

## End-of-life: Jewish perspectives

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This is the third Viewpoint in a series about end-of-life issues for different religions.

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### Foundations in beliefs and methods

#### Beliefs

Judaism's positions on issues in health care stem from its fundamental convictions.<sup>1</sup> Those relevant to the end of life include: the body belongs to God; human beings have both the permission and the obligation to heal; and, ultimately, human beings are mortal.

#### Doctor-patient relationship

Because the body belongs to God, Jews must seek both preventive and curative medical care and follow the expert's advice in preserving their health. When several forms of therapy are medically legitimate but offer different benefits and burdens, the patient has the right to choose which regimen to follow, as long as it fits within the rubric of Jewish law. Patient autonomy has a smaller role in Jewish sources than in American secular ethics; in Jewish sources, the doctor has much more authority to determine the appropriate course of treatment. Even so, within medically acceptable bounds, the patient does have the right to choose (B *Bava Metzia* 85b).<sup>2</sup> On the other hand, patients do not have the right to demand of their doctor forms of treatment that, in the judgment of the clinician, are medically futile or unwise or that violate the doctor's own understanding of Jewish law. That is, doctors just as much as patients are full partners in medical care.

Most patients will want to know the truth so that they can plan well and can feel that they exist in a safe respectful environment. Even with the worst prognosis, however, clinicians should spell out what the patient can still hope for, such as pain relief, reconciliation with family members, and other meaningful interactions and activities, including completion of an ethical will, in which the patient records on audiotape or videotape the family history and the patient's values and hopes.<sup>3</sup>

#### Role of the rabbi and the Jewish tradition

Because Orthodox and Conservative (Masorti) Jews—at least in theory and often in practice—believe that Jewish law is binding, they will want to know and follow their rabbi's interpretation of Jewish law in determining, for example, whether it is permissible to remove life support systems. The Reform movement, however, champions individual autonomy; Reform Jews might consult a rabbi, but the rabbi's words will not be authoritative law but an individual's advice—albeit an honoured individual with expertise in the Jewish tradition.

In addition to these religious differences, cultural factors can also have a role in who makes medical decisions and how. For example, Jews in different countries, generations, or family configurations can vary in how they approach the Jewish tradition generally and

medical issues in particular. With respect to critical-care issues in particular, clinicians should ask patients whether they want to consult other family members or their rabbi when filling out an advance directive or in coming to a decision about what to do. When making a decision or giving advice about treatment, the rabbi will probably want to speak directly with the doctor to learn the patient's medical condition and options so he or she knows how best to advise or serve the patient. In addition to sharing medical information, a doctor should indicate that he or she understands their Jewish concerns and views.

#### Death and dying

##### General ideas and categories

Because every person's body belongs to God, a patient does not have the right either to commit suicide or to enlist the aid of others in the act, and anybody who does aid in this plan commits murder. The patient does have the right, however, to pray to God to permit death to come (RaN, B *Nedarim* 40a; the *Talmud* records such prayers: B *Ketubbot* 104a, B *Bava Mezia* 84a, and B *Ta'anit* 23a).

Jewish sources on withholding or withdrawing life-sustaining treatment are sparse. This lack of guidance poses important methodological questions as to how to apply the Jewish tradition to contemporary circumstances that are very different from the past.<sup>4</sup> In general though, Judaism asserts that while we should seek to cure and may not do anything to hasten death, we should not prolong the dying process. Furthermore, we must always decide medical questions with the patient's benefit as our goal (Tosafot, B *Avodah Zarah* 27b, sv, *lehayyei sha'ah lo hyyshenan*).<sup>2,3</sup> Balancing these imperatives leads to considerable disagreement on specific clinical issues.

#### Determining death

The traditional criteria for death in Jewish sources are cessation of breathing and heartbeat; however, the practice was to wait some time after determining that these signs had occurred before beginning burial procedures (SA *Yoreh De'ah* 338). However, soon after the Harvard criteria for brain death became standard medical practice, Conservative rabbis accepted brain death (including the brainstem) as fulfilling the traditional criteria of cessation of breathing and heartbeat. In 1988, the Chief Rabbinate of the State of Israel approved heart transplantation from accident victims, thus accepting brain death as well, but this decision remains a matter of dispute among Orthodox rabbis.<sup>2,5-11</sup> Authorities in the various movements are now assessing the apnoea test to determine death on the basis of

cessation of respiration alone and the legitimacy of harvesting organs from non-heart-beating donors.

#### Foregoing life-sustaining treatment

The strictest position restricts permission to withdraw or withhold treatment to situations for which doctors assume that the patient will die within 72 h and has lost the swallowing reflex (*a goses*).<sup>12</sup> Others define the state of *goses* more flexibly, such that the patient will live up to a year or more, or in terms of symptoms rather than time, and they then apply the permission to withhold or withdraw machines and drugs more broadly.<sup>2,13</sup> In my legal opinion, approved by the Conservative Movement's Committee on Jewish Law and Standards, I ruled that as soon as a person is diagnosed with incurable trauma to vital organs or a terminal, incurable disease (*a terefah*), patients and doctors have permission to withhold or withdraw drugs and machines if it is in the patient's best interests.<sup>2,14</sup> Because Jewish law presumes that human beings are not omniscient, doctors are not responsible for knowing what therapy may be developed tomorrow in making these decisions. In all cases, comfort care must be administered.

#### Artificial nutrition and hydration

Most Orthodox and some Conservative rabbis regard artificial nutrition and hydration as food and liquids, which we all need; therefore, even rabbis who allow removal of machines and drugs require these interventions.<sup>2</sup> On the other hand, the nutrients that enter the body through tubes look exactly like drugs administered that way and, more to the point, they do not have the usual characteristics of food, such as varying temperature, taste, and texture. Consequently, in the opinion approved by the Conservative Movement's Committee on Jewish Law and Standards, I classified artificial nutrition and hydration as medicine. Thus, we can and should use them if there is any reasonable prospect for recovery, but when that is not likely, we should remove them, for then they are just prolonging the dying process.<sup>2,3</sup>

#### Heroic measures and advance directives

As long as there is some hope of cure, heroic measures—that is, use of machines and drugs to try to keep a person alive when there is little hope that they will do that, let alone cure the patient—and untested drugs may be administered, even though this strategy involves an enhanced level of risk. On the other hand, these measures are not required. The controlling factors are the risk/benefit ratio, the patient's best interests, and their desires.<sup>2</sup> A Jew may sign an advance directive for health care indicating his or her desire to accept or decline such care; all four movements in American Judaism have produced their own versions of a Jewish advance directive, each according to its own understanding of Jewish law.

#### Pain control and palliative care

Most rabbis, including Orthodox ones, maintain that a Jew may enrol in a hospice programme, by which the goal is not to cure the disease but to make the patient as comfortable as possible. Patients may, however, choose to suffer some pain so they remain conscious. On the other hand, it is permissible to prescribe pain drugs that actually hasten the patient's death, as long as the intent is not to kill the individual but rather to alleviate his or her pain. The *Talmud* specifically prohibits an action that will have two known effects, one permissible and one not; this is the principle of *psik reisha* ("can you cut off a chicken's head and it not die?"; B *Shabbat* 75a; M T *Laws of the Sabbath* 1:6). Reisner<sup>2</sup> would, therefore, prohibit the use of an amount of morphine when there is any chance of it leading to death whereas I would permit the use of any amount to alleviate pain as long as it is not known that it will cause death.<sup>3</sup> Moreover, hospice care crucially includes all non-medical ways in which people are supported when they go through crises, including all forms of care provided by family, friends, nurses, social workers, and rabbis.

#### Autopsies and organ and tissue transplantation

##### General principles

The treatment of autopsy and transplantation in Jewish law depends on two primary principles: *kavod ha'met*, that we should render honour to the dead body as God's property; and *pikkuah nefesh*, the obligation to save people's lives (B *Sanhedrin* 74a-b).

##### Autopsies

A 1949 agreement between the Chief Rabbinate of the State of Israel and Hadassah Hospital that was later adopted as Israeli law states that because autopsies represent an invasion of the body, which we should respect, they are not to be done routinely. They are sanctioned, however, when one of the following four conditions applies: (1) the autopsy is required by civil law; (2) in the opinion of three doctors, the cause of death cannot otherwise be ascertained; (3) three doctors attest that the autopsy might help save the lives of others with a similar illness; (4) undertaking the autopsy might safeguard surviving relatives from a hereditary disease.

Jews differ as to what medical needs justify an autopsy. People who undertake an autopsy must, in any case, do so with due reverence for the dead, and on its completion they must deliver the corpse and all of its parts to the burial society for interment. Under these conditions, the autopsy is construed not as a dishonour of the body, but, on the contrary, as an honourable use of the body to help the living.<sup>11</sup>

##### Living donors

The command to save lives (*pikkuah nefesh*) makes it laudatory and, according to many rabbis, mandatory for all Jews who can donate blood with virtually no risk to

themselves to do so often. When the donor will endure days or possibly even weeks of pain and the loss of time on one's job, as in bone-marrow donation, most rabbis would praise but not require such donation, but some see it as legally obligatory.<sup>15</sup> When there is clear risk of injury to the donor, as in organ donation, although doctors nevertheless regard it as safe for the donor, most rabbis would permit Jews to undertake the risk but not see them as required to do so because our duty to preserve our own life and health supersedes our duty to help others (B *Bava Metzia* 62a).<sup>3</sup> Clearly, these views represent different assessments of how to balance Judaism's duties to preserve one's own life and health with its duty to help others live. The probability of saving the recipient's life must be substantially greater than the risk to the donor's life or health.

#### Cadaveric donors

The default assumption is that a person would be honoured to help another live. Nevertheless, all authorities insist that the family must agree to use their loved one's body for this reason, both to accord with US law and to assure that, even without burial, relatives of the deceased can effectively carry out the mourning process so that they can have psychological closure and return to their lives in full.<sup>5,16,17</sup> Permission of the donor or their family must be procured so that the transplant does not constitute a theft.<sup>5</sup> Feldman and Rosner<sup>16</sup> say that the family's permission is only advisable in Jewish law but it is mandatory in US law; that view, however, would make it religiously required of American Jews as well, under the Jewish legal principle that "the law of the land is the law" (*Dina De-Malkhuta Dina*; B *Nedarim* 28a, etc).<sup>18</sup>

Rabbis have different opinions about the circumstances under which organs may be transplanted. The strictest view would restrict donations to cases in which there is a specific patient before us (*lefaneinu*) who is at risk of losing life or an entire physical faculty (eg, sight).<sup>19,20</sup> Most rabbis, however, including Orthodox ones, would permit transplantation to restore full function—eg, a cornea for an individual with vision in only one eye. Donation to organ banks is permitted as long as the organ will eventually, but definitely, be used for transplantation. The Rabbinical Assembly, the organisation of Conservative rabbis, has gone further: its Committee on Jewish Law and Standards maintains that Jews have a positive duty to make their organs and tissues available for transplant, and in March, 1986, the Central Conference of American rabbis (Reform) officially affirmed the practice of organ donation.<sup>6,11,13,17,21-27</sup>

#### Animal or artificial parts and organs

Animal or artificial parts—eg, porcine valves—and, if they prove viable, full organs may be used to save life and restore health. They do not have to be from a kosher animal because dietary laws apply only to eating and,

contrary to Jehovah's Witnesses, Jews do not consider xenografts to be the equivalent of eating. Moreover, even if they were regarded as food, saving a human life takes precedence over dietary laws. Thus, those Jews who choose to be vegetarian would nevertheless be obliged to use animal parts for medical reasons if such devices held the greatest promise for cure or saving life.

#### Donation of one's body to science

Although rabbis disagree on this topic, most would agree with Israel's chief rabbi Herzog, who—in the name of the Plenary Council of the Chief Rabbinate of Israel—stated in 1949 that one may make one's body available to first-year medical students to study anatomy provided that the body parts are subsequently buried according to Jewish law.<sup>11</sup> Conservative rabbi Isaac Klein argues further that if non-Jews are contributing their bodies for this reason, Jews must do so as well to avoid enmity toward Jews and Judaism.<sup>17</sup> These arguments would not apply, however, if there are ample bodies available for dissection or if medical schools follow the example of the University of California, San Francisco, in using computer programs instead of corpses to teach anatomy, for without medical necessity one may not set aside the honour due a corpse to be properly buried.

#### Social support of the sick

Caring for an individual is not a matter of physical ministrations alone. The Jewish tradition, therefore, imposes the obligation of *biqqur holim*—visiting the sick. Jewish sources maintain that visitors should sit on the same plane as the patient, enable the patient to talk about the illness, ensure that a will has been prepared, engage the patient in discussion of the usual topics they share (politics, sports, etc), and pray with and for the patient. The Jewish tradition, then, obligates us not only to cure but also to care in fulfilment of the Torah's commandment to "Love your neighbour as yourself" (Leviticus 19: 18).

#### Conflict of interest statement

I declare that I have no conflict of interest.

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