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Who Shall Live and Who Shall Die

DRAMATIC CHANGES HAVE OCCURRED IN THE DELIVERY OF MEDICAL CARE TO CRITICALLY AND TERMINALLY ILL PATIENTS, WHICH WILL ULTIMATELY AFFECT EVERYONE

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A new cost-driven, politically correct approach to medical care now prevails in many of the leading medical centers and hospitals worldwide. Its adherents exude dignity and confidence, but do not be deceived: They cannot be relied upon to see eye-to-eye with us in times of medical crisis.

It is now common for hospitals and doctors to try to avoid their legal obligations to deliver patient care that conforms to the law. They are very resourceful and express this in a variety of creative ways. Unfortunately, a large segment of the religious public is ill-equipped to cope with the recent changes in medical ethics and care.

Both of us—one a physician and the other an attorney—have confronted this phenomenon at close range and have some practical advice to share with you, since sooner or later virtually all of us will face the challenge of arranging medical care for someone suffering from a critical or terminal illness.

As Jews, we are obligated to respect every moment of human life as being of infinite and immeasurable value. To survive both the overt and subtle pressures to abandon this religious imperative requires thorough *halachic*, emotional, and legal preparation. It also

often requires unshakable faith, iron determination, and titanic courage.

An ounce of legal prevention, in the form of a properly executed Halachic Advance Medical Directive or Halachic Health-Care Proxy, can be worth a pound of medical-legal cure. However, the legally valid form alone is not always enough. Protecting yourselves and your loved ones from the troubling changes in which medical care is delivered in the US and Canada requires insight into what is actually going on in practice.

The pressures and coercive atmosphere can be nearly unbearable. Consider the following two illustrations:

In a landmark Canadian case that attracted international attention a few years ago, Samuel Golubchuk, *z"l*, a hospitalized Orthodox Jewish patient who was conscious but unable to speak, was written off by his attending physicians. He was not terminal and was not at all near death.

The hospital staff in Winnipeg, however, was unwilling to keep this disabled elderly man alive despite the protests of his adult children. Treating him was an endeavor the professionals considered futile. Reportedly, one of his doctors actually referred to ongoing treatment as "torture." So, they concluded, the only ethical thing to do was to withdraw life support, which would quickly lead to his demise. Among other things, it took an affidavit by one of us (Zacharowicz), challenging the misleading representation of the patient's condition by the medical professionals, to prompt a judge to issue a series of court orders that sustained the patient's life. Ironically, these doctors were adhering to the professional standards of the regional medical society, which *required* the treating physician to terminate the life of a patient whose quality of life, in the sole judgment of that physician, fell below a certain level.

The experience of another patient illustrates how the pressure applied by the very people upon whom we rely to treat our loved ones is devoid of our notions of ethics and basic fairness. An elderly concentration camp survivor, who had experienced horrific health-related ordeals in the camps, had for years delegated all significant medical decisions to someone else, unwilling to face the emotional stress of making such decisions alone. Despite being otherwise lucid, he simply lacked the capacity to again confront the very thin line separating life from death.

Upon admission less than a year ago to one of the world's leading hospitals, a standard New York State Department of Health health-care proxy form was handed to him for signature. The hospital administration was particularly unhappy because the patient had the audacity to fill in several blank spaces and document his express wish to be kept alive despite advanced age and tenuous health.

This elderly person was suffering from a serious disease, but most assuredly was not dying. He was neither vegetative nor comatose. He could communicate and converse. Yet he would not (and could not) make healthcare decisions without assistance. The health-care proxy form directed the physicians and nurses to follow the instructions of his designated health-care agent, with the objective of quality care, treatment, and maintenance of life.

The hospital refused to do so. It elected to ignore the health-care proxy on the legal grounds that it was not yet operative under New York law because the patient was otherwise lucid and communicative. No exceptions.

When challenged, the hospital professionals ignored the patient's inability to make medical decisions which, in the legal opinion of one of us (Kurzmann) who was advising the health-care agent, empowered that agent to make any and all health decisions. The individual's health-care agent then demanded a review by the hospital's ethics committee.

Before the full committee convened, two of its members, who realized that the hospital's position was weak, decided to take matters into their own hands. They sequestered the patient in a private room, closed the door, and barred access by the designated health-care agent. They then persuaded the patient to sign the standard New York form in blank as part of their scheme to implement the hospital's agenda. This, they reasoned, would deprive the healthcare agent of any legally enforceable objection to the patient's demise by their preferred method of death: one with "dignity." It was only after this ruse was exposed that the ethics committee was constrained to back down.

These two incidents are not exaggerated or isolated events. They reflect a trend that is prevalent and growing rapidly. Yet as Jews, we have a solemn obligation to safeguard the gift of human life and never actively shorten a person's life. This applies no matter how painful, seemingly unconscious, or excruciatingly sad each second of life might appear to us as observers.

Sadly, our views no longer seem to matter to many policymakers. The once sacred notion of patient autonomy has been usurped by doctors who apparently feel that they alone should determine who shall live and who shall die.

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Lest you believe that this phenomenon is restricted to our community, think again. Only last month there was vigorous national debate over whether former Vice President Dick Cheney, who is only 71 years of age, was deserving of a heart transplant.

Although he benefitted from no preferential treatment and had to wait 20 months for a donor organ, many expressed the belief that a younger person should have received it instead—a position antithetical to *halacha*.

This is but the tip of the iceberg. Routinely, families of patients deemed by the health-care industry to be too expensive to treat or otherwise unworthy of life-sustaining treatment are urged to choose a less costly alternative.

As a general rule of thumb, it is absolutely essential that every adult sign and have properly witnessed a *halachically*-approved medical directive or health-care proxy and submit it to the US Living Will Registry. These simple forms, and clear instructions, are readily available at no cost from the Agudath Israel of America and the Orthodox Union. No lawyer or notary public is required, although you may wish to consult your *rav* or attorney. It is equally important to have a copy to present to the admissions staff if and when you or your loved one is treated at a health-care facility. If a patient has not signed a *halachically*-approved form before admission, then someone must consult the family *rav* or *posek* immediately before the patient signs anything. Under virtually no circumstances should anyone sign in blank the standard form health-care proxy, Do Not Resuscitate (DNR), Do Not Intubate (DNI), or a similar form handed routinely to patients upon admission, without first having a thorough *halachic* consultation, which should preferably involve a physician knowledgeable about the patient's disease and sympathetic to our community's values and beliefs.

Although the practical implementation of these legal instruments can at times be a challenge in and of itself, not taking the few minutes needed to complete and submit a health-care advance directive or proxy may prove to be a fatal mistake. Further, it is absolutely essential that family members discreetly monitor a patient's condition and care constantly, with great vigilance, and in close consultation with a sympathetic physician and *rav*.

We ask each and every person to take a few minutes to sign the necessary documents that may spell the difference between life and death for you and your loved ones. ●