The Chronic Vegetative Patient: A Torah Perspective

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The Mishnah in tractate *Sanhedrin* states[1] "כל המקיים נפש אחת מישראל. . . כאלו קיים עולם מלא — He who saves a single life is as though he has saved an entire world." As is well known, *Pikuach Nefesh*, saving a life, is considered a great mitzvah and with the exception of three prohibitions — murder, idolatry and adultery — overrides all other mitzvot in the Torah. With the advent of modern medical technology, however, the initial straightforward command of saving another's life acquires new and unforeseen challenge. In previous generations only a few limited measures were

1. סנהדרין לז.

מאמר זה נקדש לזכר נשמת אמי
גיטל פשה בת רב נפתלי חיים ע"ה
תנצב"ה
This article is dedicated in loving memory of the author's mother
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available to the medical practitioner to prolong life and occasionally heal the infirm. Today, medical technology with its many strides and accomplishments has created a new and unforeseen situation: After sustaining near-fatal trauma, individuals can be maintained in a prolonged state of unconsciousness, referred to in the medical literature as a chronic vegetative state. They are technically alive and therefore receive the full armamentarium that medical science has to offer.

The questions that physicians encounter in these situations often place them in a moral and ethical dilemma. Does the Torah obligate one to prolong life under all circumstances? Is care-giving in this situation an act of healing despite the small likelihood of returning the patient to a functional life-style? Or is it an act traumatizing both body and soul, preventing both from returning to their origins?

Besides the emotional and philosophical dilemma created, the cost to society to maintain such patients is staggering. Currently costs of one thousand dollars per day are common, and such patients can survive up to two or three years in this state. Total costs for one patient can exceed one million dollars. This article will attempt to define the extent of the obligation to heal in the chronic vegetative patient as it is found in halacha, and the parameters around which it functions.

In order to facilitate the discussion, the following case scenario is provided:

Mr. C is an 87-year old nursing home resident who has had two strokes in the past with a progressive dementia. He is unable to feed or care for himself, and his speech is unintelligible. He was brought to the hospital after suffering a massive stroke requiring that he be placed on a mechanical ventilator (a machine to assist him in breathing) and medication to artificially maintain his blood pressure. The

patient is transferred to the Intensive Care Unit, where his condition slowly but steadily deteriorates. He has failed numerous attempts to be weaned from the mechanical ventilator and remains dependent upon it to sustain his life. His kidneys have ceased functioning and he will require dialysis to maintain his life functions. He cannot eat and requires that a tube be inserted through which liquid food is instilled through his nose into his stomach. His body develops frequent skin ulcerations and requires multiple surgical procedures to debride dead infected skin. Over time, these lesions will grow in size and develop into large, gangrenous sores which eventually — perhaps in one to three years — cause the demise of the patient.

To simplify the discussion, the following questions will be addressed:

1) Is this person considered halachically alive or dead?

2) If he is alive, can he recover?

3) If medical science feels the patient cannot recover, will the halacha accept this as fact? Or will halacha require that we consider even the smallest likelihood of recovery? Perhaps one individual out of a million might regain consciousness and therefore society must care for the remainder, lest we deny that single individual the life he might have had?

4) If he is alive, is the obligation to provide medical care still in force? Does the Torah mandate the physician to minister to this man, and would failure to do so violate a Torah law? If so, which one?

5) Specifically, which modalities or treatment can be withheld and which cannot?

Alive Or Dead

Often, when discussing the chronic vegetative state, the discussion devolves to a debate on the acceptability of "brain death" before halacha. The issue of "brain death" however, is not strictly relevant to this discussion. In order to meet the current criteria for "brain death" a portion of the brain called the brainstem must be demonstrated to be without blood supply, and therefore not functioning. When this occurs, the patient will not survive longer than seven days. Our discussion, however, as will be explained shortly, is referring to patients who survive more than two weeks. After this period of time, the prognosis of the patient is better determined. The issue of "brain death," therefore, is not related to our discussion, and the chronic vegetative patient is considered alive halachically. (Note: Most contemporary *poskim* today do not accept "brain death" as sufficient to define an individual as dead in halacha.)

Chances For Recovery

This entire discussion is predicated upon the assumption that the patient in a chronic vegetative state will never regain consciousness. How certain are we that this is true? Several large studies appear in the medical literature which have investigated the prognosis of chronic vegetative patients. One investigator followed one hundred and ten patients in a chronic vegetative state for up to three years without any of them able to regain activity as a social human being.[2] Another investigator[3] followed 500 patients with coma from

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2. Higashi, K. et al: "Epidem. Stds Veg. State" *J. Neurol Neurosurg Psychiatry* (1977) 4-" 876-885.

3. Levy, D.E.; Bates, D.; Caronna J.J. et al: "Prognosis in Nontraumatic Coma" *Annals of Internal Medicine* 94: 293, 1981.

nontraumatic causes for up to one year. He found that the prognosis for recovery from coma was function of time and cause of the coma. Patients who failed to demonstrate specific neurologic signs — i.e., absence of: eye opening, pupillary light reflexes, corneal reflexes, spontaneous eye movement, oculocephalic and oculovestibular reflexes — at seven days never regained any independent function after one year of observation. Although different criteria were used in these various studies, all of them conclude that if a patient, after two weeks of being comatose, fails to regain independent functioning, he will essentially never do so. This conclusion has been corroborated by other investigators and by the personal experiences of many physicians. Reports of people recovering from a coma are generally limited to an early recovery within the two-week period as mentioned.

Concern For The Improbable

There is a principle in halacha called אין הולכין בפיקוח נפשות אחר הרוב "One does not follow the rule of majority in cases of life and death."[4] This rule is generally applied in cases where evidence based on the principle of רוב (majority) will influence the adjudication of a case involving the life or death of an individual. It would seem, therefore, that if this principle is applied to our case, we cannot rely on the medical data mentioned above, as these studies are limited in their scope. One could argue that all medical studies are intrinsically limited by the size of their study population, and if a sample a thousand times larger were used, perhaps another result would be obtained.

This issue of the applicability of רוב was discussed by

4. יומא פד:.

Rabbi Moses Sofer.[5] The case he discussed involved the custom in one city of delaying burying the dead for up to three days, until the body began to decompose, in order to be certain that the person was not in a coma and would not regain consciousness.

The Chatam Sofer stated unequivocally that the principle of אין הולכים בפיקוח בנפשות אחר הרוב does not apply to situations that are beyond reasonable doubt. Even though one such episode had occurred in Europe in the recent past, such occurrences are very rare and do not influence the halacha. It therefore seems that with regard to our discussion the halacha would accept the medical statistics as fact, and that one should not be concerned about the finite possibility, however small, of potential recovery of the chronic vegetative patient.

Obligation To Heal

The source in the Torah for the obligation to care for the sick and infirm is twofold. Often, the verse regarding compensation for damage — "He must pay for his [neighbor's] lost work and healing, and he shall be healed"[6] — is cited as the source for the obligation to heal. However, the Gemara[7] clearly states that this verse only gives permission to the physician to heal[8] lest he be seen as interfering in the execution of G-d's will by preventing this person from enduring his illness as G-d had intended. The Gemara[9] gives two sources for the obligation to heal. One

5. שו"ת חתם סופר יו"ד סימן של"ח.
6. שמות כא', יט'.
7. ב"ק פה.
8. רש"י שם.
9. סנהדרין עג.

is a negative command — "Do not stand by your neighbor's blood."[10] The second is the positive command of returning a lost object.[11]

The mitzvah of "do not stand by" is interpreted in different ways in the Talmud. In *Sanhedrin* 73a, the Gemara applies this command to the case of a man being pursued by a murderer, or mauled by a wild beast, or drowning in the sea. The Gemara concludes that one must do everything in one's power directly or indirectly to see to it that no harm befall his neighbor.

The Midrash *Torat Kohanim* applies the verse to a situation in which one knows testimony beneficial to another, whether in regard to life or property. If he fails to testify, he would violate the prohibition of "standing on his neighbor's blood" ("Blood" in the verse refers to a general sense of physical or material harm. One cannot stand idly by while harm befalls another person. In *Shulchan Aruch*[12] the law is even extended to include the outlay of funds to appease potential troublemakers of one's friend.

According to some authorities[13] one is even obligated to place oneself in possible, but not certain, danger to save one's fellow Jew.

The mitzvah of השבת אבידה (returning a lost object) is extended by the Gemara to include caring for the sick. The Gemara states[14] ממונו גופו לא כל שכן - " [If one must restore] another's lost property, most certainly [one must restore] his

10. ויקרא יט, טז.
11. דברים כב, ב.
12. חו"מ תכ"ו.
13. הגהות מיימוניות הל' רוצח פרק א'.
14. סנהדרין עג.

health!" In this analogy, the sick person is seen as having lost his health, and the physician, by curing him, as returning it. Of course, one might challenge this analogy by insisting that it seems ludicrous to compare returning a nickel to saving a life. However, the Torah's intention is not to assert that both acts are of equal worth, but rather to set a minimum standard which must be followed. The Torah is teaching us that each individual must be concerned not only with the physical health and safety of his neighbor, but that even his material well-being is one's concern.

The mitzvah of returning a lost object has several components.[15] When the lost object first comes into view, one may not look away from it or ignore it. As it says[16] "לא תוכל להתעלם — one may not ignore a lost object." Once the object reaches the hand of the finder, he then becomes obligated in the positive command of returning it. If the owner of the article loses hope of recovering his lost object (יאוש), it becomes ownerless and there is no longer any obligation to return it; the finder may keep it.

As described, the obligation of a physician to heal is two sided — a positive command to return a person's health and a negative command not to stand idly by and watch harm befall another. It would follow then, that if one believes that under specific circumstances there is no obligation upon an individual to seek medical treatment (a concept to be elaborated upon) there should consequently be no obligation upon the physician to treat the patient. This might be compared to an object which the owners have abandoned and therefore no obligation exists upon the finder to return it.

15. חו"מ רנ"ט.
16. דברים כב, ג.

With respect to the chronic vegetative patient, what is the extent of a physician's obligation to care for him? Must all means available be utilized to prolong the life of this person? Does the obligation to heal extend even to chronically vegetative patients? Or can one argue that there is no obligation upon the patient himself — and therefore certainly not upon the physician — to continue treatment as no cure can be effected? The most that can be achieved is the prolongation of pain and suffering. On this issue there are several opinions as will be discussed below.

In addition to the obligation to heal, the Talmud also discusses the obligation of the patient to pursue being healed. The Gemara[17] distinguishes between חיי עולם (long-term life) and חיי שעה (short-term life). חיי עולם is understood by *poskim* as the possibility of living longer than one year[18] and חיי שעה as less than one year. The Gemara concludes that במקום חיי עולם אין חוששין לחיי שעה — "when considering long-term life one does not take into consideration short-term life." Consequently, a person is obligated to undergo surgery if that can effect a cure — or prolong life for one year — if the operative risk is small. Rabbi Moshe Feinstein[19] and others have ruled that one is even obligated to endure pain and suffering in order to prolong life, when long-term life will be obtained. As the risk to the patient grows and the probability of cure diminishes, this halacha becomes more controversial. (The reader is referred to other sources for further details.[20])

17. עבודה זרה כז:

18. אגרות משה יו"ד חלק ג' סימן ל"ו דף ער.

19. שם חו"מ חלק ב' סימן עג' אות ה'.

20. נשמת אברהם יו"ד סימן קנ"ה סעיף קטן ב' - הוא מביא דעות של ספר החיים או"ח ס' שכ"ח ושו"ת לב אריה חלק ב' סימן לה' ודעת רב ש. ז. אויערבעך שהמבחר מצטט.

The extent of a person's obligation to undergo pain and suffering in order to prolong life for a short while is less clear. The Gemara[21] relates the following story:

On the day that R. Yehuda the Prince lay dying, in great pain and distress, a fast was proclaimed and everyone prayed for mercy. The maidservant of Rebbe ascended to the roof and proclaimed, "The heavenly ones want Rebbe and the mortals want Rebbe. May it be Thy will, O L-rd, that the mortals should persuade the heavenly ones." But when she saw that Rebbe continued suffering, placing and removing his Tefillin to go back and forth to the toilet, she pleaded that the angels should persuade the mortals (and allow him to die), but still to no avail. Finally, she then ascended to the roof and threw some dishes to the ground; when the crowd stopped praying for an instant due to the distraction, Rebbe died. The Gemara elsewhere describes the maidservant of Rebbe, known for her wisdom in Torah; often a halachic dispute was resolved based on her practices. Thus, her deeds are recorded with approval.

Another talmudic text which sheds light on the normative law is the comment in *Nedarim* 40a, describing the importance of visiting the sick — here the Gemara notes that if one fails to visit the sick, he will not be able even to achieve the smaller mitzvah, of praying for the death of the ill person.

Based upon these two sources in the Talmud, Rabbenu Nissin (the Ran) and modern day *poskim* such as R. M. Feinstein conclude that there are instances where praying for death is permissible.[22] Rabbi Feinstein[23] extends the

21. כתובות קב.

22. אגרות משה חו"מ חלק ב' סימן עד' אות ד',
Rabbi Feinstein qualifies this statement and limits it to individuals

intent of the Gemara to apply even to acts of healing, stating explicitly that a patient with a terminal illness whom the physicians are unable to heal or to ameliorate his suffering, but can only prolong his life as it now is with pain and suffering, should not be treated. Rather, he should be left as he is and only medicines to relieve his pain should be given. This opinion coincides with previous opinions from Rabbi Feinstein[24] that permit a patient to refuse medical therapy in certain instances. The specific applications of R. Feinstein's ruling will be elaborated upon later.

This position, however, is not universally held. Rabbi Shlomo Z. Auerbach[25] is of the opinion that one may not withhold "routine medical care or natural human needs" (e.g. nutrition) from a person who is suffering greatly from a terminal illness, despite the fact that this will prolong his suffering. Consequently, he requires that "antibiotics be administered to patients with infections even if this prolongs their illness without hope of cure; that intravenous insulin be maintained to control high blood sugars; that blood transfusions be given to maintain the blood count and similar measures regarded by physicians as standard medical practice in the case of ill patients." However, he does not endorse cardio-pulmonary resuscitation in these patients and does allow the administration of morphine despite the risk of causing a cardio-pulmonary arrest. This can be done, according to him, only if the intention of the physician is to relieve pain and not to shorten the patient's life.

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with outstanding piety whose prayers G-d attends fervently. In practical terms, our generation does not include such pious people, and Rabbi Feinstein therefore discourages praying for death.

23. סימן עג' אות א'.

24. שם, יו"ד חלק ג'סימן ל"ו דף עה.

25. נשמת אברהם יו"ד סימן של"ט סעיף קטן ג' דף רמה.

The rationale of Rabbi Auerbach seems to be that even with respect to short-term life there is still an obligation upon the patient (and consequently the physician) to prolong life despite suffering. A person, however, is only obligated to seek standard medical therapy and not unconventional treatments. This approach differs markedly from Rabbi Feinstein's, who feels that no obligation to prolong short-term life exists in the presence of pain and suffering.

With regard to the case of the chronic vegetative patient, another factor must be considered. The Talmud uses the term "*Goses*" to describe a person who is on his death bed. A *Goses* is described as a person whose death is imminent but unpredictable and who "because of the narrowness of his windpipe brings up secretions."[26] (The current pathophysiological explanation would be a person who is asphyxiating on his own secretions which accumulate in the airway.) It is prohibited to move a *Goses* or hasten his death by even a moment, and if it is done, such an act is considered a form of murder.

However, the Ramo[27] rules that one is allowed to remove an "impediment to death" and allow the *Goses* to die naturally. The case the Ramo describes is of a *Goses* being kept alive by the sound of a nearby woodchopper chopping wood. He states explicitly that one may tell the woodchopper to stop chopping, despite the fact that this will indirectly hasten his death. Clearly then, one can conclude that there is no obligation to prolong the life of the *Goses*. If there were, the woodchopper would have to continue endlessly his wood chopping to sustain the life of the *Goses*!

The relevant question to our discussion then becomes,

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26. רמ"א אה"ע סעיף ז, ס"ק כ"א.

27. רמ"א יו"ד סימן של"ח.

what is the status of the respirator-dependent chronic vegetative patient? Is he a *Goses*? If so, can medical therapy be withheld under the provision of removing an impediment? Or, should we consider a respirator-dependent chronic vegetative patient to be in a state different than a *Goses*, in which case the ruling of the Ramo is not applicable?

Another alternative suggested[28] is that the Ramo would also permit removal of an impediment to death in a patient who is suffering, even if he is not a *Goses*, but has only a short life expectancy. The fact that the ruling of the Ramo is found in the context of a *Goses*, according to this view, only reflects the limited diagnostic and therapeutic abilities of the sixteenth century. This argument is essentially the opinion of R. Feinstein, extended into the Ramo.

This issue is highly controversial and as yet unresolved in the halachic literature. Arguments supporting the application of the status of *Goses* to the respirator-dependent vegetative patient often proceed as follows: The vegetative patient is dependent on a machine to breathe for him. If that machine were removed, the patient would, in a matter of minutes, turn blue and die. Therefore, one cannot conceive of a greater pre-morbid situation. In fact, the Talmud describes a *Goses* who can talk and effect legal transactions,[29] implying that the *Goses* is likely healthier than the chronic vegetative patient.

Opponents of these arguments counter that the Talmud states that the overwhelming majority of *Gosesim* can live no longer than three days[30] and that our patient, by surviving

28. רב צ. שכטר בית יצחק (הוצאת ישיבת ר' יצחק אלחנן) תשמ"ט כרך כא.

29. גיטין כח., עיין תוס' ד"ה לא צריכא קידושין עח:, וטור ושו"ע אבן העזר סימן קכ"א סעיף ז'.

30. טור, שו"ע יו"ד של"ט סעיף ב'.

much longer, disqualifies himself from the status of *Goses*. Other *poskim*[31] acknowledge that had artificial ventilation been available in the days of the Talmud, perhaps such a statement might not have been made. Nevertheless, one may still only consider the respirator-dependent vegetative patient a ספק גוסס — a possible *Goses* — and according to talmudic law the more stringent rules of each possible status apply. (That is, if labeling him a *Goses* would prohibit moving him, then that rule applies; if it would permit withholding therapy, then it does not.)

Another authority[32] suggests that the functional integrity of the vital organs should be the determining factor. This author employs the concept of organs which are essential for life (אברים שהנשמה תלויה בהם (אשהנת"ב)) — to define death and the status of *Goses*. The author quotes a discussion in *Shulchan Aruch*[33] regarding the definitions of animal death in which the debate centers around whether the loss of one or only the loss of all vital organs is required to define death halachically. For instance, if the liver, brain, lung and heart are אשהנת"ב (vital organs which are life sustaining), is the loss of one organ, or all of them, required by halacha to define death. This question is unresolved in halacha and therefore the more stringent opinion in each individual case must be followed. (That is, in most situations loss of all אשהנת"ב would be required to declare the animal dead.) Furthermore, this authority contends that the loss of an organ can be determined by the blood flow to that organ. That is, if it can be determined that blood flow to an organ has ceased, then that organ can be considered "dead"; and if blood flow is severely diminished such that an irreversible process has

31. רב י. ש. אלישיב, נשמת אברהם חלק ד' דף קל"ח.

32. רב צ. שכטר, בית יצחק כרך כא 120-123.

33. פתחי תשובה יורה דעה סימן מ' סעיף קטן א.

begun which will lead to organ death, that situation, if extended to a sufficient number of אשהנת"ב, would correspond to a state of *Goses*. The application of this concept to the clinical situation requires further discussion and study.

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The nature of the obligation to care for the chronic vegetative patient is complicated and controversial. Proponents of the view that the Torah does not obligate one to care for the chronic vegetative patient argue as follows: Such patients, as described earlier in the case scenario, are without hope of recovery and can be considered as having only a short-term life filled with pain and suffering.[34] According to the opinion of Rabbi Feinstein, one is only obligated to relieve pain and not institute therapeutic modalities. Alternatively, one can also argue that the respirator-dependent vegetative patient is a *Goses* and therefore no obligation to prolong his life exists.

Proponents of the view that the obligation to heal is still in force argue as follows: An individual is obligated by the Torah to sustain himself in this world and even endure pain and suffering to prolong even short-term life. They further reject the application of the status of *Goses* to the respirator-dependent vegetative patient and consequently hold that failure to care for this patient would be a violation of לא תעמוד על דם רעך (do not stand idly by...).

Discontinuation Of Treatment

As mentioned, a body of opinion exists that places limits on the obligation to heal the chronic vegetative patient. Which therapies can be withheld or even discontinued

34. אגרות משה חו"מ חלק ב' סימן ער' דף שא.

according to this position? For simplicity, three categories of interventions will be discussed: therapeutic, nutritional, and life-sustaining.[35]

Therapeutic modalities include (A) antibiotics for infections that frequently develop in the vegetative patient, such as pneumonia, skin infections, or generalized asepsis, (B) surgical procedures to correct potentially serious problems such as internal bleeding or gangrenous bowel, (C) dialysis to maintain the body's chemical equilibrium. (Although dialysis is also life-sustaining over several days, discontinuation of dialysis generally will not result in the immediate death of the patient and is therefore classified as therapeutic rather than life-sustaining.)

Nutritional modalities include (A) liquid feeding via a nasal-gastric tube, (B) intravenous fluids.

Life-sustaining modalities include (A) a mechanical ventilator to breathe for the patient, (B) blood pressure medications, such as dopamine, to maintain an adequate blood circulation.

According to the opinion of R. Feinstein mentioned earlier, there is no obligation to treat the underlying illness but rather only to relieve the suffering of the patient. This would seem to imply that all therapeutic interventions listed need not be administered. Rather, alternatives can be found to relieve the patient's pain or discomfort without prolonging life.[36]

35. These categories are the author's own classifications which are presented as illustrative examples.

36. There appears in the *Iggerot Moshe* (חו"מ חלק ב' סימן עה') a Responsum from Rabbi Feinstein which may seem to contradict the conclusion just mentioned. It concerns the treatment of a patient with two concurrent illnesses. Rabbi Feinstein discusses the case

Rabbi S. Z. Auerbach[37] is of the opinion that one has a religious obligation to prolong even short-term life under all circumstances even if this happens to prolong a person's pain and suffering. However, he acknowledges that there is no obligation upon others to compel or strongly persuade the patient to fulfill his religious obligation. Therefore, if a patient suffers greatly from an illness and refuses the above-mentioned therapies, one is not obligated to persuade him to accept them.

With regard to the vegetative patient, the situation is more complicated. If the patient himself has expressed a desire not to have his life prolonged in such a manner or the family states that he would have expressed such a desire under these circumstances, would it then be permissible to withhold therapy? Rabbi S. Z. Auerbach has written that the halacha requires that therapies which do not entail great pain to the patient, such as intravenous antibiotics, insulin, or blood transfusions, must be instituted. However, surgical procedures which are inherently painful need not be done

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of a patient with a terminal illness who, in the estimation of his physicians, will likely live only seven days, but has contracted another illness — such as pneumonia — which may shorten his life even more. Rabbi Feinstein ruled that one must unequivocally treat the patient with antibiotics despite his poor prognosis, and even expresses consternation at the question. This seems at odds with what has been stated above. However, it is clear that these two cases are different. This case is referring to a patient who has short term life, חיי שעה, without great pain and suffering, consistent with previous rulings of Rabbi Feinstein that one must prolong short-term life if it will not impose on the patient a terrible burden of pain and suffering. The case of the chronic vegetative patient involves short-term life with pain and suffering and therefore no obligation to heal exists (אגרות משה חו"מ חלק ב' דף שא סימן עד).

37. מנחה שלמה סימן צא' אות כד' תקנ"ז.

against the will of the patient although he has a religious obligation to undergo them.

The administration of liquid feeding enterally (i.e. via the digestive tract) or parenterally (via intravenous) poses a different set of halachic issues. One author[38] compares the withholding of nutritional support to an act of premeditated starvation, quoting the Gemara in *Sanhedrin*[39] which discusses the case of a man who was tied up and left to die of hunger, or left in the shade and later died of sun exposure. The Gemara concludes that this is an indirect form of murder. Although the case of the chronic vegetative patient is not completely analogous to this situation, as no mortal act of physical restraint exists, the failure to provide appropriate access to food is construed by this author to be similar to an act of indirect murder, גרם רציחה.

This opinion, however, is viewed by many as extreme. Although all authorities[40] agree that no patient or physician has the right to refuse to accept or provide feeding and that they must be given to the patient even against his will, most authorities would not label such a refusal to be an indirect form of murder. Rabbi Feinstein, in his responsum, refers to nutrition as "a natural biological need" which is understood to refer to the need of all living creatures to have access to nutrition and their consequent obligation to sustain themselves in this world. Failure to avail oneself of sustenance can thus be construed as a challenge to creation and the Creator.

The discontinuation of life-sustaining medical treatment involves several issues. As mentioned earlier, the status of

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38. רב מ. הרשלר, הלכה ורפואה חלק ב' דף ל'-לה'.

39. סנהדרין עז.

40. אגרות משה חו"מ חלק ב' סימן עד' אות ג'.

Goses may apply to the respirator-dependent chronic vegetative patient. If so, treatment that classifies as removal of an impediment to death (הסרת המונע) can be discontinued according to the Ramo. Thus, if one considers the mechanical ventilator or drug infusions for blood pressure control as removal of an impediment to death, one would be allowed, according to the Ramo, to discontinue such modalities. To date, however, only one halachic authority[41] has assumed this position in writing (with many qualifications) and this ruling has not, as yet, been applied to a real-life situation. Thus, whether one considers the respirator-dependent chronic vegetative patient to be a *Goses* or not, discontinuation of life-sustaining treatment, which will undoubtedly cause the rapid demise of the patient, at present is not sanctioned by most halachic authorities and may constitute a form of murder.

The case of withholding life-sustaining treatments (i.e. failure to initiate treatment as opposed to discontinuing it once begun) is a different issue. In general, Jewish Law does distinguish between failure to perform a specific act (שב ואל תעשה) as opposed to actively carrying out a certain deed(קום ועשה). Frequently, when faced with a halachic dilemma, a *posek* will rule in favor of שב ואל תעשה — "sit and do not act." With regard to withholding life support from the chronic vegetative patient, each modality listed above involves its own special circumstances and will be discussed separately.

The first case to be discussed involves withholding mechanical ventilation from the patient. Occasionally, the plastic tube in the patient's windpipe, which connects the patient to the mechanical ventilator, may become dislodged from its place. If the tube is not replaced within several

41. שו"ת ציץ אליעזר חלק יג' סימן פט' וחלק יד' סימן פ', פא'.

minutes, the patient will certainly die. If it is replaced, the pain and suffering of the patient which might have ended at that point will be prolonged indefinitely. What is the nature of the obligation to heal in this scenario?

An argument in support of not re-intubating the patient (replacing the tube) would proceed as follows: This patient once disconnected from the respirator will certainly die imminently and should be considered a *Goses*. Since there is no obligation to prolong the life of a *Goses*, there should be no obligation to reconnect the respirator.

Opponents of this argument counter that there is no obligation to prolong the life of a *Goses* such that he will remain a *Goses*. However, if one can treat the *Goses* and help him to regain his former חיי שעה (short-term life), one must do so. Also, one can argue that the pain of being unable to breathe is great, and in the interest of alleviating the suffering of the patient he should be reconnected to the mechanical ventilator. Others will counter that the pain and suffering to be endured by the vegetative patient over the next one to three years far outweigh the fifteen minute ordeal of being unable to breathe.

Rabbi Feinstein wrote several responsa which deal with this issue. In a responsum on heart transplants[42] Rabbi Feinstein does compare the respirator-dependent patient (the organ donor) to a *Goses* and does agree that no obligation to prolong the life of a *Goses* exists. However, in other responsa[43] Rabbi Feinstein emphasizes the need to alleviate the pain of a patient who cannot breathe, by administering oxygen. Rabbi Feinstein explicitly writes[44] that, "if it [the mechanical

42. אגרות משה יו"ד חלק ב' סימן קע"ד אות ג'.
43. שם חו"מ חלק ב' סימן עג' אות א'.
44. שם יו"ד חלק ג' סימן קל"ב .

ventilator] stops working for it has run out of oxygen, one should not return it to his mouth until a period of approximately fifteen minutes has elapsed. For, if he is not alive anymore, he will stop breathing and we will know that he is dead. If he is alive, we will see him breathe without the machine, albeit with great difficulty, and the machine should be reconnected." Rabbi Feinstein clearly states that the presence of spontaneous respiration is a sufficient criterion by which life or death can be determined.

This responsum of Rabbi Feinstein must be reconciled with his previously-stated ruling that a patient may forego medical treatment if it only prolongs pain and suffering. The case mentioned here of a patient whose mechanical ventilation is interrupted due to a malfunction in the machine, does not involve the issue of right of refusal of treatment and is not mentioned at all in the responsum, which deals entirely with the definition of death in individuals who are comatose for a variety of reasons. Rabbi Feinstein emphasized the need to assess the patient's respiratory status in order to determine whether he is halachically alive or dead. However, if after the patient was originally connected to the ventilator it became known that this was against the patient's wishes, would Rabbi Feinstein then permit withholding the ventilator if it malfunctioned or the tube became dislodged? Or perhaps the obligation to alleviate the respiratory distress of the patient takes precedence? On this issue there is no clear decision found among Rabbi Feinstein's responsa.

The second case to be discussed involves the vegetative patient whose blood pressure drops precipitously and who requires medication (such as dopamine) to maintain blood perfusion to his vital organs. Unlike the previous case, this patient does not experience any *additional* pain or suffering with the drop in blood pressure. Therefore, if one considers the vegetative patient to be a *Goses* by virtue of his imminent

death, and also believes that no obligation to prolong the life of a *Goses* exists, it would be permitted to withhold such medication and allow the patient to die. Alternatively, one may argue that no obligation exists to prolong short-term life, dominated by pain and suffering, and he may withhold treatment on that basis. It would seem then that Rabbi Feinstein would permit withholding of medications such as dopamine in the chronic vegetative patient. Whether Rabbi Auerbach would require institution of artificial blood pressure control in this situation is unclear and will not be speculated upon.

In conclusion, the halachic issues involving the care of the chronic vegetative patient have been presented. Based on the opinions of contemporary *poskim*, arguments for and against placing limits on the obligation to heal have been outlined. The halachot involved clearly are complicated and controversial. Besides the legal ramifications involved, the emotional turmoil that family members experience is considerable. Physicians also often find themselves in an emotional and philosophical quandary. The Torah-observant physician is fortunate that he can turn to the halacha for guidance and reassurance. Whichever body of opinion outlined above he is advised by his rabbi to follow, he can be reassured that כל העוסקים עם הצבור לשם שמים, זכות אבותם מסיעתם — those who toil in the needs of the community for the sake of Heaven, the merits of their forefathers will assist them.