treatment to terminal patients in great pain. They point to the critical distinction and fine line between active and passive euthanasia. While Judaism affirms the sanctity of life, questions sometimes do arise where there is a possible conflict with other inherent principles and considerations in Jewish law.

It is important to note that there are very few proponents of the first alternative, especially in Jewish circles. Active euthanasia is seen as homicide in both Jewish and civil law. Jewish tradition teaches that the body and life belong to God, the Maker of all. A person, therefore, has no right to harm his own body or another's even if given permission, as the permission is not his to give.[3] It is the question of passive euthanasia to which this thesis and the other literature mentioned address themselves.

Passive euthanasia usually refers to the withdrawal of life-sustaining treatment. Even among the proponents of passive euthanasia

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[3] See Ya'akov Weinberg's article in Dine Israel as mentioned in Chapter 2.2 concerning man's ownership over his life and body.

there is a significant difference in opinion. The RAMA[4] makes the distinction between removing the feather pillow from under the head of the dying person and the removal of an extraneous factor that leads to death such as the rhythmic noise of a wood chopper nearby the house of the dying person. He mentions that while it is forbidden to remove the pillow because it would hasten the death, it is permitted to remove the extraneous factor, such as the wood chopper, because that is only removing an impediment to death. Still, in his Darkei Moshe ,[5] RAMA goes one step further in stating that not only is the removal of the impediment allowed but perhaps it is required. Here lies the major distinction and conflict in Jewish law. On the one hand we are prohibited from hastening death and on the other we are commanded to remove any impediment to death. What is the fine distinction between the two, and who can draw this line?

Human life has supreme and infinite value: even the diminished life of a gosses deserves all of the protection and respect of a healthy, living person.[6] The value of human life is held so precious in halacha that all religious precepts, except for the three cardinal sins: idolatry, murder and certain sexual offences, can be suspended in order to save even one life.[7] Even the mere possibility of saving a human life mandates violating the precepts "however remote the likelihood of saving human life may be."[8]

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[4] Sh. Ar. Y.D. 339:1. Also see Chapter 1.4 for the text and a further discussion.
[5] TUR 339.
[6] as mentioned in all of the halachic material we have studied: Evel Rabbati, TUR, Shulchan Aruch, et. al. See Chapter 1.
[7] Bleich, J. David. "Ethico-Halakhic Considerations in the Practice of Medicine" Dine Israel: an Annual of Jewish Law and Israeli Family Law, vol. 7, 1976; Tel Aviv. p. 108. (Y.D. 157:1)
[8] ibid. (Orah Hayim 329:3)

(4.3) Withholding and Withdrawing Treatment:

Much of the argument today is based upon the question of withholding treatment in the first place as opposed to withdrawing the treatment once it has begun. Many have used the phrase "commission or omission" to describe this debate. The question arises as to what is more serious: not starting treatment or removing it once started? To be sure and to no surprise, there is no agreement either among Jewish or medical ethicists.

Rabbi Norman Lamm, president of Yeshiva University, in discussing the Karen Quinlan case, stated that physicians are not required to start "heroic" measures to prolong the life of the hopelessly ill, yet at the same time if the decision was made to implement these measures, even if they prove fruitless, it is forbidden to remove them once started.[9] On the other hand, Rabbi Immanuel Jakobovitz maintains that the removal of medication and various treatments can be sanctioned and approved as long as natural, everyday measures, such as food and water, are not withdrawn. One justification for this, he claims, is the needless prolongation of pain; even the worst criminal is given the least painful form of execution.[10]

Even more controversial is the question of the terminal patient with a secondary ailment. For example, most agree that to withhold insulin from a diabetic who is in a terminal state of cancer is irresponsible or immoral as this act, if performed, would indirectly hasten his death.

More difficult is the treatment of what has become known as the terminal patient's "best friend". Very often terminal chronic patients will

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[9] Goldman, Alex J. Judaism Confronts Contemporary Issues.
New York, Shengold Pub, 1978. p.181.

[10] Jakobovitz, Immanuel. Jewish Medical Ethics.
New York, Bloch Pub., 1959. pp.121-125, 275-276.

develop a case of inflamation of the lungs. This secondary ailment can prove fatal if not treated with antibiotics. Many doctors choose not to treat this condition as it can be seen as a stage of the dying process and not as a primary condition. When the terminal patient develops this condition the physician knows that the end is near; thus the term "best friend". Dr. Avraham Steinberg has ruled that for Jewish law, as far as he sees it, because the antibiotics do not restore natural and physiological activity in the body, there is room to consider withholding the use of the drugs.[11]

Notwithstanding the diverse opinions regarding omission and commission, all of the Jewish sources agree that if any treatment is to be withdrawn it is to be done only when the patient has entered into the condition of gesisah. Jewish law provides this term for the patient who is at the brink of death; the soul's departure is imminent. With this in mind, we must understand Jakobovitz's permission to withdraw life-sustaining treatment only for the terminal patient who is classified as a gosses.[12] Physicians may withhold otherwise mandatory treatment only when the patient has reached the point of gesisah. Even then, the gosses is still to be treated as a living person in all respects.

Most Jewish authorities agree that while hastening death is forbidden the removal of an impediment to death is allowed. In addition, we are allowed, and some argue obligated, to remove these impediments only when death is imminent and the patient is classified as a gosses. The question here, then, is twofold: what is classified as an impediment to death and at what stage is a patient classified as a gosses?

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[11] Steinberg, Avraham. "Retzach M'toch Rachamim L'or Hahalaca" Sefer Assia: Original Articles, Abstracts and Reports on Matters of Halacha and Medicine, no. 19, Jan. 1978 Jerusalem pp.449-450.
[12] op. cit. Jakobovitz; pp. 123-124.

While the rabbis of past generations were able to speak in terms of the removal of salt, feather pillows and chopping noises, modern scholars find themselves dealing with more technological devices such as artificial respirators. Indeed the issue of prolonged death today is very much related to the artificial respirator.

The fundamental question then: is the respirator a therapeutic treatment or an impediment to death? If the artificial respirator can be defined as a therapeutic device aiding the healing and curing of the patient, then most certainly the removal of this device, or "pulling the plug", would result in the hastening of the patient's death which is clearly forbidden. If, on the other hand, the respirator does not aid the patient to a better end but simply sustains the decaying bodily functions, then the artificial respirator could very well be defined as an impediment to death and may be removed.

(4.4) THE STATE OF GESISAH: THE DEPARTURE OF THE SOUL:

As we have already learned, man does not possess absolute ownership over his life and body, rather it belongs to the the Maker of all. Since man was created in God's image and is therefore holy, he has the sacred obligation to preserve, hallow and dignify that God-given life. This is the impetus for the commandment of pikuach nefesh, or the preservation of the soul.[13]

When are we absolved of our obligation to preserve the soul? We are taught that we are not bound to continue to preserve the soul through life-sustaining measures once the "departure of the soul" is imminent and the

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[13] Bleich, David. "Karen Ann Quinlan: A Torah Perspective." Jewish Life: A Publication of the Union of Orthodox Congregations of America. Winter 1976. p. 16.

patient has become a gosses. But when exactly is the "departure of the soul"?

While the precise time of the "departure of the soul" is hard to pinpoint, a definition is given in our tradition. The period of gesisah lasts for a period of three days, or 72 hours. We learn this from the ruling that one must start to observe the laws of mourning three days after a relative has been observed to be in a state of gesisah.[14] It is important to remember that this ruling was established in the era of the technology of salt, feather pillows, and woodchoppers. The rabbis set a parameter of this state under the assumption that the dying process could not last longer than three days.

Modern technology has made the arena of dying remarkably different; no longer is it possible to ascertain if a person is dead by checking his breathing and lack of movement. It is widely agreed that the "departure of the soul" remains a good basis for death; many, however, disagree that the dying process can be contained to 72 hours. Modern times have seen the technology to keep a body "alive" even after the brain has "died". Many feel that the brain is the essence of the human being. We die when the brain ceases to operate. Proponents to this view would claim that the soul is directly related to the brain as the brain holds our thoughts, feelings, emotions and soul.

To this end the modern medical world has added to its list of criteria of death the cessation of all brain activity. The criterion of "brain death" was added to the existing criteria without making it the only criterion. If respiration and heart beat are maintained artifically and the brain is found

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[14] op. cit. Bleich, J. David. "Ethico-Halakhic Considerations in the Practice of Medicine" p. 129.

to be "dead" after several repeated tests, it is permissible to remove the artificial life-suport as the person died before his body.[15,16]

This is in conformity with Rabbi Waldenberg's responsum maintaining that the respirator for such a patient should be automatically turned off and back on again by something similar to a "shabbat clock". If no brain activity can be found and the body can not maintain itself, the clock can be turned off.[17] It is important to note, however, that Waldenberg does not believe in "brain death". His concern in whether the patient, with no hope for recovery, is capable of unaided respiration, or, independent viability. More liberal thinkers claim that the soul departs when our ability to interact with others is gone[18]. A person with a flat E.E.G. is unable to interact with others: his personality, individuality and awareness are no longer present.

With this understood, we must now redefine the concept of gesisah. Because the heart beat and respiration of a body can be maintained for long periods of time, for months and even years after the brain has died, the 72-hour definition of gesisah can no longer be maintained. Once a person's body

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[15] op. cit. Novak, David. p. 108.

[16] The Harvard Medical School criteria for establishing death, which are the accepted criteria today, are:

1) lack of response to external stimuli or internal need;
2) absence of movement and breathing as observed by physicians over a period of at least one hour;
3) absence of elicitable reflexes; and a 4th to confirm the other 3.
4) a flat isoelectric electroencephalogram.

Ad Hoc Committee of the Harvard Medical School; Journal of the American Medical Association 221.1 - July3, '72.

[17] See Chapter 2.2 for a full discussion of this responsum in the Tzitz Eliezer.

[18] Cohn, Hillel. "Natural Death--Humane, Just and Jewish" Sh'ma: A Journal of Jewish Responsibilty. New York, 7/132; April 15, 1977. In addition, the former Chief Rabbi of Israel, Shalom Goren, has ruled that halacha does accept cessation of brain activity as a criterion of death. See Machanayim, no. 122, 1969, pp. 14-15.

is connected to an artificial respirator, the heart and lung functions will continue until the machine is turned off.

While we understand that death can not be hastened in any way, there is no obligation to perform any actions which will lengthen the life of a gosses. In cases such as these the artificial respirator must be seen as an extraneous factor which impeds the soul from departing. Therefore the removal of the respirator in these cases is permitted.

Rabbi Basil F. Herring raises a very good point in directing our attention to Waldenberg's interpretation of Isserless's gloss to Caro's Shulchan Aruch[19]. The artificial respirator, he claims, is analogous to the woodchopper who is defined as an extraneous factor impeding the departure of the dying person's soul. We are obligated to remove the impediment. Were it permissible to prolong life artificially in spite of the pain and suffering the patient might be experiencing, the RAMA would have required bringing in more woodchoppers to sustain the gosses.[20]

But what if we choose to follow the 72-hour guideline? We can apply this logic while adhering to the 72-hour definition of gesisiah. If we accept Isseries' ruling allowing the removal of an impediment to death[21], and the ruling that any patient who may reasonably be capable of potential survival for a period of 72 hours can not be deemed a gosses[22], we must argue that the 72-hour period of potential survival must not be by the means of modern medical intervention. In other words, if a patient can not be expected to live soley by natural means for a period of 72 hours, he is

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19 Y.D. 339:1

20 Herring, Basil F. Jewish Ethics and Halakhah For Our Time: Sources and Commentary. New York, KTAV Pub. for Yeshiva Univ. Press, 1984. p.84.

21 Sh. Ar. Y.D. 339:1

22 Sh. Ar. Y.D. 339:5

considered a gosses and life-sustaining proceedures may be removed or withdrawn.

(4.5) PASSIVE EUTHANASIA: SOME CLASSICAL EXAMPLES:

As mentioned earlier, Judaism affirms the sanctity of life so much so that it is permisible to override even the laws of Shabbat to save just one life. But what happens when the sanctity of human life conflicts with another inherent Jewish value? The Talmud teaches us several times that humans should show compassion to fellow humans.[23] "Whoever has compassion on fellowmen, compassion will be his from heaven; and whoever does not, there will be no compassion on him from heaven."[24]

A story is related in the Talmud[25] describing the death of Rabbi Judah HaNasi. When Rabbi Judah was on his death bed his disciples declared a public fast and prayed for the prolongation of his life. His maid servant, upon seeing this impediment to her master's death, threw a jar from the roof, thus distracting the student's prayers and enabling his soul to depart in peace. The Talmud portrays this woman as a heroine and praised her for her action. Whereas this story recognizes the sanctity of human life and agrees that life can only be taken by the One who gave it, it also portrays one human being showing compassion for another.

Another Talmudic precedent tries to draw the fine line of distinction between active and passive euthanasia in depicting the martyrdom of Rabbi Haninah ben Tradyon:

> They took R. Haninah b. Traydon and wrapped a Torah scroll around him, and

[23] see: B. Yoma 85a; B. Baba Kama 26b-27a; B. Sanhedrin 78a.
[24] op. cit. Novak, David. p. 100.
[25] Ketubot 104a.

> surrounded him with branches and set them on fire. They brought wads of wool soaked in water and placed them on his heart so that his soul would not depart quickly (to prolong the dying process.) His disciples said to him: "Open your mouth so the fire may enter and consume you." He replied: "Better is it that He who gave the soul shall take it, and that a man should inflict any injury upon himself" (and thus hasten death.) Then the executioner said to him: "Master, if I increase the flame and remove the wet woolen wads from your heart, will you bring me into the world to come?" "Yes," said Haninah. "Swear it," demanded the executioner. Haninah took the oath. The executioner then increased the flame and removed the wet woolen wads from over Haninah's heart, and his soul departed quickly (thus removing the impediment to his death.)[26]

This story reminds us that humans cannot take their own lives in order to relieve great pain, yet it also portrays a kind of passive euthanasia. This story can be interpreted in contemporary terms. Can a physician withhold medical intervention in order to prevent a prolongation of a life of suffering and pain? If the rabbi opened his mouth to let the flames consume him it would be considered an active act to hasten his death. Removing the wet woolen wads over his heart, however, did not result in shortening his life because they were designed as an impediment to death. Removing an impediment to death such as the wads of wool can directly be likened to an artificial respirator, drug therapy through intubation, and various other

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[26] Avodah Zarah 18a

modern medical techniques designed to deter the time of death, or the "departure of the soul."

Today's contemporary Jew can draw legal and ethical guidance from these Talmudic episodes. We are thus given Talmudic precedent teaching us that it is proper and morally acceptable that the life of a person in a terminal condition and in severe pain be allowed to end, or at least to cease striving that it be prolonged.

(4.6) THE LIVING WILL IN JEWISH VALUES:

As stated in the introduction, the Living Will is a document which allows individuals to state their wishes regarding the decision to forego life-sustaining treatment in advance of their being in a dying condition. The paragraph of our concern reads:

> If such a time the situation should arise in which there is no reasonable expectation of my recovery from extreme physical or mental disability, I direct that I be allowed to die and not be kept alive by artificial means or "heroic measures". I do, however, ask that medication be mercifully administered to me to alleviate suffering even through this may shorten my remaining life.[27]

The question that needs to be raised is whether this document and Jewish values harmonize and conform to one another. As usual there is an array of opinion.

Rabbi Moshe Tendler claims that they do not. People, he claims, do not have the fundamental right to make decisions relating to their own

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[27] Concern For Dying: 250 West 57th St., N.Y, N.Y. 10107.

medical care. For Rabbi Tendler, the Living Will has very little validity and represents a "dangerous ethical precedent" by bringing active euthanasia one step closer to social acceptance.[28]

This is a common and popular argument for those opposed to the Living Will and passive euthanasia; it is also perhaps one of the most compelling. Ethicists have named this the "slippery-slope" argument: i.e., acceptance of one principle or practice, moral as it may be, may easily lead to stepping too close to the moral boundary and slipping down the slippery slope to the acceptance of an immoral principle or practice.

Robert Veatch, a leading medical ethicist, writes that the Nazi destruction of millions of lives during the Second World War is an example of the "slippery-slope" argument. Hitler's "Final Solution" began with the reaffirmation of the open abortion laws of 1933. From the acceptance of this law, the German society slid down the slippery slope into legal mass murder.[29]

Leo Alexander, a physician who played a major role in the drafting of the infamous Nuremburg Laws, wrote an article in the New England Journal of Medicine portraying the dangerous precedent set in Nazi Germany:

> (The mass murders) started with the acceptance of that attitide, basic in the euthanasia movement, that there is such a thing as life not worthy to be lived. This attitude in its early stages concerned itself merely with the severely and chronically sick. Gradually the sphere of those to be included in this catagory was enlarged to include the socially unproductive, the

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[28] Tendler, Moshe. "Torah Ethics Prohibit Natural Death." Sh'ma: A Journal of Jewish Responsibility 7/132; April 15, 1977. pp. 97-99.

[29] Veatch, Robert M. Death, Dying and the Biological Revolution. New Haven, CT, Yale Univ. Press, 1976. p. 86-87.

> racially unwanted, and finally all non-Germans. But it is important to realize that the infinitely small wedged-in lever from which this entire trend received its impetus was the attitude toward the non-rehabilitatable sick.[30]

There are those, likewise, who maintain that the Living Will is keeping with Jewish tradition. Rabbi Seymour Seigel, a Conservative Jew, claims that although Judaism is a religion of life, the life that it sanctifies is much more than the mere functioning of the body's physical system. He maintains that the Living Will makes possible RAMA's ruling allowing the removal of the impediment to death. By having a document like the Living Will, he claims, the patient has something to protect him from devices and treatments that delay the "departure of the soul". [31]

> "We have the duty to prolong life, not to prolong death...the developments of medical technology have caused problems which our ancestors could hardly have foreseen."[32]

Finally, Rabbi Walter Jacob, representing the Responsa Committee of the Central Conference of American Rabbis, does not condone forms of "euthanasia" but does, nonetheless, sanction the removal of treatment to patients whose independent life has ceased.

> We would not endorse any positive steps leading toward death. We would recommend

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[30] ibid. from: "Medical Science Under Dictatorship," New England Journal of Medicine #241; 1949.
[31] Seigel, Seymour. "Jewish Law Permits Natural Death," Sh'ma: A Journal of Jewish Responsibility 7/132; April 15, 1977. pp. 96-97.
[32] ibid.

> **pain-killing drugs which would ease the remaining days of a patient's life.**
> **We would reject any general endorsement of euthanasia, but where all "independent life" has ceased and where the above criteria of death have been met[33], further medical support systems need not be continued.[34]**

(4.7) SUMMARY:

How is the twentieth century reform or liberal rabbi to synthesize and digest the plethora of views and properly and effectively console and counsel individuals and families in such a situation? To be sure, the rabbi has the dual responsibility to be faithful to his tradition and to his congregants. When faced with this life and death decision it is very easy for the rabbi to present the Jewish view by quoting chapter and verse. It is when the rabbi assumes the additional responsibility of counseling, consoling and remaining with the family during this most difficult and agonizing time that he needs to utilize not only his scholarly skills but his compassionate skills: he needs not only to be "a rabbi", but "their rabbi".

Regardless of orientation, Reform, Conservative or Orthodox, it is important to consult the rich source material our tradition has to offer. Turning to the halacha may yield some answers even for those who do not maintian that the halacha is the only way "to go". As reform and liberal Jews we are greatly concerned about what the halacha says; it is not the only way to go, just one of the ways.

The rabbi's role, then, must be one of compassion and of knowledge. One is no more important than the other and the two are not mutually

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33 see note #17.

34 Jacob, Walter et. al., "Euthanasia" American Reform Responsa, New York, C.C.A.R. Press, 1980.

exclusive. The rabbi not only has to be aware of the family dynamics and possess counseling skills, but also needs to understand the challenges and controversies leading to the doctor's medical intervention decisions. Together with this, the rabbi must then consult the rabbinic literature for guidance.

In a world where much of the decision-making is taken away from the individual, the rabbi can be an encouragement for the family needing to make these vital decisions. He can urge them to discuss these issues together with members of the family and be a part of the decision and not apart from it. The rabbi can also be a role model, a source of Jewish law, values and ethics.

The President's Commission Report "Deciding to Forego Life-Sustaining Treatment[35] mentioned the need for health care institutions to begin to educate their patients and expose them to true "informed" consent. To this end, many have suggested the establishment of "Clinical Care Conferences" where the doctor, patient or surrogate, family, social worker, nurse, lawyer, hospital resident and a clergy person would meet to discuss individual cases so the proper intervention, or lack of intervention, occurs.[36]

It has been suggested that physicians need to treat primarily patients and not their diseases.[37] When a patient's best interests do not include being tied up to a machine for the rest of his vegetative life the physician should say, "I can no longer treat this patient, I can only treat his disease."

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[35] see Chapter 3.2

[36] This was suggested by Dr. Mark S. Dine, Clinical Professor of Pediatrics and Family Medicine, University of Cincinnati School of Medicine to a medical ethics class at the Hebrew Union College in the fall of 1986.

[37] op. cit. Tendler, Rabbi Moshe. "Halacha and Care of the Terminally Ill"

When the physician can no longer treat the patient as a human being, but can only treat the ailment, perhaps it is due time to stop.

David Bleich said that there was once a time, not too long ago, when the human being was powerless before the ravages of nature. People died much earlier than they do now and all they could say was, "The Lord giveth, the Lord taketh away; blessed be the name of the Lord."[38] Now we know much more and no longer are we powerless before the ravages of nature. We are, nonetheless, sometimes powerless before the work of our own hands. The Living Will is not the only answer to this very heated and difficult issue; it is simply one response that states that certain forms of passive euthanasia can and should be sanctioned for those individuals who desire this path.

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[38] op. cit. Bleich, David. "Karen Ann Quinlan: A Torah Perspective." (Job 1:21)

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