



The Throes of Death

The Halachos of a Goses

There are a number of Halachos which pertain to a *Goses* (a person in the throes of death), delineated by the *Shulchan Aruch* (Y.D. 330). One of the better known Halachos is that it is forbidden to touch a *Goses* for fear of hastening his death. While it is certainly permissible, and indeed a Mitzva, to treat him in order to prolong his life, where it cannot be prolonged his treatment should be discontinued upon the onset of *Gesisah*. Therefore, all routine medical procedures such as blood-sampling for laboratory testing or even the testing of metrics such as blood pressure, temperature, and pulse should be discontinued.

An additional question is whether one may deactivate a ventilator which is supporting a *Goses*. The *Rema* rules that although a *Goses* is considered to be alive in all respects and it is forbidden to do anything that may hasten his death, one may remove something that is preventing his soul from departing in a natural way. Therefore, one may remove salt from his tongue or quieten any noise nearby. Doing so is not considered to be an act that hastens his death but one which *removes an impediment* to his natural death. The *Poskim* therefore discuss whether deactivating or failing to reactivate a ventilator for *Goses* is permissible – perhaps doing so would only be considered a removal of an impediment.

The *Nishmas Avraham* (2, p461) cites Rav Shlomo Zalman Auerbach who agreed with the following ruling:

Since he is considered a Goses and there is no prospect that he will recover or breathe unassisted again, it is permissible to deactivate the ventilator which is preventing the departure of his soul, as explained by the Rema. However, this is only if they are absolutely certain that this will not halt the flow of blood to his brain and that it will not rot inside his skull.

He also cites Rav Elyashiv zt"l who agreed with this ruling but added that "so long as it isn't clear if the patient actually constitutes a *Goses*, one should not deactivate the ventilator while his heart is beating."



It is clear that one can only consider deactivating ventilation or refraining from life-prolonging treatment if the patient is actually a *Goses* – otherwise it is absolutely forbidden. This is also clearly stated by the *Shiltei haGiborim* and *Sefer Chassidim* (723) who are the source of the aforementioned ruling of the *Rema*.

There is another important Halacha pertaining to a *Goses* which is subject to a *Machlokes Rishonim*. *Tosfos* in *Kiddushin* (78b) cites two opinions as to whether a *Goses* is Halachically fit to effect a divorce or give a gift (or the like), or whether he is considered like a dead man who cannot do so. (This question is also discussed by numerous other *Rishonim*.)

The *Shulchan Aruch* (EH 121:7) rules that if a *Goses* is lucid, he may render a divorce and a give somebody a gift. However, the *Rema* rules (based on an opinion cited by the *Mordechai*) that he can only do so if he is still able to speak.

We should point out that the *Goses's* potential lack of ability to effect a divorce and the like does not stem from a lack of intellect (as it does in the case of a *Shoteh*) but due to the fact that he may already be considered like a dead man (see the *Beis Shmuel* *ibid.* 4).

The Definition of a Goses

The Poskim do not clearly define what constitutes *Gesisah*. In the following paragraphs we will attempt to shed some light on this matter.

The *Rambam* (*Pirush haMishnayos, Arachin* 1:7) explains that a *Goses* is a person who is “in the chapter of death” – “*b’Perek haMaves*”. Rav Kapach’s translation states that a *Goses* is someone who is “*accosted by the advance of death*”. In other words, a *Goses* is a person for whom the process of death has begun. Though he is still alive – for only the majority of *Gosesim* die and a small number do recover from this state – his current state is one of tackling the process of death. He is not only in *Sakana*, or in a state of *Chayei Sha’ah*, or *Treif*.



How Long Does Gesisa Last?

The *Tur* (Y.D. 339) and *Shulchan Aruch* (*ibid.*) rule that if a person is informed that his relative was in a state of *Gesisa* three days earlier, he can assume that he has died and is obligated to mourn him.

The Poskim debate this Halacha at length. Does this mean that a state of *Gesisa* can continue for three full days, after which the *Goses* certainly died? Or does it mean that three days following *Gesisa* – which lasts a moment – we can assume him to have died?

Further, is this rule an absolute certainty, such that one could permit the wife of a *Goses* to remarry three days after the onset of *Gesisa* even if nobody actually witnessed his death? Or was it only said with regard to certain Halachos and under certain conditions (such as the potential to confirm his death at a later date). The *Pischei Teshuva* (E.H. 17:131) discusses these and other questions at length and cites many conflicting opinions.

The assertion that a *Goses* certainly died within three days has another Halachic ramification. The *Shulchan Aruch* rules that if there is a possibility of saving the life of a *Goses*, one may desecrate Shabbos in order to do so since “a *Goses* is considered alive in all respects”. *Tosfos* in *Nidah* (44b, s.v. “*Ihu*”) explain that although the majority of *Gosesim* will die, we do not make decisions regarding *Pikuach Nefesh* based on likelihood and we are obliged to attempt to save him even by desecrating Shabbos.

However, the *Shevus Ya’akov* (1:13, cited by the *Machatzis haShekel*, O.C. 329:4) contends that if a person became a *Goses* more than three days previously we do not desecrate Shabbos to see if he can be saved, as he should be assumed to have died.

[I presume that this distinction only applies to “*Pikuach haGal*” where we desecrate Shabbos to dig a person out of rubble to examine him and consider whether he can be saved. If we know that the person in question was already a *Goses* three days earlier, we would not desecrate Shabbos in order to dig him out. Likewise, if a doctor hears that a person was a *Goses* in his home three days earlier, he may not desecrate Shabbos to travel to attempt to save his life. However, if a patient who has been a *Goses* for three days is in front of us and is still alive, he *must* be of the minority of *Gosesim* who do recover. Therefore, we may desecrate Shabbos in order to treat him, like any other *Goses*.]



How is Gesisa "Diagnosed"?

Remarkably, *Chaza"l* did not leave any clear guidance in this matter, which starkly contrasts their approach to other questions such as determining a person's moment of death, where they did issue guidelines (though today it remains a matter of dispute). We should point out according to the Chasam Sofer, the duration of "*Yetzias haNeshama*" (the departure of the soul) was so obvious to *Chaza"l* that they did not feel that they needed record the information for future use.

On several occasions contemporary Poskim have stated that the nature of *Gesisa* is unclear to us and not clearly delineated by Halachic guidelines. It must instead be determined via experience in the field. Rav Shmuel Vosner *zt"l* (*Assia* 55, Teves 5755, p44-45) noted that medical professionals have many doubts as to when precisely *gesisa* begins. The *Nishmas Avraham* (2, p450) relates that when he asked Rav Shlomo Zalman Auerbach *zt"l* whom Halacha determines to be a *Goses* he replied, "*You are the doctor!*"

Rav Moshe Feinstein *zt"l* discusses this matter at length (*Choshen Mishpat* 2:73):

Regarding the signs of Gesisa - I have heard that physicians do not recognize them. Perhaps this is because the medical world's perspective is that the state of Gesisa makes no difference at all. For as far as the nations of the world are concerned, one need not worry that by moving or treating a Goses one will bring about his death. They would say that there is no prohibition in doing so, for two reasons: Firstly, they are unaware that it is in fact prohibited to touch a Goses and that if a person touches him, it is "like shedding blood", as stated in Maseches Semachos (1:4) and ruled by the Rambam (Hilchos Eivel 4:5) and cited by the Shach (Y.D. 339:5). Secondly, even if the gentile is aware of this prohibition, he isn't overly concerned about a murder of this sort.

Rav Moshe then proposes that in fact, the prohibition of hastening the death of a *Goses* may not apply to Noahides. However, after a great deal of discussion, he concludes that it is also prohibited to them. Nevertheless, as stated, gentile [and sometimes non-observant Jewish] physicians are still not always concerned about touching a *Goses*, either because they do not know the Halacha or because they do not care about it.

He then concludes:



However, Torah observant Jews who see that a patient cannot be cured and that he has become a Goses must avoid touching him. The members of the Chevra Kadisha of each city whose job it is to do what is required, [according to the customs of Torah observant Jews] to honor the dead, from when the soul departs until the end of the burial, shall be aware of this. It seems to me that physicians who work in hospitals where people die, can learn to recognize the signs of Gesisa if they try and be present at the side of patients who are about to die.

Clearly, there are no absolute Halachic parameters to *Gesisah*, and it can only be grasped by those who gain experience attending to patients on the verge of death. However, the nature of *Gesisa* can be understood by a layman which is why Rav Moshe encouraged the *Chevra Kadisha* to learn to recognize the signs of *Gesisa*.

It may be the case that today where there are advanced means of monitoring patients, we can determine a state of *Gesisa* based on a decrease in the patient's metrics, though it is difficult to formulate an absolute Shiur of *Gesisa* from this.

We should also note that today modern medicine can prolong a patient's life by artificial means when he would naturally have become a *Goses*. In this climate, determining whether a patient is truly a *Goses* and not just deathly ill, becomes an even more complex issue. Professor Avraham Steinberg (*Encyclopedia Refuit Hilchatit, Erech Noteh Lamus 2*, footnote 16) attests that Rav Shlomo Zalman Auerbach zt"l conceded that today it is difficult to determine that a critically ill patient has become a *Goses* as in the majority of cases it is far from clear that the patient is close to death.

Professor Steinberg also cites the Steipler Gaon (*Kraina d'Igarta*, 190) who discusses prolonging the life of a terminally ill patient. The Steipler noted that in his youth he heard that "one should do everything possible to prolong the life of a patient [even if it is only for *Chayei Sha'ah*]" but that he did not know if this approach came from a reliable source or not. He then questions this approach:

In my eyes, this issue needs a great deal of study. In Shulchan Aruch (Y.D. 339) it is clear that one may remove something that is preventing a sick person from dying. It is only forbidden to do a physical act to his body. Therefore, where we merely "sit and do nothing" [in other words we refrain from treating a terminal patient because it will only cause him to suffer for longer] we would not appear to be doing anything wrong. In fact, it may even be preferable to refrain from treating terminal patients in this state as Beis Lechem Yehuda (Y.D. ibid. s.v.



"She'omrim") rules that one should not place salt on the tongue of a Goses in order to prolong the phase of Gesisah.

The Steipler than considers if there may be a distinction between a *Goses* (for whom one may remove an impediment to the departure of his soul) and a terminally ill patient who isn't a *Goses*. However, he argues that the two cases should be equated:

Though one could argue that a Gosess is a different matter, it seems logical to say that where a patient can only hope for Chayei Sha'ah and we are unable to completely save his life, his state resembles that of a Goses as a Goses is also considered to be alive for all matters [yet we do not act to prolong his Gesisah]. All of these matters require a great deal of study.

The argument that any person who can only hope for *Chayei Sha'ah* has the same Halacha as a *Goses*, is a tremendous *Chiddush*.