

Survey of Recent Halakhic Periodical Literature

TREATMENT OF THE TERMINALLY ILL

I. PRESERVATION OF LIFE

A. THE DILEMMA

Medicine has long subscribed to the adage "Thou shalt not kill; but needs't not strive officiously to preserve."¹ Nevertheless, until relatively recent times, medical science was able to offer either all or nothing in its treatment of virtually all illnesses and diseases. Either the patient responded to treatment, when treatment was available, and was cured or else he or she succumbed to the ravages of the malady. These dichotomous possibilities generated few moral dilemmas for the medical practitioner. Patients, by and large, sought treatment and physicians strained to do all in their power in order to effect a cure. To be sure, theologians and ethicists agonized over such questions as the moral legitimacy of euthanasia for patients who found continued existence too painful to bear and the extent to which the patient was obliged to seek extraordinary means in effecting a cure; but the number of people with regard to whom such perplexities were germane was not nearly as great as in our day.

In recent years medical science and technology have made tremendous strides. Some diseases have been virtually eradicated; for others, effective remedies have been found. Concomitantly, ways and means have been developed which enable physicians to sustain life even when known cures do not exist. As a result issues concerning prolonging the life of the terminally ill now arise with heretofore unprecedented frequency. Economic considerations coupled with the stark reality of patients suffering from debilitating illnesses, often incapable of engaging in meaningful or satisfying activities, have combined to create a milieu in which the focus of concern is upon quality of life.

The physician's practical dilemma can be stated in simple terms: to treat or not to treat. In deciding whether or not to initiate or to continue treatment, the physician is called upon to make, not only medical, but also moral determinations. There are at least two distinguishable components which present themselves in all such quandaries. The first

is a value judgment: Is it desirable that the patient be treated? Should value judgments be made with regard to the quality of life to be preserved? The second question pertains to the personal responsibilities of the physician and of the patient: Under what circumstances, and to what extent, is the physician morally obligated to persist in rendering aggressive professional care? Is the patient always obliged to seek treatment designed to prolong life even though a cure is not anticipated?

Jewish teaching with regard to these questions is shaped by the principle that, not only is human life in general of infinite and inestimable value, but that every moment of life is of infinite value as well.² Accordingly, obligations with regard to treatment and cure are one and the same regardless of whether the person's life is likely to be prolonged for a matter of years or merely for a few seconds. Thus, on the Sabbath, no less so than on a weekday, efforts to free a victim buried under a collapsed building must be continued even if the victim is found in circumstances such that he cannot survive for longer than a brief period of time.³

Life with suffering is regarded as being, in many cases, preferable to cessation of life and with it elimination of suffering. The Gemara, *Sotah* 22a, followed by Rambam, *Hilkhot Sotah* 3:20, indicates that the woman who was required to drink "the bitter waters" (Numbers 6:11-31) did not always die immediately. If she possessed other merit, though guilty of the offense with which she was charged, rather than causing her to perish immediately, the waters produced a debilitating and degenerative state which led to a protracted termination of life. The added longevity, although accompanied by pain and suffering, is deemed a privilege bestowed in recognition of meritorious actions. Life accompanied by pain is thus viewed as preferable to death.⁴ It is this sentiment which is reflected in the words of the Psalmist, "The Lord has indeed chastened me, but He has not left me to die" (Psalms 188:18).

The practice of euthanasia—whether active or passive—is contrary to the teachings of Judaism. Any positive act designed to hasten the death of the patient is equated with murder in Jewish law, even if death is hastened by only a matter of moments. No matter how laudable the intentions of the person performing an act of mercy-killing may be, the deed constitutes an act of homicide.

One nineteenth-century commentator finds this principle reflected in the verse "But your blood of your lives will I require; from the hand of every beast will I require it; and from the hand of man, from the hand of a person's brother, will I require the life of man" (Genesis 9:5). Fratricide is certainly no less heinous a crime than ordinary homicide.

Why then, having already prohibited homicide, is it necessary for Scripture to prohibit fratricide as well? R. Ya'akov Zevi Mecklenberg, in his commentary on the Pentateuch, *Ha-Ketav ve-ha-Kabbalah*, astutely comments that, while murder is the antithesis of brotherly love, in some circumstances the taking of the life of one's fellow man may be perceived as indeed being an act of love par excellence. Euthanasia, designed to put an end to unbearable suffering, is born not of hatred or anger, but of concern and compassion. It is precisely the taking of life in circumstances in which it is manifestly obvious that the perpetrator is motivated by feelings of love and brotherly compassion that the Torah finds necessary to brand as murder, pure and simple. Despite the noble intent which prompts such an action, mercy-killing is proscribed as an unwarranted intervention in an area which must be governed by God alone. The life of man may be reclaimed only by the Author of life. So long as man is yet endowed with a spark of life—as defined by God's eternal law—man dare not presume to hasten death, no matter how hopeless or meaningless continued existence may appear to be in the eyes of a mortal perceiver.

B. PERSONAL AUTONOMY

In stark contrast to the value system posited by Judaism, decisions in a series of cases handed down by American courts in recent years have upheld the right of a mentally competent adult to decline any and all forms of medical intervention even in instances in which it is clear that death will ensue.⁵ The sole recognized exceptions involve situations in which the adult is the parent of a minor child or in which intervention is necessary to preserve the life of a fetus. In such situations earlier decisions have recognized the State's "compelling interest" in not allowing a situation to develop in which the child might become a ward of the State⁶ and a number of decisions have recognized the State's interest in safeguarding the life and health of an unborn child.⁷

The touchstone of a democratic society is the concept of individual freedom and personal autonomy. Democratic societies are quite properly dedicated to the maximization of personal freedom and find it necessary to justify any violation of personal privacy and any intrusion into the personal affairs of their citizens. These democratic traditions stand diametrically opposed to the absolutism which is the hallmark of the autocratic systems of government whose excesses cause so much human suffering.

No one will dispute the claim that personal freedom and individ-

ual autonomy are religious values as well. Yet it is readily apparent that, in a hierarchical ranking of values, the values of personal freedom and autonomy do not occupy a position within a religiously oriented ethical system identical to that which they occupy in a secular system of values. That certainly is the case insofar as Jewish tradition is concerned and serves to explain why a patient dare not refuse treatment that is clearly required to preserve life.

Judaism teaches that man has no propriety interest either in his life or in his body. Man's body and his life are not his to give away. The proprietor of all human life is none other than God Himself. As Radvaz, *Hilkhot Sanhedrin* 18:6, so eloquently phrases it: "Man's life is not his property, but the property of the Holy One, blessed be He."⁸

According to Jewish teaching, personal privilege as well as personal responsibility as extended to the human body and to human life are similar to the privilege and responsibility of a bailee with regard to a bailment with which he has been entrusted. It is the duty of a bailee who has accepted an object of value for safekeeping to safeguard the bailment and to return it to its rightful owner upon demand. With regard to the human body, man is but a steward charged with preservation of this most precious of bailments and must abide by the limitations placed upon his rights of use and enjoyment. Hence, any claim to absolute autonomy is specious.

This moral stance is reflected in the mores of society at large, although not to the same degree. Despite contemporary society's commitment to individual liberty as an ideal, it recognizes that this liberty is not entirely sacrosanct. Although there are those who wish it to be so, self-determination is not universally recognized as *the* paramount human value. There is a long judicial history of recognition of the State's "compelling" interest in the preservation of the life of each and every one of its citizens, an "interest" which carries with it the right to curb personal freedom. What the jurist calls a "compelling state interest" the theologian terms "sanctity of life." It is precisely this concept of the sanctity of life which, as a transcendental value, supersedes considerations of personal freedom. This is implicitly recognized even in the provisions of the Natural Death Act enacted in various jurisdictions; otherwise such legislation would grant its citizens unequivocal authority to terminate life by any means and in all circumstances. Were autonomy recognized as *the* paramount value, society would not shrink from sanctioning suicide, mercy killing, or indeed consensual homicide, under any or all conditions.

Jewish tradition certainly recognizes liberty as a value but defines freedom and liberty in a very particular way. The Mishnaic dictum “*velo atah ben horin le-hibatel mimenah*” (*Ethics of the Fathers* 2:16) is rendered by the fifteenth century commentator R. Isaac Abarbanel, not in the usual manner as “nor are you free to desist from it,” i.e., from obedience to the law, but as “nor in desisting from it are you a free man.” Freedom is the absence of constraint which would interfere with realization of man’s potential. The laws of the Torah are designed to facilitate man’s endeavors in fulfilling the Divine plan inherent in creation. Hence casting off the yoke of law is not an act of freedom but its antithesis. This concept is very similar to what the British philosopher T. H. Green called “positive freedom.”

Liberty, as the term is conventionally understood, is a paramount value only when it does not conflict with other divinely established values. In secular terms, personal autonomy must give way to preservation of the social fabric. The state has an interest, which is entirely secular in nature, in the preservation of life of each of its citizens. In the absence of other competing interests, it may assert its authority in compelling the preservation of a life against the wishes of a citizen in spite of the deprivation of liberty which is entailed thereby because public policy accepts the moral thesis that the preservation of life must be regarded as a superior value, taking precedence over the right to privacy and the value of personal autonomy.

Yet as reflected in Jewish law, Judaism bestows a privileged position upon preservation of human life as a moral value in a manner that is unparalleled in other value systems. As a moral desideratum, it takes precedence over virtually all other values. Exceptions to the general rule that preservation of life takes precedence over all other considerations are transgression of the three cardinal sins for purposes of preserving life. These are murder (hardly an exception), idolatry, and sexual offenses such as incest and adultery. All other laws are suspended for purposes of conservation of life. Even the mere possibility of preserving life mandates suspension of biblical restrictions, however remote the likelihood of success in saving human life may be.

C. PRAYER FOR DEATH

The aggressiveness with which Judaism teaches that life must be preserved is not at all incompatible with awareness that the human condition is such that there are circumstances in which man would prefer death to life. The Gemara, *Ketubot* 104a, reports that Rabbi Judah the

Prince, redactor of the Mishnah, was afflicted by what appears to have been an incurable and debilitating gastrointestinal disorder. Rabbi Judah had a female servant who is depicted in rabbinic writings as a woman of exemplary piety and moral character. This servant is reported to have prayed for his death. On the basis of this narrative, the thirteenth-century authority, Rabbenu Nissim of Gerondi, in his commentary on *Nedarim* 40a, states that it is permissible, and even praiseworthy, to pray for the death of a patient who is gravely ill and in extreme pain. Rabbenu Nissim chides those who are remiss in discharging the obligation of visiting the sick, remarking of such an individual, “. . . not only does he not aid [the patient] in living but even when [the patient] would [derive] benefit from death, even that small benefit [prayer for his demise] he does not bestow upon him.”

Although man must persist in his efforts to prolong life, he may, nevertheless, express human needs and concerns through the medium of prayer. There is no contradiction whatsoever between acting upon an existing obligation and pleading to be relieved of further responsibility.⁹ Man may beseech God to relieve him from divinely imposed obligations when they appear to exceed human endurance. In the context of suffering associated with a debilitating illness, the patient, even while discharging his obligations as a bailee, is fully entitled to beseech God to terminate those responsibilities by reclaiming His bailment, i.e., the life entrusted to man. Thus, in appropriate circumstances, a patient while dutifully swallowing his prescribed medication need not utter the prayer recorded in *Shulhan Arukh, Orach Hayyim* 230:4, “May it be Your will, O Lord, my God, that this endeavor be a cure for me,”¹⁰ but may actually pray that the medication not prolong his life. The ultimate decision, however, is God’s, and God’s alone. There are times when God’s answer to prayer is in the negative. But that, too, is an answer.

Contemporary rabbinic writers point out that even after Rabbi Judah’s servant expressed her feelings and conveyed information regarding her master’s pain and discomfort to his disciples, they not only declined to join her in prayer for his decease but did not desist from praying for prolongation of his life.¹¹

There is one responsum which deals with the particular question of prayer for termination of suffering through death, but which has important implications for decision-making in general. R. Chaim Palaggi, *Hikkekei Lev*, I, *Yoreh De’ah*, no. 50, accepts the view of Rabbenu Nissim but adds an important caveat. *Hikkekei Lev* asserts that only totally disinterested parties may, by even so innocuous a method as prayer, take any action that may lead to a premature termination of life.

Husband, children, family, and those charged with the care of the patient, according to R. Chaim Palaggi, may not pray for death. The considerations underlying this reservation are twofold in nature: (1) Those who are emotionally involved, if they are permitted even such non-physical methods of intervention as prayer, may be prompted to perform an overt act which would have the effect of shortening life and thus be tantamount to euthanasia. (2) Precisely because of their closeness to the situation, they are psychologically incapable of reaching a detached, dispassionate and objective decision in which considerations of patient benefit are the sole controlling motives. The human psyche is such that the intrusion of emotional involvement and subjective interest preclude a totally objective and disinterested decision.

II. TREATMENT OF THE TERMINALLY ILL

A. MODES OF TREATMENT: NATURAL VS. ARTIFICIAL; ORDINARY VS. EXTRAORDINARY

The foregoing discussion reflects the unique position that preservation of life occupies in the hierarchy of values posited by Judaism. Judaism regards human life as being of infinite and inestimable value. The quality of life that is preserved is thus never a factor to be taken into consideration. Neither is the length of the patient's life expectancy a controlling factor.

Since Judaism regards every moment of life as sacred the patient is obliged to seek treatment¹² and religious laws are suspended for the sake of such treatment even if there is no medical guarantee of a cure. Similarly, the physician's duty does not end when he is incapable of restoring the lost health of his patient. The obligation "and you shall restore it to him" (Deuteronomy 22:2) refers, in its medical context, not simply to the restoration of health, but to the restoration of even a single moment of life. Again, Sabbath restrictions and other laws are suspended even when it is known with certainty that human medicine offers no hope of a cure or restoration to health. Ritual obligations and restrictions are suspended so long as there is the possibility that life may be prolonged even for a matter of moments.

Nevertheless, there remains considerable doubt, and perhaps even a measure of disagreement, within the Jewish community with regard to the permissibility of withholding various forms of medical treatment from the terminally ill. In Israel the matter has been exacerbated by the adoption of a statute exonerating a physician or any other person from

patient has been unconscious for a year or more, pulling the plug constitutes an act of homicide. Anyone who commits such a crime violates the Biblical prohibition of *lo tirzah*.

The Gemara in *Masekhet Mo'ed Katan* that tells the story of *amta de-bei Rabbi* is in no way a justification for a doctor to deny a terminally ill patient his life support. The Gemara there relates that when the maid of Rabbi saw his unbearable pain in his dying moments, she went up on the roof and prayed to *Ha-Kadosh Barukh Hu* that He should expedite his death. The maid prayed to *Ha-Kadosh Barukh Hu*. He has title to all souls and therefore He can do with them whatever He in His infinite wisdom sees fit to do. A human being, however, cannot play God and therefore he may not decide the fate of other human beings.

(Signed)

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Jewish law with regard to care of the dying is spelled out with care and precision. The terminal patient, even when he is a *goses*, i.e., a person who has become moribund and whose death is imminent, is regarded as a living person in every respect. One must not pry his jaw, anoint him, wash him, plug his orifices, remove the pillow from underneath him or place him on the ground.¹⁴ It is also forbidden to close his eyes “for whoever closes the eyes with the onset of death is a shedder of blood.”¹⁵ Each of these acts is forbidden because the slightest movement of the patient may hasten death. As the Talmud puts it, “The matter may be compared to a flickering flame; as soon as one touches it, the light is extinguished.”¹⁶ Accordingly, any movement or manipulation of the dying person is forbidden. Furthermore, passive euthanasia involving the omission of a therapeutic procedure or the withholding of medication which could sustain life is also prohibited by Jewish law. The terminal nature of an illness in no way mitigates the physician’s responsibilities since the physician is charged with prolonging life no less than with effecting a cure.

Although, as will be noted presently, there may well be some limitations upon the obligation to preserve life, many commonly asserted moral distinctions have no basis in Jewish teaching. 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? If the drowning person is too exhausted to grasp the life preserver of his own accord he must certainly be assisted in doing so. In what sense is the pumping action of the apparatus designed to facilitate absorption of the oxygen by the blood stream different from physically placing the life preserver around the waist of the drowning victim?

Rambam’s remarks in his *Commentary on the Mishnah, Pesahim* 56a, serve to dispel any distinction that might be drawn between the “natural” and the “artificial” in such a context. The Tosefta records that King Hezekiah performed six memorable acts; three of those acts were censured by the Sages and three received their approbation. Among the latter was his suppression of a certain “book of cures.” Rashi explains that Hezekiah was concerned because, upon being stricken by illness, the sick were immediately able to cure their maladies simply by consulting this manual and following its directions. As a result “their heart did not become humble,” i.e., they failed to recognize sickness as a manifestation of providence designed to induce introspection and repentance. In offering his own totally disparate explanation of Hezekiah’s motives Rambam cites an anonymous interpretation quite similar to that of Rashi and dismissively comments:

How could they attribute to Hezekiah a foolishness that it would not be proper to attribute to the meanest of the populace? . . . According to their flighty and confused opinion, a person who is starving and goes to bread and eats of it, without doubt when he is cured of that severe illness, *viz.*, the illness of hunger, is he then forsaken and will no longer rely upon God? We say to them: O fools! Just as I give thanks to God upon eating for having made available to me the wherewithal to satiate myself and dispel my hunger in order to live and be sustained, so shall I give thanks to Him when I am cured for having made available to me a cure to heal my sickness.

In those remarks Rambam eloquently affirms the notion that the Deity provides for all of the needs of mankind. God causes man to seek bread instinctively in order to assuage hunger; in a similar manner God

providentially makes medication and technology available to man so that man may cure illnesses. The “artificiality” of medications in no way mitigates their role as instruments of providence. As such, medicaments must be attributed to God and acknowledged with gratitude. In precisely the same manner, all medical artifacts must be recognized as having been spawned by providence and designed to serve as instruments of *pikuah nefesh*.

God created food and water; we are obliged to use them in staving off hunger and thirst. God created drugs and medicaments and endowed man with the intelligence necessary to discover their medicinal properties; we are obliged to use them in warding off illness and disease. Similarly, God provided the materials and the technology which make possible catheters, intravenous infusions and respirators; we are likewise obligated to use them in order to prolong life. Medication, therefore, may not be withheld from an incurable patient.

Similarly, the commonly drawn distinction between “ordinary” versus “extraordinary” means of treatment and the exclusion of “heroic” measures in preserving life have no parallel in Jewish sources. Indeed, one is hard pressed to find appropriate terminology in rabbinic Hebrew to express such distinctions. Those distinctions have entered contemporary moral discourse through the mediation of an entirely foreign religious tradition.

In discharging his responsibility with regard to prolongation of life the physician must make use of any medical resources that are available. However, as shown elsewhere,¹⁷ he is not obligated to employ procedures which are themselves hazardous in nature and which may potentially foreshorten the life of the patient. Nor is either the physician or the patient obligated to employ a therapy which is experimental in nature.¹⁸ The question of treatment in face of intractable pain will be considered in a later section.

For these same reasons, Judaism cannot sanction a “living will” or the provisions of legislation such as the various versions of the Natural Death Act which have been enacted by a number of state legislatures. Such legislation is designed to bind the physician to respect the wishes of the patient and, under certain conditions, to withhold or withdraw life-sustaining procedures in the event of a terminal malady. Judaism denies man the right to make judgments with regard to quality of life. The category of *pikuah nefesh* extends to human life of every description, including the feeble-minded the mentally deranged, and even persons in a so-called vegetative state. The *mizvah* of saving a life is neither enhanced nor diminished by virtue of the quality of life preserved. Nor,

in the final analysis, does the desire of the patient to have, or not to have, his or her life prolonged play a role in the halakhic obligation to initiate or maintain life-sustaining procedures.¹⁹

B. PALLIATION OF PAIN

Assuredly, elimination of pain is a legitimate and laudable goal. According to some authorities mitigation of pain is encompassed within the general obligation to heal.²⁰ Palliative treatment is certainly mandated by virtue of the commandment “and you shall love your neighbor as yourself” (Leviticus 19:18). Yet, when the dual goals of avoidance of pain and preservation of life come into conflict with one another, Judaism recognizes the paramount value and sanctity of life and, accordingly, assigns priority to preservation of life. Thus, a number of authorities have expressly stated that non-treatment or withdrawal of treatment in order for the patient to be released from pain by death constitutes euthanasia and is not countenanced by Judaism.²¹ This remains the case even if the patient himself pleads to be permitted to die. As stated by one prominent authority, “Even if the patient himself cries out, ‘Let me be and do not give me any aid because for me death is preferable’ everything possible must be done on behalf of the patient.”²²

Nevertheless, every prudent effort should be made to alleviate the patient’s suffering. This includes aggressive treatment of pain even to a degree which at present is not common in current medical practice. Physicians are reluctant to use morphine in high dosages because of the danger of depression of the cerebral center responsible for respiration. The effect of morphine administered in high doses is that the patient cannot control the muscles necessary for breathing. There is, however, no halakhic objection to providing such medication in order to control pain in the case of terminal patients even though palliation of pain may ultimately entail maintaining such a patient on a respirator. Similarly, there is no halakhic objection to the use of heroin in the control of pain in terminal patients. The danger of addiction under such circumstances is, of course, hardly a significant consideration. At present, the use of heroin is illegal even for medical purposes. Judaism affirms that everything in creation is designed for a purpose. Alleviation of otherwise intractable pain is a known beneficial use of heroin. Marijuana is effective in alleviating nausea that is a side-effect of some forms of chemotherapy. There is every reason to believe that these drugs were given to man for the specific purpose of controlling pain and discomfort. Jewish teaching would enthusiastically endorse legislation legalizing the use—with adequate accompanying safeguards—of those substances in treatment of terminal patients.

III. THE GOSES

A. DEFINITION OF A GOSES

Although euthanasia in any form is forbidden, and the hastening of death, even by a matter of moments, is regarded as tantamount to murder, there is one situation in which treatment, according to some authorities,²³ may be withheld from the moribund patient in order to provide for an unimpeded death. While the death of a *goses*²⁴ may not be hastened, according to those authorities, there is no obligation to perform any action which will lengthen the life of a patient in this state. The distinction between an active and a passive act, as drawn by those authorities, applies to a *goses* and to a *goses* only. When a patient is, as it were, actually in the clutches of the angel of death and the death process has actually begun, argue these authorities, there is no obligation to heal. In support of that position, those scholars cite the words of Rema, *Yoreh De'ah* 339:1, who permits the removal of "anything which constitutes a hindrance to the departure of the soul, such as a clattering noise or salt upon his tongue. . . since such acts involve no active hastening of death, but only the removal of the impediment."

As will be shown, Rema's ruling is subject to at least three possible interpretations. The most obvious is that Rema distinguishes between an overt act that may foreshorten life and passive withholding of life-prolonging measures. It cannot be overemphasized that even those authorities who interpret Rema in this manner and sanction acts of omission do so only when the patient is in a state of *gesisah*.²⁵ At any earlier stage, withholding of treatment is tantamount to euthanasia. What, then, are the criteria indicative of the onset of this state? Rema, in both *Even ha-Ezer* 121:7 and *Hoshen Mishpat* 211:2, defines this state as being that of a patient who "brings up secretion in his throat on account of the narrowing of his chest."²⁶ Of course, if the condition is reversible there is an obligation to heal.²⁷ According to those authorities, when the condition of *gesisah* is irreversible there is no obligation to continue treatment and, according to some of those authorities, there is even a prohibition against prolonging the life of the moribund patient.

Rema's description, while a necessary criterion of *gesisah*,²⁸ is certainly not a sufficient one. Were the patient to present this symptom but in the opinion of medical practitioners be capable of survival, he would clearly not be considered a *goses* and all usual obligations would remain in force. Moreover, the physiological criteria of *gesisah* must be spelled out with care. It is surely clear that a patient whose life may be

prolonged for weeks and even months is not yet moribund; the actual death process has not yet started to commence and hence the patient is not a *goses*. The halakhic provisions governing care of a *goses* may most emphatically not be applied to all who are terminally ill.

It appears that any patient who may reasonably be deemed capable of potential survival for a period of seventy-two hours cannot be considered a *goses*. If the patient is capable of surviving that length of time, the death process cannot be deemed to have commenced. It would appear that Halakhah assumes axiomatically that the death process or the "act of dying" cannot be longer than seventy-two hours in duration.²⁹ This is evidenced by the ruling recorded in *Shulhan Arukh, Yoreh De'ah* 339:2, to the effect that one must commence to observe the laws of mourning three days after a relative has been observed in a state of *gesisah*. Some authorities even permit a wife to remarry in the absence of witnesses testifying to the actual death of the husband provided that testimony is forthcoming to the effect that her husband was observed in a state of *gesisah*.³⁰ These authorities maintain that the testimony of witnesses with regard to *gesisah*, *ipso facto*, constitutes legal proof of a state of widowhood commencing three days following the onset of *gesisah*.

It further appears that this state is not determined by a patient's ability to survive for this period solely by natural means unaided by drugs or medication. The implication is that a *goses* is one who cannot, under any circumstances, be maintained alive for a period of seventy-two hours.³¹ Testimony with regard to the existence of a state of *gesisah* as conclusive evidence of impending death implies that the state is not only irreversible but also not prolongable even by artificial means. Otherwise, there would exist a legal suspicion that life may have been prolonged artificially by means of extraordinary medical treatment. The obvious conclusion to be drawn is that, if it is medically feasible to prolong life, the patient is indeed not a *goses* and, therefore, in such instances there is a concomitant obligation to preserve the life of the patient as long as possible.

It follows that a specific physiological condition may or may not correspond to a state of *gesisah* depending upon the state of medical knowledge of the day. When medical care is of no avail and the patient manifesting the symptoms described by Rema is expected to expire within seventy-two hours, he is deemed to be in the process of "dying." When, however, medication can prolong life, such medicine, in effect, delays the onset of the death process. Accordingly, the patient who receives medical treatment enabling him to survive for a period of three days or more is not yet in the process of "dying." It follows, therefore,

that those responsible for his care are not relieved of their duty to minister to his needs and to postpone the onset of death by means of medical treatment.

References to the precise maximum duration of a state of *gesisah* are found in the works of a number of disciples of the thirteenth-century German authority, R. Meir of Rothenberg, and constitute the basis of Rema's earlier-cited ruling incorporated in the laws of mourning. *Mordekhai, Mo'ed Katan*, sec. 864, reports that the following situation was brought to the attention of R. Meir of Rothenberg: A certain woman found herself in a locale a four-day journey distant from her husband. Several Jewish travellers arriving from the husband's place of residence informed her that, at the time of their departure, her husband was a *goses*. R. Meir of Rothenberg ruled that she must immediately commence observance of the prescribed period of mourning. That ruling was predicated upon the talmudic presumption recorded in *Gittin* 28a to the effect that "the majority of *gosesin* die." R. Meir of Rothenberg amplifies that principle and indicates that the halahkic presumption is that "the majority of *gosesin* do not live two days or three."³² A similar version of the incident is recorded by another disciple of R. Meir of Rothenberg, Rabbenu Asher, in *Rosh, Mo'ed Katan* 3:97, with the slightly varying concluding statement, "...the majority of *gosesin* do not live three days or four." A report of the same incident found in *Sefer ha-Agudah, Mo'ed Katan* 3:56, contains neither concluding remark but begins by indicating that the "woman was distant from her husband a journey of three or four days." The version cited by *Mordekhai* is reflected in R. Meir of Rothenberg's work *Hiddushei Maharam Hilkhot Semahot*, edited by R. Isaac Gatineiv (Soloniki, 5555), no. 6,³³ and is the basis of the ruling recorded by *Tur Shulhan Arukh, Yoreh De'ah* 339, as well as by *Shulhan Arukh, Yoreh De'ah* 339:2.³⁴

B. WITHDRAWAL OF TREATMENT FROM A GOSES

Rema's ruling regarding cessation of woodchopping in order to allow a *goses* to expire is taken directly from *Sefer Hasidim* (Jerusalem, 5720), no. 723. Rema has been understood as drawing a distinction between performance of an overt act for the purpose of hastening death and withdrawal of an impediment so that death can occur naturally.³⁵ In effect, according to this understanding, Rema sanctions passive euthanasia in the case of a *goses*. That interpretation is bolstered by Rema's concluding phrase "for in this there is no act at all; rather, he removes the impediment."

Granted that Rema's ruling is limited to a *goses*, the paramount

