

Physician-Assisted Dying: Halachic Perspectives

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Jewish law regards life as a responsibility, not merely as a right. Not only is a person biblically forbidden from committing suicide,¹ but he is required to take affirmative steps to safeguard his life.² The precise parameters of these principles are the subject of other publications. This article addresses the halachic responsibilities of a person who encounters someone whose conduct violates these rules.³

Halacha rejects Cain's rhetorical question, "Am I my brother's keeper?"⁴ Instead, it provides that Jews are legally

1. Rambam, *Mishneh Torah, Hilchot Rotzeach U'Shemirat Nefesh* 2:2.

2. *Ibid.*, 11:4; R. Moshe Sofer, *Shut Chatam Sofer*, Y.D. 326.

3. There is a considerable halachic debate as to whether a person who is terminally ill may in certain circumstances passively fail to preserve his life by refusing medical treatment. See, e.g., R. Moshe Feinstein, *Iggerot Moshe*, Y.D. II:174 (3) (there is such a right); R. Shlomo Zalman Auerbach, *Minchat Shlomo* 91 (same). But see R. Eliezer Waldenburg, *Tzitz Eliezer* XV:40(4) (a patient has no right to refuse life-preserving treatment). See, generally, R. J. David Bleich, "Treatment of the Terminally Ill", 30:3 *Tradition* 51 (1996), at 70-77.

4. Genesis 4:9.

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and spiritually interrelated.⁵ As a result, Jews are generally: (1) prohibited from assisting others to violate halacha; (2) obligated to try to prevent such violations; and (3) directed to rescue others who are in physical danger, even if they caused the danger to themselves. After briefly examining the scope of each of these rules, we will apply them to the context of physician-assisted suicide.

PART I: The Prohibition Against Giving Improper Advice And Assisting Someone To Violate Jewish Law

The Torah states that "before the blind, do not place a stumbling block" (*lifnei iver lo titein michshol*).⁶ Rabbinic authorities apply the word "blind" to one who, whether because of intellectual ignorance or inadequate religious sensitivity, does not know the proper way to act.⁷

5 R. Yehuda HeHasid, *Sefer Hasidim* 93, 233, 601. See also R. Aryeh Kaplan, *Handbook of Jewish Thought* II, at 136-137:

When a single Jew sins, it is not he alone who suffers, but the entire Jewish people. In the Midrash, this is likened to passengers on a single huge ship. Though all the passengers may be very careful not to damage the hull, if one of them takes a drill and begins drilling holes under his own seat, the ship will sink, and all will drown. In the same manner, whenever any Jew does not keep the Torah, all others are affected spiritually. Such actions may even precipitate physical suffering for the Jewish people. [Citations omitted].

6. Leviticus 19:14.

7. Interestingly, there is a debate among Jewish law authorities as to whether this prohibition also applies to the literal case in which one places a physical obstacle in front of a person who is visually impaired. See R. Yitzhak Adler, *Lifnei Iver* (1988 or 1989), at 15-18

Thus, a person is forbidden by the Torah from enabling or convincing another to violate Jewish law.

One of the reasons for this prohibition is that Jews should not actively frustrate *HaShem's* will.⁸ While most halachic rules apply only to Jews, some apply to non-Jews as well.⁹ Consequently, *lifnei iver* forbids a Jew to enable or persuade another person – Jewish or non-Jewish – to violate any applicable halacha.¹⁰

There are many detailed rules – and differences of opinion – regarding the precise parameters of the *lifnei iver* doctrine. Although we will not examine all of them, we should identify a few basic propositions.¹¹ *Lifnei iver* surely applies when one's help is necessary to enable a wrongdoer to violate a biblical

(citing various views); *Iggerot Moshe*, Y.D. I:3 (stating that it applies to such a case).

8. Ibid. (causing another to sin is not prohibited because it is a wrong against the sinner but because it is a wrong against the Almighty), O.C., V:13(9).

9. See, e.g., R. Nahum Rakover, "The "Law" and the Noahides", *Jewish Law Association Studies: The Boston Conference Volume* (1990), pp. 169-180.

10. As a general proposition, Jewish law does not recognize an agency relationship between a person who directly violates Jewish law and some other person. Instead, Jewish law asserts that there is no agency with respect to wrongdoing. See *Kiddushin* 42b; R. Yechiel M. Epstein, *Aruch Hashulchan*, C.M. 182:9-13. See also Israel Herbert Levinthal, "The Jewish Law of Agency," in Edward M. Gershfield (ed.), *Studies in Jewish Jurisprudence* (1971), at 51-58.

11. For a fuller discussion, see Michael Brojde & David Hertzberg, "Enabling a Jew to Sin: The Parameters," *XIX Journal of Halacha and Contemporary Society* 5 (1990).

law.¹²

If, however, the help is necessary only to enable a wrongdoer to violate a rabbinic law, there is a split of authority. Some believe that the *lifnei iver* rule applies, while others contend that only a rabbinic prohibition applies.¹³ For simplicity, we will refer to the rabbinic prohibition as *mesayeah bidei ovrei aveirah*, i.e., assisting a wrongdoer.¹⁴

When the wrongdoer's violation – whether biblical or rabbinic – could be accomplished even without one's help, most authorities maintain that the *lifnei iver* rule is inapplicable.¹⁵ If the wrongdoer is Jewish, however, the general rule is that a

12. See *Shulchan Aruch*, Y.D. 151:1 and commentaries thereto.

13. Contrast R. Yosef Babad, *Kometz Minchah*, Commandment 232 (citing Tosafot, *Avodah Zarah* 22a, s.v. *talmud lomar*, that enabling the commission of a rabbinic sin constitutes a biblical violation of *lifnei iver*) to R. Yosef Teomim, *Pri Megadim*, *Eshel Avraham*, O.C. 163:2 (ruling that if the violator is guilty of only a rabbinic infraction, the assister cannot be liable for an *issur mid'oraitha*). See *Lifnei Iver*, at 44-46 (discussing various views).

14. Some *poskim* differentiate between two rabbinic prohibitions, *lifnei iver derabbanon*, and *mesayeah bidei ovrei aveirah*. They contend that the former applies when a rabbinic violation would not have been accomplished without one's help, while the latter applies when a sin would have been committed even without one's assistance. See *Eshel Avraham*, O.C. 163:2. Some *poskim* believe that the *mesayeah* prohibition only applies when one assists a Jew to violate a biblical law, *ibid*, but most *poskim* disagree. See, e.g., Rabbi Shlomo Kluger, *Tuv Ta'am VaDa'at, Telita'ah*, vol. II, no. 31.

15. See, generally, *Lifnei Iver*, at 21-22. Nonetheless, even where assistance is *unnecessary*, there are situations—such as when an assister directly (*biyadayim*) feeds someone a forbidden substance—in which the assister may still be guilty of violating *lifnei iver mid'oraitha*. *Ibid*, at 23-31.

Jew who facilitates the violation is guilty of breaching the rabbinic *mesayeah* rule.¹⁶

The *mesayeah* prohibition arises out of the special interrelationship among Jews. As a result, some authorities argue that the rule is inapplicable to Jews who have totally rejected Jewish law¹⁷ or who are contumaciously violating a particular Jewish law.¹⁸ Other authorities, however, question

16. See, e.g., R. Abraham Gombiner, *Magen Avraham*, O.C. 347, *sif koton* 4; R. Yisroel Meir HaCohen, *Mishnah Berurah* 347; R. Elijah of Vilna, *Biur HaGra*, Y.D. 151. With respect to selling to Gentiles items they would use in their religious practices, R. Moshe Isserles (Ramo) states that, while a pious person (*ba'al nefesh*) should be strict, the custom has developed to be lenient when the Gentiles could purchase the items anyway from others. *Shulchan Aruch*, Y.D. 151:1. This comment is sometimes characterized as evidence that Ramo allows a person to assist someone—Jew or Gentile—to violate Jewish law when the violation would occur even without the assistance. Yet in a responsum Ramo explicitly states that helping a Jew to sin is rabbinically prohibited even if the help is unnecessary. See *Shut Ramo* 52. Moreover, in *Darchei Moshe HaAruch*, Ramo states that the Gentile religious practices referred to in Y.D. 151 did not really constitute idolatry and, for Gentiles, did not actually violate Jewish law. Ramo explains that this is the reason why the lenient custom referred to in Y.D. 151 developed. See *Darchei Moshe HaAruch*, Y.D. 151; R. Shabtai HaKohen, *Shach*, Y.D. 151, *sif koton* 7. Ramo never states that there is a lenient custom to assist actual violations of Jewish law. See, e.g., R. Yair Chaim Bachrach, *Chavot Yair* 185; R. Avraham Shmuel Binyamin Sofer, *Ketav Sofer*, Y.D. 83; R. Ahron Kotler, *Shut Mishnat Rav Ahron* I:3; *Iggerot Moshe*, O.C. III:27. In fact, by ruling that a *ba'al nefesh* should act stringently even where no violation is involved, Ramo expresses a rather stringent position.

17. See *Shach*, Y.D. 151, *sif koton* 6.

18. See R. Yehezkel Landau, *Dagul Mervavah*, Y.D. 151.

these exceptions.¹⁹ Moreover, even if the exceptions were theoretically valid, their practical impact may be limited. Many *poskim* indicate that a large part of today's non-observant Jews, because of their limited exposure to Judaism, are not considered to have purposely rejected Jewish law or to have intentionally violated it.²⁰ As a result, it may be rabbinically prohibited to assist such persons to violate Jewish law.²¹

19. Among authorities that explicitly reject the view of *Dagul Mervavah*, see, e.g., *Chavot Yair* 185; R. Yehuda Assad, *Shut Yehuda Ya'aleh* I:177; R. Meshulam Rath, *Kol Mevasser* I:48; R. Yaakov Ettlinger, *Binyan Tzion* 15; R. Ezriel Hildesheimer, *Shut Rabbi Ezriel I*, Y.D. 182 (stating, at least as of the nineteenth century in which he wrote, that most of the Jewish law authorities disagreed with *Dagul Mervavah*). Indeed, if a Jew is intentionally sinning, many authorities rule that there is an obligation to rebuke him even if it is clear that the rebuke will be ignored. See *Shulchan Aruch*, O.C. 608; *Mishnah Berurah* 608. Even some authorities who agree with *Dagul Mervavah* contend that one should *a priori* (*l'chatchila*) be strict in accordance with the view of *Magen Avraham*. See, e.g., *Iggerot Moshe*, Y.D. I:72, at 128.

20. See, e.g., *The Laws of Ribis*, p. 98, note 17 (citing R. Shimon Grinfeld (*Maharshag*) and R. Avraham Yeshayah Karelitz (*Chazon Ish*) for the rule that non-observant Jews who were not raised in an Orthodox home must be treated just as observant Jews regarding prohibitions concerning interest-bearing loans). See also R. Yechiel Yaakov Weinberg, *Serdei Eish* II:10; R. David Zvi Hoffmann, *Melamed LeHoyel*, O.C. 5; *Binyon Tzion HeHadashot* 23. But see R. Binyomin Yehoshua Silber, *Az Nidbaru* IX:55; R. Yaakov Weiss, *Minchat Yitzchak* III:79 (relying on the distinction between observant and non-observant Jews to permit the purchase of goods produced by non-observant Jews on the Sabbath, even when the purchase may "cause" such non-observant Jews to work on the Sabbath); R. Ovadia Yosef, *Yabia Omer* II, O.C. 15.

21. In a number of *responsa*, R. Moshe Feinstein indicates that one should not do anything that would cause a contemporary non-observant Jew to commit a sin. In one instance, R. Feinstein was

A second purpose of the biblical *lifnei iver* rule does arise from the communal relationship that exists among Jews. As members of a community, Jews owe each other special duties. One of those is not to purposely give each other bad advice, either as to spiritual matters (such as advice to violate Jewish law) or as to practical matters. The *lifnei iver* rule prohibits the giving of such advice.²²

PART II: The Obligation To Prevent Someone From Violating Jewish Law

The Torah tells each Jew who sees another committing a biblical violation that “You must admonish a member of your

asked if it was permissible to provide *kashrut* supervision to a place which might sell a person milk products immediately after he had eaten meat products (which would involve a rabbinic violation). R. Feinstein wrote, in part: “Many of the people [who eat there] are like *shoggegim* because they do not realize the seriousness of the infraction because of their lack of knowledge. They are like children who were abducted by Gentiles and certainly we are obligated to prevent them from violating Jewish law as much as possible . . .” See *Iggerot Moshe, Y.D. II:52*. This reasoning certainly suggests that one should not help such people violate Jewish law. See also *ibid, O.C. III:46* (even when no *issur* is involved because one can rely on *rov*, Rav Feinstein rules that one should avoid mailing a letter on *erev* Shabbat if doing so might contribute to a Shabbat violation by a Jew who anyway would not observe Shabbat), *O.C. IV:71*. But cf. *ibid, O.C. V:13(9)*.

22. See, e.g., *ibid, Y.D. I:3* (the duty not to give bad advice, arising from the biblical *lifnei iver* rule, is an obligation one owes to a fellow; consequently, it applies only to advice given to a fellow Jew), *Orach Chaim V:13(9)*. See also R. Aharon HaLevi, *Sefer HaChinuch*, Commandment 232. But see *Minchat Chinuch*, Commandment 232 (questioning this view).

nation.”²³ Indeed, if a Jew, A, has the ability to prevent another Jew, B, from violating Jewish law and does not do so, A incurs guilt for the offense that B commits.²⁴

If the biblical rule being violated is not explicitly stated in the Torah, if B is not purposely violating the law, and if A is sure that B will not accept the rebuke, A should not admonish B. In such a case, it is better that B violate the law unknowingly rather than knowingly.²⁵ On the other hand, if the rule is explicitly stated in the Torah or B is purposely violating even a rabbinic rule, A is obligated to rebuke him even if A is certain the rebuke will be ineffective.²⁶

23. Leviticus 19:17. See also *Sefer Hasidim* 93:

All Jews are responsible for each other. If it were not for this responsibility a person would not admonish his fellow about his fellow’s sins and he would not pay attention to find out who is a transgressor [and take steps to stop them] ..

See also *Shulchan Aruch, O.C. 608*. A rabbinic rule requires one to admonish against non- biblical violations. See, generally, *Handbook of Jewish Thought II*, at 144. Of course, a variety of detailed rules apply as to when and how to give such rebuke so that it may be effective. *Ibid; Shulchan Aruch, O.C. 608*.

24. *Sanhedrin 27a*: “A person dies because of the iniquity of his brother - to teach you that everyone is responsible for each other. That is where it was possible for them to [effectively] admonish the wrongdoers and they did not do so.”

25. An unknowing violation is a less serious breach of Jewish law. *Shulchan Aruch, O.C. 608*. This sort of situation might arise, for example, when B is so certain that what he is doing is permitted that he will not pay any heed to A (especially if B believes that A is much less learned than he about Jewish law).

26. In this situation, B is already violating Jewish law knowingly. Consequently, the argument that “it is better for a person to violate unknowingly rather than knowingly” does not apply.

Of course, there are exceptions to this obligation.²⁷ For example, A need not rebuke B if A fears that by doing so he will place himself in danger because B will retaliate against him.²⁸ In addition, several authorities rule that A is not required to rebuke B if B has completely rejected Jewish law. The Hebrew word for “your nation” (*amchah*) is spelled with the same Hebrew letters as the word for “with you” (*imchah*). Consequently, some say that the duty to rebuke applies only to those Jews who are “with you” in the sense that they have not rejected Jewish law.²⁹ However, it is unclear whether this exception applies to modern, nonobservant Jews who, because they were raised in nonreligious or anti-religious environments, cannot be said to have knowingly rejected Jewish law.³⁰

In addition to the duty to verbally dissuade a Jew from violating Jewish law, there is also an affirmative duty, where

27. See Rabbi Alfred Cohen, “Protest Demonstrations”, XXIV *Journal of Halacha and Contemporary Society* 5 (1993).

28. See, e.g., *Mishnah Berurah* 608:7. See also Ramo, *Y.D.* 157, 334, C.M. 12. One might expect that a person would be required to spend up to 20% of his wealth to fulfill the affirmative biblical obligation to admonish another. See notes 38-45 and accompanying text, *infra*; *Minchat Yitzchak* V:8. Nevertheless, Ramo, *supra*, who cites R. Asher Weil, seems to rule that a person need not spend *any* money to fulfill the duty to admonish. See R. Asher Weil, *Shut Mahariv* 157. See, generally, R. Zvi Hirsch Eisenstadt, *Pitchei Teshuvah*, *Y.D.* 157, *sif koton* 5 (citing various views, including one that suggests a possible obligation to spend all of one’s money to fulfill this duty), *Y.D.* 334, *sif koton* 19; *Sefer Hasidim* 405.

29. *Ibid*, *Biur Halacha*, 608, *s.v. Aval* (citing various authorities); *Aruch Hashulchan*, O.C. 608:7. If, however, you may convince such a person to do the right thing, some say that you must try to do so. See, e.g., *Minchat Chinuch*, Commandment 239.

30. See notes 18-21 and accompanying text, *supra*.

possible, to take other steps, including the use of physical restraints, to prevent a person from actively violating Jewish law.³¹ Nevertheless, just as one is not required to verbally rebuke someone if this will expose one to a significant risk, one need not take non-verbal steps if this will subject one to such a risk.³²

What if a Jew is passively, rather than actively, violating Jewish law? In a land ruled by a religious, Jewish government, a religious court would coerce compliance, resorting, if necessary, to physical compulsion. There is a debate among authorities whether, in the absence of such a religious court, individuals have the right or responsibility to employ such coercive methods.³³

31. Rambam, *Sefer HaMitzvot*, *Mitzvat Aseh* 205. See commentary of Ramban to Deuteronomy 27:26, who says that if one does not prevent others from sinning, the verse, “Cursed is the man who does not uphold all the words of this Torah,” applies to him. See also *Handbook of Jewish Thought II*, at 151-153. Rabbinic authorities disagree whether the duty to stop someone from sinning, as opposed to the obligation of admonishing a sinner, is biblical or rabbinic. See, e.g., *Ketav Sofer*, *Y.D.* 83 (citing these views); R. Yitzhak Belzer, *Pri Yitzhak* I:53 (printing a responsum of Rabbi Naftali Amsterdam discussing these views and concluding that the duty is biblical).

32. See note 28, *supra*.

33. Contrast, e.g., Rabbi Aryeh Leib, *Kitzot HaChoshen*, C.M. 3:1 (arguing that only courts could coerce individuals to perform affirmative commandments) with *Nitivot HaMishpat*, C.M. 3:1 (contending that individuals had the right to coerce other individuals to perform such obligations). Many Jewish law authorities have held that coercion could be used, and presumably even by individuals, to force people to take medical treatment. See, e.g., *Magen Avraham*, O.C. 328 (6) (“if the patient refuses to accept the prescribed treatment [because doing so would desecrate the Sabbath], we compel him to do so”); *Iggerot Moshe*, *Y.D.* IV:24(4) (if there is much more than a

PART III: The Duty To Rescue

Jewish law requires a Jew to save another who is danger.³⁴ Perhaps the clearest textual basis for this rule is the verse that states: “Do not stand idly by your fellow’s blood.”³⁵ Other authorities, however, contend that the duty to rescue arises from the verse, “if your fellow is missing something, you shall restore it to him.”³⁶

Identification of the proper biblical source for this commandment may be important for two reasons. First, the source may determine how much of a sacrifice one must make in order to perform the commandment. Biblical commandments are classified as either negative (*lo ta’aseh*) or affirmative (*aseh*). The general rule is that a person must expend all of his wealth rather than violate a negative commandment.³⁷ On the other

50% chance that surgery will cure the patient who will otherwise die, there is an obligation to do the surgery even against the patient’s wishes), *C.M. II:73(5)* (same).

34. See, generally, Aaron Kirschenbaum, “The Bystander’s Duty to Rescue in Jewish Law,” reprinted in Martin P. Golding (ed.), *Jewish Law and Legal Theory* (1993). Interestingly, this duty extends to saving someone from financial, as well as physical, harm. *Id.*

35. Leviticus 19:16. See, e.g., “Treatment of the Terminally Ill,” 30:3 *Tradition* 51, n. 12 at 79.

36. Deuteronomy 22:2; *Sanhedrin* 73.

37. See *Shulchan Aruch*, O.C. 656:1. Although this is clearly the accepted rule, for commentators who question it, see R. Boruch Epstein, *Torah Temimah*, Genesis 28:22, and Yitzhak Zilberstein, “Monetary Considerations Regarding the Saving of Human Life,” *Assia*, vol. 14, no. 3, p. 50 (discussing authorities).

An interesting issue arises as to whether the obligation to use all of one’s wealth would require one to draw on his creditworthiness to borrow funds. Rabbi David ben Shlomo ibn Avi Zimra (*Radbaz*)

hand, a person need not spend more than 20% of his wealth to fulfill an affirmative commandment.³⁸

states that if a Jew is among Gentiles, he must use up all of his money on kosher food rather than eat non-kosher food. Once he has used up his money and cannot afford kosher food, he may, because of duress, eat non-kosher food if it is available. *Radbaz* rules that the Jew need not borrow money from Gentiles to purchase kosher food, because, should he be unable to repay the loan, the Gentiles from whom he borrowed may place him in physical danger. See R. Akiva Eger, *Chidushei Rabbi Akiva Eger*, Y.D. 157. In the United States, at least, the risk of physical harm from being unable to repay one’s debt is negligible. Consequently, if the risk of physical danger is the only reason why one need avoid violation of a negative commandment by borrowing, it would seem that in the United States, at least, one might have to borrow before being permitted to violate a negative commandment. One might not, however, be required– or even permitted–to borrow beyond one’s expectation to repay, because doing so might violate a different negative commandment, the one against stealing.

If a person has no money and is unable to borrow money, would he be required to ask for charity rather than eat non-kosher food? In ruling whether a person is required to make a particular sacrifice in order to avoid violating a negative commandment, Rabbi Moshe Feinstein asks whether the sacrifice is greater than the loss of all of one’s wealth. Only if the answer is “no” must the person sustain the sacrifice and avoid the violation. See *Iggerot Moshe*, Y.D. II:174(4). R. Feinstein’s responsum is not clear as to whether, when applying this test, one must: (1) evaluate how much these burdens would mean to a hypothetical “reasonable person” rather than to the particular person in question; or (2) evaluate how much the loss of money would mean to the particular person *if he had money*. Nevertheless, it seems almost certain that under either approach the sacrifice involved in seeking charity would be less than that involved in the expenditure of all of one’s resources. If so, one would be obligated to seek charity rather than violate a negative commandment.

38. *Ibid.* Ramo states that one need not spend a large amount of

There is a debate in Jewish law as to what criterion determines whether a commandment is considered to be negative or affirmative. According to one view, the relevant biblical language is decisive. If the verse which is the source of a commandment directs that one should do something, the commandment is an affirmative one. If the verse directs that one should not do something, the commandment is a negative one. According to this approach, if the obligation to rescue arises from “you shall restore it to him,”³⁹ the duty would be an affirmative commandment requiring up to 20% of one’s wealth, but if it arises from “Do not stand idly by your fellow’s blood,”⁴⁰ it would be a negative commandment, requiring even all of one’s wealth.⁴¹

money (*hon rav*) to fulfill a particular affirmative commandment and makes reference to a particular rabbinic decree that one should not distribute more than 20% of one’s wealth to the poor. *Id.* It is uncertain precisely how much a person *must* spend, if an expenditure is necessary, in order to fulfill an affirmative commandment. R. Yechiel Epstein seems to believe that one generally need not spend up to the 20% limit. See *Aruch Hashulchan*, O.C. 656:4. Some say that, if necessary, a person must spend at least 10% of his wealth. See R. Yosef Karo, *Beit Yosef*, O.C. 656 (citing this view). There does not seem to be any responsum that clearly explain whether assets such as a medical license are capitalized and counted as part of one’s wealth when computing this 10%. R. Shlomo Luria, however, disagrees and states that if someone is very poor it is possible that, with two exceptions, he need not spend any money in order to fulfill an affirmative commandment. See *Magen Avraham*, O.C. 656(7). But see *Biur Halacha*, O.C. 656 (disagreeing with Rabbi Luria).

39. Deuteronomy 22:2. See *Sanhedrin* 73.

40. Leviticus 19:16.

41. See, e.g., *Iggerot Moshe*, Y.D. II:174(4) (ruling that this is the source of the duty to rescue and that it is a negative commandment); R. Zvi Hirsch Shapiro, *Darchei Teshuva*, Y.D. 157, no. 57 (citing *Shut*

The alternative position ignores the form of the biblical language and asks, instead, whether a *violation* of the commandment involves malfeasance or nonfeasance. If a commandment can be violated without doing any act (for example, by *not* putting on tefillin), the commandment in effect requires conduct. Thus, it is a *positive* commandment, and there is no need to expend all of one’s wealth to avoid a passive violation. On the other hand, if a commandment can only be violated actively (*i.e.*, through malfeasance, such as stealing), one must avoid a transgression even at the cost of one’s entire fortune.⁴² The commandment, “Do not stand idly by,” effectively requires action and can be violated only by nonfeasance. According to this view, the duty to protect oneself from harm, even if it arose from “Do not stand idly by” would not require more than one-fifth of one’s wealth.⁴³ Nonetheless, some authorities believe that saving a life is a special case, and that to do so one must spend all of one’s wealth irrespective of whether the commandment is designated as affirmative or negative.⁴⁴

Zera Emet II:51).

42. See, generally, *Chidushei Rabbi Akiva Eger*, Y.D. 157:1; *Mishnah Berurah* 656, *sif koton* 9 (explaining that the more demanding rule applied to an affirmative action contrary to the divine will as opposed to mere inaction).

43. See, e.g., R. Shalom Schwadron, *Shut Maharsham* II:54.

44. R. Yisroel Meir HaCohen (Chafetz Chaim), *Ahavat Chessed* 20:2 (must spend all of one’s money to save a life; based on *Bava Metsia* 62a, that although one’s life takes precedence over another person’s life, one’s money does not); R. Avraham Yitzhak HaKohen Kook, *Mishpat Kohen* 144(17) (must spend all of one’s money to save another’s life). See also R. Ben Zion Meir Chai Uzziel, *Piskei Uzziel Bi’She’elot HaZeman* 48 (approving view of the Chafetz Chaim). Yitzhak Zilberstein discusses various views as to whether one must spend all of one’s money to save another’s life. Irrespective of what position

Second, at least one authority, Rabbi Yosef Babad, states that if the duty to rescue arises from, “you shall restore it to him,” there may be no obligation to rescue someone from his own attempt to commit suicide.⁴⁵ This verse, read in context, primarily refers to returning lost property. If a person purposely throws away his property, no one is obligated to retrieve or return it.⁴⁶ By analogy, it is suggested that if a person attempts to throw away his life by committing suicide, no one is required to prevent the suicide.⁴⁷ The vast majority of authorities,

someone takes on that issue, he seems clearly to conclude that one must spend all of one’s money to save his own life. His logic is that: (1) one must spend all of one’s money to avoid violating a Sabbath prohibition, and (2) one must violate a Sabbath prohibition to preserve his life, even briefly. Consequently, he argues, one must spend all of one’s money to preserve his life. See “Monetary Considerations Regarding the Saving of Human Life,” at p. 50. Assuming, arguendo, that Zilberstein’s logic is valid, it seems that the same logic would require a person to spend all of his money to save the life of another person because: (1) one must spend all of one’s money to avoid violating a Sabbath prohibition, and (2) one must violate a Sabbath prohibition to preserve someone else’s life, even briefly.

45. *Kometz Minchah*, Commandment 232. See also R. Boruch HaLevy Epstein, *Tosefet Beracha*, Leviticus 19:16 (arguing that if a person’s terminal, painful condition is such that it would be permissible to pray for his death, one should not rescue him if one sees him drowning himself to end his suffering). R. Shlomo Kluger argues, based on a specific detail regarding the relevant verse, that a person need not rescue someone if the rescue effort would require an act inconsistent with the rescuer’s “dignity.” This position is explained and rejected in *Iggerot Moshe*, Y.D. II:174(3); R. Yitzchak Yaakov Weiss, *Minchat Yitzchak* V:8.

46. *Kometz Minchah*, Commandment 232.

47. *Ibid.*

however, reject this argument.⁴⁸ They explain that abandoning ownership of one’s property is permissible. Consequently, if one does so, there is no reason for the Torah to frustrate one’s wishes by requiring another to return it. Suicide, however, is impermissible. A person is not the owner of his life, and he may not abandon his responsibilities to preserve this precious property. Therefore, the Torah requires another to return it.⁴⁹

If necessary to rescue a person, the Torah requires one to violate every Torah law except for those relating to immoral sexual acts, idolatry or murder.⁵⁰ Indeed, even if a person is so ill that some Jewish law authorities believe it would be proper to pray for the Creator to take the person’s soul and end his life, it is nonetheless required to violate the Sabbath – and, if necessary, to do so repeatedly – to try to preserve that life.⁵¹ Most authorities rule that one must violate the Sabbath rules even to save someone who is trying to commit suicide.⁵²

48. See, e.g., *Iggerot Moshe*, Y.D. II:174(3), III:90; R. Yitzchak Herzog, *Heichal Yitzchak, Even HaEzer* I:3; *Tzitz Eliezer* VIII:15, *Kuntrus Meshivat Nefesh*, chapter 4; R. Ovadia Yosef, *Yabbia Omer* VIII, O.C. 37 (citing authorities). See also R. Yaakov Weiner, *Ye Shall Surely Heal* (1995), at 41-42.

49. *Iggerot Moshe*, Y.D. II:174(3), III:90.

50. See *Shulchan Aruch*, Y.D. 195:3; 157:1; Rambam, *Mishneh Torah, Hilchot Yesodei HaTorah* 5:1. See also *Sanhedrin* 84a; R. Immanuel Jakobovits, “Medical Experimentation on Humans in Jewish Law,” in *Jewish Bioethics*, p. 379.

51. See, e.g., *Minchat Shlomo* 91.

52. *Iggerot Moshe*, Y.D. II:174(3), Y.D. III:90; *Tzitz Eliezer* VIII:15, *Kuntrus Meshivat Nefesh*, chapter 4; *Yabbia Omer* VIII, O.C. 37 (citing authorities); *Comprehensive Guide to Medical Halachah* (1996), at 54 (citing authorities).

PART IV : Applying Jewish Law Principles To Physician-assisted Dying

Our topic, “physician-assisted dying,” obviously focuses on people who are alive. Before applying the various Jewish law principles surveyed above to physician-assisted dying, however, we should emphasize that some people who are considered to be dead under secular law may not be dead under Jewish law.

In the last 30 years, there has been substantial secular and religious discussion as to what constitutes death.⁵³ When the traditional common law criteria – cessation of circulatory and respiratory functions – were satisfied, the Jewish law criteria were also satisfied. Today, however, virtually all states, whether by statute, case precedent or administrative regulation, consider a person to be dead if his circulatory and respiratory functions are artificially sustained and he has experienced an “irreversible cessation of all functions of the entire brain, including the brain

53. In 1968, an ad hoc committee of the Harvard Medical School announced that “responsible medical opinion” was prepared to expand the criteria of death to include “irreversible coma as a result of permanent brain damage.” See The Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Irreversible Coma, *A Definition of Irreversible Coma*, 205 JAMA 337, 339 (1968). Generally speaking, there are two types of cessation of brain function. The first affects only the part of the brain that is believed to be associated with “higher brain function,” such as consciousness. The other, more complete cessation of brain function, referred to as “whole brain death” or “brain stem death,” occurs when even the brain stem ceases to operate. The Harvard ad hoc committee made it fairly clear that its proposal was only to extend the criterion of death to those who experienced “whole brain death.”

stem.”⁵⁴ Many Jewish law authorities believe that a person may still be alive even after hospitals determine that this secular “brain stem death” criterion is satisfied.⁵⁵ Moreover, even some of the Jewish law authorities who may have been willing to accept the brain stem death standard relied on the assumption that brain stem death was the functional equivalent of decapitation, *i.e.*, that the brain no longer had any operative connection with the rest of the body.⁵⁶ Nevertheless, studies in

54. See, e.g., *N.J.S.A.* 26:6A-3.

55. See, generally, R. J. David Bleich, *Time of Death in Jewish Law* (1991); R. Aaron Soloveichik, “The Halakhic Definition of Death,” *Jewish Bioethics* 302; *The Comprehensive Guide to Medical Halacha* 188 (1996) (citing authorities and stating that someone who is clinically brain-stem dead is not considered dead but, rather, is in the category of a possible *goses* such that tests to verify the diagnosis are forbidden); Fred Friedman, “The Chronic Vegetative Patient: A Torah Perspective,” *Journal of Halacha & Contemporary Society* 26:88, 91 (1993) (asserting that most contemporary rabbinic authorities “do not accept ‘brain death’ as sufficient to define an individual as dead” under Jewish law); Yitzchok Breitowitz, “The Brain Death Controversy in Jewish Law,” at <http://www.JLaw.com/Articles/brain/html>.

56. Some of the Jewish law authorities who support the brain stem death standard contend that this was the position of Rabbi Moshe Feinstein. See, e.g., R. Moshe Tendler, Letter to Editor, *Jewish Observer* (October 1991), at 12-14. (asserting that this was R. Feinstein’s ruling); R. Shabtai Rappaport, Letter in *12 Assia*, no. 3-4 (Kislev 5750), pp. 11-13. Whether Rabbi Feinstein actually accepted the brain stem death standard is the subject of much debate. See Dr. Yoel Jakobovits, “[Brain Death and] Heart Transplants: The [Israeli] Chief Rabbinate’s Directives,” *24:4 Tradition* 1 (1989), at 9-10, n. 9 (stating that R. Aaron Soloveichik and R. J. David Bleich are among those who argue that R. Feinstein’s responsa fail to show that he adopted the brain stem death standard); R. Avraham S. Avraham, *Nishmat Avraham*, vol. 2, *Y.D.* 339 (disputing R. Tendler’s interpretation). In any event, Rabbi Feinstein did make it clear, when referring to brain stem death, that

recent years present substantial evidence that the tests commonly used for establishing brain stem death do not, in fact, prove that all brain functions have ceased.⁵⁷

Assuming that a patient is alive, there are essentially five questions Jewish law must consider: (1) may a patient or a physician do an affirmative act to end the patient's life; (2) may someone encourage or assist such affirmative acts by a patient or physician; (3) may a patient or a physician hasten the patient's death by passive conduct; (4) may someone encourage or assist such passive conduct; (5) may or must someone coerce a patient to accept medical treatment.

A. Affirmative Acts To End A Patient's Life

As a general rule, a patient who affirmatively ends his own life violates the prohibition against suicide. There is considerable rabbinic controversy whether there is an exception which permits suicide for the purpose of sanctifying G-d's name and avoiding desecration of G-d's name.⁵⁸ This purpose, however,

he was relying on the assertion of R. Tendler that brain stem death, when confirmed by a nuclide slide, proved that there is no functional connection between the brain and the rest of the body. See *Iggerot Moshe, Y.D.* III:132.

57. See, e.g., Robert D. Truog, "Is It Time to Abandon Brain Death?", *Hastings Center Report* 27, no. 1 (1997):29, 29-30; J. David Bleich, "Moral Debate and Semantic Sleight of Hand", 27 *Suff. U.L.Rev.* 1173 (1993).

58. Rabbenu Tam, a 12th-century scholar, states that "Where people fear that idol-worshippers will force them to sin through torture that they will be unable to withstand, it is a "mitzvah" for them to smite themselves just as in the case in *Gittin* in which the children captured for immoral purposes cast themselves into the sea." Tosafot, *Avodah Zarah* 18a, s.v. *Vi'al*. See *Gittin* 57b, which extols female captives who killed themselves by diving into the sea rather than allow

does not typically arise with respect to a medical patient.

Aside from sanctification of G-d's name, why might a patient want to end his life? Perhaps he wants to donate his vital organs to one or more people in an effort to save their lives. Despite the duty to rescue others from danger, however, it is specifically prohibited to forfeit one's own life to save the life of another.⁵⁹ Alternatively, perhaps a patient desires to save others from the inconveniences associated with worrying about him or visiting him. But if saving the *lives* of such other people is an inadequate justification, saving them from inconvenience or concern is certainly insufficient. Indeed, the divine purpose behind the patient's condition may even, in part, be to inspire the other people to perform the good deeds associated with caring for the afflicted.

What if a patient wants to commit suicide in order to preserve his assets for the benefit of those who will inherit him? Cases in which this issue arises in connection with a patient's *passive* refusal to accept treatment will be discussed below. But it is at

themselves to be abused; *Bava Batra* 3b, which tells of a Hasmonean woman who jumped to her death from a rooftop rather than allow herself to be wed by a slave. This view seems to have been relied upon by many throughout Jewish history who, when faced with the prospect of forced conversion, committed suicide. See, e.g., R. Basil F. Herring, *Jewish Ethics and Halachah For Our Time* (1984), p. 76; *Sihot Mussar*, at 36. Nonetheless, not all authorities agree with Rabbenu Tam. See, e.g., R. Shlomo Luria, *Yam Shel Shlomo, Bava Kama* 8:59 (rules that such killings are prohibited). See, generally, *Ye Shall Surely Heal* (1995), at 4-6.

59. As to the prohibition to risk or sacrifice one's life to save another, see *Iggerot Moshe, Y.D.* II:174(4); *Tzitz Eliezer* XVI:23; "Compelling Tissue Donations" 27:3 *Tradition* 59 (1993), 59-61 (discussing authorities). Whether one may risk or surrender one's life to save a group of Jews is a somewhat more complex issue. Contrast *Kol*

least theoretically possible that treatment might be forced upon someone, at his own expense,⁶⁰ and he may perceive suicide as the only effective way to protect his wealth. Jewish law rules that suicide is forbidden for such a purpose.

Perhaps a patient might prefer suicide to avoid a life of suffering. Nevertheless, the overwhelming weight of Jewish law does not, at least *a priori*, allow a patient actively to commit suicide in order to escape pain, emotional distress or poverty.⁶¹

In any of the above scenarios, if someone acted to end the patient's life, that person would not be guilty of "assisted suicide;" he would be guilty of murder – even if the patient asked to be killed. This is true even if the patient is a *goses*⁶² on the brink of death. As Rabbi Yehiel Epstein, a nineteenth and early twentieth century authority, points out:

Even if we see that the *goses* suffers greatly from his *gesisah* and that it is good for him to die, nevertheless it

Mevasser I:47 (disallowing) to R. Chaim Yosef David Azulai (Chida) *Tov Ayin* 18 (allowing). See *The One vs. the Many in Life and Death Situations*" (discussing various views).

60. For example, secular authorities may regard a patient as legally incompetent even though the patient is competent under Jewish law. This might occur, for example, either because of a flaw in the secular adjudication or a substantive difference between the secular and halachic standards for competency. In such a case, a secularly authorized surrogate decision-maker may be directing that treatment continue despite the patient's opposition.

61. See, e.g., *Jewish Ethics and Halachah for Our Time*, at 77 ("[M]ost authorities likewise disagree with the *Besamim Rosh* [who is quoted as permitting suicide to avoid a life of sickness, pain or poverty]..."); *Pitchei Teshuvah*, Y.D. 345:2 (citing authorities); *Shut Chatam Sofer*, Y.D. 326; *Tzitz Eliezer VIII, Ramat Rachel* 29; *Yam Shel Shlomo, Bava Kama* 8:59; R. Yehiel Michoel Tukazinsky, *Gesher HaChaim* I, at 273; R.

is prohibited to us to do anything that will hasten his death. The world and all that fills it belongs to the Holy One, blessed be He, and such is His wish . . .⁶³

Even the late Rabbi Moshe Feinstein, who, as discussed below, allows terminal patients suffering unmanageable pain to passively refuse to temporarily preserve their lives, states that:

Doing an act to hasten the death [of a *goses*] is proscribed...even though he [the *goses*] is suffering, and doing so would constitute murder, violating the injunction 'Thou shalt not kill.' . . . A person incurs the death penalty if he kills someone suffering intractable pain out of a sense of mercy, even though [the deceased] asked him [to do it].⁶⁴

Indeed, many authorities explicitly state that one is affirmatively required to save a sufferer's life – even if the sufferer is a *goses* and even if one must violate the Sabbath to do so.⁶⁵

Does it matter if the person who hastens the patient's death

Ephraim Oshry, *Responsa from the Holocaust* (1989), p. 34.

62. As to when someone is a *goses*, see *Semahot* 1:1-4; "Treatment of the Terminally Ill," at 81, n. 23.

63. *Aruch Hashulchan*, Y.D. 339:1. See also R. Abraham Danzig, *Chochmat Odam* 151:14 ("[I]t is prohibited to cause [a *goses*] to die more quickly even if he has been a *goses* for a long time and . . . [he] and his relatives are suffering a great deal . . .").

64. See *Iggerot Moshe*, Y.D. II:174(3). See also *The Comprehensive Guide to Medical Halachah*, at pp. 193-194 (citing rules and authorities); Moshe Tendler and Fred Rosner, "Quality and Sanctity of Life in the Talmud and the Midrash", *28:1 Tradition* 18, 20 (1993).

65. See, e.g., *Iggerot Moshe*, *ibid* and Y.D. III:90; *Tzitz Eliezer VIII*:15,

is a physician? Secularists might argue that there is a special physician-patient relationship that might empower patients and/or physicians to take steps that might not otherwise be permitted. Jewish law recognizes that a physician can possibly provide information, such as a diagnosis of a patient's condition and an evaluation regarding the risks of certain treatment, that is relevant to certain Jewish law issues. Nonetheless, physicians are not given any special authority to terminate a person's life.

A rabbinic dictum provides that "[even] good physicians end up in hell."⁶⁶ This is difficult to understand, especially in light of the fact that many outstanding Jewish law authorities, such as Rambam, were excellent physicians. The Tosafist Rabbi Yitzchak HaZakein writes that this statement refers to "those who kill the sick."⁶⁷ One commentator interprets this explanation as referring to physicians who practice euthanasia out of "good intentions."⁶⁸ Despite those intentions, they are guilty of murder – and receive the appropriate punishment.

Under Jewish law, everyone is prohibited from taking any affirmative steps that may, even unintentionally, hasten a patient's death. This is especially problematic with respect to a patient who qualifies as a *goses*,⁶⁹ because any unnecessary touching of such a person could accelerate his death. Consequently, such a *goses*

...should not have his pulse, temperature, or blood pressure checked. Blood may not be withdrawn for laboratory examinations, since in any case the results

Kuntrus Meshivat Nefesh, chapter 4; *Yabbia Omer* VIII, O.C. 37 (citing authorities); *Biur Halacha* 329, s.v. *Eleh*; R. Chaim Azulai, *Birkei Yosef*, O.C. 329(4); *Tosafot*, *Nidah* 44b. See also *Nishmat Avraham*, vol. 2, Y.D. 339:2.

66. *Kiddushin* 82a.

67. See *Jewish Ethics and Halachah For Our Time*, at 88.

would lead to no change in the handling of the patient.⁷⁰

B. Encouraging Or Assisting Affirmative Acts To Terminate Life

As explained previously, a Jewish patient who tries to kill himself⁷¹ tries to violate biblical law. Jewish law prohibits one from advising or encouraging the patient to kill himself and requires one to attempt: (1) to dissuade or prevent the patient from killing himself; and (2) to rescue the patient from the danger he poses to himself.

One who advises or encourages such a patient to kill himself, and whose advice or encouragement causes the violation, breaches the biblical *lifnei iver* prohibition.⁷² For example, a Jewish doctor who successfully persuades a Jewish patient to wrongfully shorten her life in order to permit her organs to be used for someone else breaches this ban.

Similarly, a person transgresses this rule if he makes it possible for another to commit a sin that would not have been performed without such help.⁷³ Assume, for instance, that the only way a person is willing to commit suicide is by using a special suicide device owned only by one particular physician. If that physician makes the device available to the patient and the patient uses it to commit suicide, the physician violates the rule against *lifnei iver* – even if the physician is not present

68. *Ibid.* (citing view of R. N. Friedmann, author of *Nezer Mata'ai*).

69. See, e.g., *Iggerot Moshe*, C.M. II:73(3).

70. *Comprehensive Guide to Medical Halachah*, at 192.

71. The same may be true if the patient is not Jewish. But at least one authority contends that the prohibition against suicide does not apply to non-Jews. *Minchat Chinuch*, Commandment 34.

72. See *ibid.*, Commandment 239 (failure to convince someone not

when the patient actually uses the machine. Even if many physicians owned such devices and they were readily available to the patient, the physician who actually gave one to the patient would violate at least the rabbinic rule against assisting a wrongdoer.

In light of these rules, a Jewish physician may have to be careful in prescribing drugs to a patient who is depressed or who has expressed a desire to die. Although such a patient might be disinclined to commit suicide in ways that are more painful or troublesome, he might be willing to overdose on morphine or other painkillers. The physician might have to dole out such medications in small quantities.

Moreover, Jewish law generally obligates one to try to dissuade such a patient verbally. Not only should one identify the various religious reasons not to commit suicide, but one should emphasize the practical benefits of life, such as the patient's ability to see or speak with family or friends,⁷⁴ to

to commit a sin is a violation of *lifnei iver*).

73. See *Shulchan Aruch*, Y.D. 151:1.

74. See, e.g., Abraham S. Abraham, "Euthanasia," in Fred Rosner (ed.), *Medicine and Jewish Law* (1990), at 126-127:

I recently treated a patient with end-stage emphysema . . . He managed to painfully gasp out his request that I inject "something to make him sleep forever." He was tired of suffering, tired of burdening his wife and family, and tired of the supreme effort of breathing. Two years previously he had been admitted to our respiratory intensive care unit (ICU) with pneumonia, and had been intubated there for many days. At the time he had written, "Please let me die"; the note was still in his file. This patient's mental and physical pain was truly an agonizing, heartbreaking thing to witness. One of our conversations, during rounds one day and in the

supervise the development of one's business, or to pursue other personal interests. One should strive to deflect the patient even if only temporarily. If there is a particular reason why the patient wants to commit suicide, one should endeavor to eliminate the reason. Perhaps health care personnel may not be providing adequate palliative therapy. If the patient's suicidal ideation is driven by pain, one should ensure that the pain is effectively treated.⁷⁵ In addition, if verbal admonishment is ineffective, more forceful intervention is required, unless such intervention would put one at risk.⁷⁶

A patient may be under enormous pressure to refuse

presence of the patient's wife, left few dry eyes among those in attendance. "What have the last two years been like before your admission to the ICU?" I asked him now.

"A living death, worth nothing," he replied.

"Do you have any grandchildren?" I asked.

"Yes, four."

"Do they visit you?"

"Yes, often," he said and his face lit up.

"And do you enjoy them?" I asked.

"What a question!" he said. "Every minute is Heaven!"

"Worth living for?" I asked. There was no answer.

"Were these two years wasted?" Silence.

75. Modern advances indicate that pain can in fact be effectively controlled in most instances. See, e.g., Albert Einstein, "Overview of Cancer Pain Management," in Judy Kornell (ed.), *Pain Management and Care of the Terminal Patient* (1992), p. 4 ("adequate inventions exist to control pain in 90 to 99% of patients"); Burke J. Balsch and David Waters, "Why We Shouldn't Legalize Assisting Suicide, Part II: Pain Control," <http://www.nrlc.org/euthanasia/asisuid2.html>.

treatment. Pressure may be generated “internally” – as a result of untreated pain or as a side-effect of particular medication – or externally – from doctors, hospital administrators, insurers, family members, or even private groups seeking to increase the availability of transplantable organs. A person who is aware of such duress may be obligated to seek appointment of a guardian, and may have to be willing to serve as such guardian, to ensure that life-preserving treatment continues.⁷⁷ Even if such steps cost money, the duty to rescue obligates the rescuer to use his own money, if necessary, to save the patient’s life.⁷⁸ In appropriate cases, some authorities might require one to donate blood or bone marrow in order to rescue another.⁷⁹

Furthermore, the duty to rescue applies even to a suicide and authorizes, when necessary, the violation of virtually any Jewish law, other than those regarding sexual immorality,

Hopefully, additional, aggressive pain palliation research will even further reduce the number of people who experience significant pain.

76. See note 28, supra.

77. It is not practicable here to examine the various Jewish law rules relating to the permissibility of initiating any sort of secular litigation. Nonetheless, rabbinic authorities may well permit such action for the purpose of saving someone’s life.

78. If necessary, many authorities would require the rescuer to use up to all of his money. See note 37, supra. In computing the “cost” of keeping a person alive, one may consider the possibility of financial liability under secular law. Nevertheless, it is interesting that in some jurisdictions, secular law may not impose substantial liability for preserving a person’s life against the person’s wishes. See *Anderson v. St. Francis-St. George Hospital, Inc.*, 77 Ohio St.3d 82, 671 N.E.2d 225 (1996) (no cause of action for treating someone in violation of a do not resuscitate order; and, as to battery, here there is no physical harm, the “victim” can only collect nominal damages). See, generally, Lawrence W. Vernaglia, Annotation, “Propriety Of, and Liability

idolatry and murder.⁸⁰ Thus, although one must usually avoid falsehoods, it would be permitted to lie in order to prevent a suicide.⁸¹

A physician, whether Jewish or not, who tries to kill a patient is attempting to violate the biblical ban against murder. One would be forbidden from assisting the physician. If the physician or patient is Jewish, one would also be affirmatively obligated to try to dissuade or prevent the physician from consummating his plan.⁸²

One who could prevent a patient from committing suicide – or a physician from committing murder – but who does not do so is considered as if he had committed the crime himself.⁸³

C. Passive Conduct To Hasten A Patient’s Death

1. Passive Conduct by a Patient

The rule that a person must safeguard his life⁸⁴ generally forbids a person from refusing life-preserving treatment. There is considerable debate, however, as to whether this general

Related To, Issuance or Enforcement of Do Not Resuscitate (DNR) Orders,” 46 A.L.R.5th 793 (1997).

79. See note 59, supra.

80. See *Shulchan Aruch*, Y.D.195:3; 157:1.

81. See, e.g., *Iggerot Moshe*, C.M. II:74(1); R. Immanuel Jakobovits, “Ethical Problems Regarding the Termination of Life,” in Levi Meier (ed.), *Jewish Values in Bioethics* (1986).

82. If the patient were Jewish, there would also be an affirmative duty to rescue him, as discussed in the preceding text.

83. *Ramo*, Y.D. 157.

84. See note 3, supra. See also R. Zev Schostak, “Ethical Guidelines

rule applies when one or more of the following factors are present: (1) the patient is terminally ill and the treatment will only prolong the patient's temporary, extremely painful condition; and (2) the treatment is not well-established, is painful, risky and/or is not likely to succeed.

a. Treatment that will only temporarily prolong life, where the patient has a painful condition

Some authorities, including Rabbi Moshe Feinstein and Rabbi Shlomo Zalman Auerbach, rule that terminally ill patients in great pain can, in some situations, refuse treatment that cannot cure but will only temporarily prolong their agonizing existence.⁸⁵ Even in these scenarios, however, they do not permit affirmative acts of suicide. As discussed elsewhere, some commentators are reluctant even to permit passive refusal of life-preserving treatment.⁸⁶

b. The Nature of the Treatment Refused

Even some of the authorities who disagree with the approach of Rabbi Feinstein and Rabbi Auerbach permitting terminally ill patients to refuse treatment because of their pain may nonetheless rule that such refusal is justified in individual cases, based on the nature of the treatments involved. Thus, a person is not generally obligated to submit to "unproven" experimental treatments.⁸⁷ Indeed, a person may sometimes not even be allowed to take some medications because of the attendant

for Treatment of the Dying Elderly", XXII *Journal of Halacha and Contemporary Society* 62, 83-85 (1991) (discussing various views); Steven H. Resnicoff, "Physician Assisted Suicide Under Jewish Law," 1 *DePaul Journal of Health Care Law* 589 (dated 1997, published 1998), at 616-622.

85. See, e.g., *Iggerot Moshe*, Y.D. II:174(3); *Minchat Shlomo* 91.

86. See, generally, Resnicoff, "Physician Assisted Suicide Under Jewish Law," at 616-621.

risks.⁸⁸

2. Passive Conduct by a Physician

As discussed above, there may be a few instances in which a Jewish patient is not obligated to take steps to preserve his life. But wherever the patient is so obligated, other Jews are surely affirmatively required to prevent the patient from violating his duty and to rescue the patient from the danger of death.

What if the patient is not refusing treatment but, instead, health care personnel simply fail to provide it? Secular society has witnessed an increasing trend toward empowering physicians to declare certain medical treatments – even life-preserving treatments such as providing nutrition – as medically "futile."⁸⁹ Having made this determination, the health care personnel, at least in certain jurisdictions, may then refuse to provide the treatment – perhaps even if the patient or the patient's family want the treatment to be provided.⁹⁰

87. See R. Yaakov Emden, *Mor Uktziah* 328; R. Alfred Cohen, "Whose Body? Living With Pain," XXXII *Journal of Halacha and Contemporary Society* 39, 49 (1996). See, generally, J. David Bleich, *Contemporary Halakhic Problems* IV, at 203-217.

88. As to what extent a person may risk her life by taking experimental treatment or to reduce pain, see, e.g., *Ye Shall Surely Heal: Medical Ethics from a Halachic Perspective*, at 75- 81; *Iggerot Moshe*, C.M. II:73(9) (allowing surgical removal of patient's testicles in prostrate cancer in order to reduce pain; argues that reduction in pain would prolong patient's life); *The Comprehensive Guide to Medical Halachah*, at 53; Cohen, "Whose Body? Living With Pain," at 49.

89. See, e.g., *Md. Code Ann., Health-Gen.* s 5-611 (1994 & Supp. 1995) (physicians need not provide "ethically inappropriate or medically ineffective" treatment). See also Shiner, *Note*, "Medical Futility: A Futile Concept?," 53 *Wash. & Lee L. Rev.* 803 (1996); Judith F. Daar,

“Medical Futility and Implications for Physician Autonomy,” 21 *Am. J.L. & Med.* 221 (1995).

90. Some state cases have held that treatment may not be withheld against the wishes of a patient or, in the case of an incompetent patient, the patient’s family, see, e.g., *In re Jane Doe*, No. D-93064 (Sup. Ct. Fulton County, Ga. Oct. 17, 1991), *aff’d*, 418 S.E.2d 3 (Ga. 1992); *In re Wanglie*, No. PX-91-283 (Hennepin County, Minn., P. Ct. June 28, 1991), reprinted in 7 *Issues L. & Med.* 369 (1991). Nevertheless, it is not certain that every jurisdiction will so rule.

In 1994, a decision by the Fourth Circuit Court of Appeals suggested that federal law importantly restricted a hospital’s ability to refuse to provide treatment that it deemed to be “futile.” Specifically, the Court ruled that, in light of the Emergency Medical Treatment and Active Labor Act (EMTALA), a hospital was required to provide respiratory support to an anencephalic infant even if the hospital felt that such treatment was “morally and ethically inappropriate,” *In the Matter of Baby “K,”* 16 F.3d 590 (1994), cert. denied, 115 S. Ct. 91 (1994). The effect of this case, however, is limited by other courts, most of which have held that EMTALA merely requires that a hospital provide an emergency room patient with the same way that it would have treated “any other patient in a similar condition with similar symptoms.” See *Marshall v. East Carroll Parish Hospital Service District*, 134 F.3d 319, 323 (5th Cir. 1998) (citing cases). Under this approach, if a hospital determines that providing respiratory support to any similar anencephalic infant is futile, the hospital would be able to refuse such treatment without violating EMTALA.

Moreover, in *Bryan v. Rectors and Visitors of the University of Va.*, 95 F.3d 349 (4th Cir. 1996), the Fourth Circuit itself identified an important limitation on its ruling in *Baby “K.”* *Bryan* involved a patient who entered a hospital’s emergency room because of respiratory distress. The hospital treated her, stabilized her condition and admitted her as a patient. Nonetheless, twelve days later the hospital, against the express wishes of the patient’s family, entered a “do not resuscitate” order. Eight days later, the patient experienced emergency respiratory distress. The hospital, pursuant to the “do not resuscitate” order,

Various factors may fuel such declarations. For example, many secular physicians, who are not attuned to life’s spiritual dimensions, may disdain the so-called “quality” of a patient’s life and, for this reason, may characterize life-sustaining treatment as futile. In addition, physicians are trained as problem-solvers, and a physician may become frustrated when he believes he is unable to solve the patient’s problem, such as when a patient has been diagnosed as in a persistent vegetative state (“pvs”).⁹¹ Furthermore, physicians may feel pressure to try to help other, socially-interactive patients, either with the medical resources presently allocated to the pvs patient or with the organs the physicians hope to obtain from the pvs patient when he dies. Similarly, physicians may face certain pressure from the companies that provide medical insurance. Jewish law does not generally recognize this doctrine of futility. A Jewish physician is not authorized to abandon his patient;⁹²

failed to treat her, and she died. The Court held that EMTALA applies only to emergency stabilization prior to a person’s being admitted to a hospital. In *Bryan*, once the emergency treatment was provided and the patient was admitted to the hospital, the patient’s rights were regulated by state tort law, not by EMTALA.

91. Alas, for purposes of clarity, I reluctantly use the common expression, “persistent vegetative state,” which is typically used to refer to patients who are in deep coma and who are not expected to “regain” consciousness. The phrase itself is indicative of the lexicographical gerrymandering of those who would belittle human life. How is it that they are so sure that such patients do not have a level of consciousness that is simply undetected by today’s technology? Moreover, how can they be certain that a human life, even if in a state in which consciousness may be lacking, is no different from vegetation? This hubris is exacerbated by those who prefer to say “permanent vegetative state” rather than “persistent vegetative state.” After all, it is undisputed that a number of patients who are characterized as “pvs” actually regain socially-interactive

instead, he must try to rescue the patient.

D. Encouragement Or Assistance Of Passive Acts To Hasten Death

A person who convinces a Jewish patient to refuse treatment when the refusal is wrongful violates the biblical rule against *lifnei iver*. Similarly, one who enables such a patient to wrongfully refuse treatment when he could not otherwise have

consciousness.

92. Cf. J. David Bleich, "The Quinlan Case: A Jewish Perspective," in *Death and Dying*:

The Hasidic Seer, the *Hozeh* of Lublin, added a pithy comment: "The Torah gives permission to heal. It does not give the physician dispensation to refrain from healing because in his opinion the patient's condition is hopeless."

This lesson is the moral of a story told of the 19th-century Polish scholar, popularly known as Reb Eisel Charif. The venerable Rabbi was afflicted with a severe illness and was attended by an eminent specialist. As the disease progressed beyond hope of cure, the physician informed the Rabbi's family of the gravity of the situation. He also informed them that he therefore felt justified in withdrawing from the case. The doctor's grave prognosis notwithstanding, Reb Eisel Charif recovered completely. Some time later, the physician chanced to come upon the Rabbi in the street. The doctor stopped in his tracks in astonishment and exclaimed, "Rabbi, have you come back from the other world?" The Rabbi responded, "You are indeed correct. I have returned from the other world. Moreover, I did you a great favor while I was there. An angel ushered me in to a large chamber. At the far end of the room was a door, and lined up in front of the door were a large number of well-dressed, dignified and intelligent-looking men. These men were proceeding through the doorway in a single file. I asked the angel who these men were and where the door led. He informed me that the door was the entrance to the netherworld and that the men passing through those portals were those of whom the Mishnah says 'The best of physicians merits

done so, violates the *lifnei iver* rule. Even if the refusal would have occurred without the encouragement, a Jew who provides such encouragement would, at least according to many authorities, violate rabbinic law.⁹³ Of course, under the approach of Rabbi Feinstein and Rabbi Auerbach, which treats the subjective state of mind of the person who is sick as a critically important factor, it may be very difficult for one to properly evaluate whether a particular person's refusal of treatment is or is not justified under Jewish law.

Someone who encourages or assists the patient's wrongful refusal of treatment also fails in his duties: (1) to encourage the patient to perform the obligation to safeguard his own life; and (2) to rescue the patient from danger. In this case, a "rescue" might have been accomplished by providing competent counseling or adequate analgesics. If such actions failed, the duty to rescue would require other affirmative efforts to have the patient treated, including the use of one's own money.⁹⁴

Similarly, in a case in which necessary treatment is being withheld from a patient, one must attempt to rescue the patient – perhaps by influencing the health care personnel or hospital administration – or by enabling the patient to change doctors or hospitals. Where the relevant health care personnel are Jewish, then, in addition to trying to rescue the Jewish patient, one also has the obligation to try to convince the health care personnel to perform their own religious responsibility to rescue the patient by providing treatment.

Gehinnom [hell]'. Much to my surprise, I noticed that you too were standing in the line about to proceed through the door. I immediately approached the angel and told him: 'Remove that man immediately! He is no doctor. He does not treat patients; he abandons them!'"

93. See, e.g., *Lifnei Iver*, at 121-151 (citing views).

E. Coercive Treatment

Assuming that a patient is obligated by Jewish law to accept a particular treatment, is a person – such as an attending physician – required to use verbal or physical coercion, if necessary, to ensure that the treatment is accepted? There really are two questions. The first question is whether one has the duty to coerce a patient to fulfill the patient's obligation to preserve his own life. Although Jewish *courts* had such authority, Jewish law scholars debate whether *individuals* have such a right.⁹⁵ The second question is whether one, who under Jewish law has an independent obligation to save the patient's life, may use coercion to fulfill that independent obligation. Most authorities seem to assume that the theoretical answer to this question is not only that such a person may, but, if necessary, must use such coercion.⁹⁶

Nevertheless, some argue that coercion could easily be counter-productive because of the adverse psychological impact it may have on the patient.⁹⁷ Furthermore, medical uncertainty regarding the effectiveness or attendant risks of a proposed therapy frequently relieves a patient of any obligation to submit to the treatment and similarly relieves others from any duty to administer it. Consequently, although coercion is a theoretical possibility, it is often not a practical choice.

Even if a person would otherwise be commanded to employ coercion, the concomitant costs of performing the

95. Contrast, e.g., *Kitzot HaChoshen*, C.M. 3:1 (arguing that only courts could coerce individuals to perform affirmative commandments) with *Nitivot HaMishpat*, C.M. 3:1 (contending that individuals had the right to coerce other individuals to perform such obligations).

96. See note 33, *supra*.

97. See, e.g., *Iggerot Moshe*, C.M. II:73(5).

commandment could be high. The physician might face professional sanctions and malpractice liability.⁹⁸ As discussed above, whether Jewish law would require a physician to sustain such costs depends, in part, on whether the applicable duty is considered an affirmative or a negative commandment. In addition to any possible monetary burden, the use of coercion – at least the use of physical coercion – would also raise the prospect of possible criminal sanctions, which, as a practical matter, might well exceed the personal sacrifice that the Torah imposes.

Conclusion

Jewish law perceives life as a process through which a person sanctifies himself by fulfilling G-d's commandments. Consequently, living is a responsibility, not merely a right. Not only is a person prohibited from rejecting this duty by committing suicide, but he is also affirmatively directed to safeguard his life.

Should someone's life be in danger – whether from his own suicidal impulses or from other causes – fellow Jews are commanded to respond. They are obligated to *prevent* another Jew from violating his halachic obligations, they are proscribed

98. See Immanuel Jakobovits, "Medical Experimentation on Humans in Jewish Law," in J. David Bleich and Fred Rosner (eds.), *Jewish Bioethics*, at 381 ("His [the doctor's] obligation to save life and health . . . is altogether independent from the patient's wishes or opposition. The conscientious physician may even have to expose himself to the risk of malpractice claims against him in the performance of this superior duty."); *Iggerot Moshe*, Y.D. IV:54(2) ("Even if through this rescue the doctor will become obligated to spend a great sum of money to pay for the [medical] equipment and other medications, he is obligated to do so.").

from *assisting* him to violate his duties and they are required to rescue him from physical danger. The extent of the sacrifice one must make to fulfill these responsibilities, however, remains subject to rabbinic debate.

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