Withholding/Withdrawing Treatment of the Terminally Ill Valley Beit Midrash February 11, 2019

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Definition of death

1. משנה מסכת יומא פרק ח משנה ז

מי שנפלה עליו מפולת ספק הוא שם ספק אינו שם ספק חי ספק מת ספק עובד כוכבים ספק ישראל מפקחין עליו את הגל מצאוהו חי מפקחין עליו ואם מת יניחוהו:

If debris falls on someone [on Shabbat] and it is uncertain whether he there or not, whether he is alive or dead...one must probe the heap [of debris] for him. If he is found to be alive, one must remove [the debris] for him.

2. תלמוד בבלי מסכת יומא דף פה עמוד א

תנו רבנן: עד היכן הוא בודק? עד חוטמו, ויש אומרים: עד לבו. בדק ומצא עליונים מתים - לא יאמר: כבר מתו התחתונים. מעשה היה, ומצאו עליונים מתים ותחתונים חיים... אמר רב פפא: מחלוקת ממטה למעלה, אבל ממעלה למטה, כיון דבדק ליה עד חוטמו - שוב אינו צריך, דכתיב כל אשר נשמת רוח חיים באפיו

The Rabbis taught: How far does one search [to see whether the person is alive or dead]? Until [one reaches] his nose. Some say: Until [one reaches] his heart. If one checks and finds the upper ones to be dead, he should not say that [surely] the ones underneath must have died. [The Braisa records] There once occurred an incident [where a building collapsed and they searched throughout the rubble] where they found the upper ones dead and lower ones alive...Rav Pappa said the dispute [whether one should check up to the heart or up to the nose is only when checking] from the bottom [of the body] to the top [from feet to head]. However, from the top towards the bottom, since he already checked up to the nose [and there was no breathing], he does not need to check further. Since it is written "All whose nostrils was the breath of the spirit of life [since breath demonstrates the spirit of life, without breath it shows the cessation of life].

3. רש"י מסכת יומא דף פה עמוד א

עד חוטמו – ואם אין חיות בחוטמו, שאינו מוציא רוח – ודאי מת, ויניחוהו

AD CHOTMO – 'Until [one reaches] his nose' – If there is no life in his nose, in that it does not exhale breath, he is surely dead.

הכי גרסינן: אמר רב פפא מחלוקת מלמטה למעלה - מחלוקת דהנך תנאי, דמר אמר: עד לבו, ומר אמר: עד חוטמו, מלמטה למעלה שמוצאו דרך מרגלותיו תחלה, ובודק והולך כלפי ראשו, דמר אמר: בלבו יש להבחין, אם יש בו חיות, שנשמתו דופקת שם, ומר אמר: עד חוטמו דזימנין דאין חיות ניכר בלבו, וניכר בחוטמו

HACHI GARSINAN – The dispute...arises only...when the examination is made towards the head. One opinion is that his heart indicates whether he is alive, for his breath pulsates there. The other opinion is that one should examine until [one reaches] his nose, because sometimes no life can be detected at the heart but [signs of life] can be detected at the nose.

4. רמב"ם הלכות שבת פרק ב הלכה יח

מי שנפלה עליו מפולת ספק הוא שם ספק אינו שם מפקחין עליו, מצאוהו חי אף על פי שנתרוצץ ואי אפשר שיבריא מפקחין עליו ומוציאין אותו לחיי אותה שעה If debris falls on someone, it is doubtful whether or not he is there, move away the debris. If you find him alive even if he broken and it is impossible that he will be healed you uncover the debris and take him out that he may live even for that temporary time. Check until his nose and upon examination no sign of breathing can be detected at his nose, the victim must be left where he is [until after Shabbat] for he is already dead.

5. שולחן ערוך אורח חיים סימן שכט סעיף ד

אפי' מצאוהו מרוצץ, שאינו יכול לחיות * אלא לפי שעה, מפקחין ובודקים עד חוטמו; אם לא הרגישו בחוטמו חיות, (י) אז ודאי מת לא שנא פגעו בראשו תחלה (יא) לא שנא פגעו ברגליו תחלה

Even if he is found so severely injured that he cannot live for more than a short while, one must clear and probe [the debris] until one reaches his nose. If no sign of life can be detected at the nose, he is surely dead. It makes no difference whether they had first uncovered his head or his feet.

6. Tradition 1973, Rabbi J. David Bleich

Rabbi J. David Bleich writes that "Brain death and irreversible coma are not acceptable definition of death in so far as Halakha is concerned. The sole criterion of death accepted by halakha is total cessation of cardiac and respiratory activity."

6a. Tradition 1994, Rabbi Moshe Dovid Tendler, Dr. Fred Rosner

In response, the proponents of recognizing brain death as a proper halakhic standard write: "All rabbinic authorities agree that the classic definition of death in Judaism is the absence of spontaneous respiration in a patient with no other signs of life. A brief waiting period of a few minutes to a half hour after breathing has ceased is also required. Brain death is a criterion for confirming death in a patient who already has irreversible absence of spontaneous respiration.... This view is now supported by more and more Rabbis.

7. Letter from Rav Moshe Feinstein to Dr. Elliot Bondi (grandson of Rav Yosef Breuer)

Rosh Chodesh Kisley 5746 (November 14, 1985)

...My grandson, Rav Mordechai Tendler, has spoken to me at length about many of the doubts and concerns you have raised because of the New York State appellate court's ruling that brain-stem death should be regarded as an alternative criterion for determining death.

For practical purposes, like I heard from my son-in-law, Rav Moshe Dovid Tendler, shlit'ah, detailed that the judges of the secular courts accept as a criteria, that is in agreement with halakha, called the 'Harvard Criteria' that is considered "like a person with his head cut off" that is to say that his brain is actually destroyed.

And here, even if his heart is still beating for few days, nevertheless, any time that ill person does not have the ability to breath on his own, he is considered as a dead person, as I explained in Iggrot Moshe, YD,Part 3, Siman 132.

However, it may begin that certain hospitals or countries will begin to consider ill people who are legally alive as dead. And it will obligate doctors that treat this sick person, to command [the doctor] to disconnect patient from a ventilator ... nevertheless a person should stop himself from treating the sick person and assign the patient to someone else to do what they want.

In a situation where this is a person who is a Jew, the doctor is obligated, like with all Jews to do all that he can to save him, even if it is for a few days and even if he is a Gosses, to pay for his being reintubated and all his treatments...to lengthen his Chayei Sha'a (short-term life)....

The Importance of Saving a Life

8. תלמוד בבלי מסכת סנהדרין דף לז עמוד א

וכל המקיים נפש אחת מישראל - מעלה עליו הכתוב כאילו קיים עולם מלא

"to save someone's life is tantamount to saving a whole world" – value of human life is infinite.

9. תלמוד בבלי מסכת יומא דף פב עמוד א

שאין לך דבר שעומד בפני פקוח נפש חוץ מעבודה זרה וגילוי עריות ושפיכות דמים. There is nothing that stands in the way of saving a life except idolatry, forbidden sexual relations and murder.

Withholding/Withdrawing Treatment

10. תלמוד בבלי מסכת כתובות דף קד עמוד א

______ ההוא יומא דנח נפשיה דרבי, גזרו רבנן תעניתא ובעו רחמי, ואמרי: כל מאן דאמר נח נפשיה דר', ידקר בחרב.

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

On the day that R. Yehuda the Prince lay dying, in great pain and distress, a fast was proclaimed and everyone prayed for mercy. The maidservant of Rebbe ascended to the roof and proclaimed, "The heavenly ones want Rebbe and the mortals want Rebbe. May it be Thy will, O Lord, that the mortals should persuade the heavenly ones." But when she saw that Rebbe continued [suffering, placing and removing his Tefillin] to go back and forth to the toilet, she pleaded that the angels should persuade the mortals [and allow him to die], but still to no avail. Finally, she then ascended to the roof and threw some dishes to the ground; when the crowd stopped praying for an instant due to the distraction, Rebbe died.

11. תלמוד בבלי מסכת עבודה זרה דף יח עמוד א

אמרו: לא היו ימים מועטים עד שנפטר רבי יוסי בן קיסמא, והלכו כל גדולי רומי לקברו והספידוהו הספד גדול, ובחזרתן מצאוהו לרבי חנינא בן תרדיון שהיה יושב ועוסק בתורה ומקהיל קהלות ברבים וס"ת מונח לו בחיקו. הביאוהו וכרכוהו בס"ת, והקיפוהו בחבילי זמורות והציתו בהן את האור, והביאו ספוגין של צמר ושראום במים והניחום על לבו, כדי שלא תצא נשמתו

They said [that] it was not [even] a few days [that passed] before R'Yose Ben Kisma died. And all the great men of Rome went to bury him. And they mourned him with a great funeral. And upon their return [from the funeral] they encountered R. Chanina ben Teradyon who was sitting engaged in Torah [study], and convening gatherings in public [for its dissemination], and a Torah scroll was resting in his lap [all inopen violation of their edicts]. They [therefore] brought him and wrapped him in a torah scroll, encircled him with bundles of vine shoots and set them on fire. The Romans then brought tufts of wool, soaked them in water and placed them over his heart, so that he should not expire quickly...His disciples called out, "Rabbi what do you see? He answered them, "The parchments are being burnt but the letters of the Torah are soaring on high." "Open then your mouth" [they said] "so that the fire enter into you" [and put an end to your agony]. He replied, "Let He who gave me [my soul] take it away, but no one should injure oneself." The Executioner then said to him, "Rabbi, if I raise the flame and take away the tufts of wool from over your heart, will you cause me to enter into the life to come?" Yes, he answered. [The executioner said] Swear to me [that you will] and [R. Chanina] swore to him. Immediately, [the executioner] increased the flame and removed the tufts of wool from over R. Chanina's heart [and] the latter's soul departed [the body] quickly. Also The executioner jumped and fell into the fire, [whereupon] a heavenly voice issued forth and proclaimed: R. Chanina Ben Teradyon and the executioner have now been readied for the life of the world to come.

12. רמ"א - יורה דעה סימן שלט סעיף א

It is forbidden to hasten the death of the Gosses (the soon the be deceased). For example, if someone is a Gosses for a long period of time but cannot die, it is forbidden to remove the pillow from under him, as some wish to do, believing that certain bird feathers are causing this (the delay of his death). So too, he should not be moved from his place.... However, if there is something that prevents his soul from departing, such as a knocking noise near that house, like that of a woodchopper, or there is salt on his tongue, and these prevent his soul from departing, it is permitted to remove it, because this is not an affirmative act, but rather the removal of an impediment.

13. שו"ת אגרות משה חלק יו"ד ג סימן קלב

...זהו בסתם חולים שנקרב מצבם למיתה ולא הוצרכו למכונה שיעזרם לנשום, אבל איכא חולים גדולים שלא יכלו לנשום והניחו הרופאים בפיהם מכונה שנושם ע"י זה, שע"י המכונה הא שייך שינשום אף שהוא כבר מת דנשימה כזו הא לא מחשיבו כחי, הנה אם לא ניכר בו בענינים אחרים ענין חיות שנראה כלא מרגיש בכלום אף לא בדקירת מחט וכהא שקורין קאמא כל זמן שהמכונה עובדת עבודתה אסור ליטול מפיו דשמא הוא חי ויהרגוהו בזה, אבל כשפסקה מלעבוד שנחסר העקסינזען /החמצן/ שהיה שם לא יחזירו לפיו עוד הפעם עד עבור זמן קצר כרבע שעה, שאם אינו חי כבר יפסיק מלנשום וידעו שהוא מת, ואם יחיה היינו שיראו שהוא נושם גם בלא המכונה אך בקושי ובהפסקים יחזירו המכונה עוד הפעם לפיו מיד וכה יעשו הרבה ...

Iggeros Moshe, Yoreh De'ah III:132 (5 Iyyar 5736 [May 5, 1976])-

The preceding discussion refers to a terminally ill patient who is not on a ventilator. Some people, however, do require the aid of a ventilator. The ventilator inflates the lungs even though [the patient] is actually dead.

Breathing of this kind is not regarded as a sign of life. The "breath of life" test requires that the patient breathe on his own. Breathing by means of a machine does not satisfy the halakhic definition of respiration, and therefore the patient is considered to be dead so long as the other criteria are met. If no sign of life is apparent to the eye, and [the patient] is absolutely unresponsive to any stimulus, such as a pinprick, [he] is in a coma, but it is still forbidden to remove the respirator for fear that he may be alive and this will kill him. But when the ventilator is being serviced or the oxygen replaced [if oxygen tanks are used rather than having oxygen piped in], it is possible to observe him for a period of approximately fifteen minutes [while the ventilator is off because the tank is being replaced]. If there is no evidence of independent respiratory activity during this period, it is certain that [the patient] shows any sign of respiration, he should be re-intubated, and the machine allowed to assist him until the point [now referred to as apnea] at which he is totally unable to breathe independently.

Pain and Suffering - Mental Anguish-

14. תלמוד בבלי מסכת תענית דף כג עמוד א

Honi sat down to have a meal and sleep overcame him. As he slept a rocky formation enclosed upon him which hid him from sight and he continued to sleep for seventy years. When he awoke he saw a man gathering the fruit of the carob tree and he asked him, Are

you the man who planted the tree? The man replied: I am his grandson. Thereupon he exclaimed: It is clear that I slept for seventy years. He then caught sight of his ass who had given birth to several generations of mules;13 and he returned home. He there enquired, Is the son of Honi the Circle-Drawer still alive? The people answered him, His son is no more, but his grandson is still living. Thereupon he said to them: I am Honi the Circle-Drawer, but no one would believe him. He then repaired to the Beth Hamidrash and there he overheard the scholars say, The law is as clear to us as in the days of Honi the Circle-Drawer, for whenever he came to the Beth Hamidrash he would settle for the scholars any difficulty that they had. Whereupon he called out, I am he; but the scholars would not believe him nor did they give him the honour due to him. This hurt him greatly and he prayed [for death] and he died. Raba said: Hence the saying, Either companionship or death.

15. שו"ת מנחת שלמה חלק א סימן צא

כד

אך מסתבר שאם החולה סובל מכאבים ויסורים גדולים או אפילו סבל נפש חזק מאוד, חושבני לנשימה חייבים ליתן לו גם נגד רצונו, אבל מותר להמנע מתרופות הגורמות סבל שאוכל וחמצן לחולה אם החולה דורש את זה. אולם אם החולה ירא שמים ולא נטרפה דעתו רצוי מאוד להסביר לו שיפה שעה אחת בתשובה בעוה"ז מכל חיי העולם הבא,

24.

...it seems reasonable to say that if the patient is suffering from great pain, even extreme pain and distress, he must be given food and oxygen even against his will; but it is permitted to refrain from giving medications that cause pain, if the patient so requests. However if the sick person fears Hashem and has not lost his faculties, it is extremely desirable to explain to him that [experiencing] one hour of repentance in this world is better than [experiencing] all of the world to come.

16. שו"ת אגרות משה חלק חו"מ ב סימן עג

וחולה מסוכן שאינו יכול לנשום צריך ליתן לו חמצן (אקסידזשען) אף שהוא באופן שא"א לרפאותו, שהרי הוא להקל מיסוריו, דהיסורין ממה שא"א לנשום הם יסורים גדולים והחמצן מסלקו

Iggros Moshe, Choshen Mishpat II:73 [16 Iyyar 5742 (May 9, 1982)]-

...A critically ill patient who cannot breathe must be given oxygen, even if he cannot be cured, for this alleviates his suffering. The inability to breathe causes great suffering, and the oxygen relieves that suffering....

17.שו"ת אגרות משה חלק חו"מ ב סימן עד

ופשוט שאף רופאים מומחים גדולים כשאין יודעין לרפאות מחלה זו שיש בהחולה אין להם ליתן רפואות שאין מרפאין ולא מקילין היסורין ואין מחזיקין כח החולה שיוכל לסבול, ורק אם נשקט רוחו דהחולה במה שיתן לו הרופא איזה דבר צריך ליתן לו...

אח"כ נודע לי שכוונת כתר"ה היה שאולי שמאחר שבדין זה אנו אומדין איכות החיים ומתירין בשב ואל תעשה שלא לרפאות חולה, יש אולי לחוש שרשעים יקחו זה כמקור שיכולים להוסיף עוד חלוקים באיכות החיים, לומר שאין צריך לרפאות אחד שר"ל שוטה או אחד שר"ל היה באסון והוזק ונעשה כדומם וכדומה. והנה באמת לא ראיתי מקום לטעות בדברי שליכא חיוב לרפאות למי שהוא שוטה שנחלה ולמי שאינשי דלא מעלי אומרין על איזה אינשי שאין דעתם כראוי כל כך שהם רק כמו ירק שאין לרפאותן כשנחלו באיזו מחלה כשאין לו יסורין והריפוי הוא כדי שיהיה בריא ויוכל לחיות זמן הרבה, דודאי פשוט וברור וידוע לכל בן תורה ויר"ש שמחוייבין לרפאות להציל במה שאפשר לכל אדם בלא שום חלוק בחכמתו ובדעתו

Iggeros Moshe, Choshen Mishpat II:74 [23 Adar II 5744 (March 27, 1984)]-

...It is clear that even the most expert physicians cannot cure the patient, they should not give medications which do not cure, alleviate the pain, or give the patient strength to endure suffering. The physician is required to administer only those treatments which will put the patient at ease...

Afterwards, it became known to me that you have been concerned about my ruling that we examine the "quality of life" and on that basis allow a patient not to be given treatment. You are concerned...that this ruling may be used as a precedent to further broaden the definition of the "quality of Life" to the point that one might conclude that there is no need to cure someone who, God forbid, is an imbecile or was in an accident and was reduced to a vegetative state, and similar cases.

I honestly do not see how someone could misconstrue my words [to mean] that there is no obligation to cure an imbecile who becomes ill, or a person described by some...as so mentally deficient as to be in a vegetative state....even if they do not suffer, and the treatment will enable them to regain their health and to live for a long period of time. It is clear and well understood by any Torah scholar or God-fearing person that we must treat and save every person and every possible means, without regard to his intelligence or understanding....

18. Dr. Avraham Steinberg: Encyclopedia Hilkhotit Refuit: s.v. Noteh la-mut (Terminally III), pgs. 57-58

According to the opinions that hold that, in certain circumstances, it is permitted to refrain from prolonging life- or even forbidden to prolong life – the following conditions and limitations have been established:

In principle, all procedures that supply the natural needs of the patient – such as food, drink, and oxygen – must be continued. Beneficial procedures for complications that any other patient would willingly accept – such as antibiotics for pneumonia, or blood in cases of severe hemorrhaging – must be administered, even against the patient's wishes.

On the other hand, there is no obligation to treat the underlying disease or severe complications that will clearly cause the patient to die if such treatment will only prolong his life somewhat, and there is no hope that it will fully cure him. There is certainly no [obligation to administer such treatment] if the treatment will increase the pain and suffering if the patient does not consent. This applies to such treatments as resuscitation, respiration, surgery, dialysis, chemotherapy, radiation and the like.

19. Nishmat Avraham, YD at 245: (Quoting Rav Shlomo Zalman Aurbach)

...Similarly, if a patient whose condition is considered hopeless has stopped breathing, or his heart has stopped beating, there is no obligation to try to resuscitate him or prolong his temporary life if this will increase his suffering.

20. The Terminally Ill Patient, Rabbi Avraham Steinberg, M.D. 4."Vegetative State" –

The last medical subject which I would like to address briefly is what today is termed the "vegetative state." I believe that this is a highly unfortunate, inhuman term. Without going into too much detail, we are speaking of a person whose cerebral cortex is completely destroyed, while his brain stem is completely healthy. Hence his condition is such that he is aware neither of himself nor of his surroundings, but his body continues to perform all the vital functions necessary to continue living. He breathes unassisted with no need for a ventilation machine. His heart beats, he sleeps and wakes, digests food, etc. Generally, healthy people who reach this condition can continue to live like this for many years without any hope of recovering.

21. SHEFER v. STATE OF ISRAEL,

Supreme Court of Israel, 1993

Before Deputy President Elon and Justices Maltz and Ariel

Decision in the Case Before Us.

- 63. The application before us, as submitted by the mother of Yael Shefer, is that the following treatments not be given, if and when the child's condition worsens:
 - A. Respiratory aid;
 - B. All medication, except to relieve pain;
 - C. Artificial nutrition