

# Disconnecting a Terminal Patient From an Artificial Respirator\*

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Today's lecture deals with a very serious topic, not from the halachic aspect (as we shall see), but from the human aspect. Is it permissible to disconnect an artificial respirator from a human being whose life is totally dependent on it? My feeling is that you are seeking a moral dispensation and a peaceful conscience, rather than a halachic answer. This I will attempt to do. Firstly, it is necessary to preface an exposition on the value of life in Torah philosophy, including temporary life. Only after that can we approach the particular question under discussion.

### 1. Hastening the Death of a "Gosses"

"The *gosses*<sup>1</sup> is like the living in all aspects; he creates an obligation for *yibum*<sup>2</sup> and exempts for *yibum*...." (*Smachot* 1,1).

1. The halachic definition of one who is dying, *gosses*, is one who is close to death, and the death rattle is heard in his throat. (Rambam, Comm. Mishna, Arach. 1,3). The Rama writes: *gosses* — one who is close to death brings up mucus in his throat due to constriction in his chest". (EH 121,7, and ChM 211,2).
2. If a man dies childless, and his brother is alive at the time of death, there exists an obligation for the brother to marry the widow, in order to perpetuate the name of the deceased. This is called *yibum*. — trans.

\* This article is the text of a lecture delivered several years ago to a regional medical conference in the Beilinson hospital in Petach Tikva (after an English court permitted the disconnection of an artificial respirator in the case of a girl who had become a "vegetable").

“One may not tie his jaws, nor close his orifices, nor place a metal utensil or something cooling on his navel, until he dies.... One may not move him, nor place him on the sand or on salt, until he dies”. (ibid. 1,3)<sup>3</sup>

“One may not close the eyes of a *gosses*. Touching him or moving him is like committing murder. As R. Meir would say, it is like a candle that is wavering; the touch of a man extinguishes it. So too, closing the eyes of a *gosses* is the same as killing him”. (ibid. 1,4)

From the above quotations, it is clear that it is forbidden to hasten the death of a terminally ill patient, even if his death is imminent and inevitable. His status is equal to that of a healthy person. The example cited by R. Meir of a wavering candle is the basis for the law with which we will deal.

The ruling of *Masechet Smachot* is quoted in the *Shulchan Aruch* as follows:

“A *gosses* is like the living in all respects. One may not tie his jaws... nor remove the pillow from under his head, nor place him on the sand....” The Rama adds, “It is furthermore forbidden to cause him to die more quickly. For instance, if the death process is protracted and he cannot depart, it is forbidden to remove the pillow from under him, in order to remove the feathers which people say cause this. He should not be moved from his place. It is forbidden to place the keys of the synagogue under his head in order that he may depart. However, if there is something which is preventing the departure of the soul, e.g. there is nearby a knocking noise such as a wood chopper, or there is salt on his tongue, and this is preventing the departure of the soul, it is permitted to remove it, for this is not a (positive) action at all, but only the removal of a preventive.” (YD 339)

From this ruling of the Rama we may derive that it is forbidden to hasten the death of a terminally ill patient even in order to relieve him of the agony of the extended throes of death.

## 2. The Sanctity of Life

The *Aruch HaShulchan* (339, 1) offers the following explanation for this law. “Even though we see that he is suffering a great deal in his death throes

3. All of these measures are normally taken after death to prevent deterioration of the body and to prepare it for burial.

and it is better for him to die, it is nonetheless forbidden to do anything to hasten his death. The world and all therein is God's, and this is His will”.

There is a great deal of meaning compacted into these few words. The suffering of man is the will of God. The taking of life is a rebellion against the will of God, who created that life, and is punishing him with that suffering.

The same explanation is offered for the law that a man may not be executed on the basis of his own confession. (Rambam, *Hilchot Sanhedrin* 18,6) The Radbaz explains that “a man's life is not his possession but that of God, as is written (Ez. 18) ‘The souls are Mine’”.

The Rambam utilizes this point in explanation of yet another *halacha*. “The court is commanded not to accept ransom from the murderer, even if he gives all the money in the world, even if the blood-relative wishes to excuse him, for the life of this murderer is not the possession of the blood-relative but of God....” (*Hilchot Rotzeach* ch.1).

On the one hand, it is a decree of heaven. Human life is the possession of God who grants it. Man is forbidden to assault the divine soul. Even if the soul is found in his own body, he is not its master.

On the other hand, there is a rational basis for this position as well. As the *Aruch HaShulchan* concludes, “This is His will”. Why does God grant an easy death to one, while another suffers a lingering agony-filled illness? It is not arbitrary, but the dictate of the wisdom of God, that each should receive as he deserves, according to divine justice.

Furthermore, our criteria are completely materialistic. If we perceive the soul as a pre-existing entity which will continue to exist after leaving the body, and if we take into consideration that we have no idea why the soul was brought into this world, what its purpose is here, for what it is destined in the next world, and what the value is of each second and hour of life, it is then easier to understand why it is forbidden to hasten by even one second the departure of the soul from this world.

## 3. Desecrating Shabbat for Temporary Life

The Rambam states: “One is executed for killing anyone, whether healthy, sick, or even a *gosses* (*Hilchot Rotzeach* 2,7). From this we see that the valuation of the life of a *gosses* is not merely a pious stringency. The taking of his life is legally murder, making the murderer liable for the death penalty.

In this context, it is worthwhile citing the statement of the Tosafot (Nid. 44a), “We violate Shabbat for the saving of human life, (even for a *gosses*)...

even though... most terminally ill persons will die..., because in matters of mortal danger we do not follow the principle of probability (*rove*).” Similarly, in the *Shulchan Aruch* we find, “Even if he is found crushed, without a chance to live more than a little while, nonetheless we extricate (him from the rubble — a forbidden act on Shabbat)...” (OH 321,4). Even a temporary life has supreme value and suspends the Shabbat prohibitions.

There is a problem here. The basis for the suspension of Shabbat prohibitions in cases of mortal danger is the verse “and he shall live by them”, from which the sages derive “and not that he shall die by them”, or the reasoning “violate one Shabbat so that he may observe many *Shabbatot*” (cf. Yom. 85b). In the case of one destined to die shortly, neither of these sources is applicable. In any event he will not “live by them”, nor will he observe many *Shabbatot*. The Meiri appears to be considering this problem when he writes; “We complete the extrication even though it is clear that he cannot live even one hour, for in that hour he can repent in his heart and confess (his sins).” (Yom., loc. cit.)

This reason is appropriate in our case as well. One should not hasten the death of a patient, even though he is in agony, for perhaps he has not confessed mentally and repented before departing this world, and he could do so in the remaining minutes.

The *Pri Megadim* further extends this principle. He states (YD op. cit., *Eshel Avraham*, 4) that we remove the rubble on Shabbat even from one legally condemned to die, since the sentence cannot be carried out on Shabbat and temporary life suspends the prohibitions of Shabbat. The *Mishna Brura* (*Be'ur Halacha*, ibid.) disagrees. “The value placed by the Torah on temporary life applies to one who values his own life; this excludes one who through his own wickedness has forfeited his life.” Nonetheless, the opinion of the *Pri Megadim* is well-founded in light of the reasoning presented above. Furthermore, it is possible that new evidence will be discovered or new arguments offered before the execution the next day. The Mishna requires that even on the way to the execution there be a continuous proclamation calling on anyone who can offer a vindictory argument to step forward (San. 6,1). Finally, one is required to confess before execution; hence, by saving him on Shabbat, we are enabling him to confess and repent before his death.

With these principles of the value of human life in mind, we can now turn to the specific question under discussion.

#### 4. The Prohibition of Indirectly Causing Death

We previously quoted the ruling of the *Shulchan Aruch* and the Rama concerning the prohibition of hastening death.

“A *gosses* is like the living in all respects. One may not tie his jaws... nor remove the pillow from beneath his head, nor place him on the sand...” Rama — “It is furthermore forbidden to cause him to die more quickly. For instance, if the death process is protracted and he cannot depart, it is forbidden to remove the pillow from beneath him, in order to remove the feathers which people say cause this. He should not be moved from his place. It is forbidden to place the keys of the synagogue beneath his head in order that he may depart. However, if there is something which is preventing the departure of the soul, e.g. there is nearby a knocking noise such as a wood chopper, or there is salt on his tongue, and these things are preventing the departure of the soul, it is permitted to remove it, for this is not a (positive) action at all, but only the removal of a preventive.” (YD 339)

The intent of the Rama's comment is unclear. The *Shulchan Aruch* prohibits performing for the dying any of the activities normally done for the dead, including to “remove the pillow from beneath his head”, since this might hasten the moment of death. What does the Rama add to this?

A careful reading of his comment suggests that he wishes to add indirect hastening of death to the prohibition of the *Shulchan Aruch*, which included only direct action. This is borne out by the language “... to *cause* him to die more quickly”, as well as by the examples, which include activities whose effectiveness is of a more or less mystical, non-physical nature, such as removing feathers or placing the synagogue keys under his head.

It is true that the classical commentaries on the Rama understood that the prohibition in all of the cases he mentions derives from the incidental movement of the body and not from the action itself, i.e. were it possible to remove the feathers or insert the keys without disturbing the patient, it would be permissible to do so, even though these actions have the effect of hastening death. But this interpretation makes the entire comment superfluous. The *Shulchan Aruch* prohibited moving the body; what difference does it make if the movement is the result of the removal of feathers or some other intent on the part of the agent? Furthermore, the Rama explicitly mentions that he

“should not be moved from his place”. This is exactly the content of the ruling of the *Shulchan Aruch*. What is the Rama adding in these words? Furthermore, the *Taz* (n. 2), according to his understanding of the Rama’s ruling, disputes the permissibility of removing the salt from his tongue, as this will surely also involve some disturbance of the body, even if it is of the most infinitesimal sort. The Rama appears to be contradicting himself. Finally, the term “to cause death” argues against the accepted interpretation. Movement of the body does not “cause” death, in the halachic sense of the word (*grama*), but directly brings it on.

Therefore, the correct interpretation, in my opinion, is the one offered above. The Rama intends to expand the prohibition to include indirect hastening of death. In order to understand the remaining difficulties in the passage, we must examine the source of the ruling.

The Rif (MK ch.3) quotes the *Braita* from *Masechet Smachot*, without the words “nor remove the pillow from beneath him”, which are, however, found in the quote of the *Braita* found in the *Torat HaAdam* of the Ramban and in the *Tur*. The *Shiltei HaGiborim* comments on the Rif:

“From here it appears that it is prohibited to remove the pillow from beneath the head of a dying man whose soul cannot depart, as some people do. They say that there are feathers which do not permit the soul to depart. Many times have I protested vehemently against this, without avail. My masters disagreed with me, and R. Natan Ish Igra wrote permitting it.”

Clearly, R. Natan Ish Igra and the masters of the *Shiltei HaGiborim* did not have the reading in the *Braita* which explicitly prohibits the removal of the pillow from beneath the head of the dying. They apparently consider the removal of the pillow not to be a significant physical disturbance of the patient. The incidental movement does not hasten death. The *Shiltei HaGiborim* wishes to prohibit it, not by virtue of the movement involved, but because he understands the *Braita* as prohibiting the hastening of death by any means and not only disturbing the body. That is precisely the point of contention between him and the others.

The *Shiltei HaGiborim* adds; “After many years I found support in the *Sefer HaHasidim*. It says there (723) ‘If he is a *gosses* but cannot die unless they place him in another location, he should not be moved’.” The proof is from a case where the cause of death is not the movement but the new location in a different room, i.e. an indirect effect.

## 5. The Permissibility to Remove an Impediment

The *Shiltei HaGiborim* continues:

“In truth, the position of the *Sefer HaHasidim* is unclear. Previously he wrote that if someone is a *gosses* and a woodchopper is near the house and the soul cannot depart, we remove the woodchopper from there. This appears to be the opposite of what he wrote afterwards (referring to the prohibition of moving the patient, quoted above). But the answer is that undoubtedly it is forbidden to do something to delay the death of the patient, such as chopping wood there in order to prevent the departure of the soul, or placing salt on his tongue in order to delay death. All these things are forbidden, as is clear from his language. In such a case, it is permitted to remove the preventive agent. But it is forbidden to do anything which will hasten his death. Therefore it is prohibited to move the patient and place him in another location so that his soul may depart, or to place the keys of the synagogue beneath his head in order to hasten his death (this also has the effect of hastening death). Accordingly, if something is preventing the departure of the soul, it is permissible to remove it without compunction, for he is not ‘touching the candle’, and not directly performing an action. But it is prohibited to place anything on the patient or to move him in order to hasten the departure of the soul, for then he is ‘touching the candle’.”

The *Shiltei HaGiborim* prefaces his resolution of the apparent contradiction in the *Sefer HaHasidim* by stating that just as it is forbidden to hasten death, so too it is forbidden to prolong artificially the life of a terminally ill patient. From this he proceeds to deduce that the removal of the artificial means of prolonging life is permitted. The reason is that since the time of natural death has arrived, and it is only the wood-chopping and the grain of salt which is preventing the natural process from being fulfilled, it is permissible to remove the impediment.

“But it is forbidden to do anything which will hasten his death.” Here, he is referring to one whose time of death has not yet arrived, but is in the agony of his death throes, and therefore we wish to hasten his death prematurely. This is forbidden. He cites two examples — moving the body and placing the

synagogue keys beneath his head. These two cases are mutually instructive. Just as placing the keys beneath his head is not forbidden because of any incidental movement associated with it, which would be direct hastening of his death, but only by virtue of an indirect mystical effect, so too the efficacy of the movement that he is speaking of is mystical, based on the assumption that in another corner of the room it will be easier for the soul to depart. Undoubtedly, the movement is accomplished with all possible caution in order to avoid any disturbance which might physically hasten death. Even so, it is forbidden, since the patient dies sooner as a result of the action.

Finally, he concludes that the removal of an impediment to death is permitted, not only where the impediment was physically placed there by someone, such as in the case of the grain of salt, but also in any case where the impediment is artificially impeding the natural process. "According to this, if something is preventing the departure of the soul, it is permissible to remove it without compunction."

The ruling of the Rama, based on this passage from the *Shiltei HaGiborim*, is now clear. He intends to add cases of indirect causation of death to the ruling of the *Shulchan Aruch*. He therefore cites three examples — the feathers, the synagogue keys, and movement — all of which are effective in the same mystical manner. On the other hand, he permits the removal of an impediment, such as the wood-chopping or the grain of salt, as explained above.

The distinction between removing the pillow and removing a grain of salt is still unclear, as in both cases the object is an impediment to death. (cf. *Taz*, *Shach*, and others, loc. cit.) Hence, many opinions permit the removal of the pillow, including those cited by the *Shiltei HaGiborim* himself. Although the Rama prohibits it, later opinion permits it (cf. *She'arei Kneset Hagdola*, YD 339, on the *Tur*).

## 6. The Artificial Respirator

The case of the salt which may be removed from the tongue of the patient is the closest parallel in the sources to the case of the artificial respirator. The permissibility of removing the salt is uncontested in the sources. The reason, as was explained above, is that it is a case of removing an impediment to death rather than a case of actually hastening death. The salt was apparently placed under his tongue in an attempt to save or prolong his life, but now, when all efforts have failed, and it is only adding to the patient's agony, it is permissible to remove it. The artificial respirator is an exact parallel to this. When the

patient was brought to the hospital in a critical state, he was immediately attached to the machine in an attempt to save his life. Now, when the doctors have determined that nothing can be done for him, and the respirator is artificially prolonging his life, it follows that it is permissible to detach the patient from the machine.

In fact, the permissibility in this case is clearer than in the classic ones. In those cases the patient was breathing on his own; even so, after we determine that the salt is preventing the natural death, it is permitted to remove it. It is clearly permitted to do so when the patient is unable to breathe on his own, and the machine alone is keeping him alive.<sup>4</sup>

Furthermore, the reason advanced by the Meiri for protecting temporary life does not apply in cases of an irreversible coma, where the patient is incapable of repenting.

In my opinion, doctors are not permitted to continue to prolong life by use of the respirator in such a case. We have already explained that it is prohibited to prolong life artificially when there is no longer any hope for the patient. While it is true that the halacha is referring to a patient who is suffering from his continued life, which is not the case where the patient is in a coma and is insensible, nonetheless, in my opinion, not only is it permissible to disconnect the machine, but it is mandatory to do so. The soul of man is the possession of God, who has already called it to him. By the operation of the machine we are causing the soul (rather than the body) to suffer by preventing it from departing and going to its rest and peace.

Therefore, after concluding unequivocally that there is no possibility for the patient to recover, it is permissible to disconnect the artificial respirator, and this may be done without any pangs of conscience.

May God, who cures all flesh, aid you to bring cure and healing to all who need it.

4. The ability to breathe is the halachic sign of life and therefore special significance is given to the inability to breathe independent of the respirator. — trans.