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Aging and the aged in Jewish law

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DYING PATIENT KEPT ALIVE

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DYING PATIENT KEPT ALIVE

Solomon B. Freehof

QUESTION: Is a doctor duty bound to continue making efforts to keep a patient alive even if the patient is dying and in great pain, or has arrived at the stage of utter helplessness in bodily functions? The question is asked with regard to Jewish law or the ethics implied in Jewish law. (Dr. Regina Stolz Greenebaum, Pittsburgh, PA)

ANSWER: The question does not ask whether it is permitted to put to death a patient who is suffering, that is, euthanasia. As for euthanasia, it is clear that this is forbidden by Jewish law. We have no right to take life, except in the case where one person is pursuing another to destroy him. In that case the pursuer may be stopped, even at the risk of destroying his life. It is on this basis of stopping a "destroyer" or an "attacker" that Jewish law requires that if a child is being born and it becomes evident that its birth will kill the mother, the child must be destroyed in order that he does not kill the mother (*Shulhan Arukh, Hoshen Mishpat 425: 2*). The child is looked upon as "a pursuer, a murderer," and his life may be taken for that reason. But other than in such a case (and of course after legal conviction of a criminal), no human life may be taken. Even when a person is dying, one may not purposefully take the pillow from under his head, or make any extra disturbance, in order to hasten his death (*Shulhan Arukh, Yore Deah 339*). In other words, the act of killing a patient, for whatever motive, is absolutely forbidden.

This is mentioned merely for the sake of completeness. You do not ask whether it is permitted to kill a patient (euthanasia). You ask only whether Jewish law or its implied ethics require that a doctor keep any patient alive by force when the patient is manifestly dying and is in pain or has lost all control of bodily functions.

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To answer this question it must be said that although there may not be in the Jewish legal literature any direct and positive guidance to the physician on this matter, there is, however, a strongly *implied* guidance in the attitude toward prayers for the dying. From the point of view of the Jewish legal tradition, both medicine and prayer are efficacious modes of healing. A physician is considered an authorized emissary of God and prayer is also an effective therapeutic agent (*b. Berachoth* 60a). Your question as to whether a doctor is duty bound to keep alive a dying, suffering patient is discussed in relation to the healing power of prayer; namely, whether we are duty bound to use the power of prayer to keep a miserable and dying patient alive.

On this form of the question we have some direct statements. The Talmud (*Ketubot* 104a) discusses the dying day of the great Rabbi Judah the Prince, author of the *Mishnah*. We are told that the rabbis gathered in ceaseless prayer to keep him alive, but his servant-maid (who, by the way, was honored as a learned woman in the Talmud), seeing how hopeless was his case and how much he suffered, prayed that he be given the privilege of death. When the rabbis insisted on praying that he be kept alive a little longer, she threw down from the roof a huge earthen jar in order to disturb them and stop their prayers so that Rabbi Judah might peacefully die. The Talmud quotes this action of this learned woman with evident approval.

In fact, this incident is quoted with approval by one of the great Spanish-Jewish scholars in about the year 1200. Rabbenu Nissim Gerondi comments on the passage (*Nedarim* 40a). The passage discusses the duty of visiting the sick and praying for their recovery. Rabbenu Nissim says that there are times when a man

should ask God's mercy for a sick person that he may die, as, for example, when the sick son is in agony and it is impossible for him to recover. He quotes as justification the story of the servant-maid of Rabbi Judah.

Roughly contemporary with this Spanish scholar is the famous German mystic-legal work, *The Book of the Pious*, from which many customs and laws are often cited. In this book (p. 100, #315-18) it says: "If a man is sick and in pain and dying and asks another man to kill him mercifully, this request must not be fulfilled, nor may the man take his own life. Still, you may not put salt on his tongue to keep him alive longer." Then it continues: Ecclesiastes says, "There is a time to live and a time to die." Why does the author need to add this obvious fact? The answer is that he has in mind the following situation: "If a man is dying, do not pray too hard that his soul return, that is, that he revive from the coma. He can at best live only a few days, and in those days he will endure great suffering. So, "there is a time to die." (See also the long note, #4, *Sefer Hassidim*, ed. Margolies, p. 34; also note to #723.) In *Yalkut Shimoni* to Proverbs (#943), we are told about a woman who wanted to die. She came to Rabbi Halafta, who, seeing that her wish was justified, told her to absent herself for three days from the synagogue. She did so, and died.

Closer to our time is an interesting responsum by Haim Palaggi (Smyrna, ca. 1800). In his book, *Hikei Lev* (Vol. I, #50), he is asked the following question: A woman with a chronic, painful disease was dying. She pleaded with her husband and sons to pray that God be merciful and let her die. The husband and sons did everything material that they could do to ease her suffering, but they did not have the heart to comply with her request to pray for

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her death. Instead, they prayed, and asked others to pray, for continued life. Did they do right? Haim Palaggi answers (citing most of the material above) that it is right for them to pray that she die, but since there is some slight possibility of selfishness in their prayer, in that they might wish to be disencumbered of the burden, therefore let them not pray for her death, but let others do so. It is the merciful thing to do. See also the article of Rabbi Jacobowitz, of Dublin, which explains the Talmudic statement (*Ber. 60a*), "God gives permission to the physician to heal." He says that the physician's duty "to heal" does involve a duty to keep a dying patient from dying.

The subject is summed up in the *Shulhan Arukh, Yoreh Deah 339:1*, where the laws are carefully stated that nothing must be done to hasten death, such as removing a pillow from under the head of the dying, or making any sudden noises. Moses Isserles adds: "However, if there is something present which prevents the departure of the soul, such as a man chopping wood outside, or salt present on the dying man's tongue, we may stop the chopping or remove the salt, so as not to hinder the departure of the soul." (Isserles bases this upon an older authority.)

Evidently they felt that salt that happened to be on the tongue, or the noise of woodchopping, artificially focused the dying person's attention and prevented his relaxing into death. Isserles adds that wiping away the salt or stopping the woodchopping is not considered a violation of the law against hastening the death of the dying because these are not positive actions, but only the removing of obstacles to the coming of death.

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The essence of the matter is this: Counting prayer, as these authorities did, to be one of the effective therapeutic agencies, their tendency was to say that when it is manifestly impossible for the patient to recover, and he is suffering greatly, it is cruel to use the instrument of prayer to keep him, by force, alive and suffering. Therefore, the conclusion from the spirit of Jewish law is that while you may not do anything to hasten death, you may, under special circumstances of suffering and hopelessness, allow death to come.

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Solomon B. Freehof, *Reform Responsa*, #27, (Hebrew Union College, Cincinnati, 1960).