

## Halacha and Hospice

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### Traditional and Modern Death Scenes

When our forefather Yaacov was about to die, he called his family together and gave his children his final message. The Torah describes this death scene in a straightforward way, without tears or grief. Everyone realizes that death is imminent and inevitable.

This biblical death scene was characteristic of the way families traditionally dealt with death. It was normal for death to take place in the midst of one's family, in one's own home. Philippe Aries, in his classic studies of Western attitudes towards death, has coined the phrase "tamed death." In the pre-modern world, people generally knew that death was coming and prepared themselves for this major event. "Children were brought in; until the 18th century no portrayal of a death-bed scene failed to include children."<sup>1</sup>

Aries has argued that the notion of a tamed death "has by now been so obliterated from our culture that it is hard for us to imagine or understand it."<sup>2</sup> The past fifty years have witnessed

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1. Philippe Aries, *Western Attitudes Towards Death*, Baltimore and London (1974) Page 12.
  2. Philippe Aries, *The Hour of Our Death*, New York (1981) Page 28.
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dramatic changes in the conditions of death and in society's attitudes towards death. It is estimated that about three-fourths of deaths in the United States occur in institutions. People generally die in surroundings unfamiliar to them. They are surrounded by doctors and nurses more often than by family members. Death in a hospital or a nursing home tends to be an impersonal, technical experience — rather than a major event in the life of the dying person and in the life of the surviving family members. The hospital room, filled with machines and tubes, is a rather different environment for death from that known by our ancestors.

There has been a quiet but growing backlash to the modern style of death. Many people are saying "*chadesh yameinu kekedem*," let us try to return, at least in some measure, to the old style of dying. Let us try to consider death as a personal, human event. Let the dying person at least retain his dignity and place among family members. Let us move away from the sterility of death in a hospital to the warmth and comfort of death in familiar surroundings.

The hospice movement attempts to help the dying person and his/her family deal with the impending death. A hospice may be an actual place, a facility where terminally ill people can come to spend their last days. Such a facility attempts to create a home-like environment — to be personal, rather than official. Dying people, who cannot be properly cared for at home, may find the hospice setting far more congenial than a hospital.

Most hospice programs do not involve actual buildings. There are programs operated through various hospitals, with the goal of enabling a dying person to be cared for at home. A hospice volunteer becomes a "member of the family" for the dying person. He/she visits the person regularly and provides emotional support for the one who is dying and his/her family. The hospice volunteer treats the dying person as a person — not as a patient. And that is a great difference. Hospices involve doctors, nurses, social workers and other professionals as well as volunteers.

When dying people participate in a hospice program, they already realize that they are dying and that they will not recover their health. In fact, hospice is designed specifically for the



terminally ill, whose life expectancy is six months or less.

Are there halachic problems with the hospice idea? Should a person be told that he/she has a terminal illness and that he/she would be better off in a hospice than a hospital? Does participating in a hospice program demonstrate a lack of *bitachon* in God, since the person seems to be admitting that death is inevitable and that prayers for the restoration of health are valueless? Hospitals attempt to prolong life, even by using heroic efforts. In a hospice, though, a person is allowed to die, without heroic efforts made to prolong life. Does halacha give us the right to let a dying person die, or must we seek ways to prolong life?

### Death Defiance/Death Acceptance:

Rabbi Maurice Lamm, chairman of the Los Angeles Jewish Hospice Commission, delivered a lecture at the General Assembly of the Council of Jewish Federations on November 1983. In his comments, Rabbi Lamm argued that "By history and by theology, Judaism is death-defying. Man is to do battle against the 'spirit of defilement' which, in fact, is a life-long battle against death, considered to be the worst defect of this world." According to Rabbi Lamm, Jews must struggle against death and refuse to give up on life even against the most insurmountable medical odds. On the other hand, he points out that Jews traditionally have prepared themselves for death. "Man must accept death after defying it to the last."

Rabbi Lamm's exposition, while stressing the death-defying elements in Judaism, does not adequately underscore the death accepting elements in Judaism. The heroes in the Torah did not express a fear or defiance of natural death. On the contrary, they seemed to have lived quite at ease with the idea of dying. When Abraham died, the Torah tells us that he had lived a good life, he was old and satisfied, and he was gathered unto his ancestors. When we are informed of Abraham's death, we do not feel sad, nor do we even feel that Abraham himself was sad. The Rambam has commented that God shows the righteous the reward they receive in the world to come. This information satisfies the righteous as they are dying so they do not resist death, but rather

they welcome it.

When Yitzchak is old and expects to die, he plans to give his blessing to his first-born. When Yaacov nears death, he calls Yoseph and tells him to arrange his burial in the land of Canaan. The Torah does not record that Yaacov was trying to defy death in any way. Rather, he seems to have accepted the reality quite easily and was now concerned with giving his last words to his family. When Yoseph was about to die, he said to his brothers quite clearly: "*Anohi met.*" "I am about to die." When it was time for Aharon to die, God himself informed Moshe and Aharon of the impending death and gave instructions on how to prepare for this event.

Indeed, rabbinic tradition also does not present death as something abhorrent which must be defied with all one's strength. The Torah teaches<sup>3</sup> that when God finished Creation, he looked at the world and saw that it was "very good." The Midrash in *Bereshit Rabbah* offers the well-known interpretation that the words "*hineh tov me-od*" refer to death. That is, after examining His creation, God recognized that death was a positive feature in His creation. There are a number of rabbinic texts which underscore that death is a positive feature of creation and necessary ingredient in God's plan.<sup>4</sup>

Rather than being a strictly death-defying culture, Judaism is actually a balance between death-defiance and death-acceptance. Faithful Jews resist death as long as they can so that they can have the opportunity to fulfill more mitzvot; but once the time of death approaches, the faithful Jew is not afraid. *Hashem li velo ira.*

In her important writings, Dr. Elisabeth Kubler-Ross has described the stages through which a dying patient passes when dealing with his illness and ultimate death. The stages include denial, anger, bargaining, depression — and finally acceptance. At

3. Genesis 1:31.

4. See Louis Ginsburg, *Legends of the Jews*, Vol. 6, Pages 112-113 Note 641; Vol. 1 pages 287-8; *Avot de Rabbi Natan*, Chapter 14; *Berachot* 10a; *Eliyahu Rabba* 16, 81; the response of Rabbi David Ibn Ali Zimra, Vol 1. 1, No. 256.



this stage, the dying patient has moved beyond grief and sorrow, beyond his own depression and sadness at reaching the point of death. With acceptance, the person feels ready to die.

Reaching a level of acceptance of death may be the most profound experience a person can have in his entire life. It allows a person to evaluate his life from the perspective of one who is about to leave this world. This period provides a person with deep insight and understanding; it is as though he receives a key to solving the riddle and enigmas of life. Anyone who has spent time with a person who has reached this level of death acceptance will know the depth of wisdom, serenity, and love which can characterize this stage of life.

The idea of hospice is built upon the premise that death-acceptance is a positive feature of a person's life. When one knows, really knows, that his remaining time of life is short, he should be allowed to experience the wisdom and love that come with death-acceptance. The hospice setting tries to give moderns the same possibility of experiencing the positive elements of death as existed for our ancestors in earlier generations.

### Should A Person Be Told He/She is Dying?

The hospice idea depends on patients' reaching a level of death-acceptance. Do we have the responsibility or the right to force a person into the realization that his death is imminent? Should we inform a terminally ill patient that he is dying?

The weight of halacha opposes telling a patient that he is dying. The *Shulchan Aruch*<sup>5</sup> rules that we may not tell a very ill patient the news of the death of one of his close relatives. Such news would break his heart and reduce his ability to resist his illness. If a relative died over whom the ill person is obligated to mourn, we still may not inform him of this death, nor tear his garments, nor cry, nor eulogize in his presence. The *Bach* there comments that we should not even tell an ill person of the death of someone who is *not* related to him. By mentioning the death of

5. *Yoreh Deah* 337.

anyone and by showing our sadness over that death, the ill person may become frightened that maybe he too will die. By extension, it seems evident that we should not tell a patient that he himself is dying, since this will de-moralize him and weaken his will to live.

If a patient is not informed of his terminal illness, how will he have the opportunity to say *vidui* (confession) and to set his house in order before dying? The most obvious answer is that the person himself — regardless of what others do or do not say — knows the seriousness of his condition. Although some people can delude themselves until the very end of their lives, a great many people know of their impending death without anyone having to inform them officially. And even where a person is somewhat reluctant to face up to the reality, we are obligated to remind him of the necessity of confession.

The *Shulchan Aruch*<sup>6</sup> teaches that if one is about to die, we tell him to confess. We tell him that "many have confessed and have not died, and many have not confessed and yet died. On the merit of your confession may you live. All who confess have a portion in the world to come." In other words, we make it clear that a confession is in order, but that confession does not in and of itself mean that the person will die right away.

The text of the confession<sup>7</sup> is itself somewhat tentative. "I admit before you, God, my God and God of my ancestors, that my cure and my death are in Your hands. May it be Your will that You heal me with a complete healing. And if I die, may it be an atonement for the sins, transgressions and violations which I have sinned, transgressed and violated before You. And place my portion in the Garden of Eden, and let me merit the world to come reserved for the righteous." The ill person first asks God to heal him. Only then does he consider the alternative that he might not recover.

From this discussion, it seems clear that a person should not be compelled into a hospice setting if he has not yet achieved the

6. *Yoreh Deah* 338.

7. *Yoreh Deah* 338:2.



state of death-acceptance. This is a very delicate matter. If the patient himself feels that he is dying and is ready for death, he may ask for the comfort of hospice, for a more personal and humane kind of death. He may express resentment at the possibility of having to die in a hospital, amidst strangers and strange machines. If the dying person does not ask about hospice, or does not know about it, one needs to be very careful in presenting the option. It is not acceptable to deprive a dying person of hope, if a person still fosters hope.

### Bitachon:

Does death-acceptance reflect a lack of faith in God? By entering a hospice setting, does the dying person imply that God cannot heal him, that prayers are not efficacious?

These questions, which may seem significant, are based on what I think is a false premise. As discussed earlier, Abraham, Yitzchak, Yaacov, Yoseph and other Torah heroes did accept their deaths without difficulty. Even Moshe, who pleaded with God for an extension of life, did so in the hope of being allowed to enter the Promised Land. Moshe did not fear death, nor did he defy it for its own sake. He merely wanted to live to see the fulfillment of his years of labor. God Himself told Moshe that he would die soon and would not enter the land of Israel. Accepting death was not a sign of lack of *bitachon* (trust) but was rather an acceptance of the wisdom of God's creation — which includes both life and death.

Moreover, accepting death does not mean precluding the possibility of God's performing a miracle. There certainly have been many people who were on the brink of death and who miraculously were saved, even after doctors had given up all hope. The one who participates in hospice might have the following thought process: "I am very ill. It appears that I will die soon. I do not want to die in a hospital. I want to be in a comfortable setting. I want to be with family and friends. I am ill, but I am still a person and I want my humanity to be respected. While I understand that the odds are very much against my surviving, I know that the power over life and death is in God's hands. If He decides to grant me life, well and good. If not, I prefer to die in a

hospice setting." To my mind, such a thought process does not reflect any lack of *bitachon*.

The Talmud<sup>8</sup> records the meeting of the prophet Yeshayahu with the king Chizkiyahu. When Yeshayahu informs the king that he is going to die, Chizkiyahu tells the prophet of a tradition in his family that even if a sharp sword is resting on one's neck he should not give up on God's mercy. This idea was also stated by Rabbi Eliezer: "*Afilu cherev chadah munachat al tsavaro shel adam al yimna atsmo min harachamim.*" No matter how dangerous one's condition is, there is always the possibility of recovery through God's power. Death-acceptance does not mean total resignation and total giving up on the possibility of extended life.

### The Dying Person And His/Her Loved Ones:

The stages of dying as outlined by Dr. Kubler-Ross apply not only to the patient, but also to the loved ones. The ill person and his family members do not necessarily go through the process at the same rate. It is tragic when a family has given up on the patient, while the patient is still struggling optimistically, thinking that he will survive. It is equally tragic when the patient has achieved death-acceptance, and the family members still persist in telling him that he will recover, that things will be better. The hospice idea is important in that it deals with the dying person and his loved ones. It attempts to harmonize the experiences and feelings of those concerned.

What is the responsibility of family members who see the dying person in great pain or discomfort? What if the doctors have informed the family that the disease can no longer be treated, that the situation is beyond human control? Should the family accept this evaluation and act accordingly? Or should the family continue to defy death?

Put in more specific terms: should the family consider a hospice for the dying person? Should they ask that no heroic medical measures be taken to prolong the person's life? Or should

8. *Berachot* 10a.



they insist that doctors do everything possible to prolong the person's life with respirators, drugs and other medical procedures? Is the family allowed to say: "The dying person's life is in God's hands. Let us make no heroic efforts to prolong his life."

Rabbenu Nissim<sup>9</sup> has expressed his opinion that "There are times when one must ask for mercy for the ill person — that he should die, such as if the ill person is suffering very much in his illness and it is impossible for him to live." He refers to the Gemara in *Ketubot* 104a, where the maidservant of Rabbi Yehudah Hanasi prayed for the death of Rebbe, since she saw how greatly he suffered. This means that at a certain point it is permissible to conclude that it is best for a person to die, rather than to continue suffering from a hopeless disease. Giving up in such a case is not a sin, but rather a virtue.

One has a responsibility to make the dying person as comfortable as possible, to relieve as much pain as possible. One may pray to God to have mercy on the dying person, to spare him further suffering. But, needless to say, one may not take any physical action to hasten the death of the ill person. In the words of the *Aruch Hashulchan*<sup>10</sup> "Even if we see that the person suffers greatly and that death is preferable for him, nevertheless it is forbidden for us to do anything to hasten his death. The universe and its fullness belong to God, and such is the will of the Blessed One."

### Dealing With A Goses

The Ramo<sup>11</sup> teaches that, while it is forbidden to do something to the imminently dying person (*goses*) to hasten his death, it is permissible to *mesir hamonea* (remove the impediment to death). That is, if someone nearby is chopping wood, and the noise is preventing the person from dying, one may ask the woodchopper to stop, in order to let the person die in peace. Likewise, if the

9. *Nedarim* 48a.

10. *Yoreh Deah* 339:1.

11. *Ibid.*

dying person has some salt on his tongue, and the salt is preventing him from dying, then the salt may be removed.

A person should live his life in full, without being actively deprived of it, not even a second of it. On the other hand, it is sometimes appropriate to pray that the person be spared further pain and suffering. One need not seek to prolong life beyond its normal course, through artificial means. It is unfair and wrong to prevent one's soul from returning to its rest when the proper time has come.

In past times, Jewish communities served naturally the functions of a hospice. They provided comfort and emotional support for the dying person and his family. The dying person was not deprived of his personality, was not treated as a scientific or medical case number. Death was defied and accepted; it was an event for the individual who died, for his loved ones, for the community. To the extent that hospice tries to restore the human element in dying, it is in harmony with Jewish tradition.