

End of Life Care: Withholding, Withdrawing and MAiD

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Our agenda

Judaism prides itself on its emphasis upon life; almost all of Judaism's laws are overridden in order to preserve the briefest moment of life. But at what financial cost – to the individual, family and community – do we preserve and extend life? And what happens when preserving life means extending physical and/or emotional suffering? Is there a point in a patient's suffering at which Judaism accepts the idea of giving up? And if so, what practical steps may be taken to prevent additional suffering?

By the end of this session participants will:

- (1) Be able to articulate the halachic considerations relevant to End of Life Care;
- (2) Understand the critical differences between withdrawing or withholding care, and medically assisted death;
- (3) Appreciate other elements of decision-making in end of life care, including physical and emotional suffering, community, family and economic considerations.

Vignettes

- 1> Sue Rodriguez was a 42-year-old mother whose illness amyotrophic lateral sclerosis (ALS or "Lou Gehrig's disease") was diagnosed in 1992. By 1993, it was found that she would not live more than a year, and so she began a crusade to strike down section 241(b) of the *Criminal Code*, which made assisted suicide illegal, to the extent it would be illegal for a terminally ill person to commit "physician-assisted" suicide. ([https://en.wikipedia.org/wiki/Rodriguez_v_British_Columbia_\(AG\),_6/18/21](https://en.wikipedia.org/wiki/Rodriguez_v_British_Columbia_(AG),_6/18/21)) If Ms. Rodriguez were to be examined and found competent, would Judaism support her desires, whether by actively ending her life, enabling her to end her life, or referring her to a medical professional who would assist in MAiD?
- 2> Mr. Peter French is a 62 year old man who had cardiac surgery two weeks before but is still in the Intensive Care Unit because the medical team has been unable to wean him off mechanical ventilation. The patient has a past history of both fibrotic and obstructive lung disease related to working in the stone cutting industry, as well as a 45 year heavy smoking history. Prior to surgery, the patient had significant dyspnea with exertion and was unable to walk up more than one flight of stairs without having to stop and rest. His exercise was also limited by chest pain, secondary to coronary artery disease. The preoperative medications included both inhaled bronchodilators and cardiac vasodilators. But preoperative pulmonary function studies showed a severe combined restricted and obstructive pulmonary dysfunction with minimal improvement after bronchodilators. Extubation has been attempted twice with rapid deterioration in arterial blood gases, necessitating reintubation of the patient within six hours. The medical team is not in agreement on how to proceed. On the one hand, the team has not been able so far to identify any potentially reversible causes of the patient's ventilator dependency. On the other hand, the patient appears stable as long as he is ventilated. To add to the complexity, Mr. French himself, though unable to speak, has made it known that he wants the ventilator removed. (Welie, J.V., ten Have, H.A. The ethics of forgoing life-sustaining treatment: theoretical considerations and clinical decision making. *Multidiscip Respir Med* 9, 14 (2014). <https://doi.org/10.1186/2049-6958-9-14>) If Mr. French were to be examined and found competent, would Judaism support his desires?
- 3> Karen was a 16-year old Catholic girl, the second oldest of seven siblings. She was first hospitalized in September 1968, after a three-week course of nephrotic syndrome, or kidney disease. She did not respond to medical treatment. A renal biopsy in April 1969 revealed "chronic, active glomerulonephritis," and by the spring of 1970 a rapid decrease in renal function prompted the decision to plan for dialysis and transplantation. A bilateral nephrectomy, removal of the kidneys, was performed in August 1970, and Karen received a transplant of her father's kidney the following month. The transplant functioned well initially, but... in March 1971 the kidney completely ceased to function. Prior to surgery and following the transplant's failure, thrice-weekly hemodialysis was performed. Karen tolerated dialysis poorly, routinely experiencing chills, nausea, vomiting,



severe headaches, and weakness... In early April 1971, after it became clear that the kidney would never function, Karen and her parents expressed the wish to stop medical treatment and let "nature take its course." (Veatch, Robert M., *Case Studies in Medical Ethics*, Case 74: Saying No to Hemodialysis, <https://books.google.ca/books?id=4QizDd0EWIYC&pg=PA230&lpg=PA230>) If Karen and her parents were to be examined and found competent, would Judaism support their desires?

- 4> Beth is a 71-year-old woman with longstanding Parkinson's disease (a progressive neurologic disorder). Her functioning has declined over the years, leaving her wheelchair-bound. More recently, she is frequently confused, though she recognizes family members and communicates with them easily. Over the last two months, she has suffered from an unrelated, recurrent lung problem that has landed her in the hospital on multiple occasions. Doctors have repeatedly drained fluid from around her lungs, but more fluid collects each time. Extensive testing has not been able to give a firm diagnosis or explanation for why this keeps happening. During this current hospitalization, Beth's breathing has deteriorated further, despite an oxygen mask and further attempts at drainage. She is more confused and agitated than usual, hallucinating and pulling at the medical equipment. The medical team informs Beth's family that she is at risk of death if they do not intubate her—that is, sedate her, insert a breathing tube into her windpipe, and connect her to a ventilator (sometimes colloquially called "life support"). (Goldberg, Rabbi Dr. Judah, *A Halakhic Framework for Decision-Making in Acute Critical Illness*, Tradition 53:1 (2021))

1. The CanMEDS Framework, Royal College of Physicians and Surgeons of Canada

The CanMEDS Physician Competency Framework describes the knowledge, skills and abilities that specialist physicians need for better patient outcomes. As Health Advocates, physicians responsibly use their expertise and influence to advance the health and well-being of individual patients, communities, and populations.

Physicians are able to... Appreciate the possibility of conflict inherent in their role as a health advocate for a patient or community with that of manager or gatekeeper.

The Ethical Challenge

2. Talmud, Ketuvot 33b

דלמא מלקות חמור, דאמר רב: אילמלי נגדוה לחנניה מישאל ועזריה, פלחו לצלמא!

The pain of lashes may be considered a punishment harsher than death, for Rav taught: Had the Babylonians whipped Chananiah, Mishael and Azariah, they would have served the statue!

3. Rabbi Menasheh Klein (20th century Slovakia/USA/Israel), Mishneh Halachot 7:287

אם יהיה כדבריו ממש שא"א לו לחיות כלל בלי מכונה זו וגם עם המכונה לא יהיה רק יהיה ממשיך גסוסו זמן רב אז נראה דאין חיוב לטפל בו במכונה זו ואדרבה אולי היה גם איסור בדבר משום גורם לו גסיסה וצער ללא דבר.

If it is truly as he says, that the patient cannot live at all without this machine, and even with this machine he will not live, but it will only greatly extend his period as a *goses*, then it appears that one is not obligated to use this machine for the patient. Just the opposite – perhaps it would be prohibited, as it causes him to be a *goses* and in pain without purpose.

4. Rabbi Shlomo Zalman Auerbach (20th century Israel), Minchat Shlomo 1:91:24

מסתבר שאם החולה סובל מכאבים ויסורים גדולים או אפילו סבל נפש חזק מאוד, חושבני שאוכל וחמצן לנשימה חייבים ליתן לו גם נגד רצונו, אבל מותר להמנע מתרופות הגורמות סבל לחולה אם החולה דורש את זה.

Logically, where an ill person suffers from great pain and suffering, or even very strong emotional pain, I would think that we would be obligated to give him food and oxygen for breathing, even against his will, but we could refrain from treating with medicine that would cause suffering for the patient, if the patient wished it.

5. Talmud, Ketuvot 104a

סליקא אמתיה דרבי לאיגרא, אמרה: עלינו' מבקשין את רבי והתחתוני' מבקשין את רבי, יהי רצון שיכופו תחתונים את העליונים. כיון דחזאי כמה זימני דעייל לבית הכסא, וחלץ תפילין ומנח להו וקמצטער, אמרה: יהי רצון שיכופו עליונים את התחתונים. ולא הוו שתקי רבנן מלמיבעי רחמי, שקלה כוזא שדייא מאיגרא [לארעא], אישתיקו מרחמי ונח נפשיה דרבי.

Rebbe's maid ascended to the roof and said, "The Heavens request Rebbe and the earthly realm requests Rebbe. May it be Gd's will that the earthly realm should overpower the Heavens!" When she saw how often Rebbe had to go to the washroom, removing his phylacteries and then putting them back on, and how he was in great pain, she said, "May it

be Gd's will that the Heavens should overpower the earthly realm!" The sages were not silent in their prayers for Gd's mercy, so she took a pitcher of water and threw it from the roof. The praying people paused, and Rebbe passed away.

6. Rabbeinu Nisim (14th century Spain) to Talmud, Nedarim 40a

פעמים שצריך לבקש רחמים על החולה שימות כגון שמצטער החולה בחליו הרבה ואי אפשר לו שיחיה.

Sometimes one needs to pray for mercy for the patient to die, such as where the patient is in great pain due to his illness and he cannot live.

Case #1: MAiD

7. Supreme Court of the United States, *Washington v. Glucksberg* (1997)

The earliest American statute explicitly to outlaw assisting suicide was enacted in New York in 1828, Act of Dec. 10, 1828, ch. 20, §4, 1828 N. Y. Laws 19... and many of the new States and Territories followed New York's example. Marzen 73-74. Between 1857 and 1865, a New York commission led by Dudley Field drafted a criminal code that prohibited "aiding" a suicide and, specifically, "furnish[ing] another person with any deadly weapon or poisonous drug, knowing that such person intends to use such weapon or drug in taking his own life." *Id.*, at 76-77. By the time the Fourteenth Amendment was ratified, it was a crime in most States to assist a suicide.

8. Rabbi Yaakov Tzvi Mecklenburg (19th century Germany), *HaKtav v'haKabbalah* Noach 9:5

ומיד האדם. כפל לשון אדם ואיש, גם חבר אליו מלת אחיו. נ"ל כי יש שני אופני רציחה. אם לרעת הנרצח לנקום נקמתו ממנו, או לקחת ממנו וכדומה, אם לטובת הנרצח כשהוא משוקע בצער גדול ויבחר מות מחיים

"From the hand of *adam* [and from the hand of *ish*, his brother]" – The Torah doubled the term *adam* and *ish*, and also joined the word "brother". Apparently, there are two forms of murder: Harming the victim by avenging one's self upon him, taking his property and the like, or benefiting the victim when he is immersed in great pain and he would choose death over life.

9. Rabbi Yechiel Michel Epstein (19th century Lithuania), *Aruch haShulchan* Yoreh Deah 339:1

ואף על פי שאנו רואים שמצטער הרבה בגסיסתו וטוב לו המות מ"מ אסור לנו לעשות דבר לקרב מיתתו והעולם ומלואו של הקב"ה וכך רצונו יתברך

Although we see that he is in great pain in his *goses* state, and it would be better for him to die, still, we are prohibited from doing anything to hasten his death. The world and all in it belong to Gd, and such is His will.

10. Talmud, *Avodah Zarah* 18a

הביאוהו וכרכוהו בס"ת, והקיפוהו בחבילי זמורות והציתו בהן את האור, והביאו ספוגין של צמר ושראום במים והניחום על לבו, כדי שלא תצא נשמתו מהרה.... אמרו לו תלמידיו... פתח פיך ותכנס [בך] האש! אמר להן: מוטב שיטלנה מי שנתנה ואל יחבל הוא בעצמו. אמר לו קלצטונירי: רבי, אם אני מרבה בשלהבת ונוטל ספוגין של צמר מעל ללבך, אתה מביאני לחיי העולם הבא? אמר לו: הן. השבע לי! נשבע לו....

They brought him and wrapped him in a Torah scroll, and bound him with vines and kindled them. They brought wool sponges and soaked them in water and placed them on his heart so that his life would not depart quickly... His students said to him... Open your mouth and let the fire enter! He said to them: Better that the One who gave it take it back, and not that I harm myself.

The executioner said to him: My master! If I were to increase the flame and remove the wool sponges from your heart, would you bring me to the next world? He replied: Yes. [The executioner said:] Swear to me! He swore.

11. Rambam (12th century Egypt), *Hilchot Chovel uMazik* 5:1

אסור לאדם לחבול בין בעצמו בין בחבירו...

One may not wound himself or any other person...

12. Lord Rabbi Immanuel Jakobovits (20th century England), *HaRefuah v'haYahadut* pg. 152

כי ערכם של חיי אדם הוא ללא שיעור ולפיכך אינו ניתן לחלוקה, וכל חלק וחלק מהם הוא אינסופי. יוצא איפוא, שלשבעים שנות חיים אותו ערך בדיוק כל שלושים שנה, או שנה אחת או שעה אחת או שניה אחת. הגדרה קפדנית זו של קדושת חיי אדם מבוססת לא רק על מתמטיקה צרופה או הגיון, היא מיוסדת באותה מידה על שיקולים מוסריים. אם יגרע מערכם של חיי אדם בשל קיצו המתקרב, יפסידו חיי אדם בכלל את ערכם המוחלט ויקבלו ערך יחסי, יחסי לגבי תוחלת חייו, מצב בריאותו, תועלתו לחברה...

The value of human life is infinite, and therefore it cannot be divided – each portion of it is infinite. It then emerges that seventy years of life have the exact same value as thirty years, or one year, or one hour, or one second. This demanding definition of the sanctity of human life is founded not only on strict mathematics or logic; it is founded equally upon ethical considerations. If human life were to be diminished in value because its end was near, human life would lose entirely its absolute value, and receive relative value – relative to its life expectancy, health, benefit to society...

13. Samuel I 31:3-4

(ג) ותכבד המלחמה אל־שאול וימצאֶהוּ המורים אַנְשִׁים בְּקִשָׁת וַיַּחַל מְאֹד מִהַמּוֹרִים: (ד) וַיֹּאמֶר שְׂאוּל לְנִשְׂא כְלָיו שְׁלֵף עֶרְבֶךָ וְדַקְרַנִּי בָּהּ פְּנֵי־בֹאוֹ הָעֲרָלִים הָאֵלֶּה וְדַקְרַנִּי וְהִתְעַלְלוּ־בִי וְלֹא אָבָה נִשְׂא כְלָיו כִּי יָרָא מְאֹד וַיִּקַּח שְׂאוּל אֶת־הָעֶרֶב וַיַּפֵּל עָלָיו:

And the war turned heavily against Saul, and the archers found him, and he suffered greatly from the archers. And Saul said to his armour-bearer: Unsheathe your sword and stab me with it, lest these uncircumcised ones come, stab me and mock me! But his armour-bearer would not, for he was very afraid. And Saul took the sword and fell on it.

14. Midrash, Yalkut Shimoni Ekev 871

מעשה באשה אחת שהזקינה הרבה ובאת לפני רבי יוסי בן חלפתא, אמרה ליה, "רבי, הזקנתי יותר מדאי, ומעכשיו חיים של נוול הם שאיני טועמת לא מאכל ולא משקה ואני מבקשת להפטר מן העולם," א"ל "מה מצוה את למודה לעשות בכל יום?" א"ל "למודה אני אפילו יש לי דבר חביב אני מנחת אותו ומשכמת לבית הכנסת בכל יום." א"ל "מנעי עצמך מבית הכנסת שלשה ימים זה אחר זה," הלכה ועשתה כן וביום השלישי חלתה ומתה. A greatly aged woman came before Rabbi Yosi ben Chalafta and said, "My master, I have become too old, and my life is now repellent to me. I do not taste food or drink; I wish to leave this world." He asked her: What mitzvah do you practice daily? She replied: My practice is that even if I have something beloved to do, I leave it and rise early for synagogue each day. He said: Keep yourself from the synagogue for three consecutive days. She did this, and on the third day she fell ill and died.

15. Rambam (12th century Egypt), Hilchot Rotzeiach 12:14

כל המכשיל עור בדבר והשיאו עצה שאינה הוגנת או שחיזק ידי עוברי עבירה שהוא עור ואינו רואה דרך האמת מפני תאות לבו הרי זה עובר בלא תעשה שנ' ולפני עור לא תתן מכשול...

Anyone who causes a blind person to stumble in some matter, giving him inappropriate counsel, or encouraging those who transgress and are blind and don't see the path of truth due to their desires, violates a prohibition, "Do not put a stumbling block before the blind"...

16. The Christian Medical & Dental Society of Canada v. CPSO, 2018 ONSC 579

I therefore conclude that the limit on objecting religious physicians imposed by the effective referral requirements of the Policies has been demonstrated to be justified under section 1 of the Charter. The goal of ensuring access to healthcare, in particular equitable access to healthcare, is pressing and substantial. The effective referral requirements of the Policies are rationally connected to the goal. The requirements impair the Individual Applicants' right of religious freedom as little as reasonably possible in order to achieve the goal. The alternatives proposed by the Applicants would compromise the goal of ensuring access to healthcare in many situations, often involving vulnerable members of our society at the time of requesting medical services. Finally, the requirements are proportionate in terms of effects: the positive effects associated with the effective referral requirements of the Policies are significant, while the impact on the Individual Applicants, while not trivial, does not extend to deprivation of the ability to practice medicine in Ontario although it may require an accommodation on their part.

17. Rabbi Eliezer Waldenberg (20th century Israel), Tzitz Eliezer 19:33:9

להרבה פוסקים אין זה אלא איסור מדרבנן בלבד, ועל כן סוברים הרבה מהבאים אחריהם שאין חיוב להפסיד כל ממונו כדי שלא יעבור על זה... ואפילו אם נאמר שאיסור מסייע הוא מדין הוכח תוכיח, כדס"ל למקצת פוסקים, ג"כ הרי נפסק ביו"ד סי' קנ"ז דא"צ להוציא ממונו על זה... ויש מקום לומר כן גם להסוברים שהוא מדין ערבות... כן אין לדלג על כמה שיטות ראשונים שסוברים שאם זה לא בתרי עברי דנהרא אין בכלל איסור...

According to many authorities this is only a rabbinic prohibition, and so many of those who follow their view rule that one need not lose all of his wealth to avoid violating it... And even if we will say that the prohibition against aiding is a function of [the biblical] mitzvah of rebuke, as some do, it was ruled in Yoreh Deah 157 that one need not spend money for this... And there is room to say the same within the view that this is part of the [biblical] mitzvah of mutual

responsibility... One should also not omit the views of early authorities that there is no prohibition against aiding unless the help cannot be duplicated elsewhere...

18. Rabbi Asher Weiss (21st century Israel), at 1:17 of the recording

<http://www.yiwoodmere.org/shiurim.html?page=lecture&shiurID=852542&teacherFullName=Rabbi-Asher-Weiss&shiurTitle=Medical-Seminar-with-Rav-Asher-Weiss>

Case #2: Withdrawing Care

19. Rabbi Moshe Isserles (16th century Poland), Yoreh Deah 339:1

אסור לגרום למת שימות מהרה, כגון מי שהוא גוסס זמן ארוך ולא יוכל להפריד, אסור להשמיט הכר והכסת מתחתיו, מכח שאומרים שיש נוצות מקצת עופות שגורמים זה וכן לא יזיזנו ממקומו. וכן אסור לשום מפתחות ב"ה תחת ראשו, כדי שיפריד. אבל אם יש שם דבר שגורם עכוב יציאת הנפש, כגון שיש סמוך לאותו בית קול דופק כגון חוטב עצים או שיש מלח על לשונו ואלו מעכבים יציאת הנפש, מותר להסירו משם, דאין בזה מעשה כלל, אלא שמסיר המונע.

One may not cause a dying person to die quickly, such as where one is *goses* for extended time and he cannot separate – one may not remove the pillow or cushion from beneath him, for they say that the feathers of certain birds cause this state. And one may not move him from his place. And one also may not place the synagogue keys beneath his head, to cause him to separate. However, where something prevents the soul from departing, such as where there is the sound of knocking near the house, such as from a woodchopper, or there is salt on his tongue, and these keep the soul from departing, one may remove them. There is no deed in this, he is only removing an obstruction.

20. Rabbi Chaim Dovid haLevi (20th c. Israel), *Techumin* #2

מעשה, דברי רבינו הרמ"א שמקורם בדברי הרב "שלטי הגבורים" פשוטים וברורים, שבא להוסיף על דברי מרן איסור קירוב מיתה שלא בפועל ובמעשה, אלא ע"י פעולות סגוליות אף שהן בחינת גרמא בלבד. "וכן אסור לגרום למת שימות מהרה" (דוק: לגרום) והביא את שלשת הדוגמאות. הנוצות, העברה למקום אחר, ומפתחות ביהכ"ס. שמטרת עשייתם "כדי שיפטר" כלשונו. והתיר לסלק הגורם המונע, כחטיבת עצים וגרגיר מלח... ברור שלא כתבני כל הנ"ל כדי לברר דין נוצות שבכר וגרגיר מלח, אלא שדין הגרגיר שמותר להוציאו מלשון הגוסס הוא הדמיון השלם למכונת הנשמה מלאכותית. כי היתר הוצאת גרגיר המלח הוא מוסכם ופשוט לדעת כל הפוסקים ללא שום חולק. ונתבאר עיקר הטעם מפני שאין זה אלא הסרת המונע...

זאת ועוד. שגם אותו טעם שכתב המאירי לפקוח נפש של חיי שעה. כדי שיחזור בתשובה ויתודה אינו תופס בנדון דידן. שכן חולים הקשורים למכונת הנשמה הם חסרי הכרה בחינת צמח. אלא שעוד יותר נראה לענ"ד שאם גם ירצו הרופאים להמשיך ולהחיותם בעזרת מכונת הנשמה אינם רשאים לעשות כן...

Therefore, the words of our master the Rama, based on the position of the Shiltei Giborim, are simple and clear. He is adding to [Rabbi Yosef Karo] a prohibition against hastening death without actively doing so, but via *segulah* actions which only cause it indirectly. "And so it is prohibited to cause the dead to die quickly" (note: "to cause"). And he brought the three examples: the feathers, transport, and the synagogue keys, the goal of which is "so he will die," as per his language. And he permitted removal of that which prevents [death], like chopping wood or the grain of salt...

Clearly, I did not write all of this to clarify the law regarding feathers in a pillow and a grain of salt, but the law of the grain, that one may remove it from the tongue of the *goses*, is perfectly analogous to artificial ventilation. Permission to remove the grain of salt is agreed upon and obvious in the view of all authorities, without dissent. And the essential reason is because this is only removal of an obstruction...

Further. Also, the reason recorded by the Meiri for saving temporary life, so that the person will repent and admit [sin] is irrelevant in our case. Patients who are attached to a ventilator are unconscious, on the level of a vegetable. And further, in my humble opinion, it appears that if the doctors would wish to extend and keep the patient alive with the help of a ventilator, this would not be permitted...

21. Rabbi Menasheh Klein (20th century Slovakia/USA/Israel), *Mishneh Halachot* 7:287

וגדולה מזו אני מסופק אם כבר נתנו עליו מכונה זו אם מותר להסירה ממנו כדי שלא להאריך צעריו... אלא שצריך לדעת אופן המכונה שלא יגרם עי"ז מיתה ממש דאז ודאי אסור גם זה ואין לעשות דבר כזה אלא ברופאים בקיאים וע"פ שאלת חכם.

Further, I am in doubt as to whether, if they already put him on this machine, they might be permitted to remove it from him in order to avoid extending his pain... But one must know who the machine works, lest this actually cause his death, as then this would certainly be prohibited as well. One may not do this would expert doctors and consultation with a sage.

22. Rabbi Zalman Nechemiah Goldberg (20th-21st c. Israel), *בגדרי גרימת הריגה ודחיית נפש מפני נפש*, Halachah uRefuah 2
הנה בעיקר מה שחלוק [רב לוי יצחק הלפרין] עלי הוא בזה שכתבתי שתי דרכים ליישב מה שפסק הרמ"א שגוסס מותר להסיר המלח מעל לשונו או להשתיק קול דופק, שבוזה ימות מהרה. והדרך הא' הוא שהשורף מאכלו או רפואתו של חבירו ומחמת זה מת ברעב אין השורף נחשב כרוצח אפילו לא כרוצח בגרמא, ולא עבר אלא על לאו ד'לא תעמוד על דם רעך' שנמנע מלהציל חבירו, ולכן בגוסס כזה שטוב מותו מחייו אין מצות הצלה ולכן מותר להסיר המלח וקול דופק. הדרך הב' ששורף מאכלו ורפואתו של חבירו נחשב כרוצח בגרמא אלא שמסיר מלח וקול דופק מתיר הרמ"א שאין המלח והקול דופק מחיי האדם, ולכן אין בהסרתם משום גרם רוצח. משא"כ מונע מאכל ורפואה שזה כחונק חבירו על ידי גרמא. והגה לידידי הרב המשיג פשוט לו כדרך הב' ואין להסתפק כלל לומר כדרך הראשון. אכן לענ"ד לבבי לא ידמה כן.

Regarding [Rabbi Levi Yitzchak Halperin's] dissent from what I wrote, that there are two ways to explain the Rama's ruling that one may remove salt from the tongue of a *goses* or silence a knocking sound, so that he will die quickly. The first way is that one who burns someone's food or medicine, causing the person to die of starvation, is not considered a murderer or even an indirect murderer, and he has only violated the prohibition of "Do not stand by while the blood of another is shed," for failing to save the other. Therefore, with such a *goses*, for whom death would be better than life, there is no mitzvah of rescue, and therefore one may remove the salt and the knocking sound. The second way is that burning his food and medicine is viewed as indirect murder, and the Rama only permits removing salt and a knocking sound because salt and a knocking sound are not a person's life, and so removing them does not cause death. As opposed to withholding food and medicine, which is like indirectly strangling a person. To my friend, the Rav, who disagrees, the second approach is obviously correct, and there is no room for uncertainty regarding the first. But in my humble opinion, it does not appear so in my heart.

Case #3: Withholding Care

23. Ramban (13th century Spain), *Torat ha'Adam*, Shaar haSakkanah

וי"ל כיון שנתנה תורה רשות לרופא לרפאות, ומצוה נמי היא דרמיא רחמנא עליה אין לו לחוש כלום, שאם מתנהג ברפואות כשורה לפי דעתו, אין לו בהן אלא מצוה, דרחמנא פקדי' לרפויי, וליביה אנסיה למטעא.

And one could say that since the Torah permitted healing, and there is also a mitzvah that Gd places upon us, he should not be concerned at all. If he acts medically properly according to his view, it is only a mitzvah. Gd commanded to heal, and his heart forced him to err.

24. Rabbi Dr. J. David Bleich (20th century USA), *Tradition* 30:3 (1996), pp. 59-60

Any distinction between "natural" and "artificial" means of treatment is without precedent in Jewish law. Indeed, upon examination, the distinction is fundamentally specious. Medical substances synthesized in the laboratory are certainly not "natural," yet it is unlikely that ethicists would regard such medications as "artificial." For that matter, even drugs extracted from plants and the like are hardly "natural" sources of nutrition for man but assuredly would not be classified as artificial. The obligation to revive a person from drowning is one of the paradigms of *pikuah nefesh* advanced by the Gemara, Sanhedrin 73a. That obligation includes the duty to throw a life preserver to the potential victim. In what sense is a respirator designed to deliver oxygen to the lungs different from the casting of a life preserver?

25. Rabbi Yisrael Lipschitz (19th century Danzig), *Tiferet Yisrael to Mishnah Yoma 8*, Boaz 3

נראה לי שפיקוח הגל שונה, משום דכשמסיר מעליו האבנים ודאי הקל ייסוריו, ואף שממשיך לחיות ביסורים, טוב לו שימות לאט לאט ובפחות יסורים, ממה שיתקצרו חייו וימות מיתה קשה תחת משא האבנים. אבל במעשה דרבי אדרבה, אם לא היתה מתפללת [למיתתו] היו היסורים מתגברים והולכים.

To me, digging through a pile is different, for when one removes the stones from him one certainly eases his suffering. Even though he continues to live in pain, better that he should die slowly and with less pain, than for his life to be shortened and for him to die painfully, beneath a burden of stones. But the story of Rebbe was the opposite – had she not prayed [for his death], his suffering would have grown.

26. Rabbi Yaakov Kanaievsky (20th century Israel), *Karyana d'Igrita* 1:190

בעיקר היסוד דכל מה דאפשר להאריך חיי החולה [אפי' אינו אלא לחיי שעה] צריכים לעשות, אמת שגם אני שמעתי בילדותי מימרא כזו ולא ידעתי אם זהו מבר סמכא הוא, אבל בעיני דבר זה צריך עיון גדול דביו"ד של"ט מבואר דמותר להסיר דבר המונע פטירת החולה [כשעל ידי זה המונע יסוריו רבים] ורק מעשה בגופו אסור לעשות, ואם כן להיות שב ואל תעשה לכאורה [במקום שעל ידי זה יתוספו לו יסורים] לא מצאתי איסור, ואדרבא יש ללמוד למנוע מזה...

Regarding the basic principle that one must do everything possible to extend the life of a patient [even though it is only temporary life]: In truth, I also heard statements like this in my youth, but I do not know whether it comes from someone

reliable. In my eyes, this requires great examination, for in Yoreh Deah 339 it is clear that one may remove an obstacle to the death of a patient [when that would also prevent great suffering]. One only may not act upon his body. If so, then I see no reason to prohibit sitting without acting [where acting would increase suffering]; just the opposite, one should learn from here to refrain from acting...

27. Rabbi Yitzchak Zylbershtein (21st century Israel), Shiurei Torah l'Rofim 189

ועל פי האמור נראה שמותר לחולה להימנע מניתוח או כל טיפול רפואי אחר הכרוך בסבל רב, משום שאין חיוב להכאיב לו ולגרומ לו יסורים בטיפול למען הארכת חיי שעה.

Based on what has been said, it appears that a patient may refuse surgery or any therapeutic treatment which involves great suffering. There is no obligation to pain him and cause him suffering with treatment that will extend temporary life.

28. Rabbi Moshe Feinstein (20th century USA), Igrot Moshe Choshen Mishpat 2:73:1

ובאינשי כה"ג שהרופאים מכירין שא"א לו להתרפאות ולחיות, ואף לא שיחיה כמו שהוא חולה בלא יסורין, אבל אפשר ליתן לו סמי רפואה להאריך ימיו כמו שהוא נמצא עתה ביסורין, אין ליתן לו מיני רפואות אלא יניחום כמו שהם.

In such people, where the doctors recognize that he cannot be healed and live, and that he will not live as a sick person without pain, but they can give him medicine which will extend his life as he is, with suffering, then one should not give him medicine, but leave them as they are.

29. Rabbi Moshe Feinstein (20th century USA), Igrot Moshe Choshen Mishpat 2:74:3

שאל כתר"ה אם יש לחלק בין חיי שעה לחיי עולם לענין חיוב לרפאות כשלא אפשר לרפאותו מיסורין אלא להאריך חיייו בהיסורין כל הזמן שיחיה שאין חייבין לרפאותו כשהרפואה היא שיחיה ביסורין אותו זמן הקטן שיחיה אבל כשיתרפא לחיי עולם דהוא כדרך שחיים אינשי בזמננו חייבין לרפאותו. הנה אמת שבדברי לא הזכרתי בענין זה ובאמת לא מסתבר לחלק ובסברות בעלמא איכא למימר גם איפכא...

His honour asked whether one should distinguish between temporary life and on-going life regarding the obligation to heal, where it is not possible to heal him from suffering but only to extend his life in pain for as long as he lives. [He means] that there is no obligation to heal him when the healing will cause him to live in suffering during that brief time, but if he were healed for on-going life, as people today live, then one would be obligated to heal him. In truth, I never mentioned this distinction, and in truth, it is not logical to distinguish; using logic, one could also argue the opposite...

30. Rabbi Moshe Feinstein (20th century USA), Igrot Moshe Choshen Mishpat 2:74:3

צריך ליתן לו חמצן (אקסידוזשען) אף שהוא באופן שא"א לרפאותו שהרי הוא להקל מיסוריו דהיסורין ממה שא"א לנשום הם יסורים גדולים והחמצן מסלקן. וכפי זה שאל כתר"ה אם בחולים שאינם יכולין לאכול אם צריכין ליתן להו אוכל דרך הורידין כשהוא מסוכן שהוא להאריך חיייו כמו שהו ביסורין כשנדמה לנו שאין לו יסורין ממה שאינו אוכל. פשוט שצריך להאכילו דברים שאין מזיקין ואין מקלקלין דודאי מחזיקין כחו מעט אף שהחולה בעצמו אינו מרגיש ואף העומדין ומשמשין אותו אין מרגישין.

One must give oxygen, even in a situation in which one cannot heal him, for this eases his suffering; the suffering that results from inability to breathe is great, and oxygen removes it.

Along similar lines, his honour asked whether one must feed patients intravenously when they cannot eat and they are in danger. This would extend his life as it is, in suffering, and we think he is not suffering due to not eating. It is obvious that one must feed him food that will not harm and not damage, for this certainly strengthens him a bit even where the patient himself does not sense it, and those who stand and serve him do not sense it.

31. Rabbi Dr. Avraham Steinberg (21st century Israel), haRefuah kaHalachah 10:1:1:3:21 (vol. 6 pg. 366)

גם בחולה הנוטה למות שהוחלט על פי דין שמותר להימנע מלהאריך את חיייו, מכל מקום אסור להימנע מטיפול רפואי בסוגי הטיפולים הבאים, אף אם יש עדות שכך היה רצונו של החולה:

(א) טיפול שאינו קשור לבעייתו הרפואית חשוכת המרפא, לרבות טיפולים שגרתיים הנחוצים לטיפול במחלות בו-זמניות, כגון טיפולים יעילים לסיבוכים שכל חולה אחר היה מקבל אותם, כגון מתן אנטיביוטיקה לזיהומים שכיחים כמו דלקת ריאות או דלקת בדרכי השתן, או מתן דמים במצבי דימום חריף, או טיפול במחלות רקע כגון אינסולין לחולה סוכרת.

Even with a patient who is dying, when it has been halachically determined that one may avoid extending his life, still, one may not withhold medical care of the following kinds – even where it is confirmed that the patient wished it:

Care which is not tied to his incurable condition, including routine care necessary to treat contemporaneous illnesses, like beneficial treatment for complications, which any other patient would receive. For example: antibiotics for common infections, like lung infections or urinary tract infections, or blood transfusions in cases of great bleeding, or treatment of background illnesses, like insulin for diabetics.

32. Talmud, Bava Metzia 112a

"ואליו הוא נשא את נפשו" - מפני מה עלה זה בכבש ונתלה באילן ומסר את עצמו למיתה - לא על שכרו?

"For this he puts his life on the line (Devarim 24:15)" – Why did this person climb the ramp, become suspended from the tree, and give his life over to death? Was it not for his wages?

33. Rabbi Hershel Schachter (21st century USA), *ואליו הוא נושא את נפשו*, Beit Yitzchak 1986

ויוצא לדינא שג' חילוקי אופנים יש: א. היכא דאיכא אומדנא דמוכח שכל אדם היה רוצה בטיפול רפואי זה, אז אמרינן דבטלה דעתו אצל כל בני אדם, וכופין אותו בעל כרחו משום "ונשמרתם". ב. והיכא דאיכא אומדן דעת דכל אדם לא היה רוצה בתרופה שכזו, אז אמרינן דבטלה דעתו אצל דעת כל בני אדם, ואסור לנו לייסרו על ידי טיפול, ואפילו הוא רוצה בזה. ג. והיכא דליכא אומדנא דמוכח לשום אחד מן הצדדים, אז הדבר תלוי בדעת החולה...

Three distinct categories of cases emerge, as law:

- 1) Where there are clear grounds to believe that all people would want such treatment, then we say that his view is cancelled before that of all people, and we compel him, under [the mitzvah of] "You shall protect your lives."
- 2) Where there are grounds to believe that all people would not want such treatment, then we say that his view is cancelled before that of all people, and we may not torture him with treatment, even should he wish it.
- 3) And where there are no clear grounds supporting either side, then it depends on the view of the patient...

34. Rabbi Zev Schostak, *Ethical Guidelines for Treatment of the Dying Elderly*, J. Halacha & Contemp. Soc. 22, pg. 84

Rabbi Herschel Schachter and Rabbi Chaskel Horowitz (the Viener Rav) maintain that artificial nutrition and hydration are medical procedures which a terminal patient may direct to be withheld.

Case #4: Acute Care

35. Rabbi Dr. Judah Goldberg, *A Halakhic Framework for Decision-Making in Acute Critical Illness*, Tradition 53:1

<https://traditiononline.org/a-halakhic-framework-for-decision-making-in-acute-critical-illness/>

In Beth's case, her confusion, weakness, and immobility will all work against her ever getting back to her previous state of health. At the same time, there is also suspicion that her lung condition is progressive and irreversible, even though no one can say with certainty, as no one knows what is causing it.

Her odds may be slim; but what is there to lose? Here, it is important to remember that there are other possible outcomes besides complete success or total failure. Intubating Beth, for instance, could have any one of the following three effects:

1. Bridge her to definitive therapy and full recovery;
2. Fail to prevent rapid, inevitable death; or
3. Stabilize her only partially.

In the last scenario, Beth might die anyway, but the process will be more drawn out. Alternatively, she may be left with chronic critical illness, in which she survives this episode but never regains the ability to breathe on her own and is left ventilator-dependent. As these possibilities are often associated with further discomfort, complications, and suffering, they need to at least be considered before any course of action is taken.

36. Rabbi Moshe Feinstein (20th century USA), *Igrot Moshe Yoreh Deah 3:36*

כשהרוב הוא לחיים מסתבר שחייב כדכתב גם כתר"ה מסברא, אבל בספק השקול מסתבר שאין לחייבו, דאם הוא חס על חיי שעה שלו הודאין ואינו רוצה ליכנס בספק לאבד זה בשביל ספק שירויה עוד זמן ודאי רשאי. דהא בעצם תמוה איך שייך למילף מארבעה המצורעים שהיו גיחזי ושלשת בניו, שגיחזי הוא אחד מארבעה הדיוטות שאין להם חלק לעוה"ב כדתנן בסנהדרין דף צ', וא"כ הרי מעשיו אינם ע"פ דרך התורה אלא על דעת רצון עצמו ואיך יליף מינה ר' יוחנן לדיני התורה לומר שכן הוא גם דין התורה? ולכן צריך לומר דר' יוחנן אומר דדין התורה תלוי בזה בדעת האינשי, דכיון שחזינן דלאינשי עדיף ספק חיות גמור מודאי חיי שעה, לכן אמרינן דמותר גם מדיני התורה ליכנס בספק הצלת חיים גמורים אף שמסכן בזה ודאי דחיי שעה...

It is logical to say that when most patients live, he is obligated [to undergo the treatment], but if the odds are even then it is logical to say we should not obligate the patient. If he is concerned for his definite, short-term life, and he does not want to enter into possibly losing that life for the possibility of gaining more time, he certainly is licensed. For it is shocking – how could [Avodah Zarah 27b] learn from the four *metzoraim* – Gechazi and his three sons, and Gechazi was one of the four non-royal people who do not have a share in the next world per Sanhedrin 90a? If so, his deeds are not according to Torah, but according to personal desire, and how could Rabbi Yochanan extrapolate Torah law, to say that this is Torah law? One must say that Rabbi Yochanan was saying that Torah law depends on human opinion. Since

we see that people prefer possible full life over definite short-term life, we say that the Torah allows entry into possible full-life-saving treatment, even though that endangers definite short-term life...

37. Rabbi Dr. Judah Goldberg, *A Halakhic Framework for Decision-Making in Acute Critical Illness*, Tradition 53:1
If, despite unresolvable uncertainties, the overall likelihood of meaningful recovery is thought to be low, and the risk that critical care interventions will lead to outcomes that are subjectively worse than death is significant, then a patient should be given the room to carefully weigh the different options and risks. The patient may choose to either pursue or decline the intervention in question, such as intubation. Rabbinic consultation is certainly encouraged for those who seek further guidance.

38. Rabbi Hershel Schachter and Rabbi Mordechai Willig, *Decision-Making in Acute Critical Illness, A Rabbinic Postscript*, Tradition 53:1

In our opinion, this information should be conveyed to patients and families, as it could, paradoxically, be lifesaving. The decision to intubate or not can be influenced by the fear of remaining on a ventilator even after there is no chance of meaningful recovery or of a return to cognition. If, in these eventualities, indefinite extension of a life of hopelessness or lack of awareness can be avoided by withholding further life-prolonging treatment, it is more likely that initial, stabilizing treatments, including intubation, will be pursued. Patients will feel freer to attempt aggressive therapies if they are less worried about being sustained indefinitely by them. This decision is lifesaving for those who can actually recover, as we have seen during the coronavirus pandemic.

39. *Carter v. Canada (Attorney General)*, 2015 SCC 5

Section 241 (b) of the *Criminal Code* says that everyone who aids or abets a person in committing suicide commits an indictable offence, and s. 14 says that no person may consent to death being inflicted on them. Together, these provisions prohibit the provision of assistance in dying in Canada...

Insofar as they prohibit physician-assisted dying for competent adults who seek such assistance as a result of a grievous and irremediable medical condition that causes enduring and intolerable suffering, ss. 241 (b) and 14 of the *Criminal Code* deprive these adults of their right to life, liberty and security of the person under s. 7 of the *Charter*. The right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly. Here, the prohibition deprives some individuals of life, as it has the effect of forcing some individuals to take their own lives prematurely, for fear that they would be incapable of doing so when they reached the point where suffering was intolerable. The rights to liberty and security of the person, which deal with concerns about autonomy and quality of life, are also engaged. An individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy. The prohibition denies people in this situation the right to make decisions concerning their bodily integrity and medical care and thus trenches on their liberty. And by leaving them to endure intolerable suffering, it impinges on their security of the person.

Review Questions

- 1> Does Halachah permit performing MAiD or enabling it in any form, for a patient who qualifies for MAiD under the law?
- 2> What are two arguments that are brought to justify withdrawing treatment from a *goses*?
- 3> What are the four positions regarding deciding to withhold care in terminal situations?
- 4> What argument does Rabbi Dr. Judah Goldberg put forth to justify withholding acute care for a non-terminal patient?

Links for related sessions

Rationing End-of-Life Care	https://www.yutorah.org/lectures/lecture.cfm/837324/
Following Medical Advice	https://www.yutorah.org/lectures/lecture.cfm/820212/
Patient Autonomy	https://www.yutorah.org/lectures/lecture.cfm/890198/
Giving up: specific treatments	https://www.yutorah.org/lectures/lecture.cfm/846186/
The unconscious/incompetent patient	https://www.yutorah.org/lectures/lecture.cfm/783340/