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Aging and the aged in Jewish law

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SURGERY AT NINETY-SIX

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SURGERY AT NINETY-SIX

Walter Jacob

QUESTION: A ninety-six-year-old woman who lives in a nursing home has recently been informed that severe hardening of the arteries necessitates the amputation of her foot. As a result of the shock of hearing this news, she has become severely disoriented. Her family was subsequently advised of her situation and several alternatives were presented. She may submit to amputation with a chance that her condition will be permanently corrected. However, there is no assurance that she may not die during surgery or soon thereafter. Furthermore, her other foot may be similarly affected, or her rehabilitation may not be successful. The alternative is a slow and painful death which can be partially relieved by sedation. The family wants the mother to make the decision. She refuses to sign the release for surgery. But as her lucid moments are brief, it is not clear whether that is what she actually wishes. Should there be surgery or should matters simply be allowed to take their course? (Rabbi, Illinois).

ANSWER: We shall look at both the traditional and modern components of this question. Rabbinic tradition from Talmudic times onward has encouraged the utilization of all possible medical procedures for life-threatening situations. *Sanhedrin* (23a) advocates this direction of the basis of "you shall not stand idly by the blood of your fellow" (Lev. 19:16). *Baba Kama* (85a) bases itself on "he shall cause him to be thoroughly healed" (Exod. 21:20). There are other parallel passages in which the citations are a little less clear. Nahmanides (13th century), in his commentary on Leviticus 25:36 ("And your brother shall live with you"), followed this path, earlier proposed by Hai Gaon (10th century). Yehuda Lev Zirelson (20th century) applied this line of reasoning to less dangerous, non-life-

threatening situations (*Teshuvat Atzei Levanon* #61). The general principle that medical intervention is to be widely used has thus been established.

We must ask three further questions. Is this appropriate when the procedure is dangerous? Is there an age limit beyond which tradition would not advocate rigorous medical intervention? Shall the ninety-six-year-old woman face the trauma of an amputation?

The fact that considerable risk may be undertaken to save or restore life is based on a Talmudic discussion (*A. Z.* 27b), which interprets a story from 2 Kings (7:3 f). In this tale a group of lepers about to starve in the siege of Samaria decided to risk the mercy of the Syrian army rather than face certain death in the city. The Talmud used this discussion to show that in life-threatening situations one might place oneself even into the hands of idolaters. In modern times this passage has been cited in order to permit the use of drugs whose side effects may be hazardous (J. Reischer, *Shevut Yankov* III, #85; Posner, *Bet Meir Yoreh Deah* 339.1). There are further discussions about use of hazardous drugs when the chance of survival is low. Eliezer Waldenberg (*Tzitz Eliezer* 10, #25, Chap. 5, Sec. 5) felt that a 50% survival rate was necessary to recommend usage. Others like Mosheh Feinstein (*Igrot Mosheh, Yoreh Deah* 2, #59) felt that hazardous procedures and drugs may be used even when there is only a remote chance of survival. This path was also followed by I. Y. Unterman (*Noam* 12, p. 5). There is considerable debate on this matter. It is quite clear, however, that the use of medical procedures with a high risk have been encouraged by traditional Judaism whenever there is an opportunity to save a life.

In the literature cited, and in other instances, there has been no discussion of an age limit beyond which such procedures should not be utilized. If an individual is close to death, she should be permitted to die peacefully, and it is not necessary to subject her to needless pain through therapy which can not succeed (*Sefer Hasidim* #723; W. Jacob, *American Reform Responsa*, # 79). However, if there is a chance for success, it should be undertaken.

Although the life span throughout the rabbinic and Biblical period was low, the Psalmist's ideal of three-score years and ten, or by reason of strength four-score years (Ps. 90) and Moses' life of one hundred and twenty with his "eyes undimmed and his vigor unabated" (Deut. 34:7), as well as the ages of patriarchs and others, pointed to the ideal of an advanced age. As medical practice has advanced and made a longer life possible, we, too, should encourage medical procedures on individuals who have reached an advanced age.

However, we must also take into consideration the psychological factors which our forefathers only partially considered. In this instance even the news of a possible amputation was devastating, and the woman was not able to overcome it. This indicates a doubtful prognosis for her future. Here the psychological disadvantages may outweigh the medical advantages. We must remember that the efforts of tradition were solely concerned with saving life and not with its quality.

The medical prognosis is doubtful in our case and the psychological prognosis negative. Under these circumstances we would be reluctant to encourage an operation and inclined to let the woman

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live out her remaining days with the help of drug therapy to provide all possible comfort.

Walter Jacob, *Contemporary American Reform Responsa*, #85, (Central Conference of American Rabbis, New York, 1987).