

For your interest -
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A JEWISH PHYSICIAN'S PERSPECTIVE ON WITHHOLDING ARTIFICIAL
FEEDING FOR TERMINALLY ILL PATIENTS.

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You don't have to be Jewish to understand the meaning of the word "chutzpah," but for the uninitiated here's an example: After murdering his father and mother, a man asked the court to be merciful- because he was an orphan. That's chutzpah! or supreme arrogance.

Some might say that it's chutzpah for me to talk about Jewish attitudes on artificial feeding. After all, I'm only a physician and one who certainly makes no pretensions at being a rabbi or a Jewish legal scholar. Yet, perhaps a ~~Jewish~~ physician's perspective from within a Jewish framework should be of equal interest to that of a theologian since it's the doctor who is on the firing line every day making decisions that often have life and death implications. A fourth century writer, Ben Sidra, said that "without experience there is little wisdom." I won't attest to my wisdom, but I do believe that my sixteen years of practice as internist-cardiologist-geriatrician sufficiently qualifies me to talk about care of the dying. Many of my patients reside in a nursing home near my office and, recently, I had the occasion to audit my own practice for the past year. I was surprised to learn that 37 of the many patients in my charge at that nursing home died last year. That's a large and sobering experience with death. Many deaths were sudden and unanticipated, but in others the decline was inexorable and many fateful decisions had to be made along the way. It's expressly because I've so often found myself involved in decision-making for people who were at or near the end of life that several years ago I began to explore what the Jewish tradition might teach me about a proper code of conduct. Of course, medical practice is uniquely existential. Often, there are no clear rules, but always there are choices. Different standards provide conflicting advise, but in the end, the physician must decide which to accept and which to reject. Many of these decisions must be made in a climate of uncertainty. Nonetheless, they must be made and so I wondered whether Judaism might offer me any practical guideposts about what to do or, more challenging, what not to do when in doubt.

One outspoken Orthodox rabbi, David Bleich of Yeshiva University, in a letter recently published in the N.Y. Times argued that physicians shouldn't be involved at all in making non-emergency life and death decisions. He reasoned that in the case of a comatose patient who was dependent on a respirator to breath, the real issues are theologic and moral, not scientific or semantic. Whereas doctors may be qualified and know how to diagnose and treat, he contended that the decision about whether or not they should treat is a value judgement better suited for resolution by a rabbi. That is the opinion of Rabbi Bleich and I don't know how many others would subscribe to it.

Of course, both words "doctor" and "rabbi" have the same meaning- teacher and, indeed, throughout history many famous Jewish teachers, such as Maimonides, followed both callings. Whether or not Rabbi Bleich is correct, it's clear that in modern society, physicians do play a central role in clinical decision making which has moral as well as scientific implications.

In addition to clarifying my professional credentials, it's important for you to know something about my own religious convictions in order that you don't misconstrue my comments and understand from where I'm coming. I am among those who believe that contemporary Judaism comprises a spectrum of legitimate attitudes and beliefs and, if one accepts this, I probably stand about midway between the strictly observant position on one extreme and a liberal and less observant persuasion on the other. I'm fully aware of the mischief that easily can result from oversimplification and misapplication of labels, but it's necessary for this audience to appreciate that there is no single Jewish position on most ethical issues although a strong tide runs centrally throughout our history as delineated in such classic religious texts as the Talmud. It's important that you understand this, not only to put my remarks into context, but also in order to appreciate what's going on in a bedside scenario of caring for a terminally ill Jewish patient. If the intent is to be consistent with the patient's own beliefs, very likely there would be a vast difference between what a non-religious secular Jew would want done for him as opposed to the attitude of another Jewish patient who happened to be a hasidic rabbi. When considering the many modern dilemmas that confront us because of burgeoning technology, we all are breaking new ground- orthodox and liberal, Jew and gentile alike. The challenge for all of us is how to apply the wisdom of the past to new situations that would have been inconceivable to the ancient scholars.

Having made these lengthy but, I think, necessary introductory remarks, my intent now is twofold: First, to review some traditional Jewish values and laws that concern caring for dying patients and second, to put these rules into a contemporary perspective so as to learn what can be useful not only for the perplexed Jewish physician, but for the non-Jewish community as well.

Through the millenia, Judaism has been pro-life in the extreme and it may be said that the Jews were the original right-to-life advocates- unequivocally opposed to suicide, infanticide and euthanasia except in the most extenuating circumstances. The duty to preserve life takes precedence over all other obligations except avoiding ^{idolatry} adultery, murder and incest. Since Judaism values life as the highest good, man is obliged to cherish it. The value of every individual and every breath of life being equal, once life has begun it can't be discarded. Quality of life is not an issue. Even the non-cognitive have value, if only for others as an object for caRING. Our bodies are not our own; it is as if we are but tenants and have no absolute title. God, the landlord, is the source of health and sickness and alone decides when life is to end. Life is a gift and when the time comes, it must be returned. We are not to determine when that time is. Suicide is regarded as a criminal act no matter how tragic the circumstances or profound the individual's despair. To take one's own life is equivalent to denying the divine ownership; even wilfull neglect of one's own health is an act of partial self-murder. Of course, this represents a major departure from contemporary Western legal and moral attitudes about patient autonomy. I'll discuss this further as we procede, but first let me cite some colorful illustrations of these basic principles which appear in the Talmud and other early religious texts.

For example, it is written that if any man cause^d a single soul to perish, it is as if he caused a whole world to perish, and he who keeps alive a single soul, it is as if he has saved a whole world. Elaborating on this idea, the Talmud states that a person who kills a child who is falling from a roof is guilty of a capital offense even though his intention is honorable and although he hastens the child's certain death by only a few moments. The crucial distinction here is that the crime involves active killing.

If a funeral cortege meets a bridal procession, the former must give way to the latter since life takes precedence over death. If on the Sabbath, a person is buried under rubble from a fallen building, the prohibition against performing work is suspended so long as there is even a remote chance of life. However, once it has been established that the victim is no longer breathing, this no longer applies and further labor must be suspended until after the Sabbath. Another illustration of this is the Talmudic statement that we may desecrate the Sabbath for a day-old infant if he is still alive, but if he already has died, we may not do so even for someone as great as David, King of Israel.

One Talmudic tractate describes a prayer that patients should utter while undergoing therapeutic blood-letting in which God is implored to permit

healing to take place. Only God has the ability to heal; the physician is merely God's instrument. Prayer itself was considered to be therapeutic as illustrated by the story of the death of the famous rabbi Judah HaNasi. Many rabbis had gathered at Rabbi Judah's deathbed to pray for his recovery. The old scholar was suffering greatly until his handmaiden, a woman known for her great wisdom, had pity on him, climbed up on the roof and from there threw a large earthenware jar down to the ground. The rabbis were startled by the crash and momentarily stopped their praying and, as a result, allowed Rabbi Judah to die peacefully. Prayer being the equivalent of medicine, this charming story about the handmaiden's trick represents an example of indirect termination of life support and was favorably commented on in the Talmud. A variation on this same theme was written by an 18th century rabbi in Smyrna. A woman was dying of some lingering disease and her husband and son were trying by every means- including prayers in the synagogue- to keep her alive. She called them to her bedside and said that she was grateful for their efforts, but asked that they please refrain from such prayers because her life was no longer bearable. The rabbi was asked whether this would be permitted and he answered that to refrain from praying is permitted, but that nothing positive could be done to shorten her life.

These accounts indicate that Jewish law does not categorically prohibit terminating artificial life support in all cases. It is permissible to allow death once death is, in fact, happening. Based on the famous line in Ecclesiastes "There is a time to live and a time to die," man has a right to die. Just as if ^{NOT} when a man is dying, we do not pray too hard that his soul return, it is incumbent upon the physician to force a truly terminally ill patient to live a little longer by active treatment.

Although it is forbidden to perform a positive action which hastens death, not so an act of removing an impediment to death. The fine distinctions between prolonging life and prolonging the act of dying, or between causing and allowing, sometimes are virtually impossible to discern.

The 16th century Code of Law, known as the Shulchan Aruch, devotes an entire chapter to the laws of the dying and speaks of the concept of the goses- the person for whom natural death is imminent, literally- the "death rattle" being in the throat. The goses is the exception to the Jewish total commitment to life. We have noted that even at life's terminus nothing direct can be done to hasten death. Here, life is fragile and the patient should not be moved or jostled. Even closing the eyelids or moving the pillow may upset a delicate balance. The matter has been compared to a flickering flame; as soon as one touches it the light is extinguished. Yet, there is a

subtle difference for ~~him~~ in the moribund state, certain modifications are permissible. As with the story of Judah HaNasi's death where terminating prayer treatment was sanctioned, any artificial thing that hinders the soul's departure can be removed so long as it is passive. Thus, if someone is chopping wood outside the window of a goses and the regular sound concentrates the mind or serves as a stimulation, the chopping can be stopped because it's delaying a natural process. Similarly, stimulants such as salt on the tongue can be very gently wiped away although some Talmudists even objected that this too might hasten death. One 13th century commentator forbade those attending the dying patient to cry lest the noise revive the spirit and another early rabbi suggested that even medicine must not be used because it might delay the departure of the goses's soul.

Extrapolating from these Talmudic statements, it seems clear that when life has become so fragile that even a mere touch is condemned, the modern act of inserting a feeding tube or starting an intravenous into a goses would be inappropriately active. The more difficult question is when an artificial feeding device already is in place, whether it would be permissible to not replace the bag or bottle when it has run out. Rabbi Bleich has noted the parallel that Maimonides made between food and medicine. As God created one to deal with hunger, he created the other to deal with illness and as we are bound to use the one so are we bound to use the other. Of course, the Talmud did not distinguish between natural and artificial methods of feeding and it should be appreciated that to eschew the latter does not imply abandoning or neglecting patient care. Rather, in this situation there is a heightened responsibility to provide comfort, to moisten the mouth and to show respect by small considerate actions.

How does one know whether or not a patient is a goses so that obstacles to death, be they woodchoppers, prayer or feeding tubes, can be withdrawn? According to ancient rabbinic sources, death for a goses is expected within three days. This may seem rather arbitrary and modern-day Jews of a more liberal persuasion might be inclined to broaden the definition somewhat. The moment of death can't be predicted precisely and one might ask do the same rules apply for the terminally ill? When does a patient become terminal? Some cynics joke that after birth we all are "terminal." Others suggest that it's when an incurable disease is diagnosed or when treatment has failed. It's questions such as these that are the purpose for convening this symposium. The Talmud makes clear that the goses is in the process of dying but it also seems clear ~~from~~^{from} these traditional teachings that prognosis dictates treatment. Technology and feeding tubes, per se, are neither

intrinsically moral or immoral, but it is the context in which they are used that determines appropriateness, extraordinariness, or what has been called being "proportionate."

Is it Jewishly permissible to take liberties and extrapolate or follow ^{ONLY} the spirit of the law? It's necessary to understand that the major Jewish denominations have different attitudes about the law which is called Halachah. Again, I run the risk of oversimplification and of offending by labelling, but of the nearly six million American Jews about half are unaffiliated and probably most ^{of these} are not ~~strictly~~ observant. About one million each are either members of the Reform and Conservative movements and somewhat fewer are Orthodox and strictly follow Halachah. Reduced to basics, Reform Jews believe that it's best to let people make up their own minds while considering what God wants, what Jewish tradition teaches, and what others are doing. The orthodox would object that Judaism is not a religion of personal convenience and equivocation, but rather, is a strict system of law. That law is immutable and complex, but by following it and doing the big and little things habitually and in a specifically Jewish way, one follows the road to the perfection of man. Conservative Jews fall somewhere between these two poles. Like with the Reform movement, they believe that Jewish law can and should change in time, but only within a strict framework and in a slow and thoughtful process directed by disciplined scholars who are familiar with the law.

Therefore, a principal difference between the major Jewish denominations is in their attitudes about Halakah. There is little dispute about the foundation of the law, but there often is considerable disagreement about its implementation. On the issue of terminal care there is relatively little difference of opinion. For example, Rabbi Solomon Freehof, a modern Reform scholar, has noted that from the spirit of the Jewish law, while nothing can be done to hasten death, under special circumstances of suffering and hopelessness, one may allow death to come. Conservative Rabbi Seymour Siegel has written "we must not forget, in our loyalty to tradition, the welfare of the suffering patient who, when the Giver of life has proclaimed the end of his earthly existence, should be allowed to die in spite of our machines."

If there is a straight road through Jewish history, that road has certainly intersected many other roads, in effect, creating a veritable highway network. For many Jews, comingling with Greek, ~~and~~ Christian and other influences has meant they have little attitudinal difference from that of gentile American citizens. In regard to laws pertaining to

care of the dying, there is no single Jewish position, but rather there is a bell-shaped curve that ranges on one end from strict adherence to the traditional rules, to on the other end a much freer interpretation and with most Jews probably falling somewhere in the middle.

Let me try to put all of this into a real-world context with two examples. The first contrasts current societal attitudes with the traditional Jewish position over the issue of personal autonomy. The President's Commission discussed the case of Pearlmutter vs. Florida Medical Center which involved a competent adult's constitutional right to refuse treatment. Here, a 73 year-old man with amyotrophic lateral sclerosis (ALS, Lou Gehrig's or Jacob Javits' disease) was mentally alert, aware of his situation, paralyzed and kept alive by a respirator attached to a tracheostomy. On several occasions he had unsuccessfully attempted to dislodge the respirator but was prevented. He took the matter to court asking that he be permitted to decide for himself whether his life should be continued by what he considered to be extraordinary and painful medical means. The court found no state ^{further} interest sufficient to supplant his right to self-determination and said that the medical profession should not substitute its judgement for his right to privacy. Contrast this with the case of another Jewish patient, the famous existentialist philosopher Franz Rosenzweig who early in this century was afflicted with the same disease-ALS. As a deeply committed Jew, Rosenzweig claimed no right to free choice in hastening his own death. Instead, he felt an obligation to preserve life and so, clenching a pencil between his teeth to point to the typewriter keys which his wife would push, Rosenzweig collaborated with Martin Buber on translating the Bible into German. Perhaps we shouldn't expect the same nobility of spirit and standard of heroism for less gifted people, but Rosenzweig's example teaches that sometimes its in the very struggle for life that man achieves dignity. I don't mean to criticize Mr. Pearlmutter, but it's clear that when society is overly insistent on protecting patient autonomy and individual rights, grievous decisions may be made. In answering the familiar question "Whose life is it anyway?", Judaism would answer "it's not yours."

A second ^{and} instructive case is that of one of my own patients, a woman in her forties, previously in good health, who fell and broke several vertebrae. She was hospitalized, but several days after admission she developed a tragic complication-a massive blood clot, which travelled to her lungs and caused profound and refractory shock. After several hours of strenuous effort her life was sustained, but only with the use of a respirator and after several days it was clear that there was neither cortical or brain stem function.

The family was made aware that there was no chance of recovery and in an effort to salvage some slight good from this catastrophe, they agreed to donate her kidneys and cornea. In order to accomplish this, a transplant team would have to be mobilized and the organs harvested before they decomposed. This would necessitate turning off the respirator since the organ removal is performed immediately after death. The family was partially observant and belonged to an orthodox synagogue. They consulted with their rabbi who invoked Jewish law and advised against terminating life support. As you may know, some orthodox rabbis don't acknowledge the legitimacy of brain death. Nonetheless, the family decided to proceed, ~~and~~ the respirator was turned off and the kidneys were successfully transplanted into two recipients who had been waiting several years for suitable donors. Doctors and family felt that a "mitzvah", or good deed, had been performed, but had Jewish law been transgressed? Perhaps so, in a technical sense, but it seemed to us that this was an example of a forgivable, if not strictly permissible, act that psychologically was extremely satisfying. We felt that we were adhering to a fundamental principle of permitting life-albeit life for another human being. Note, however, there is an important consideration here. The Talmud enjoins against ~~saving~~ ^{risking} one person's life in order to save another's. In our case, though, the patient was not only severely impaired, but the clinical criteria for brain death had already been met. Therefore, we felt that it was a matter of a dead person helping to save the life of a living one.

In summary, Judaism contains no absolute mandate to treat the incurable. In a tight time-frame, acts of omission are permissible at the very end of life. Overt acts of commission, if they would hasten death, are intolerable at any time. If a patient is in extremis and in pain and no treatment holds any hope for his recovery, it may be proper to withhold additional non-routine or artificial medical care in order to permit the natural ebbing of life. The price that must be paid in order to preserve this principle of life's preciousness is high, but perhaps a society's willingness to pay that price is a moral litmus test of that society's humanity. Sometimes it's difficult to reconcile the apparent contradictions between what Jews do and what their law allows and disagreements over interpretation can be contentious. However, it's this very dynamism that enriches the varied texture of modern Jewish thought. Not all Jewish authorities take an absolute position based entirely on ancient principles. For example, the noted Rabbi Abraham Joshua Heschel seemed to distinguish between biologic life and a life of the mind when he said "to be human is to be involved, to act and to react, to wonder and to

respond...man's most important problem is not being, but living."

If the traditional orthodox Jewish attitude about caring for the dying seems a stern challenge for a contemporary society whose values are increasingly permissive and emphasize patient autonomy, it should be considered that Jewish halakah has endured throughout history as a sensitive, responsible and consistent standard of behavior- that works. As Rabbi Moshe Tendler has observed, all rules of society contain some limitation on personal autonomy. The question is how much personal right is allowable and who should decide. The five thousand year-old Jewish system of case law has stood the test of time!

I'd like to conclude, as I began, with some personal remarks. I've tried to give a balanced overview that reflects a spectrum of Jewish opinion. For myself, I've often found that the spirit, if not always the letter, of Jewish law ~~to be~~ ^{is} an extremely valuable standard. I confess, without apology, that like many physicians I sometimes tend to be nihilistic and don't always fully consider the non-medical dimensions of a case. Sadly, for many physicians the most important determinant of clinical decision-making nowadays is fear of criticism and of malpractice suit rather than ^{of} transgressing a moral code. When I've found myself lapsing into a mood of pragmatism, I've sometimes tested my attitude by considering the traditional Jewish pro-life position. Although I can't say that I've always adhered to the Halachic prescription in a strict sense, when I've been in doubt I've found it to be a very satisfactory overarching guide in helping to make the proper decision.