

1. Clare Clarke, *Rationing scarce life-sustaining resources on the basis of age*, Journal of Advanced Nursing 35 (2001) Insufficient funding to meet the escalating costs of health care has resulted in a scarcity of certain life-sustaining resources. Some form of rationing appears inevitable and the use of biological age has been advocated as a criterion for rationing these limited resources.

2. Elio Borgonovi, *Economic aspects in prolonged life sustainable treatments*, NeuroRehabilitation 19 (2004) Economists, managers and health policy makers think that it is wrong, even unethical, not to consider that resources are limited. If these are inefficiently allocated they can impede other treatments with higher benefits (in term of health and life saved)/cost ratio.

3. *Deciding intensive care unit-admission for critically ill cancer patients*, Indian Journal of Crit. Care Med. 11 (2007) Over the last 15 years, the management of critically ill cancer patients requiring intensive care unit admission has substantially changed. High mortality rates (75-85%) were reported 10-20 years ago in cancer patients requiring life sustaining treatments. Because of these high mortality rates, the high costs, and the moral burden for patients and their families, ICU admission of cancer patients became controversial, or even clearly discouraged by some. As a result, the reluctance of intensivists regarding cancer patients has led to frequent refusal of admission in the ICU.

4. 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.

Would Judaism accept rationing due to cost concerns?

5. Talmud, Gittin 45a

משנה: אין פודין את השבויים יותר על כדי דמיהן מפני תקון העולם...

איבעיא להו: האי מפני תיקון העולם - משום דוחקא דצבורא הוא, או דילמא משום דלא לגרבו ולייתו טפי?

Mishnah: One may not redeem captives for more than their market value, for the sake of general communal welfare...

Gemara: Does "*tikkun ha'olam*" refer to communal strain, or to a concern that the captors may capture and bring more captives?

6. Maimonides (12th century Egypt), Mishneh Torah, Hilchot Matnot Aniyyim 7:3, 9:12

לפי מה שחסר העני אתה מצווה ליתן לו... אפילו היה דרכו של זה העני לרכוב על הסוס ועבד רץ לפניו והעני וירד מנכסיו קונין לו סוס לרכוב עליו ועבד לרוץ לפניו שנאמר די מחסורו אשר יחסר לו....

מי שישב במדינה שלשים יום כופין אותו ליתן צדקה לקופה עם בני המדינה, ישב שם שלשה חדשים כופין אותו ליתן התמחוי, ישב שם ששה חדשים כופין אותו ליתן צדקה בכסות שמכסים בה עניי העיר, ישב שם תשעה חדשים כופין אותו ליתן צדקה לקבורה...

Based on the pauper's deficit, you are instructed to give him... Even if this pauper normally rode a horse, with a servant running before him, and then he became indigent, they purchase a horse for him to ride and a servant to run before him, as it is written, "According to his deficit, which is lacking for him"...

One who dwells in a land for 30 days is compelled to give tzedakah to the *kupah* with the citizenry. One who dwells there for three months is compelled to give to the *tamchui*. One who dwells there for six months is compelled to give clothing for the local needy. One who dwells there for nine months is compelled to give tzedakah for burial...

7. Rabbi Yisrael Meir Kagan (20th century Poland), Mishneh Berurah 334:68

בריא ומסוכן בריא קודם

One who can save either a healthy person or a dying person [from a fire] must save the healthier person.

8. Rabbi Moshe Feinstein (20th century USA), Igrot Moshe Yoreh Deah 2:58

בדבר הניתוחים שיש בהו ספק סכנה, וספק הרפואה הוא פחות משקול, אבל בלא הניתוח הוא ודאי שימות במשך זמן קצר, שהסכמתו להתיר... הטעם שהרי כל הנידון הוא בשביל חיי שעה שאולי ימות תחלה ע"י הניתוח מכפי שהיה מת בלא זה. והרי מפורש בע"ז דף כ"ז... ודאי מת מתרפאין מהן, לחיי שעה לא חיישינן."

Regarding surgeries involving potential danger, where the chance of healing is less than even, but without the surgery he will certainly die in short order, which I have agreed to permit... The entire discussion is regarding short-term life, for te surgery might cause him to die sooner than he would otherwise have died. It is explicit in the Talmud, "One who will definitely die [sans treatment] may be treated by non-Jews; we are not concerned about short-term life."...

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

ובדבר שני חולים, אחד שלפי אומדנא דהרופאים הוא רק ריפוי לחיי שעה להאריך ימיו במה שאפשר להם, ולפעמים הוא רק לסלק ממנו היסורין אבל צריך לטיפול נמרץ, והשני לפי האומדנא שלהם יכולין לרפאותו אבל אין ידוע להם אם יצטרך לטיפול נמרץ כזה שעושין בבית החולים בהיחידה לטיפול נמרץ (עמידזענסי רום), ויש שם רק מטה אחת בהיחידה... נראה לע"ד שאם באו שניהם בבת אחת, היינו קודם שהכניסו האחד מהם, צריך להכניס בתחלה את מי שלדעת הרופאים הנמצאים שם יכולין לרפאותו אם גם לחולה זה צריך להתחיל תיכף אם יש צורך אף מספק.

Regarding the case of two patients, one for whom doctors estimate that they can only provide short-term healing, extending life as much as possible, or perhaps removing pain, but he needs immediate treatment, and the second whom they estimate that they can heal, but they don't know whether he needs immediate care like that provided in the hospital's ER, and there is only one bed in the unit... It appears, in my humble opinion, that if both arrive simultaneously, meaning they have yet to bring either one in, they must first bring in the one whom the doctors on scene believe they can heal, if there is even a possibility that they would need to begin his treatment immediately.

Might rationing still be problematic?

10. Code of Jewish Law (16th century Israel), Orach Chaim 329:4

אפילו מצאוהו מרוצץ, שאינו יכול לחיות אלא לפי שעה, מפקחין ובודקים...
Even if they find him crushed, such that he cannot live beyond the short term, they still overturn it, and check [for life]...

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

הענין של "חיים" אין לנו שום קנה - מידה כמה למדוד את יוקרם וחשיבותם אפילו לא בתורה ומצוות, שהרי מחללין את השבת גם על זקן חולה מוכה שחין אף על פי שהוא חרש ושוטה גמור, ואינו יכול לעשות שום מצוה וחיייו הם רק למשא וסבל גדול על משפחתו וגורם להם ביטול תורה ומצוות, ונוסף לצערם הגדול הרי הם אזלי ומדלדלי... אבל מ"מ הואיל וסוף סוף החיים של המשותקים הם רעים ומרים, וגם יש אשר טוב להם המות מהחיים, לכן בכגון דא מסתבר שאין חייבין לעשות מעשה של נתוח בקום ועשה...

We have no measuring stick for "life", to gauge its value and importance even without Torah and commandments. We violate Shabbat even for an elderly, ill, boils-ridden person, even if he is deaf and mute and entirely insane, and he can perform no commandment, and his life is only a burden and great suffering for his family, and he takes them away from Torah study and other commandments, and in addition to their great pain they are deteriorating... But still, because the lives of people who are entirely paralyzed are bad and bitter, and for some of them death would be better than life, in such a circumstance it is logical to say that there is no obligation to operate...

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

וכיון שהכניסוהו להיחידה לרפאותו כבר זכה במקום, לא מיבעיא כשהוא משלם בעד הזמן שנמצא בבית החולים, בין שאינו משלם שמרפאין שם בחנם

Once he is brought into the unit for treatment, he acquires the space, whether he pays for his time in the hospital or whether he does not pay, and he is treated for free.

13. Rabbi Dr. Avraham Sofer Abraham (21st century Israel), Nishmat Avraham Yoreh Deah 252:2

אם הרופא כבר התחיל לטפל בחולה אחד או חיבר אותו למכשיר ובא חולה שני שזקוק לטיפול של הרופא או לאותו מכשיר, אסור לרופא לעזוב את החולה הראשון כדי לטפל בשני וכן אסור לקחת את המכשיר מהחולה הראשון כדי לחברו לחולה השני. וזה אע"פ שהחולה הראשון רק בספק אם הוא יתרפא... וכ"כ לי הגרש"ז אויערבאך זצ"ל: אין דוחין נפש מפני נפש אפילו להציל עצמו או אחרים...

If the doctor already began treating one patient, or he connected him to equipment, and a second patient needing the doctor's treatment or that machine comes in, the doctor may not leave the first patient to treat the second, and one may not take the equipment from the first patient to connect it to the second patient. This is even where the first patient has an uncertain chance of being healed... And so wrote Rabbi Shlomo Zalman Auerbach to me: One does not push off one life for another life, even to save himself or others...

14. Judge Beverley McLachlin, *Norberg v. Wynrib*, [1992] 92 DLR (4th) 449 at 485–6

The relationship of physician and patient can be conceptualized in a variety of ways. It can be viewed as a creature of contract, with the physician's failure to fulfil his or her obligations giving rise to an action for breach of contract. It undoubtedly gives rise to a duty of care, the breach of which constitutes the tort of negligence.

15. Rules of Professional Conduct, Law Society of Upper Canada, Commentary to Rule 2.03(1), 2000 edition

A lawyer cannot render effective professional service to the client unless there is full and unreserved communication between them.

16. Margaret Dore, *Preventing Abuse and Exploitation*, ABA Senior Lawyers Division 25:4

I have had two clients whose fathers signed up for the lethal dose. In the first case, one side of the family wanted the father to take the lethal dose, while the other did not. He spent the last months of his life caught in the middle and traumatized over whether or not he should kill himself... In the other case, it's not clear that administration of the lethal dose was voluntary. A man who was present told my client that his father refused to take the lethal dose when it was delivered ("You're not killing me. I'm going to bed"), but then took it the next night when he was high on alcohol.

17. Talmud, Gittin 5b

בר הדיא בעי לאתויי גיטא, אתא לקמיה דרבי אחי דהוה ממונה אגיטי, א"ל: צריך אתה לעמוד על כל אות ואות. אתא לקמיה דרבי אמי ור' אסי, אמרי ליה: לא צריכת, וכי תימא אעביד לחומרא, נמצא אתה מוציא לעז על גיטין הראשונים
Bar Hedy wished to be certified to transport a *get*. He came to Rabbi Achi, who was appointed for *gittin*, who told him, "You must stand there for the writing of each letter." He came to Rabbi Ami and Rabbi Asi, who told him, "You need not. And if you will say, 'I will practice strictly,' you will cause slander of earlier *gittin*!"

18. Pope Francis, *Evangelii Gaudium* (2013)

Some people continue to defend trickle-down theories which assume that economic growth, encouraged by a free market, will inevitably succeed in bringing about greater justice and inclusiveness in the world. This opinion, which has never been confirmed by the facts, expresses a crude and naïve trust in the goodness of those wielding economic power and in the sacralized workings of the prevailing economic system.

19. Deuteronomy 15:11

כי לא יִחַדֵּל אֲבִיוֹן מִקְרֵב הָאָרֶץ עַל־כֵּן אֲנִכִּי מְצַוֶּה לְאמֹר פֶּתַח תִּפְתַּח אֶת־יָדְךָ לְאָחִיךָ לְעִנִּיךָ וּלְאֲבִינְךָ בְּאֶרֶץ־ךָ:

The pauper shall never cease from the midst of the land. Therefore I instruct you: Open up your hand to your brother, to your pauper, to the indigent person in your land.