



End-of-Life Issues: Who Decides?

And the time approached for Yisrael to die, so he called for his son, for Yosef, and said to him, "Please – if I have found favor in your eyes – please place your hand under my thigh and do kindness and truth with me: please do not bury me in Egypt. (Bereishis 47:29)

Euthanasia is a highly controversial topics in medical ethics and often leads to conflict between Halacha and the medical community. It is not uncommon for terminally ill patients to request not to be subjected to painful treatments at the end of their lives, and even to terminate their lives at a certain stage to avoid suffering. In fact, some may even go so far as to ensure that they are hospitalized in facilities that support euthanasia.

In many cases, towards the end of their lives, patients are not capable of making decisions as to their care or treatment. Therefore, everyone is encouraged to leave guidance for their caregivers at an earlier stage and outline the patient's wishes if he should be unable to express them himself. These advance directives often include instructions as to how medical care should proceed – or be terminated – in the event of great suffering or prolonged unconsciousness.

In this essay, we will discuss the Halachic significance and validity of advance directives.

Contrary to popular belief, a patient who is terminally ill or near death ("Shechiv Mera") is not able to compel his relatives or caregivers to follow his instructions regarding medical care and treatment. Though his children are obligated to fulfill his deathbed instructions (which is learned from Yosef's faithful fulfillment of his father's requests as recorded in this week's Parsha), this is not necessarily true of instructions regarding matters prior to his death. A *Shechiv Mera* is not imparted with any definitive authority as a result of his impending demise. The many Halachos that discuss the obligation to follow the instructions of a person upon his deathbed are based upon the concern that the patient may feel anguish if he feels that his wishes are not being respected and his instructions may be ignored, and that could potentially endanger his life.



The fundamental question is whether a person has the right to make decisions regarding his care at any stage of his life, and if others are obligated to fulfill those wishes. Although in many cases he does not have this right and must undergo treatment that will save or prolong his life, we will see certain instances where Halacha leaves the final decision to him.

We will begin by discussing whether a person is considered to be the “owner” of his body – in the sense of having jurisdiction over his body – such that he may decide whether he may forgo the obligation of others to save his life.

The Gemara in *Sanhedrin* (74a) explains that the obligation to save lives can be derived both from the Pasuk of “*Lo Sa’amod Al Dam Rei’echa*” (*Vayikra* 19:16) and from the Mitzva of *Hashavas Aveida*, which includes an obligation to “return his body” (“*Hashavas Gufo*”) if he is sick or in mortal danger. The *Minchas Chinuch* (237, *Kometz haMincha*) contends that if a person is attempting suicide, there is no obligation to save his life as there is no Mitzva of *Hashavas Aveida* in circumstances where the owner is attempting to discard something. Furthermore, there is also no Mitzva of *Lo Sa’amod Al Dam Rei’echa* when the person himself is “*standing over his blood*” and actively rejecting rescue.

The *Acharonim* explain that according to the *Minchas Chinuch*, a person is considered to be the “owner” of his body. Therefore, although it is absolutely forbidden to commit suicide¹, if a person decides to do so it is considered an “owner’s decision” and it absolves others of the Mitzva to save his life.

Many dispute the conclusion of the *Minchas Chinuch*. The *Sefer Kaba d’Kushaysa*² (1) argues that willful destruction of one’s property cannot be compared to suicide **as a person isn’t the owner of his body**. The *Rambam* (*Hilchos Rotzeach* 1:4) writes explicitly that the reason that a *Goel haDam* (the relative of a person who has been killed accidentally) may not take monetary compensation instead of avenging the life of the victim is because “*The life of the killer is not a possession of the*

¹ See the Gemara in *Bava Kama* 91b which derives the prohibition from the Pasuk, “*But the blood of your souls I shall demand*” (*Bereishis* 9). See also *Rashi* and the *Ibn Ezra* to *Bereishis* *ibid.*, and the *Rambam* in *Hilchos Rotzeach* (2:2-3). See also the *Sefer Chasidim* (675 & 677) who rules that a person who puts himself in danger also violates this *Issur*. The *Pesikta Rabasi* (Introduction to Chap. 24) expounds – “*Lo Sirtzach*” (do no murder), to read “*Lo Sisrtzach*” – “do not cause yourself to be killed”. Does a person who commits suicide actually transgress “*Lo Sirtzach*”? See the *Minchas Chinuch* (44) and *Marcheshes* (3:29) et. al.

² R’ Yoav Yehoshua Weingarten (1845-1922). *Kaba d’Kushyasa* is printed at the end of *Shu”i Chelkas Yoav* and contains 103 (the *Gematria* of *Kaba* – 827) questions on various topics.



Goel haDam, but a possession of Hashem". Rav Moshe Feinstein *zt"l* (*Igros Moshe*, Y.D. 2:174:3) makes a similar argument³.

The majority of Poskim disagree with the *Minchas Chinuch* and rule that there is an obligation to save the life of a person who attempts suicide. This was the position of the *Mahari"l Diskin* (*Shu"t, Kuntres Acharon*, 5:34), Rav Moshe Feinstein (*Igros Moshe*, O.C. 127, Y.D. 2:174:3, & 3:90), Rav Elyashiv (*Kovetz Teshuvos* 41:6-124). Rav Asher Weiss *Shlit"a* has also expressed this position. They cite the *Maharam m'Rothenberg* (Prague, 39) who rules that one is obligated to save another's life, even if is insisting that he does not want to be rescued⁴. These Poskim all hold that a person is not considered to have jurisdiction over his body. Therefore, it is self-evident that a person may not be entitled to make decisions about ceasing medical treatment.

In spite of this, there are certain cases where Poskim do take the desires of a patient who is on the verge of death into consideration, namely, where he is suffering greatly and wants his caregivers to refrain from extending his life artificially. Though it is absolutely prohibited to actively end the life of a patient in these circumstances (such as by lethal injection of a large dose of opioids) and a person who does so is an outright murderer, there are several cases where it may be permitted to passively allow him to die (e.g. by refraining from intervention or removing an impediment to death).

The *Rema* (Y.D. 339) rules:

It is similarly prohibited to cause a person to die more quickly. For example, if a person has been a Goses (on the verge of death) for a long time and isn't able to pass away, one may not remove the pillow or blanket from beneath him... it is also forbidden to move him, and it is forbidden to place the keys to the Shul beneath his head⁵ so that he is able to pass away.

However, it there is something that is impeding the departure of his soul, such as a banging noise nearby, or sound of wood chopping, or there is salt on his

³ See also the *Radvaz* (on the *Rambam*, *Hilchos Sanhedrin* 18:6), the *Minchas Chinuch* (34 & 48), *Shulchan Aruch haRav* (*Hilchos Shemiras haGuf v'haNefesh* 4 & *Kuntres Acharon* *ibid.* 1), *Mor u'Ketzia* (on the *Magen Avraham* 328:6), *Kli Chemda* (*Ki Seitzei* 6), *Shu"t Mishpat Kohen* (144:2-3) and *Ma'asei Ish* (4, p211).

⁴ See also the *Radvaz* (*Shu"t* 4:16) and *Mateh Ephraim* (618).

⁵ This was believed to "allow" a lingering patient to pass on.



tongue... it is permissible to remove them as doing so is not considered an act at all for one merely removes an impediment (Hagahos Alfasi, Chap. Eilu Megalchin).

The Rema's position is that although it is forbidden to actively cause the death of Goses it is nevertheless permissible to remove something that is impeding the departure of his soul⁶.

In spite of this, there are Poskim who hold (and this was the accepted practice for many years) that it is forbidden to refrain from treating a patient under any circumstances, even if the treatment will only slightly lengthen his life and even if he doesn't request that we do so. The Steipler Gaon *zt"l*, in a famous letter in *Karyana d'Igrasa* (190), noted that this position appears to run counter to the ruling of the Rema:

The notion that we are obligated to try any means to lengthen the life of a patient (even if it will only grant him Chayei Sha'ah) – [while] it is true that I heard of this in my youth, I don't know whether it comes from a reputable source. However, in my opinion, it needs a great deal of study, for in Yoreh Deah (339) it is clear that it is permissible to remove something that is preventing a patient's death – it is only forbidden to do a [direct] act to his body [to cause his death]. If so, since we are discussing taking a passive stance, I don't see any issue [with refraining from treatment] (if lengthening his life will cause him suffering). On the contrary, we should conclude [from the Rema's ruling] that it is preferable to refrain from it. All of these matters require a great deal of further study.

The *Tzitz Eliezer* holds that one may not refrain from medical treatment under any circumstances. He discusses this in many of his *Teshuvos*⁷. However, many other Poskim rule that if an unconscious patient is on the verge of death and has no hope of regaining consciousness, his caregivers may refrain from treatment that would prolong his life.

⁶ Obviously, he is not discussing a patient who has a chance of recovery.

⁷ See *Tzitz Eliezer* 5, *Kuntres Ramat Rachel* 28, 9:47, 13:87-89, *Y.D.* 80-82, & 17:62.



Nevertheless, there are instances where the patient's wishes should be taken into account. Rav Moshe Sternbuch *Shlit"a* (*Teshuvos v'Hanhagos* 1:861) explains:

The view of the Igros Moshe (Y.D. 2:174:3) is that not only is there no obligation to engage in methods to prolong a patient's life for a short time where there is no hope of saving his life and he is suffering greatly, but it is in fact forbidden. He explains this in another Teshuva (C.M. 2:74:1) where he writes:

*"... If the physicians do not know of any treatment – not only to cure him but not even to alleviate his suffering – and all they can do is prolong his life slightly in his current state of suffering, they should not perform this treatment... **when he doesn't agree to these treatments which prolong his life of suffering.**"*

In another Teshuva (ibid. 75:1) [the Igros Moshe rules]:

One needs to inform the patient of this and ask him if he wants these medications to be administered. If he prefers a life of suffering rather than death, one should administer them. If the patient does not want to live with suffering, these medications should not be administered.

Rav Shlomo Zalman Auerbach *zt"l* (*Minchas Shlomo* 91:24) discusses a case of a patient who was critically ill but could undergo an operation which could potentially save his life. However, the operation would result in paralysis. He ruled that the patient was probably not obligated to undergo the operation, even though one is generally obligated to save the life of a paralyzed person even if they are suffering.

Professor Avraham Steinberg (*Nishmas Avraham* 4, *Y.D.* 339) relates that Rav Shlomo Zalman told him that if a patient is terminally ill, there is no obligation to administer any treatments that will cause him to suffer, even if he is presently unconscious and not suffering. However, Rav Elyashiv *zt"l* would instruct doctors to use all means necessary to prolong patients' lives even if there was no chance of their recovery⁸. He would only permit doctors to refrain from doing so if the patient was suffering greatly and requested that these treatments not be performed. Therefore, if a patient was unconscious (or even following death by neurologic criteria), if it was

⁸ As long as they had not reached the stage of *Gesisa* (the throes of death).



clear that he wasn't suffering, Rav Elyashiv held that there is an obligation to do anything possible (including cardiopulmonary resuscitation), to save his life⁹.

Professor Steinberg cites another ruling of Rav Shlomo Zalman regarding the intravenous administration of antibiotics for treatment of pneumonia in a terminal patient with ALS who is entirely paralyzed and dependent upon mechanical ventilation and artificial feeding:

One should certainly administer oral antibiotics. But injections or other treatments that cause pain need his consent (if he still in a state to answer yes or no). Perhaps if he wants us to refrain we should accede to his request, and at least not desecrate Shabbos on his account.

Rav Shlomo Zalman further elaborates in *Minchas Shlomo (ibid.)*

Many struggle with the question of treating a patient who is a Goses. Some say that just as we desecrate Shabbos on account of Chayei Sha'ah, we must also compel a patient to accept it [i.e. agree to treatments to extend his Chayei Sha'ah] for he has no jurisdiction to forgo even one moment [of his life]. However, it is logical to say that if a patient is suffering and in great pain, or even in mental anguish, though he must be provided with food and oxygen even against his will, one may refrain from administering medications that cause him more suffering if that is his desire.

However, if the patient fears Heaven and is still lucid, it is certainly better to explain to him that one hour of repentance in this world is better than all of the life in the World to Come. We similarly find that the Gemara in Sotah (20a) asserts that it is a "merit" to suffer for seven years rather than die immediately.

Rav Moshe Sternbuch *Shlit"a (Teshuvos v'Hanhagos 3:363)* rules that one may only accede to a patient's request to refrain from treatment if it is highly doubtful that it will be effective. Then, although there is a chance that it will be effective, and in matters of life and death we usually grasp at even the smallest chance of saving lives, the patient is allowed to refuse it if he is suffering. However, if the treatment is likely to be effective, we cannot accede to the patient's request, even if he is likely to suffer greatly.

⁹ Rav Yosef Efrati *Shlit"a* also cites Rav Elyashiv in this vein.



We should note that there are a number of other related topics that are beyond the scope of this essay. For example, do family members have the power to make decisions on a patient's behalf if he is no longer in a state to do so?

In addition, we should point out than in any case where a person's life is at stake, particularly end-of-life scenarios, it is imperative to consult with expert Rabbanim and Poskim for guidance. This applies equally to the patient's family and to the physicians who are treating him.