

EUTHANASIA DILEMMAS

Cases, Laws, Precedents, Responsa, Essays

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Outline

Introduction – Basil Herring	Page 3
Questions and Cases about assisted Euthanasia	Page 4
Writing your own Jewish Living Will (Conservative Rabbinat's Form)	Page 6
Biblical Precedents and Laws:	
King Saul's Suicide – I Samuel 31	Page 15
Genesis 9:6 with commentary from Bereshit Rabbah 14 Ramban, <i>Torat HaAdam</i> and Yosef Karo, Shulchan Aruch, Y.D. 345:3	Page 16
Rabbinic Laws and Stories:	
Don't Hasten the Death – TB Shabbat 151b; Semachot 1:1-4 and Rambam, Mishne Torah Laws of Mourning 4:5	Page 16
Rabbi Yehuda HaNasi's Painful, Prolonged Death -TB Ketubot 104a	Page 18
Honi's Desire to Die: Either Companionship or Death –TB Taanit 23a	Page 20
Hastening Hannaiah ben Tradion's Torture - TB Avodah Zara 18a	Page 21
400 Adolescent Boys and Girls Jump top their Death – TB Gittin 57a	Page 21
Saving Life – even for an Hour - TB Sanhedrin 73a; TB Yoma 85a	Page 23
On Active Euthanasia - Is it Punishable?	
TB Baba Kama 90b – Injuring Oneself versus Injuring Another	Page 24
Rambam, Mishne Torah, Laws of Damages 5:1	
TB Sanhedrin 78a – Is it murder to kill a terminal patient?	Page 25
Rambam, Mishne Torah, Laws of Homicide 2:1,7 and 3:10	
On Passive Euthanasia – Where to Draw the Line?	
Reviving Salts and Woodchopping – Sefer HaHassidim 723;234; Rabbi Moshe Isserles Shulchan Aruch 339:1	Page 26
Rav Hayim David Halevi, Responsum	Page 27
Guideline Questions on Some of the Texts	Page 28

APPENDIX: ESSAYS AND VERDICTS

Personal View of the Human Issues of Euthanasia

- A Whole New Life by Reynolds Price reviewed
by Richard Selzer**
in NY Times Book Review **Page 3**
- Confronting the Angel of Death by Harold Shulweis**
(printed in Shma, February 16, 1996) **Page 4**
- The Right to Die by Daniel Jeremy Silver**
(from *Jewish Reflections on Death*, edited by Jack Riemer) **Page 6**

Ethical Dilemmas in the Law

- Beware of Terminology- “Mercy Killing” by Judge Menahem Elon**
in Shefer versus Shefer, 1993, Israeli Supreme Court
(reprinted from *Jewish Law : Cases and Materials*,
edited by Elon, Sykes etc) **Page 11**
- May a Parent Refuse Treatment so that the Child Dies?
The Slippery Slope and Determining the Wishes of a Minor or
Incompetent
by Judge Menahem Elon**
in Shefer versus Shefer, 1993, Israeli Supreme Court
(reprinted from *Jewish Law : Cases and Materials*, edited by Elon, Sykes etc) **Page 12**

Comparative Law: USA, Holland, and Israel

- Active and Passive Euthanasia in Contemporary Law in USA and
Holland by Judge Menahem Elon**
in Shefer versus Shefer, 1993, Israeli Supreme Court
(reprinted from *Jewish Law : Cases and Materials*, edited by Elon, Sykes etc) **Page 14**
- Contemporary Israeli Law on Euthanasia and the Synthesis of Jewish
and Democratic Tradition by Judge Menahem Elon**
in Shefer versus Shefer, 1993, Israeli Supreme Court
(reprinted from *Jewish Law : Cases and Materials*, edited by Elon, Sykes etc) **Page 18**

Contemporary Verdict in Israel

- Shefer versus Shefer, 1993, Israeli Supreme Court
by Judge Menahem Elon**
(reprinted from *Jewish Law : Cases and Materials*, edited by Elon, Sykes etc) **Page 20**

Background Summary Articles

- The Jewish Attitude toward Euthanasia by Fred Rosner**
(reprinted in *Jewish Bioethics* edited by Bleich and Rosner) **Page 33**
- Euthanasia by Basil Herring**
(from *Jewish Ethics and Halakhah for our Time* by B. Herring) **Page 39**
- Suicide in Jewish Law by Fred Rosner**
(reprinted in *Jewish Bioethics* edited by Bleich and Rosner) **Page 47**
- Jewish Deliberations on Suicide by Noam Zohar**
(from *Physician Assisted Suicide*, edited by M. Battin etc) **Page 54**

Contemporary American Jewish Responsa

- The Quinlan Case: A Jewish Perspective by J. David Bleich**
(Yeshiva University, reprinted in *Jewish Bioethics* edited by Bleich and Rosner) **Page 57**
- Reform Responsa by Solomon Freehof and Israel Bettan,**
(CCAR American Reform Responsa, 1950, 1975, and 1969,
see website ccar.net.org) **Page 62**
- Trefah, Rather than Goses, as an Operative Category by Elliot Dorff**
(Conservative Judaism, Spring 1991, pages 29ff) **Page**

CCAR Responsa
American Reform Responsa
76. Relieving Pain of a Dying Patient

(Vol. LXXXV, 1975, pp. 83-85)

QUESTION: A dying patient is suffering great pain. There are medicines available which will relieve his agony. However, the physician says that the pain-relieving medicine might react on the weakened respiratory system of the patient and bring death sooner. May, then, such medicine be used for the alleviation of the patient's agony?

Would it make a difference to our conclusion if the patient himself gave permission for the use of this painkilling medicine? (Rabbi Sidney H. Brooks, Omaha, Nebraska)

ANSWER: ...What difference would it make if the patient himself gives permission for the use of this medicine, though he knows it may hasten his death? After all, for a man to ask that his life be ended sooner is the equivalent of his committing suicide (or asking someone else to shorten his life for him). Suicide is definitely forbidden by Jewish law.

However, we are dealing with a person who is in great physical agony. That fact makes an important difference. **A person under great stress is no longer considered in Jewish law to be a free agent.** He is, as the phrase has it, *Anus*, "under stress or compulsion." Such a person is forgiven the act of suicide, and the usual funeral rites--which generally are forbidden in the case of suicide--are permitted to the man whose suicide is under great stress. The classic example for this permissibility is King Saul on Mount Gilboa. His death (falling on his sword) and the forgiveness granted him gave rise to the classic phrase, in this case, "*Anus keSha-ul.*" Thus, in many cases in the legal literature the person committing suicide was forgiven and given full religious rites after death, if in his last days he was under great stress.

However, a caution must be observed here. **The law does not mean that a person may ask for death if he is in agony, but it means that if in his agony he does so, it is pardonable.** In other words, here we must apply the well-known principle in Jewish law, the distinction between *Lechatechila*, "doing an action to begin with," and *Bedi-avad*, "after the action is done." Thus, we do not say that *Lechatechila* it is permissible for a man to ask for death, but *Bedi-avad*, if under great stress he has done so, it is forgivable.

So far we have discussed the situation from the point of view of the **action of the patient**. Now we must consider the question from the point of view of the physician:

Is a physician justified in administering a pain reliever to a dying patient in agony when the physician knows beforehand that the medicine will tend to weaken his heart and perhaps hasten his death?

Jewish traditional law absolutely forbids hastening the death of a dying patient. It requires meticulous care in the environs of the dying patient, not to do anything that might hasten his death. All these laws are codified in the *Shulchan Aruch*, Yoreh De-a 339. If, therefore, this were definitely a lethal medicine, the direct effect of which would be to put an end to the patient's life, the use of such medicine would be absolutely forbidden.

But this medicine is neither immediately, nor intentionally, directly lethal; its prime purpose and main effect is the alleviation of pain. The harmful effect on the heart of the patient is only incidental to its purpose and is only a possible secondary reaction. The question, therefore, amounts to this: **May we take that amount of risk to the patient's life in order to relieve the great agony which he is now suffering?**

Interestingly enough, there is very little discussion in the classic legal literature, beginning with the *Talmud*, about the relief of pain. ...It is more than a question of relieving pain of a wound or an operation. It is a question of relieving pain at the risk of shortening life. Now, granted that it is forbidden to take any steps that will definitely shorten the life of the patient--may it not be permitted in the case of a dying patient to take some risk with his remaining hours or days, if the risk is taken for his benefit?

...The law permits risking these last hours on the chance of *curing* the patient. But may we conclude from that permission also the right to risk those last hours, not with the hope of curing the patient, but for the purpose of relieving him of pain?

Interestingly enough, there is a precedent in Talmudic literature precisely on this question. The incident referred to is in Ketubot 104a. **Rabbi Judah the Prince** was dying in great agony. The Rabbis surrounded his house in concerted prayer for his healing. But Rabbi Judah's servant (who is honored and praised in the *Talmud*) knew better than the Rabbis how much agony the rabbi was suffering. She therefore disrupted their prayers in order that he might die and his agony end.

In other words, we may take definite action to relieve pain, even if it is of some risk to the *chayei sha-a*, the last hours. In fact, it is possible to reason as follows: It is true that the medicine to relieve his pain may weaken his heart, but does not the great pain itself weaken his heart? And: May it not be that relieving the pain may strengthen him more than the medicine might weaken him? At all events, it is a matter of judgment, and in general we may say that in order to relieve his pain, we may incur some risk as to his final hours.

Solomon B. Freehof

American Reform Responsa

78. Euthanasia

(Vol. LX, 1950, pp. 107-120)

QUESTION: ...Two thousand physicians in the State of New York has drafted a bill for presentation to the New York Legislature seeking to **legalize the practice of orderly scientific euthanasia**. [A CCAR committee studied and issue and reported back].

ANSWER: Neither in its theoretical nor in its practical aspects does euthanasia present anything new. The Bible, which affirms religious doctrine more often by implication than by direct command, leaves **no doubt** as to what the religious man's attitude toward a life of affliction should be. **He will accept the lot apportioned to him**. He surely will not tamper with the life given him. When Job's wife, herself prostrate at the sight of her husband's overwhelming affliction, cried out, "Dost thou still hold fast thine integrity? Blaspheme God, and die," Job indignantly replied, "*Thou speakest as one of the impious women speaketh. What? Shall we receive good at the hand of God, and shall we not receive evil?*" (Job 2:9-10).

Later, in the early Rabbinic period, the same religious temper was evidenced by a famous rabbi who suffered martyrdom for his religious convictions. When Chananiah ben Teradion, a Tannaitic teacher of the second century, was condemned by the Romans to be burned at the stake, his disciples counseled him, as the fires began to flare, to let the consuming flames surge into his frame and thus put a speedy end to his suffering. In reply, the celebrated martyr is reported to have said: "**It is best that He Who hath given the soul should also take it away; let no man hasten his own death**" (TB Avoda Zara 18a).

Both of these statements, while seemingly made in casual manner, were by no means the stray utterances of individual teachers; they sprang from a common ethical tradition. They are closely related to a principle of faith that lies at the foundation of Jewish ethics. **Human life is more than a biological phenomenon; it is the gracious gift of God; it is the inbreathing of His spirit**. Man is more than a minute particle of the great mass known as society; he is the child of God, created in His image. "*The spirit of God hath made me,*" avers Job in the midst of his suffering, "and the breath of the Almighty gives me life" (Job 33:4). Thus, human life, coming from God, is sacred, and must be nurtured with great care. And man, bearing the divine image, is endowed with unique and hidden worth and must be treated with reverence.

This principle--which is basic to Judaism, and to which we probably owe whatever spiritual progress there has been made through the centuries--finds clear embodiment in the *Halacha*, in Rabbinic law. The Rabbis were no inflexible legalists; they recognized that not under all circumstances could we condemn unfeelingly the man who chose the way of self-destruction to escape from his hard lot. Yet in formulating the law, they

proved uncompromising. The formal rites of mourning, they declared, shall be suspended in the case of one of sound and mature mind who deliberately and of his own volition has laid violent hands on himself; only those rites may be performed the omission of which would give undue offense to the bereaved family (Semachot 2.1-5). Likewise, in the case of one who is in dying condition, the law prohibits anyone else from employing any positive and direct means to hasten his death, no matter from what protracted an ailment he may suffer (Yoreh De-a 339). To abridge in some positive and direct manner the duration of life by a single second is tantamount to the shedding of blood (Shab. 151b).

Yet Rabbinic law sanctions the use of indirect and negative means to facilitate a peaceful death, such as the elimination of noise and the withholding of stimulants (Yoreh De-a 339; Avoda Zara 18a). In the eyes of the law, the causes which may retard the natural process and thus delay the moment of death are artificial, and may therefore be removed. Not so, however, when that which is withheld is a natural physical requirement and essential to sustain life. No nourishment, however little the amount required, may be denied a dying patient whose condition seems hopeless and his pain great, in order to hasten his death (*Tel Talpiyot*, Letter 42, vol. 30, 1923, Budapest).

Of course, we liberal rabbis have always claimed the right, in the interest of a progressive faith, to modify Rabbinic law and to remove what we regard as an obstacle in the advance of the spirit. And, indeed, we have eliminated many an old restriction which, though meant to safeguard Judaism, proved to obscure its essential nature. But we have never sought to nullify an effective Rabbinic implementation of a vital spiritual principle.

The Jewish ideal of the sanctity of human life and the supreme value of the individual soul would suffer incalculable harm if, contrary to the moral law, men were at liberty to determine the conditions under which they might put an end to their own lives and the lives of other men.

Israel Bettan

Discussion

Rabbi Dudley Weinberg: I wonder about the latter part of the passage regarding the death of Rabbi Chananiah ben Teradion.

In that case, the executioner offered to make his death easier and speedier by building up the flames and removing some protective tufts of wool from vital areas of his body. Rabbi Chananiah agreed that if the executioner did these things, he would be admitted to the *Olam Haba*. After taking these steps, which hastened the death of Rabbi Chananiah, the executioner leaped into the flames and perished. The text then states that a *bat kol* declared that the executioner had been admitted to the *Olam Haba*, thereby giving approval to his action.

Rabbi Jonah B. Wise:

The question of euthanasia today is not one that can be discussed on the basis of the opinion of one who lived in Smyrna in the 17th century or of our distinguished Rabbinical predecessors in Talmudic times. The moral question involved has, of course, been discussed by Dr. Bettan, but the **world has progressed since that time; conditions have changed.** The advances in human knowledge, which I am sure our distinguished Halachists would have recognized, are a very important factor in making a decision. It is entirely possible that had these Rabbis been aware of the circumstances which confront us, they would have changed their attitude. They passed no real legislation; the references are not to cases in which the practice of euthanasia was discussed. ...

The paper is of great interest, but the conclusions to which it comes, and the decisions which it asks us to make, are not the kind which the Central Conference of American Rabbis should present to the American public.

CCAR Responsa

American Reform Responsa

77. Allowing a Terminal Patient to Die

(Vol. LXXIX, 1969, pp. 118-121)

QUESTION: A terminal patient was dying as a result of a series of strokes. Two physicians, one of whom was the patient's son, decided--with the consent of the family--to hasten the end by withdrawing all medication and fluids given intravenously. Is such procedure permitted by Jewish law?

ANSWER: This is a complex question and, therefore, is not quite clear in the law. However, there is enough in the legal literature to permit us to arrive at a conclusion.

The real question is: What is the limit on the freedom of action of a physician with regard to a dying patient?

By "**dying patient**" we do not mean a patient who is in danger of death but only who can yet be healed. If, for example, a person has a heart attack and can be healed (as many are from one attack or even two), or if a patient has been rescued from drowning and can be saved with resuscitation (but if no resuscitation is given he will die)--such dying patients, all of whom have a prospect for recovery, must be given the full resources of medicine in the attempt to save them. One may even risk a remedy that might possibly kill them, provided there is a fair chance that the remedy might save them. Thus, the *Talmud*, in Avoda Zara 27b, says clearly that one may risk otherwise forbidden remedies (e.g., from a heathen healer) if the dying patient has a chance to be cured by the remedy. See the full discussion of this permission to risk death if there is a fair chance to cure in *Shevut Yaakov* III.75 (Jacob Reischer of Metz, d. 1733).

But in the case under consideration we are not dealing with a dying patient who has a chance for recovery if given the proper medication. We are dealing with a patient with regard to whom all the physicians present, including his own son, agree that he has no chance for recovery. In other words, he is a terminal patient. What, then, are the limits of freedom of action of a physician with a terminal patient?

Is it the physician's duty to keep this hopeless patient (who is also in all likelihood suffering great pain) alive a little longer, maybe a day or two?

Jewish law is quite clear on this question. He is not in duty bound to force him to live a few more days or hours. This law is based on the famous incident in B. Ketubot 104a. Rabbi Judah the Prince was dying in great suffering. The Rabbis insisted on ceaselessly praying so that he might thus be kept alive a little longer. But his servant-woman (who is often referred to with honor in the *Talmud*) threw down an earthen jar from the roof of the house into the midst of the praying Rabbis, in order to stop their prayers so that Rabbi Judah might peacefully die. The Spanish scholar Nissim Gerondi (to Nedarim 40a, top) says that **while it is our duty to pray for a sick person that he may recover, there comes a time when we should pray for God's mercy that he should die.** So, too, *Sefer Chasidim* (#315-318, edition Frankfurt)-- basing its opinion on the statement of Ecclesiastes, "*There is a time to live and a time to die*"--says as follows: "If a man is dying, we do not pray too hard that his soul return and that he revive from the coma; he can at best live only a few days and in those days will endure great suffering; so 'there is a time to die.'" In other words, according to the spirit of Jewish tradition, just as a man has a right to live, so there comes a time when he has a right to die. Thus, there is no duty incumbent upon the physician to force a terminal patient to live a little longer.

But what, under these circumstances, is a physician permitted actually to do?

Here again the law is clear. He may do nothing positive to hasten death. The *Mishna* (in *Shabbat* XXIII.5) says that we may not close the eyes of a dying patient. The *Talmud* (*Shabbat* 151b) compares the dying patient to a guttering candle that is about to go out. If a man touches his fingertip to the candle flame, it will go out at once. This he must not do. In other words, he must not hasten the death of a dying patient by closing his eyes. The Talmudic discussion is elaborated on in the post-Talmudic treatise, *Semachot*, chapter 1, and finally is codified in the *Shulchan Aruch*, Yoreh De-a 339, where it is clear that no action must be taken to hasten death, i.e., you may not remove a pillow from under his head.

However (see Isserles, *ibid.*), if someone outside is chopping wood and that rhythmic sound focuses the mind of the dying patient and prevents his soul from departing, you may stop the wood-chopping so that the patient may relax and die in peace. Or, if there is salt on the patient's tongue and the tartness of the salt focuses his mind and keeps him from relaxing into death, you may wipe the salt from his tongue and thus allow him to die. .. while you must not do anything to hasten death, you may remove the causes of the delay of death.

All this brings us to a clearer understanding as to the limits of freedom of action of the physician in relation to the hopelessly dying patient. He may not take any overt action to hasten death, such as giving him, perhaps, an overdose of an opiate, but he may refrain from doing that which will prevent his dying. Of course, in this case, if he ordered the removal of the intravenous apparatus, there may be some ground for objection if the removal of the apparatus was a rather forcible procedure and shook up the patient. But if, for example, the removal of the apparatus was so gentle as not to disturb him, it would be like the wiping off of the salt on his tongue, which Isserles permits. If he does not even do this, but merely gives the order that the bottle containing the nutriment not be refilled when it is emptied out, then, too, he committed no sin at all. He is merely, as the law says, preventing that which delays the death...

To sum up: If the patient is a hopelessly dying patient, the physician has no duty to keep him alive a little longer. He is entitled to die. If the physician attempts actively to hasten the death, that is against the ethics of Jewish law. In the case as described, the term used in the question, "to hasten death," is perhaps not correct, or at least should be modified. **The physician is not really hastening the death; he has simply ceased his efforts to delay it.**

Solomon B. Freehof