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." 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. 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.

Life with suffering is regarded as being, in many cases, preferable to cessation of life and with it elimination of suffering. The Gemara, *Sota* 22a, followed by Rambam, *Hilkhot Sota* 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. 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. 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 State and a number of decisions have recognized the State’s interest in safeguarding the life and health of an unborn child.

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.”

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 “ve-lo 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. 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, Orah Hayyim 230:4, "May it be Your will, O Lord, my God, that this endeavor be a cure for me," 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.

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.

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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 treatment 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
criminal liability “for a medical action or treatment performed with lawful permission of an individual for the person’s benefit.” In an attempt to dispel confusion the following statement was issued recently by a group of leading Israeli rabbinic decisors:

According to the law of the Torah it is obligatory to treat even a patient who, according to the opinion of the physicians, is a terminal, moribund patient with all medications and usual medical procedures as needed. Heaven forfend that the demise of a terminal patient be hastened by withholding nutrients or medical treatments in order to lessen his suffering. *A fortiori*, it is forbidden to hasten his demise by means of an overt act (other than if it is clear that these are his last hours in which case even movement [of the patient] is forbidden since he is a *goses*.

Below is a list of medical treatments compiled by senior physicians.

In accordance with what has been stated above, it is incumbent upon the families of terminally-ill patients to concern themselves and to request that the patients receive treatment in accordance with the above stated principles.

(Signed) Yosef Shalom Eliashiv Shlomoh Zalman Auerbach

Shmu’el ha-Levi Woszner S. Y. Nissim Karelitz

Appended to this statement is a list of mandatory treatments that includes intravenous or gastric feeding, IV fluid replacement, insulin injections, controlled dosages of morphine, antibiotics and blood transfusions. The Hebrew text of this statement appeared in various periodicals, including the 29 Kislev 5755 issue of the English-language edition of *Yated Ne’eman*.13

In addition, the following heretofore unpublished statement, dated 9 Adar 5756 (February 29, 1996), was issued by Rabbi Ahron Soloveichik:

It is my unmitigated, convinced opinion that a doctor must do his utmost to treat terminally ill patients. This is true whether doctors believe that the patient can survive for even an extremely brief period of time, or even if they believe that the patient is brain dead. The situation of a *goses* does not even have to be considered since today very few, if any, patients manifest the symptoms of a *goses*. Even in a case where the
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 Rebbi* 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 Rebbi 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)* Ahron Soloveichik

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, 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. 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 *mitzvah* 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, may be withheld from the moribund patient in order to provide for an unimpeded death. While the death of a gose 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 gose and to a gose 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 gesiah. 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.” Of course, if the condition is reversible there is an obligation to heal. According to those authorities, when the condition of gesiah 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 gesiah, 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 gose and all usual obligations would remain in force. Moreover, the physiological criteria of gesiah 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. 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*. 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. 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 min-
ister to his needs and to postpone the onset of death by means of med-
ical 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 hus-
band. Several Jewish travellers arriving from the husband’s place of resi-
dence informed her that, at the time of their departure, her husband was
a goses. R. Meir of Rothenberg ruled that she must immediately com-
mence 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 halakhic presumption is
that “the majority of gosesin do not live two days or three.” 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 reflect-
ed in R. Meir of Rothenberg’s work Hiddushei Maharam Hilkhot
Semahot, edited by R. Isaac Gatineiv (Soloniki, 5555), no. 6, 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.

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. In
effect, according to this understanding, Rema sanctions passive eutha-
nasia 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
problem with regard to his ruling is why the general obligation to prolong life does not extend to a goses as well. As noted earlier, the obligation to preserve life is not limited either by the quality of life preserved or by longevity anticipation. Moreover, Rema in his commentary on *Tur Shulhan Arukh*, *Darkei Mosheh*, *Toreh De'ah* 339:1, goes beyond the ruling incorporated in *Shulhan Arukh*. In his gloss to *Shulhan Arukh*, *Toreh De'ah* 339:1, Rema rules simply that it is permitted to remove an impediment to the departure of the soul from the body whereas in his *Darkei Mosheh* he declares it to be forbidden to interfere with the departure of the soul. This understanding of Rema is reflected in *Teshuvot Bet Ya'akov*, no. 59, who accepts the comment of *Darkei Mosheh* declaring prolongation of the life of a goses not only to be unnecessary but actually prohibited. In a manner entirely consistent with that view, *Teshuvot Bet Ya'akov* rules that it is forbidden to violate the Sabbath on behalf of a goses.

Although he does not comment upon the ruling of *Sefer Hasidim* and Rema, R. Jacob Reischer, *Teshuvot Shevut Ya'akov*, I, no. 13, cites *Teshuvot Bet Ya'akov* and takes sharp issue with the author of that work in stating, “His words are incomprehensible. Certainly it is forbidden for one who is not proficient in medicine to prevent the departure of the soul but it is certainly permissible for one who is proficient in medicine to ward off gesisah temporarily.” Accordingly, *Teshuvot Shevut Ya'akov* rules that otherwise forbidden acts may be performed on Shabbat on behalf of a goses even in order to prolong his life only ephemerally. In support of that position *Shevut Ya'akov* cites the advice offered by the Gemara, *Avodah Zarah* 12b: “One who swallows a wasp cannot live. Nevertheless, let him be given a revi’it of strong vinegar to drink. Perhaps he will live briefly, long enough to set his house in order.” However, in the light of Rema’s definition of a goses as one who cannot bring up secretions from his chest, that statement of the Gemara does not necessarily substantiate Shevut Ya’akov’s position. Not every moribund patient is a goses. A goses is a patient whose death is imminent and who has also lost control of bodily functions as manifested by his inability to bring up secretions from the chest. Although the Gemara presumes that a person who swallows a wasp will die within a very short period of time, there is no evidence, and indeed no reason to presume, that such a person loses control of bodily functions immediately. Quite to the contrary, the concern expressed by the Gemara is that he be enabled “to set his house in order,” an endeavor that is presumably beyond the capacity of one who is in a debilitated state such that he cannot even bring up secretions from his chest. The position of
Shevut Ta’akov requiring medical treatment on behalf of a goses is espoused by Mishnah Berurah, Bi’ur Halakhah 329:4, and by R. Eliezer Waldenberg in a number of his writings, including Ramat Rahel, no. 28; Ziz Eli’ezar, VIII, no. 15, chap. 3, sec. 16; ibid, IX, no. 47; and Assia, Nisan 5738, p. 19, reprinted in Sefer Assia, III (5743), p. 458.

Although talmudic sources for this interpretation of Sefer Hasidim and Rema are elusive, the declared principle seems to be that both the obligation of pikuah nefesh as well as direct license to intervene in physiological processes derived by the Gemara, Baba Kamma 85a, from the verse “and he shall cause him to be thoroughly healed” (Exodus 21:19), does not extend to a patient in extremis once the actual process of dying has begun. Conceptually, however, any life-saving act can be denoted either as “prolonging life” or as “interfering with the process of dying.” Those disparate descriptions parallel the description of a single glass of water as either half full or half empty. In both instances the chosen depiction may be indicative of a certain attitude on the part of the perceiver but the differing descriptions do not reflect different empirical realities. In the case of the glass of water it has often been said that one description marks the speaker as an optimist, while the other marks him as a pessimist. In a related manner, to describe an act of intervention as life-prolonging is emotively to express approval whereas to describe it as interference with the process of dying is likely to reflect a negative moral and/or theological judgment. Recognizing this to be the case, it is important to emphasize that Rema’s ruling (if understood in this manner) is limited to the case of a goses and that this term has a precise technical meaning when employed in a halakhic context. Life itself is a terminal condition and the process of dying begins with the moment of birth. Identification of any point along the continuum of life as the beginning of the process of dying is, in the logical sense, entirely arbitrary. Similarly, identification of the state of gesisah as denoting the onset of dying is nothing more than a halakhic construct, and hence definition of gesisah as the process of dying is tautologous, i.e., a patient in the physiological state termed gesisah is treated as being in the process of dying, not because of any incontrovertible empirical considerations, but because Halakhah declares it so.

Needless to say, it is self-evident that if the goses can be restored to good health, or even if the state of gesisah can be reversed, the obligation of pikuah nefesh mandates that the requisite medical intervention be instituted. It is also clear that there exist many patients who, in the past, would have been described as gosesim but who today can be treated. In effect, there are conditions in which contemporary medicine is
capable of reversing the state of *gesisah*. Or, to state it somewhat differently, since a *goses* is a moribund patient manifesting specific clinical criteria who will die within a specific period of time despite administration of all known medical treatment, identification of patients as members of the class of *gosesim*, and hence the denotation of the term, is relative and will vary with the state of medical knowledge and technology.

This conclusion is not at all surprising if it is remembered that Rambam espouses an identical view with regard to the concept of *treifah* as applied to human beings. Rambam, *Hilkhot Roseah* 2:8, rules that, unlike the definition of *treifah* as applied to animals whose meat is prohibited by the dietary code, the definition of a human *treifah* varies from generation to generation. Animal *treifot* are identified and described by the Oral Law given at Sinai. An animal identified as a *treifah* remains a *treifah* regardless of the present-day ability of veterinary medicine to prolong the animal’s life indefinitely. Not so, declares Rambam, with regard to identification of *treifot* in human beings. Classification of a person as a *treifah* is of importance primarily with regard to exoneration of the murderer of a *treifah* from the penalty of capital punishment. The murderer either of a person born with one of a specified number of congenital defects or of a person who has suffered a trauma of a nature categorized as a *treifah* does not incur capital punishment. However, rules Rambam, if the victim, as the beneficiary of the medical expertise of his epoch, is presumed to have been capable of survival for more than twelve months, the murderer is guilty of a capital offense. Rambam clearly maintains that the definition of a *treifah*, insofar as humans are concerned, is relative and varies with the state of medical expertise in any given age. Thus, it is not surprising that this is the case with regard to the categorization of a *goses* as well.

As recognized by these authorities, the limitation upon the obligation to preserve life once the process of dying has actually begun can perhaps be captured in metaphorical expression. Man has the right—and indeed the obligation—to rescue his fellow but man ought not to interfere with, or hinder, the Angel of Death in the latter’s discharge of his duties unless he can prevail. The Angel of Death may take as long as three days to complete his assigned task. During that period man ought not to interfere and thereby prolong the time the Angel of Death must devote to discharging his duty unless he anticipates being able to take the Angel of Death by the scruff of the neck and eject him from the sick room and thereby cancel his mission.
C. NONWITHDRAWAL OF MEDICAL TREATMENT FROM A GOSES

As has been noted, according to the authorities who rule that prolongation of the life of a goses is permissible and indeed mandatory, Rema’s ruling permitting cessation of wood-chopping and his statement in Darkei Mosheh prohibiting an act designed to impede the departure of the soul from the body are highly problematic. It is noteworthy that the examples given by Rema are limited to termination of wood-chopping and removal of salt from the tongue of the patient. Explicitly prohibited by Rema in the same gloss is removal of a cushion or comforter from beneath the patient because the presence of the feathers of some fowl impedes death and because of the fear that such removal would necessarily entail prohibited movement of the goses. Rema does not offer the simple and obvious example of withholding life-sustaining medication from the patient.

Elsewhere this writer has drawn attention to the distinction between natural remedies of demonstrated efficacy involving readily recognizable causal relationships and non-scientific segulot of undemonstrable causal efficacy, e.g., consuming a portion of meat taken from an area surrounding the liver of an attacking dog as protection against rabies. The obligation of pikuah nefesh is limited to utilization of drugs and medications that are in the realm of rationally explainable, causally effective procedures. Use of remedies that are non-natural or of undemonstrated efficacy is never mandatory. The presence of a persistent clattering noise, salt on the tongue or feathers of certain fowl under a patient’s body are clearly in the latter category. Since their use is not mandatory for purposes of pikuah nefesh such measures need not, or perhaps should not, be utilized to prevent departure of the soul. However, according to this second understanding of Rema, normal forms of life-prolonging therapy must be administered to a goses just as they are administered to any other patient.

This analysis is supported by the phraseology employed by Shevut Ya’akov in his comment that one who is not proficient in medicine should not attempt to treat a goses but that there is no basis for restraining a person who is proficient in medicine from doing so. The ministrations of a practitioner who is not proficient in medicine are in the category of a refu’ah she-einah bedukah and hence forbidden, as are Rema’s examples of segulot; the ministrations of a competent medical practitioner are entirely different and hence mandatory even if the patient is a goses.
Further support for this distinction may be found in the talmudic passage cited by Shevet Ya’akov. The Gemara advises a person who has swallowed a wasp to drink strong vinegar so that he may put his affairs in order. Shevet Ya’akov fails to comment upon the obvious difficulty posed by advancement of that rationale. If prolongation of the life of a terminally ill patient, or even of a gose, is permissible, such prolongation of life should be mandatory as a form of pikuah nefesh. The rationale cited by the Gemara, viz., “so that he may put his affairs in order” is thus entirely superfluous. If, however, as would seem to be the case, vinegar is not a refuah bedukah, its use is not at all obligatory. Hence the advice that vinegar be utilized because perchance (efshar) the remedy may help and the victim may survive long enough to place his affairs in order.45

D. WITHDRAWAL OF TREATMENT IN CASES OF INTRACTABLE PAIN

R. Moshe Feinstein, Igerot Mosheh, Hoshen Mishpat, II, no. 74, sec. 1, advances an entirely different analysis of Rema’s position. Igerot Mosheh expresses amazement at the suggestion that impediments to the departure of the soul from the body may be removed and states that, on the contrary, it would stand to reason that such measures should be introduced in order to prolong life. Igerot Mosheh asserts that the sole consideration governing Rema’s ruling is that there is no obligation to prolong the life of a patient who is in a state of pain. Igerot Mosheh further asserts that a gose invariably experiences increased suffering by virtue of prolongation of the departure of the soul from the body and, acknowledging that it is not at all obvious that all moribund patients experience pain, comments that “certainly our teachers, Rema and his predecessors, had a tradition with regard to this.” Thus, for Igerot Mosheh, the rule formulated by Rema with regard to goes is two-fold in nature: (1) all treatment may be withheld from a patient who suffers “pain;” (2) every gose must be regarded as suffering pain of a nature that he is not required to endure. The suffering to which Igerot Mosheh refers is not pain as that phenomenon is conventionally understood. It is readily acknowledged that not all patients experience suffering at the time of death; comatose patients, for example, do not experience pain. Absence of pain can be confirmed by lack of response to pain stimuli such as a pin prick as well as by more sophisticated neurological procedures. Persons who are in pain manifest particular and unique brain waves; brain waves associated with the experience of pain are totally absent in comatose patients. Accordingly, the “pain” described by Igerot Mosheh as an unvarying concomitant of the departure of the soul from his body must
be understood as a metaphysical or spiritual pain experienced by the soul rather than by the body. Moreover, there is no explicit reference in rabbinic writings to the fact that prolonging the process of dying prolongs or intensifies such pain. That principle is postulated by Iggerot Mosheh as a premise in formulating a hypothesis to explain the ruling cited by Rema. Acceptance of an alternative explanation of that ruling serves to negate any support for such a presumption.

The basic principle that it is not obligatory to prolong the life of every patient is developed by Rabbi Feinstein in an earlier responsum, Iggerot Mosheh, Hoshen Mishpat, II, no. 73, sec. 1. In that responsum Iggerot Mosheh cites the narrative recorded by the Gemara, Ketubot 104b, describing the sickness and pain suffered by R. Judah the Prince. As has been noted earlier, when R. Judah's maidservant saw that the prayers of his disciples did not effect either a cure or relief of his suffering, she successfully prayed for his death. Iggerot Mosheh concludes that, in circumstances in which the physician has determined that the patient cannot be cured and that his or her life cannot be prolonged without concomitant suffering, further medication should not be administered. By the same token, Rabbi Feinstein declares that medications must be administered to alleviate pain provided that the medication does not foreshorten life even briefly. He also insists that oxygen be administered as needed on the assumption that failure to administer oxygen will increase the suffering of the patient. In Iggerot Mosheh, Hoshen Mishpat, II, no. 74, sec. 1, Rabbi Feinstein again states that a cancer patient should be informed if medication will merely prolong his life with suffering and that such therapy should not be administered without the consent of the patient. In that responsum he emphasizes that sanctioning the withholding of therapy in cases of extreme pain should not be confused with decisions based upon “quality of life.” Iggerot Mosheh emphatically declares that the life of a mentally incompetent person, and even of a patient in a permanent vegetative state, must be prolonged to the extent possible so long as the patient does not suffer extreme pain.

A similar pronouncement by the late R. Shlomoh Zalman Auerbach was published in Halakhah u-REFU‘AH, II (Jerusalem, 5341), 131, and reprinted with a minor linguistic change in his collected responsa, Minhat Shlomoh, no. 91, sec. 24. The following is a literal translation of that statement:

Many struggle with this question concerning treatment of a Goses. Some are of the opinion that just as the Sabbath must be desecrated for
ephemeral life (hayei sha'ah) so is it similarly obligatory to compel the patient with regard to this since he is not a proprietor with regard to himself [with the right] to relinquish even a single moment.\(^4\) However, it is reasonable that if the patient experiences great pain and suffering, or even extremely severe psychological pain, [although] I think that it is mandatory to give him food and oxygen for breathing even against his will, it is permissible to withhold medications that cause suffering to the patient\(^5\) if the patient so demands. However, if the patient is God-fearing and is not mentally confused, it is extremely desirable to explain to him that a single hour of repentance in this world is more valuable than all of the world-to-come as we find in tractate Sotah 20a that it is a “privilege” to suffer seven years rather that to die immediately.

Noteworthy is the fact that Rabbi Auerbach refers to two distinct situations, viz., the case of a patient who steadfastly refuses treatment and the case of a patient who can be consulted with regard to his wishes, but ignores the situation of the incompetent patient who lacks decision-making capacity. Similarly, the earlier cited statement dated 29 Kislev 5755 speaks only of obligatory forms of treatment but fails to indicate whether, in the absence of an announced desire on the part of the patient, other forms of treatment are prohibited or whether they may be administered at the discretion of the family and/or physician. Igerot Mosheh speaks of prolongation of pain to the patient as being prohibited other than with the patient’s consent. Also noteworthy is Rabbi Auerbach’s emphasis upon pain as a spiritual “benefit” or “privilege” and his strong recommendation that the patient be encouraged to accept prolongation of life to the extent medically possible despite accompanying suffering.

The rulings of Igerot Mosheh and Rabbi Auerbach present two distinct but related problems: (1) The threshold level of pain and suffering that serves to permit withholding of treatment. Assuredly, the prospect of inconvenience, albeit lifelong in nature, or of mere discomfort is not sufficient to extinguish the obligation to preserve life. Indeed, Igerot Mosheh carefully refers to “suffering” rather than to mere discomfort or ordinary pain and Rabbi Auerbach is even more precise in speaking of “great pain and suffering.” What, then, are the criteria that serve to distinguish “great pain” or “suffering” from ordinary pain? (2) What are the sources and/or the underlying rationale upon which that distinction is based?

The underlying principle is not at all difficult to discover and is
indeed expressed by Igerot Mosheh in response to an entirely different query. Rabbi Feinstein was apparently asked whether it is permitted to remove an organ from a cadaver for purposes of a life-saving transplant against the wishes, or without the consent, of surviving relatives. In Igerot Mosheh, Toreh De‘ah, II, no. 174, anaf 4, Rabbi Feinstein responds by indicating that it is forbidden to do so. His line of reasoning is most interesting. Tosafot, Shabbat 44a, indicate that a person may be presumed to suffer greater distress at the prospect of ignominious treatment of the corpse of a loved one than at the prospect of the loss of his entire fortune. Tosafot reach that conclusion on the basis of the fact that, although the Gemara permits removal of a corpse on Shabbat from the path of a fire, it does not similarly permit the removal of material possessions that may not generally be transported on Shabbat. The Gemara explains that, in cases of fire, the Sages abated the rabbinic prohibition against moving a corpse on the Sabbath because failure to grant such dispensation would result in wilful extinguishing of the fire since a person is likely to become agitated and confused upon confronting the sight of the body of a loved one becoming cremated or disfigured in a conflagration. Since similar dispensation is not granted for the rescue of material objects, no matter how valuable they may be, Tosafot conclude that a person does not generally experience the same anguish at the prospect of losing even his entire fortune.

The general rule with regard to expenditure of resources in order to avoid transgression as recorded by Rema, Orah Hayyim 656:1, is that a person is obligated to expend twenty percent of his net worth, but not more, in order to fulfill, or to avoid transgressing a positive commandment but is obligated to expend even his entire fortune in order to avoid transgressing a negative precept. As cited by Hiddushei R. Akiva Eiger, Toreh De‘ah 157:1, and Pithei Teshuvah, Toreh De‘ah 157:4, there is some controversy with regard to whether the distinction depends upon the phraseology in which the command is couched, i.e., whether it expressed in negative rather than in positive terms, or whether the fundamental distinction is with regard to whether the transgression involves an overt act or is merely the result of passive non-performance. According to the first view, negative prohibitions are inherently more stringent; according to the latter view, transgressions involving overt acts of commission are more severe in nature because they involve active involvement on the part of the transgressor. Those two views lead to diverse rulings in situations in which a negative command mandates a positive act and hence violation of the commandment occurs through passive nonfulfillment. A case in point is expenditure of
funds to preserve life. The obligation is expressed as a negative com-
mand, “and you shalt not stand idly by the blood of your fellow,” but transgression involves, not an overt act, but passive non-intervention. Thus, according to one opinion, a person is obligated to expend no more than twenty percent of his financial resources in order to rescue a person from death while, according to the other opinion, he is obligated to expend his entire fortune in order to preserve a life. 54

The financial obligation, however, is limited, at most, to expenditure of one’s entire fortune; one is under no obligation to expend more than an entire fortune in order to avoid transgression of even a negative commandment. 55 Iggerot Mosheh explains that it is for this reason that Shakh, Yoreh De’ah 157:3, concludes that a person need not sacrifice a limb in order to avoid transgressing a negative commandment. Similarly, Teshuvot Radvaz, III, no. 627, rules that a person need not allow a limb to be amputated in order to preserve the life of another person. The loss of a limb, these authorities rule, is more onerous than loss of an entire fortune. It then follows that, since one need not expend more than one’s entire fortune to preserve the life of another person, one need not sacrifice a limb to do so.

Basing himself upon these precedents, Iggerot Mosheh reasons that, since desecration of a close relative may cause greater anguish than loss of an entire fortune, a person need not permit such desecration in order to avoid violation of a negative commandment and, similarly, a person need not assume such anguish in order to preserve the life of another. 56 However, emotional distress, at least for some people, is subject to control. Therefore, Iggerot Mosheh adds that a person should be counseled not to be distressed by the removal of an organ from the body of a loved one for the purpose of transplantation. Indeed, if a person does not actually experience such extreme distress the emotional cost is less than that comparable to expenditure of an entire fortune and, accordingly, for such a person, consent to the procedure would be mandatory. Moreover, Iggerot Mosheh notes that Radvaz regards the sacrifice of a limb in order to rescue another person as a fitting act of piety. Accordingly, Iggerot Mosheh urges that, in all circumstances, next of kin be encouraged to grant consent for life-saving transplants.

Precisely the same argument can be formulated with regard to physical pain, assuming that there exists intractable pain of such severity that a person would willingly surrender his entire fortune in order to rid himself of such pain. Since a person need not expend more than his entire fortune in order to preserve his life, he need not accept pain of such magnitude in order to do so. Since a person has no obligation to
accept intractable pain even for the purpose of preserving life, others have no right to inflict it upon him without consent.  

The application of a closely related concept with regard to inordinate pain finds expression in the comments of an early-day authority. As recorded in the Book of Daniel 3:12-21, in allowing themselves to be cast into a fiery furnace, Hananiah, Mishael and Azariah (identified in Daniel as Shadrach, Meshach and Abed-nego), accepted martyrdom rather than agreeing to worship a pagan deity. In a remarkable statement, the Gemara, *Ketubot* 33b, declares that, had those personages been subjected to torture rather than immediate death, they would have succumbed. The classical talmudic commentators understand that statement as expressing a normative rule rather than as a reflection of human weakness. Accordingly, they question, if martyrdom is required in face of idolatry, why is acceptance of torture not required as well? *Tosafot*, for example, resolve the problem by postulating that the act in question was not really an act of idolatry at all and hence Hananiah, Mishael and Azariah chose to accept martyrdom, not as a normative obligation, but as an act of piety.

*Shittah Mekubezet, Ketubot* 33b, cites an anonymous scholar (*u-be-kuntreisin piresh*) who responds to this question by noting that the obligation to sacrifice one’s life rather than engage in an act of idolatry is based upon the verse “And you shall love the Lord, your God, with all your heart, and with all your soul, and with all your might” (Deuteronomy 6:5). “With all your soul” is understood as meaning with one’s very life. The obligation, then, is to sacrifice even one’s life rather than to commit the sin of idolatry—but there is no obligation, argues this anonymous authority, to sacrifice more than one’s life. Sustained torture, concludes this authority, represents a sacrifice greater than martyrdom and hence is not required even in order to avoid idolatry. Since, according to this authority, the burden of torture need not be accepted in situations requiring martyrdom, *a fortiori*, it need not be accepted in situations in which the burden imposed for fulfillment of an obligation is limited to expenditure of financial resources.

It may well be assumed that the commentators who resolve the underlying problem in an alternative manner disagree with the halakhic implication inherent in the approach of this anonymous scholar. For them, the obligation to accept martyrdom includes the obligation to accept protracted torture as well. Nevertheless, it is entirely reasonable to assume that their disagreement is limited to situations in which martyrdom is demanded, but that they might well concede that in situations requiring a more modest burden, i.e., expenditure of one’s entire
fortune, there is no obligation to accept either torture or intractable pain.

As noted earlier, both Igerot Mosheh and Rabbi Auerbach agree that nutrition, hydration and oxygen must be provided for all patients. They apparently assume that hastening death by starvation, dehydration or suffocation increases the intensity of the pain and suffering experienced by the moribund patient. However, existing medical opinion suggests that patients who have permanently lost consciousness do not experience pain or discomfort following the withdrawal of artificial nutrition and hydration. Less information is available concerning the experience of greatly debilitated patients or those suffering from severe illness who are in the end-stage of the dying process. Available information, however, indicates that these patients appear to experience little, if any, discomfort when routine comfort measures are provided. Moreover, in some cases, the provision of artificial nutrition and hydration very close to the time of death may actually increase the patient’s discomfort. Some patients are more likely to experience pulmonary edema, nausea and mental confusion when artificial nutrition and hydration are maintained in the last stages of the dying process.

Although the theory espoused by Igerot Mosheh and Rabbi Auerbach is well founded, it seems to this writer that there is little room for its implementation. If the foregoing analysis is correct, those halakhic rulings proceed from the presumption that at least some patients must endure “great pain” or “suffering.” While many patients undoubtedly do suffer unspeakable pain, that need not be the case. Recent medical literature is replete with articles and comments deploring the fact that physicians are inadequately trained in palliation of pain or are unwilling to utilize available means to control pain. In rejecting the patient’s suffering of unrelieved pain as a valid motive for the practice of euthanasia, Dr. Porter Storey reports on his own treatment of some 2,000 terminally ill patients and asserts that pain “can be effectively palliated by administering narcotic analgesics which can be used safely if the dose is carefully titrated against the symptoms.” Moreover, studies conducted over the past decade demonstrate that substantial and sustained doses of narcotics may be administered without risk to the patient. An as yet unpublished report of the Bioethics Committee of the Montefiore Medical Center concludes that “The widespread belief that adequate pain control usually poses high risks of respiratory distress and a consequent hastening of death appears to be based more on longstanding myth than on medical fact.” From the vantage point of Halakhah, life-prolonging therapy may be withheld only to avoid excruciating pain.
However, when pain can be controlled, the obligation to preserve and prolong life remains in full force.

IV. A CONCLUDING COMMENT

A brief comment of the late Rabbi Yosef Eliyahu Henkin, of blessed memory, eloquently captures the Jewish attitude with regard to the emotionally charged issue of treatment of the terminally ill. Many years ago, when I first began to investigate issues of medical halakhah and when many now commonplace life-prolonging measures were yet novel, I offhandedly asked Rabbi Henkin, “How far is one obligated to go in order to prolong life?” Without the slightest hesitation he responded, “Azoi lang vi a Yid ken leben, darf er velen leben” (So long as it is possible for a Jew to live, he ought to want to live.) Those words uttered by a blind, frail, saintly individual to whom life had clearly become a burden—but a sacred burden—made a profound impression upon me. That short, succinct statement reflects authentic Jewish values in a way that sometimes becomes submerged in learned responsa. Truly, sometimes one cannot see the forest because of the trees.

NOTES

1. Arthur Hugh Clough, “The Latest Decalogue,” The Oxford Book of Nineteenth-Century English Verse, ed. by John Hayward (Oxford, 1970), p. 609. These words, when quoted, are almost invariably cited in a literal sense. In actuality, the poet was not endorsing the moral position expressed in this couplet but was engaging in irony. See Maurice Strauss, Familiar Medical Quotations (Boston, 1968), p. 159b, note 1.

2. This statement, of course, applies to life as defined by Halakhah. The status of a nefel, i.e., a nonviable neonate, requires independent analysis.


4. See also Tosefet Yom Tov, Sotah 1:9.


7. See, for example, Matter of Application of Jamaica Hospital, 128 Misc. 2d 1006, 491 N.Y.S.2d 898 (Sup. Ct., Queens Co. 1985); Crouse Irving Memorial Hospital v. Paddock, 127 Misc. 2d 101, 485 N.Y.S.2d 443 (Sup. Ct., Onondaga Co. 1985).

8. See also R. Shlomoh Yosef Zevin, Le-Or ha-Halakah, 2nd edition (Tel Aviv, 5717), pp. 318-335; cf., R. Saul Israeli, Ha-Torah ve-ha-Medinah, V-VI (5713-5714), 106-111 and VII-VIII (5715-5717), 331-336. See also R. Simchah ha-Kohen Kook, Torah she-be-’al Peh, XVIII (5736), 82-85.

9. See R. Shlomoh Zalman Auerbach, Teshuvot Minhat Shlomoh, no. 91, sec. 24, and R. Moshe Stern, Teshuvot Be’er Mosheh, VIII, no. 239, sec. 4. Cf., however, R. Moshe Feinstein, Igerot Mosheh, Hoshen Mishpat, II, no. 74, sec. 1. The Gemara, Ta’amit 23a, reports that, upon awakening from his sleep of seventy years, Honi the Circle-Drawer entered the House of Study. Since he was not recognized, he was not accorded proper honor. Becoming distressed, Honi prayed for death and the prayer was granted. Honi was certainly not a goses and it is difficult to assume that his psychological pain was so great that, as discussed below, he was relieved of any obligation to preserve his own life. Nevertheless, prayer for death under those circumstances was entirely acceptable.

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11. See R. Eliezer Waldenberg, Ramat Rahel, no. 5, and idem, Ziz Eli’ezr, IX, no. 47.

12. It is clear that, when halakhically indicated, a patient is not only obligated to seek medical care but may be compelled to do so. See sources cited in Jewish Bioethics, p. 43, note 100; cf., ibid, p. 42, note 97. Since the obligation of rescue is phrased as a prohibition against standing idly by “the blood of your fellow” the source of an obligation to save one’s own life is somewhat elusive. It is, of course, an uncontested halakhic principle that “A person is his own relative” (adam karov ezel azmo). See Sanhedrinn 9b and 25a; Ketubot 18b; and Yevamot 25b. By the same token, it may be argued that a person is his own “fellow” and hence owes himself the selfsame duties. See R. Zalman Nechemiah Goldberg, Moriah, vol. 8, no. 3-4 (Elul 5738), p. 51, quoted in Halakhah u-Refu’ah, ed. R. Moshe Herschler, II (Jerusalem, 5741), pp. 153-154; cf., however, R. Mordecai Jonah Rabinowitz, Afikei Yam, II, no. 40, s.v. ve-hayah. Note should also be taken of the fact that the Gemara, Baba Mezi’a 62a, cites the verse “and your brother shall live with you” (Leviticus 25:38) in establishing that preservation of one’s own life must be given preference over the rescue of another. An obligation to preserve one’s own life may readily be inferred from that definition. Also, Rambam, Hilkhot Roszeah 11:4, cites the verse “take heed of yourself and safeguard yourself” (Deuteronomy 4:9) as establishing an obligation “to be watchful” with regard to any matter that poses a danger. See also Hilkhot Roszeah 11:5. The latter verses serve to establish a positive command whereas “nor shall you stand idly by the blood of your fellow” establishes a more stringent negative prohibition for failure to seek life-saving interventions.

Afikei Yam, II, no. 40, s.v. ve-hayah, suggests that failure to preserve one’s own life may be halakhically equivalent to suicide. Pesikta Rabbati, chap. 24, advances an exegetical rendition of “lo tirzah” (Exodus 20:13) as “lo titrazh” in establishing that felo-de-se is encompassed in the prohibition against murder. See also Halakhot Ketanot, II, no. 231; Bet Me’ir, Yoreh De’ah 215:5; Teshuvot Hatam Sofer, Yoreh De’ah, no. 326; and Torah Shlemah, Parashat Tirot, chap. 20, sec. 336. Rambam, Hilkhot Roszeah 2:3, declares suicide to be prohibited on the basis of the verse “But your blood of your lives will I require” (Genesis 9:5). The ramifications of citation of that verse are noted by Minhat Hinnukh, no. 34. Cf. Mahari Perla’s comments on Minhat Hinnukh, ad locum. Cf., also, R. Shimon Moshe Diskin, Mas’et ha-Melekh (Jerusalem, 5942), Hilkhot Roszeah 2:3; reprinted in idem, Mas’et ha-Melekh (Jerusalem, 5749), IV, no. 433.

In point of fact, Afikei Yam’s position that the obligation to seek a cure for a life-threatening illness and to take other necessary measures to prolong one’s own life is based upon the prohibition against suicide may be inferred from comments of Ran, Shemot 28a. Rambam, Hilkhot Shemot 5:20, rules that one who swears not to eat for seven days has sworn a vain oath and, accordingly, is to be punished immediately for that infraction but may eat whenever he wishes. Ran agrees with Rambam’s ruling but not with his reasoning. Rambam regards the oath as vain because it cannot be fulfilled, just
as an oath not to sleep for a period of three days is not capable of fulfillment. Ran disagrees and argues that, although a person cannot keep himself awake, he can refrain from eating even though he endangers himself in the process. Nevertheless, Ran regards the oath as vain because “one who has sworn to kill himself has actually sworn to transgress the words of the Torah for Scripture states explicitly ‘But your blood of your lives will I require’... or also ‘take heed of yourself and safeguard yourself.’” Ran explicitly declares that the prohibition against suicide and the obligation to avoid danger mandate active intervention to seek food in order to sustain life. The selfsame obligations require the individual to seek medical treatment as well.

13. Yated Ne’eman, 29 Kislev 5755, p. 56.
15. Loc. cit.
18. See Jewish Bioethics, p. 28; Judaism and Healing, pp. 116-118; and the more extensive discussion in Contemporary Halakhic Problems, IV (Hoboken, 1995), 203-217.
20. See Ziz Eli’ezer, XIII, no. 87. See, also R. Nathan Zevi Friedman, Ha-Torah ve-ha-Medinah, V-VI, 229; and R. Iser Y. Unterman, Torah she-be‘al Peh, XI (5729), 14.
21. Cf., however, R. Isaac Liebes, Teshuvot Bet Avi, II, no. 153, p. 213. Rabbi Liebes cites Rambam’s comment in his Commentary on the Mishnah, Nedarim 4:4 (see also idem, Mishneh Torah, Hilkhot Nedarim 6:8) indicating that the scriptural exhortation with regard to returning lost property also serves to establish an obligation requiring the physician to render professional services in life-threatening situations. See Sanhedrin 73a. Rabbi Liebes comments that “on the basis of this derivation, the physician is obligated to restore [the patient’s] body, i.e., in a situation in which there is hope to restore the body entirely, but in a situation in which by means of this [treatment] he will not longer restore [the patient’s] body but, on the contrary, will cause him additional pain and suffering, with regard to this he is not at all obligated.” Rabbi Liebes’ argument is not compelling for two reasons: 1) The obligation to restore property is in no way related to the duration of the useful life of the lost item. Hence restoration of the body should be required regardless of the fact that longevity anticipation is limited to even a brief period of time. 2) Although, as indicated by the Gemara, Baba Kamma 85a, specific scriptural authorization is required to treat the sick, once such sanction has been granted the obligation with regard to therapeutic intervention is no different from other forms of preservation of life. Failure to intervene constitutes a violation of the commandment “nor shall you stand idly by the blood of your fellow” (Leviticus 19:16). Thus Shulhan Arukh, Yoreh De’ah 336:1, states: “The Torah gave permission to the physician to heal. This is a religious precept and is included in the cate-
gory of saving life, and if the physician withholds [his services] it is considered as shedding blood.” Non-therapeutic rescue as described in Sanhedrin 73a, e.g. rescue from drowning or from a wild animal, is mandatory regardless of age, state of health or length of the natural longevity anticipation of the victim. Accordingly, equating medical intervention with other forms of rescue serves to establish an obligation to prolong life even if a complete cure is not possible.

22. Ziz Eliezer, IX, no 47, sec. 5.

23. There is considerable confusion in some circles regarding the distinction between a goses and treifah. A treifah is a person or animal who, either as the result of congenital anomaly or trauma, suffers the loss or perforation of one or more specified organs and, as a result, is presumed to be incapable of surviving for a period of twelve months. The primary import of classification of a human being as a treifah is with regard to punishment for homicide: murder of a treifah, although encompassed within commandment “Thou shalt not kill,” is not punishable as a capital offense. For virtually all other dimensions of Jewish law the status of a treifah no different from that of normal persons. A goses, as defined by Rema, is a moribund person whose demise is imminent. A person suffering from a degenerative, physiological malady may or may not be a goses depending upon his clinical state, but in the absence of congenital anomaly or trauma affecting specific organs, such a person is not a treifah. Moreover, it must be emphasized that, insofar as the obligation of rescue and the obligation to prolong life is concerned, a treifah is treated no differently from any other person. See Iggerot Mosheh, Hoshen Mishpat, II, no. 73, sec. 4.

24. See, for example, R. Yechiel Michal Epstein, Arukh ha-Shulhan, Yoreh De‘ah 339:4, and Iggerot Mosheh, Hoshen Mishpat, II, no. 74, sec. 1; see also infra, note 37 and accompanying text.

25. Cf., R. Ya‘akov Yisra’el Kanievski, Kraina de-Iggerata (Bnei Brak, 5746), no. 190: “With regard to the basic principle that everything that can prolong the life of a sick person [even for a brief period (hayyei sha‘ah)] must be done, in truth I, too, heard such a dictum in my childhood but I do not know if it [stems from] a reliable person.” That statement has been cited by some as reflecting the notion that active intervention on behalf of the terminally ill is not required. However, Rabbi Kanievski’s immediately following citation of Yoreh De‘ah 339:1 and his ensuing discussion make it abundantly clear that treatment may be withheld only because as a result “additional suffering” will be imposed upon the patient or because the patient is a goses. In fact, he expresses doubt with regard to the correct interpretation by Rema’s position, i.e., whether the active/passive distinction drawn by Rema is predicated upon absence of an obligation to accept inordinate suffering as discussed below or whether it is a distinction relevant solely to the treatment of a goses. The clear implication is that he agrees that in all other circumstances it is indeed the case that “everything that can prolong the life of a sick person, even for a brief time, must be done.”

26. See also Tosefet Yom Tov, Erukhin 1:3. Rambam, in his commentary on Erukhin 1:3, describes a goses as a moribund person from whose throat a “death rattle” emanates.

27. This is explicitly stated by Teshuvot Bet Ya‘akov, no. 59, who maintains that
it is otherwise forbidden to prolong the life of a goses.

28. See infra, note 38.

29. See also Perishah, Tur Yoreh De'ah 339:5, who writes, “It appears from this that it is the nature of gesisah to be three days.” Since it is simply not possible to understand this authority as asserting that gesisah must always extend for a period of three days, his comment must be understood as stating that the period of gesisah extends no longer than three days.

See also Iggerot Mosheh, Hoshen Mishpat, II, no. 75, sec. 5, who states explicitly, “... it is also impossible that [a goses] live more than three days as is explicit in Shulhan Arukh, Yoreh De'ah 339:2 ...”


30. See Bet Shmu'el, Even ha-Ezer 17:18 and 17:94. Cf., however, R. Ezekiel Landau, Dagul me-Revavah on Bet Shmu'el, Even ha-Ezer 17:94; Pithei Teshuvah, Even ha-Ezer 17:13 and Yoreh De'ah 339:3; and Gilyon Maharsha, Yoreh De'ah 339:2.

31. Iggerot Mosheh clearly indicates that the vast majority of those who manifest the criteria of gesisah, as determined of those proficient in such matters, cannot survive for more than three days despite medical treatment. This is evident from his statement in the previously cited responsum, Hoshen Mishpat, II, no. 75, sec. 5, “... and it is not to be considered (ve-lo shayyakh) that they might give [the goses] medical treatments” as well as from the further statement “... therefore if we see that it seems to the people caring for him that he is a goses more than three days and he is alive, we should rather assume that they are not proficient and that they erred in categorizing him as a goses even prior to three days; and if those greatly proficient stated that he was a goses more than three days earlier, of necessity this person is of the minority. ...” Thus, consistent with his view that gesisah does not occur until additional criteria not mentioned by Rema become manifest, Iggerot Mosheh apparently maintains that, even in our day, medical science cannot reverse the state of gesisah.


34. It has been argued that, in stating that a goses cannot survive for more than a period of three days, Maharam of Rothenberg is stating a fact rather than advancing a qualification to the definition of gesisah. See R. Gedaliah Rabinowitz, Halakhah u-Refu'ah, III (Jerusalem, 5743), 113-114. It may be presumed that this is the position of some contemporary authorities, who sanction withholding of treatment from a goses but who do not explicitly indicate that such treatment is mandatory if life can be prolonged thereby for a minimum period of three days. See, for example, Mishneh Halakhah, VII, no. 287. It might then be argued that, since advances in medical science now make prolongation of the life of a goses a distinct possibility, the rule formulated by Maharam of Rothenberg as recorded in Shulhan Arukh regarding commencement of mourning for a person observed to be a goses and Magen Avraham's ruling regarding the wife's eligibility to contract a
new marriage are no longer valid. Nevertheless, it is quite clear that, even according to those authorities, inability to bring up secretions from the chest as evidenced by their collection in the area of the throat, even when coupled with loss of control over other bodily functions, is not sufficient to render the patient a goses. Assuredly, gesisah cannot be indefinite in duration. Thus, Igerot Mosheh, Hoshen Mishpat, III, no. 73, sec. 3, speaks of gesisah as a state readily recognized by experienced members of a hevra kadisha. Although Igerot Mosheh felt himself unable to spell out the precise clinical criteria of gesisah, it is clear that he regards only moribund patients actually experiencing “death throes” to be in a state of gesisah. It is clear that if that state can be reversed there is an obligation to do so. Modern medicine, although at times capable of effecting such reversal, does not presume that a goses continues to experience death throes for a significant period of time. Thus it seems that even if Maharam of Rothenberg’s comments are regarded as empirical rather than definitional, in practice, a patient who is capable of surviving for any significant period of time is not a goses. According to Igerot Mosheh who demands manifestation of clinical criteria beyond those spelled out by Rema, criteria that in his opinion are best recognized by members of a hevra kadisha, it must be concluded that even a patient who “brings up secretions in his throat” because of constriction of the chest and who is incapable of surviving for a period of seventy-two hours but who does not manifest the unspecified clinical symptoms to which Igerot Mosheh refers, is not a goses. Hence, in the absence of intractable physical pain, such a patient must be provided with any treatment capable of prolonging life provided that such treatment does not threaten to foreshorten the brief period that the patient may be expected to live.

35. Some contemporary writers purport to find talmudic precedent for this position in the talmudic narrative concerning R. Hanina ben Tradion and his executioner recorded in Avodah Zarah 18a. R. Hanina ben Tradion was being burned at the stake and tufts of wool were soaked in water and placed over his heart so that he would not die quickly. His disciples advised him to open his mouth so that the fire might enter and he be spared further agony. R. Hanina explained that such an act is forbidden. The executioner then offered to remove the tufts of wool if R. Hanina would guarantee him entrance into the world world-to-come. R. Hanina agreed and the tufts were removed. This, it has then argued, serves to demonstrate that withdrawal of impediments to death is permissible. The argument, however, is based upon a misreading of the text. As recorded by the Gemara, the words of the executioner were: “Rabbi, if I increase the flame (emphasis added) and take away the tufts of wool from over your heart, will you bring me to life in the world-to-come?” The executioner did not simply remove the wool tufts that impeded death; he also “increased the flame” by means of an overt act, i.e., he engaged in active euthanasia, an act that is categorically prohibited. Cf., Yam shel Shlomoh, Baba Kamma 8:59 and Teshuvot Be’er Mosheh, VIII, no. 239, sec. 4. Various hypotheses have been advanced in justification of the conduct of R. Hanina ben Tradion; see R. Moshe Feinstein, Ha-Pardes, Shevat 5736, p. 12; idem, Igerot Mosheh, Yoreh De’ah, II, no. 174, anaf 3, and Hoshen Mishpat, II, no. 74, sec. 2; R. Eliezer
36. The statement of R. Zalman Nehemiah Goldberg, Moriah, vol. 8, no. 4-5 (Elul 5738), p. 52, reprinted in Halakhah u-Rifu'ah, II, 154, to the effect that there is no obligation of rescue with regard to a goses “who prefers death to life because of suffering or [because] he has no benefit from life since he has no mental function” is not supported by earlier sources and is not substantiated by halakhic categories governing the obligation of rescue. Unlike Teshuvot Bet Ya'akov, no. 89, Rabbi Goldberg permits violation of Shabbat prohibitions in order to prolong the life of a goses, but only if the patient derives “enjoyment” from, and prefers, such prolongation of his life.

37. See also Bet Lehem Yehudah, Yoreh De'ah 339:1; R. Simchah ha-Kohen Kook, Torah she-be'-al Peh, XVIII, 86-87; and Mishneh Halakhot, VII, no. 287.

38. Teshuvot Bet Ya'akov carefully distinguishes between a goses and a person buried beneath the debris of a fallen wall or the like. Shulhan Arukh Orah Hayyim 329:3, rules that Sabbath restrictions are suspended on behalf of such an individual despite the fact that he cannot survive for more than a very brief period of time. The accident victim can be distinguished from a goses only by virtue of the fact that he does not as yet manifest the clinical criteria of gesisah.

39. See Or ha-Hayyim, Exodus 31:16, who remarks that the Sabbath may be violated on behalf of such a person only if it is anticipated that he will survive long enough to observe at least one Sabbath. That view is rebutted by Minhat Hinnukh, Kuntres Moskh ha-Shabbat, sec. 39, s.v., ve-her'ah li lamdan ehad.

40. See also Mahazit ha-Shekel, Orah Hayyim 329:4; Teshuvot Hatam Sofer, Yoreh De'ah, no. 338; and Birkei Yosef, Orah Hayyim 329:4.

41. Indeed the reason advanced by the Gemara for administering a life-prolonging remedy, viz., “perhaps he will live briefly, long enough to set his house in order,” far from supporting Shevut Ya'akov’s position, would appear to contradict his view since the obligation of pikuah nefesh, if it extends even to the terminally ill, is sufficient to require remedies that merely prolong life even in the absence of any possibility of “setting one’s house in order.” Cf., R. Zevi ha-Kohen Zarkowski, Bet Shmu’el (New York, 5740), ad locum. Of course, vinegar may have been regarded as a folk remedy of no demonstrated value and hence not a mandatory form of treatment. See also the resolution offered infra, note 57. Those analyses do not, however, serve to explain how the text serves as a proof for Shevut Ya'akov’s position.

42. Ziz Eli’ezer, XIII, no. 89, sec. 14, draws a tenuous distinction between the state of gesisah and the actual process of dying, i.e., the departure of the soul from the body. The latter state he terms gemar kelot ha-nefesh; in Assia, Nisan 5738, p.18, he employs the phrase “sha’at yezii’at neshamah” in making the identical distinction.

43. “Experimental Procedures: The Concept of Refu’ah Bedukah,” Contem-
44. In the course of an oral discussion with this writer, the late R. Jacob Kami-
netsky presented this interpretation of Rema as self-evident. This analysis of
Rema's positions is also inherent in the position of R. Nathan Zevi
Friedman, *Ha-Torah ve-ha-Medinah*, V-VI, 229-232, who rejects the
active/passive distinction and insists that medical treatment and medicaiton
must be continued even though suffering is prolonged thereby. See Rabbi
Friedman's italicized comments, *ibid.*, pp. 229, 230 and 231. Cf., R.
Chaim David Halevy, *Tehumin*, II (5741), 303-305, who recognizes that
Rema's examples are in the nature of *segulot* but fails to take cognizance of
that aspect of Rema's comments as a possible limiting factor in applying
Rema's rule.

45. For an alternative explanation see infra, note 57.

46. See also R. Chaim David Halevy, *Tehumin*, II, 305.

47. That there is pain at the moment of death may be inferred from the state-
ment of the Gemara, *Yoma* 20b, declaring that the sound of the soul as it
departs from the body is heard from “one end of the universe to the other.”
See also *Bereishit Rabbah* 6:12. For a discussion of the cause of the anguish
see R. Isaac Arama, *Akeidat Yizhak*, *Parashat ve-Zot ha-Berakhah*, sha'ar
105.

48. R. Shmu'el ha-Levi Woszner, *Shevet ha-Levi*, VI, no. 179, accepting the
position of *Shuvut Ya'akov*, declares that it is permissible, but not mandatory,
to prolong the life of a *goses* and further states that since it is permissible
to do so [such treatment] enters into the category of *pikuah nefesh* that
takes precedence over *Shabbat*. He further states that even if it is held that
treatment of a *goses* is obligatory that is so only if the treatment does not
cause greatly enhanced and prolonged suffering. Although *Shevet ha-Levi*
asserts that in circumstances of inordinate suffering treatment of a *goses* is
not required he does not adopt the position of *Igerot Mosheh* who asserts
that such suffering is always attendant upon a state of *gesisah*.

49. See supra, note 8 and accompanying text.

50. There is perhaps some ambiguity with regard to the implication of this
statement. The phrase “it is permissible to withhold medications that cause
suffering” standing alone, might be understood as limited to suffering
caused by the medication, i.e., as a side-effect, rather than by the underlying
condition. However, the earlier reference to a patient who “experiences
great pain and suffering” seems to indicate that the suffering to which refer-
ence is made is not the product of the medication but of the underlying
pathology. Moreover there does not appear to be any halakhic considera-
tion that would support such a distinction between pain that is the result of
a malady and pain induced by medication. Indeed, no distinction of that
nature appears in the statement of 29 Kislev 5755 to which Rabbi Auerbach
was a signator.

51. Cf., *Magen Avraham*, *Orah Hayyim* 656:7, who cites a variant opinion lim-
iting the obligation to ten percent of one's fortune.

52. Cf., however, *Bi'ur ha-Gra*, *Toreh De'ah* 257:5.

53. See also *Teshuvot Zera Emet*, II, no. 51; R. Mordecai Schwadron, *Teshuvot
Maharsham*, V, no. 54; R. Elijah Feinstein, *Halikhot Elyahu*, no. 33; Dar-
kei *Teshuvah*, *Toreh De'ah* 157:57; R. Israel Meir ha-Kohen, *Ahabat Hesed,*

54. Cf., however, R. Abraham I. Kook, Mishpat Kohen, no. 144, sec. 17, s.v. amnam be-ikar ha-inyan, who asserts that all authorities agree that rescue of a person whose life is in danger requires the sacrifice of one’s entire fortune. Expenditure of twenty percent of one’s fortune, he argues, is mandated by the commandment “and your brother shall live with you” (Leviticus 25:36). Accordingly, he concludes that the additional negative commandment “nor shall you stand idly by the blood of your fellow” must be understood as necessitated in order to mandate expenditure of one’s entire fortune in order to preserve a life.

See also, R. Yitzchak Zilberstein, Assia, vol. 14, no. 3, p. 50, who, despite his earlier citation of differing opinions with regard to whether a person is obligated to expend his entire fortune or only twenty percent of his wealth in order to save the life of another, endeavors to demonstrate that he must expend his entire fortune in order to prolong his own life even for a brief period of time. His argument is in the form of deduction from relevant halakhic provisions without an endeavor to prevent a conceptual basis for that principle.

55. See Mishpat Kohen, no. 144, sec. 17, s.v. amnam be-ikar ha-inyan.

56. Igerot Mosheh’s conclusion is subject to challenge on the grounds that, although a person may not be obligated to deliver a body for dissection if he thereby subjects himself to inordinate anguish, it does not follow that another party is relieved of his obligation because of the distress caused to relatives of the deceased. Relatives have no proprietary interest in the body of deceased kin. The mizvah of pikuah nefesh devolves upon those possessing the knowledge and skill required to carry out the procedure. The sui generis mental distress of persons not responsible for carrying out the obligation appears to be irrelevant in assessing the obligation of those charged with that duty.

57. The difficulty presented by the statement of the Gemara, Avodah Zarah 12a, discussed supra in the text accompanying note 45, advising a person who swallows a wasp to drink a quantity of vinegar solely in order to put his affairs in order is readily explained on the basis of this principle if it is assumed that such a person suffers pain of this magnitude.

The incident involving the executioner of R. Hanina ben Tradion cited supra, note 35, may also be explained on the basis of this principle. R. Hanina ben Tradion neither performed an overt act hastening his own death nor told the executioner that such an act was ever permissible as a matter of Halakhah. He did indeed “place a stumbling block before the blind” in allowing the executioner to do so. Thus, although the executioner’s deed was categorically forbidden as an act of homicide, R. Hanina himself transgressed a simple negative commandment. Although R. Hanina would have been required to expend his entire fortune in order to avoid that transgression he was not obliged to accept the greater burden of prolonged suffering entailed by a slow death at the stake. Cf., Igerot Mosheh, Hoshen Mishpat, II, no. 74. The distinction between categorically prohibited homicide and violation of the prohibition against “placing a stumbling block before the blind” in causing a gentile to perform such an act is for-

58. For an alternative explanation see *Tosafot, Pesahim* 53b.

59. See also *Teshuvot Be'er Mosheh*, VIII, no. 239, sec. 4.


