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### The Jewish Tradition: Religious Beliefs and Healthcare Decisions, 2002

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# The Jewish Tradition

## Religious Beliefs and Healthcare Decisions

By Elliot N. Dorff

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Part of the "Religious Traditions and  
Healthcare Decisions" handbook series  
published by the Park Ridge Center  
for the Study of Health, Faith, and Ethics

**T**he Jewish tradition traces its roots to Abraham. The patriarchal stories of the Bible reflect the migration of the ancient Hebrews from Mesopotamia to Canaan and from there to Egypt. Jewish history continues with the Exodus from Egypt; the Sinai event; the gradual conquest of Canaan during the period of Joshua, the Judges, and the Kings; the building of the First Temple and, with it, the first Jewish commonwealth under Solomon; the splitting of the Jewish commonwealth into northern and southern kingdoms around the year 930 B.C.E.; the defeat of the northern kingdom by the Assyrians in 722 B.C.E.; and the conquest and exile of the Jews of the southern kingdom by the Babylonians in 586 B.C.E., and, with that, the destruction of the First Temple and the first Jewish commonwealth. All of these events are familiar from their biblical accounts.

Jews established a strong community in Babylonia (modern-day Iraq) that continued to exist for another fifteen hundred years under the Persians and then the Muslims. A number of Jews returned to rebuild the temple in 516 B.C.E., and with their return the second Jewish commonwealth was born. It continued to exist in Israel through Greek and Roman conquest until 70 C.E., when the Romans destroyed the Second Temple.

Jews continued to exist in what is now Israel in fairly large numbers for the next three hundred years, but their situation became increasingly dire, and the

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focus of Jewish history shifted to the community in Persia. The Persian Jewish community was at the forefront of world Jewry through the Muslim period, extending to approximately 1050 C.E., but there were sizable Jewish communities in Israel, North Africa, and southern Europe during that time.

From around 1000 C.E. to the fifteenth century, the Jewish communities of North Africa and western Europe became the major centers of Jewish culture. Jews, expelled from the western Mediterranean region and western Europe in the fourteenth and fifteenth centuries, moved to eastern Europe and the eastern Mediterranean basin, where they were concentrated until the late nineteenth and early twentieth centuries. At that time, because of persecution in Russia and the development of Zionism—a movement to reconstitute Jewish national life in the ancient homeland—many Jews moved to America and Israel, although the majority of them remained in eastern Europe until they were slaughtered in the Nazi Holocaust.

The largest Jewish community as of 1997, the last year for which figures are currently available, lives in the United States (approximately 5.7 million Jews), and the second largest lives in Israel (approximately 4.7 million Jews). There are also Jewish communities (in order of size) numbering in the hundreds of thousands in France, Canada, Russia, the United Kingdom, Argentina, Ukraine, and Brazil, and there are sizable but somewhat smaller Jewish communities in Australia, South Africa, Germany, Hungary, Mexico, and Belgium. It can be said truthfully that Jews live in almost every country of the world, including some that are currently hostile to Judaism and Israel. This wide distribution is the result of the remarkable fact that Jews lived without a homeland for close to nineteen hundred years, the only people to survive under those conditions. Although it is difficult to determine exactly how many Jews there are in the world today, demographers estimate that there are about thirteen million.<sup>1</sup>

## GENERAL TENETS OF JEWISH BELIEF AND PRACTICE

Jewish belief centers on the revelation of God at Sinai contained in the Torah (the five books of Moses) and on the historical relationship of God to the Jewish people from the time of Abraham through the Exodus and into the present day. Traditional Jews consider themselves bound by the commandments of God as articulated in Jewish law. Because Jewish law gives Judaism a distinctly activist cast, even those Jews who do not observe the law often are actively involved in many projects for the improvement of life on earth. Jewish values concentrate on the life of the family and the community, education throughout life, historical rootedness, and hope for a Messianic future when all peoples will come to know God and follow Jewish law. In that way, Jews understand themselves as having a mission—that of demonstrating morality to the world and being, in Isaiah's terminology, "a light unto the nations" (Isaiah 49:6).<sup>2</sup> For Jews, the land of Israel is the Jewish homeland not only because many of the critical events in the birth and development of Judaism took place there, but also because, according to Scripture, God gave the land to the Jews. Although Jews understand themselves as having a divine mission, that mission is to be carried out by example rather than by actively pursuing converts; in fact, Judaism has historically been reluctant to accept converts.

While Jewish law specifies many particulars about the actions of Jews, Jewish belief is much less determined. Consequently, Judaism has a long history of lively intellectual debate on philosophical issues, and rabbis have taken theological positions ranging from supernaturalism to naturalism, from rationalism to mysticism, and from a community-based revelational understanding of Jewish law to an individualistic, existential understanding of it.

Traditional and liberal manifestations of Judaism exist in most countries. In the United States there are four movements: the Reform Movement, the Reconstructionist Movement, the

Conservative Movement, and the Orthodox Movement. Orthodox Jews, constituting approximately 20 percent of affiliated American Jews, believe that the Torah is the literal word of God and that Jewish law is to be determined by reference to the codes and *responsa* (literally, “queries and replies”; the rabbinic term denotes the exchange of letters in which one party consults with another on a matter of Jewish law) of the past. Conservative Jews, who include some 41 percent of affiliated American Jews, believe that all Jewish sources must be understood in their historical context and that Jewish law developed historically as well. Therefore, while Conservative Jews consider Jewish law binding, they are more willing than Orthodox Jews to make changes in its content in response to modern needs. Reconstructionist and Reform Jews do not consider Jewish law to be binding, although many voluntarily choose to observe sections of it. The Reconstructionist Movement, approximately 2 percent of American Jewry, has historically possessed a greater sense of community than the Reform Movement has manifested and hence offers more encouragement to adopt the folkways of the People of Israel. Autonomy is a central value for the Reform Movement, which represents about 35 percent of American Jewry. (The remaining percentage consider themselves “just Jews.”) Thus for Reform Jews the law is at most a resource that the individual may choose to consult in making a decision; it is certainly not the authoritative command of God. Still, the 1999 Pittsburgh Platform Statement of the Reform rabbinate encourages Reform Jews to learn and practice not only the moral, but also the ritual elements of Jewish tradition, although the individual still has the right to determine how much to observe. The rabbis of the various movements adhere to the positions described above, but for lay people family history, convenience, and friendships are at least as important in choosing an affiliation as ideology and practice. Therefore, Jews might be members of synagogues that are affiliated with one movement or another even though their own personal

philosophies and practices do not coincide with those of the institutions that they join.<sup>3</sup>

## FUNDAMENTAL JEWISH BELIEFS CONCERNING HEALTH CARE

Judaism’s positions on issues in health care stem from three of its underlying principles:<sup>4</sup> that the body belongs to God; that the body is integrated into the entire human person and, as such, is morally neutral, its moral valence being determined by how we use our physical abilities; and that human beings have both the permission and the obligation to heal.

## GOD’S OWNERSHIP OF OUR BODIES

According to Judaism, God owns everything, including our bodies.<sup>5</sup> God loans them to us for the duration of our lives, and they are returned to God when we die. The immediate implication of this principle is that neither men nor women have the right to govern their bodies as they will; God can and does assert the right to restrict the use of our bodies according to the rules articulated in Jewish law.

One set of rules requires us to take reasonable care of our bodies. That is why a Jew may not live in a city where there is no physician.<sup>6</sup> It is also the reason rules of good hygiene, sleep, exercise, and diet are not just recommendations but commanded acts that we owe God. So, for example, bathing is a commandment (*mitzvah*) according to Hillel, and Maimonides includes his directives for good health in his code of law, making them just as obligatory as other positive duties like caring for the poor.<sup>7</sup>

Just as we are commanded to take positive steps to maintain good health, so are we obligated to avoid danger and injury.<sup>8</sup> Indeed, Jewish law views endangering one’s health as worse than violating a ritual prohibition.<sup>9</sup> So, for example, anyone who cannot subsist except by taking charity but refuses to do so out of pride is

shedding blood and is guilty of a mortal offense.<sup>10</sup> Similarly, Conservative, Reform, and some Orthodox authorities have prohibited smoking as an unacceptable risk to our God-owned bodies.<sup>11</sup>

Ultimately, human beings do not have the right to dispose of their bodies at will (that is, commit suicide), for that would be a total obliteration of that which belongs to God.<sup>12</sup> In the laws of all American states, suicide is not prohibited, although abetting a suicide is forbidden in all except Oregon. It is frankly difficult to construct a cogent argument that it is in the state's interest to prohibit suicide, especially if the person is not leaving dependents behind. In Judaism the theoretical basis for this prohibition is clear; we do not have the right to destroy what is not ours.

## THE BODY AS MORALLY NEUTRAL AND POTENTIALLY GOOD

The second major principle underlying Jewish medical ethics is that the body is morally neutral and potentially good. For Judaism the body is as much the creation of God as the mind, the will, and the emotions are. Its energies, like those of our other faculties, are morally neutral, but they can and should be used for divine purposes as defined by Jewish law and tradition. Within that structure, the body's pleasures are God-given and are not to be shunned, for that would be an act of ingratitude toward our Creator. The body, in other words, can and should give us pleasure to the extent that doing so fits within its overriding purpose of enabling us to live a life of holiness.

The Jewish mode for attaining holiness is to use all of our faculties, including our bodily energies, to perform God's commandments. Eating, for example, is an act we do as animals, but it takes on a divine dimension when we observe Jewish dietary restrictions and surround our meals with the appropriate blessings. Some bodily pleasures are positively commanded.

Thus, unless Yom Kippur falls on Saturday, one may not fast on the Sabbath, and one must have three meals in its celebration. Similarly, one is supposed to bathe and wear clean clothes in honor of the day.<sup>13</sup> Sexual intercourse in marriage is not only commanded for purposes of procreation; it is also a duty that each of the spouses has toward the other for their mutual enjoyment.<sup>14</sup> Marital union thus not only produces the next generation, but also establishes the environment in which it can be nurtured and educated in the Jewish tradition.

According to the rabbis, it is actually a sin to deny oneself the pleasures that God's law allows.<sup>15</sup> Bodily pleasures, though, are most appropriately enjoyed when we intend to enhance our ability to do God's will, as Maimonides explains:

He who regulates his life in accordance with the laws of medicine with the sole motive of maintaining a sound and vigorous physique and begetting children to do his work and labor for his benefit is not following the right course. A man should aim to maintain physical health and vigor in order that his soul may be upright, in a condition to know God . . . Whoever throughout his life follows this course will be continually serving God, even while engaged in business and even during cohabitation, because his purpose in all that he does will be to satisfy his needs so as to have a sound body with which to serve God. Even when he sleeps and seeks repose to calm his mind and rest his body so as not to fall sick and be incapacitated from serving God, his sleep is service of the Almighty.<sup>16</sup>

The medical implications of this understanding are clear. Jews have the obligation to maintain health not only to care for God's property, but also so that they can accomplish their purpose in life, that is, to live a life of holiness. Moreover, since pain is not a method of attaining holiness, it is our duty to relieve it. Perhaps the most pervasive corollary of Judaism's insistence on the divine source of our bodies is its positive attitude toward the body and medicine.

## THE HUMAN DUTY TO HEAL OURSELVES AND OTHERS

God's ownership of our bodies is also behind our obligation to help other people escape sickness, injury, and death.<sup>17</sup> It is not for some general (and vague) humanitarian reason or for reasons of anticipated reciprocity. Even the duty of physicians to heal the sick is not a function of a special oath they take, an obligation of reciprocity to the society that trained them, or a contractual promise that they make in return for remuneration. It is because all creatures of God are under the divine imperative to help God preserve and protect what is his.

That is neither the only possible conclusion nor the obvious one from the Bible. Since God announces himself as our healer in many places in the Bible,<sup>18</sup> perhaps medicine is an improper human intervention in God's decision to inflict illness or bring healing, indeed, an act of human hubris.

The rabbis were aware of this line of reasoning, but they counteracted it by pointing out that it is God who authorizes us and, in fact, requires us to heal. They found that authorization and that imperative in two biblical verses. According to Exodus 21:19–20, an assailant must insure that his victim is “thoroughly healed,” and Deuteronomy 22:2 requires the finder to “restore the lost property to him.” The Talmud understands the Exodus verse as giving permission for the physician to cure. On the basis of an extra letter in the Hebrew text of the Deuteronomy passage, the Talmud declares that that verse includes the obligation to restore another person's body as well as her property, and hence there is an obligation to come to the aid of someone else in a life-threatening situation. On the basis of Leviticus 19:16 (“Nor shall you stand idly by the blood of your fellow”), the Talmud expands the obligation to provide medical aid to encompass expenditure of financial resources for this purpose. And fourteenth-century Rabbi Moses ben Nahman (Nahmanides) understands the obligation to care for others

through medicine as one of many applications of the Torah's principle, “And you shall love your neighbor as yourself” (Leviticus 19:18).<sup>19</sup>

Medical experts, in turn, have special obligations because of their expertise. Thus Rabbi Joseph Caro (1488–1575), the author of one of the most important Jewish codes, says this:

The Torah gave permission to the physician to heal; moreover, this is a religious precept and is included in the category of saving life, and if the physician withholds his services, it is considered as shedding blood.<sup>20</sup>

The following rabbinic story indicates that the rabbis recognized the theological issue involved in medical care, but it also indicates the clear assertion of the Jewish tradition that the physician's work is legitimate and, in fact, obligatory:

Just as if one does not weed, fertilize, and plow, the trees will not produce fruit, and if fruit is produced but is not watered or fertilized, it will not live but die, so with regard to the body. Drugs and medications are the fertilizer, and the physician is the tiller of the soil.<sup>21</sup>

This is a remarkable concept, for it declares that God does not bring about all healing or creativity on his own, but rather depends upon us to aid in the process and commands us to try. We are, in the talmudic phrase, God's agents and partners in the ongoing act of creation.<sup>22</sup>

## INSTITUTIONAL AUTHORITY AND INDIVIDUAL CONSCIENCE

The Jewish tradition, perhaps more than any other, has used legal methods to make moral decisions. The underlying Jewish belief is that God declared his will at Sinai and specifically commanded that we not add or detract from it legislatively but that we apply it to concrete situations judicially (Deuteronomy 4:2; 13:1; 17:8–13; see also Exodus 18 and Deuteronomy

1:9–18). The rabbinic tradition understood that judicial mandate broadly, with the result that rabbinic law is much more voluminous and detailed than biblical law is. The Torah (the five books of Moses), in other words, is the constitution of the Jewish people, and rabbinic interpretations and rulings function as legislation and judicial rulings do in American law. Custom is also an important source of Jewish law.<sup>23</sup>

Most decisions that Americans would call moral, then, are part and parcel of the legal system in Judaism. So, for example, if one wanted to know whether it is moral to abort a fetus or to withdraw life-support systems, one would ask one's rabbi, the local expert in Jewish law, and he (or she, in recent decades) would look up the question in the legal resources of the Jewish tradition. If there is some disagreement among previous or contemporary rabbis who ruled on such cases, or if there are complications in the specific case at hand, the rabbi would use standard legal methods in deciding that specific case. The rabbi might also consult another rabbi with acknowledged expertise in the area. The lay Jew,

then, would follow the ruling of her rabbi for both communal and theological reasons.

That methodology and rationale still holds for Orthodox and Conservative Jews, at least in theory and often in practice, for both of those branches of Judaism hold that Jewish law is binding. The Reform movement, however, champions individual autonomy, so moral decisions are totally a matter of what the individual thinks is right. He may consult a rabbi, but the rabbi's words will not be authoritative law but an individual's advice—albeit an individual with expertise in the Jewish tradition.

There are also moral norms that require us to go beyond the limits of the law. Such moral norms are as binding as the law is. Even those who conscientiously abide by Jewish law, then, might feel moral imperatives beyond what the law requires. For that matter, the rabbi might rule on the basis of such imperatives in addition to the specific sources of the law, for ultimately we are commanded to “do what is right and good in the eyes of the Lord” (Deuteronomy 6:18).<sup>24</sup>

## THE INDIVIDUAL AND THE PATIENT-CAREGIVER RELATIONSHIP

### THE RELATIVE AUTHORITY OF THE PHYSICIAN AND PATIENT

**B**ecause the body belongs to God, each person is duty-bound to seek both preventive and curative medical care and to follow the expert's advice in preserving one's health. Physicians, in turn, are required to elicit the patient's cooperation by ensuring that the patient understands and agrees to the therapy. 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.<sup>25</sup>

On the other hand, patients do not have the right to demand of their physicians forms of treatment that, in the judgment of the physi-

cians, are medically unnecessary, unwise, or futile or that violate their own understanding of Jewish law. That is, physicians are just as much full partners in medical care as are patients. So, for example, if a patient asks for an amniocentesis in order to know the gender of the fetus so that she can abort it if its gender is undesirable, the physician not only may, but should refuse both the amniocentesis and the abortion when those are the only grounds.

### CLINICAL ISSUES

#### *Self-determination and informed consent*

In general, the respect that we must show each other as people created in God's image would



require that physicians take the time to inform their patients about both the preventive and curative steps necessary for their care so that they can make informed decisions. At the same time, physicians need not inform their patients of alternatives that are, in their estimation, medically futile. To this point the Jewish and American traditions agree.

The two traditions, however, address these matters to different degrees. American law puts great emphasis on patient autonomy; physicians must, therefore, inform patients of every possible mishap for fear of being sued if the patient consented to the procedure without that knowledge. The Jewish tradition trusts physicians more than contemporary American law does; indeed, suits against physicians are virtually unheard of in the annals of Jewish law. Moreover, Jewish sources are concerned about the patient's mental health as much as her physical health. Consequently, the Jewish tradition would advise against physicians telling their patients absolutely everything that might go wrong in a procedure. When the probability of problems occurring is slight, maintaining the patient's good spirits would generally outweigh the need to provide information about unlikely outcomes.

### *Truth-telling and confidentiality*

Judaism strongly values telling the truth, and the Bible itself admonishes, "stay far away from any lie."<sup>26</sup> At the same time, Judaism teaches that truth is not the only value, nor is it an absolute one. In hard cases, truth-telling must be weighed against other moral goods. So, for example, when telling the truth will only harm a person and not produce any good, one must choose to remain silent or even gild the lily. A bride, then, is to be described on her wedding day as beautiful no matter how she looks, for tact in such circumstances takes precedence over truth.<sup>27</sup> On the other hand, when writing a letter of recommendation for a job, the writer must reveal the applicant's weaknesses relevant to the job, for those may have a practical effect on the welfare of others.

Similar guidelines apply to the caregiver-patient relationship. By and large, patients do better when they know what to expect; they feel infantilized and undermined when relevant factors about their disease are hidden from them or misrepresented. In general, then, patients should be told the truth calmly, clearly, and tactfully.

If the patient's disease is incurable, he should be told; caregivers should describe how the patient's family, friends, rabbi, and other caregivers can help him cope physically, emotionally, and spiritually. The patient's welfare, however, takes precedence over the truth in such cases. Thus, it is reasonable when the physician—or parents in the case of a child—decide that the patient would be better off not knowing. Due care, though, must be given when considering what is best for the patient.

### *Proxy decisions (advance directives) and living wills*

Jewish law would allow Jews to write an advance directive nominating someone else to make medical decisions for a patient when she cannot do so personally. The proxy, of course, would have no more authority in Jewish law to make medical decisions than the patient would have, and here it is important to remember that Jewish sources give the physician, as the medical expert caring for God's property, more authority relative to the patient or the surrogate than American law does. Still, Jews may appoint representatives to guide their health care.

In addition, Jews may fill out a living will to indicate how they would want decisions to be made in a variety of circumstances. In fact, all of the denominations of American Judaism have published such documents for the use of their constituents. Each reflects the particular denomination's understanding of the content and degree of authority of Jewish law.



## FAMILY, SEXUALITY, AND PROCREATION

### UNDERLYING PRINCIPLES

**M**arriage and children are the epitome of blessing in the Jewish view.<sup>28</sup> “Our Rabbis taught: A man without a wife lives without blessing, without life, without joy, without health, and without peace.”<sup>29</sup> A later mystical source carries this one step further: “The divine presence can rest only upon a married man because an unmarried man is but half a man and the divine presence does not rest upon that which is imperfect.”<sup>30</sup> So important is it for a man to take a wife that “One may sell a scroll of the Torah for the purpose of [having enough money to] marry.”<sup>31</sup>

Sexual relations have two distinct purposes, both rooted in biblical commands. The very first of the Torah’s commands is that given to Adam and Eve, “Be fruitful and multiply.” Procreation, then, is a commandment. It is also a blessing. In rabbinic interpretation, for exegetical and probably economic reasons, it is the man who bears the responsibility to propagate, even though men obviously cannot do so without women. A man fulfills that obligation when he fathers at least two children. Because we are supposed to model ourselves after God, we should create as God did in the first chapter of Genesis (1:27), that is, create at least one male and one female child. Two children, though, is a minimum; couples are supposed to have as many children as possible.<sup>32</sup>

Sexual intercourse is also understood to be a vital part of the pleasure and companionship of marriage. The Torah therefore declares that when a man marries a woman, “her food, her clothing, and her conjugal rights he may not diminish” (Exodus 21:10). Contrary to most other ancient traditions, then, Judaism from its earliest sources recognized that women have sexual needs as much as men do and legitimated the satisfaction of those needs within marriage.<sup>33</sup>

### CLINICAL ISSUES

#### *Masturbation*

With the importance of marriage and children in mind, one can understand that traditional Judaism looked askance at interruptions in the process of conception and birth. Normally one was supposed to marry and have children. Masturbation, birth control, sterilization, and abortion were, both physically and ideologically, counterproductive.

Jews historically shared the abhorrence of masturbation that characterized other societies, but legal writers had difficulty locating a biblical basis for it. Maimonides claimed that it could not be punishable by the court because there is not an explicit commandment forbidding it.<sup>34</sup> As he makes clear, the prohibition was based in part on assumptions about the medical consequences of ejaculation and also on concerns about self-pollution and murder of unborn generations.<sup>35</sup>

In modern times, many Orthodox Jews retain these beliefs and prohibitions, but Conservative, Reform, and unaffiliated Jews largely do not. To date there have not been official positions of these movements validating masturbation, but in practice any prohibition with regard to it is largely ignored.

#### *Contraception*

Despite the command to have two children and the ideal of having more, and despite the traditional prohibition against “wasting the seed,” contraception is permitted and even required under certain circumstances. In general, the tradition understands the command to procreate to be the obligation of the male and not the female. This, together with the prohibition against masturbation, means that male forms of contraception are generally not permitted, but female methods sometimes are.<sup>36</sup>

In contemporary times, when many men and women pursue extended education and initiate a career before getting married, modern move-

ments have varied widely in their response to the desire for family planning. Some allow couples to use contraception even before they have children, and this has been the practice of the vast majority of Jews. Because of the loss of one-third of the Jewish population during the Holocaust, however, and because of the high rate of intermarriage and the extremely low birth rate among Jews, Jewish religious leaders have increasingly stressed the need for Jews to procreate. Moreover, couples are well advised to begin childbearing by their late twenties, if possible, to avoid the increased chances of infertility and birth defects that come with age. These factors have tempered an otherwise liberal approach to contraception on the part of many non-Orthodox rabbis and most Jews. As we shall see, Judaism restricts the legitimacy of abortion to cases where the life or health of the mother is at stake, and so those forms of contraception that prevent conception in the first place (e.g., diaphragm, pill) are preferred over those that abort the fertilized egg cell (zygote) after the fact (e.g., RU-486).

### *Sterilization*

The same concerns govern the issue of sterilization, although there another issue arises, namely, the prohibition against a person mutilating his body in light of the fact that the body is really God's property. Vasectomies and tubal ligations are rather new procedures, and so only a few *responsa* deal with them. Both traditional and liberal respondents forbid male sterilization on the basis of the rabbinic interpretation and extension of Deuteronomy 23:2, "No one whose testes are crushed . . . shall be admitted into the congregation of the Lord"<sup>37</sup> or Leviticus 22:24, "That which is mauled or crushed or torn or cut you shall not offer unto the Lord; nor shall you do this in your land."<sup>38</sup> They are more permissive about female sterilization, both because a woman does not come under those prohibitions and also because she is not legally obligated to procreate.<sup>39</sup>

All sources agree, however, that even male sterilization is permitted and perhaps even required if necessary to preserve the man's life or health. Moreover, even though I am not aware of any written opinion that would allow this practice, since vasectomy is far easier and safer than tying a woman's tubes, I could imagine an argument consistent with Jewish law and principles that would permit a vasectomy when pregnancy would entail a severe risk to the man's wife. After all, vasectomy does not amount to castration or to crushing the testes, and so the biblical verses cited above are not directly violated by the operation. The question, though, would be whether pregnancy could be effectively prevented by other means that would not endanger the woman and would not even possibly violate the verses cited. If so, then such means would undoubtedly be preferable.

### *Abortion and the status of the fetus*

In conflict situations, there is a clear bias for life within the Jewish tradition. Indeed, it is considered sacred. Consequently, although abortion is permitted in some circumstances and actually required in others, it is not viewed as a morally neutral matter of individual desire or an acceptable form of *post facto* birth control. Contrary to what many contemporary Jews think, Judaism restricts the legitimacy of abortion to a narrow range of cases; it does not give blanket permission to abort.

Judaism does not see all abortion as murder because rabbinic sources understand the process of gestation developmentally. According to the Talmud, within the first forty days after conception the zygote is "simply water."<sup>40</sup> Another talmudic source distinguishes the first trimester from the remainder of gestation.<sup>41</sup> These marking points are not based on a theory of ensoulment at a particular moment in the uterus, but rather on the physical development of the fetus. These demarcations effectively make abortion during the early periods permitted for more reasons than during the rest of pregnancy.<sup>42</sup>

The fetus does not attain the full rights and protections of a human being until birth, specifically when the forehead emerges or, in a breech birth, when most of the body emerges.<sup>43</sup> The mother, of course, has full human status. Consequently, if the fetus threatens the life or health of the mother, then it may and in some cases must be aborted, as the following Mishnah graphically stipulates:

If a woman has [life-threatening] difficulty in childbirth, one dismembers the embryo in her, limb by limb, because her life takes precedence over its life. Once its head [or its “greater part”] has emerged, it may not be touched, for we do not set aside one life for another.<sup>44</sup>

While all Jewish sources would permit and even require abortion in order to preserve the life or organs of the mother, authorities differ widely on how much of a threat to a woman’s health the fetus must pose to justify or require an abortion.<sup>45</sup> Based on a *responsum* by Rabbi Israel Meir Mizrahi in the late seventeenth century,<sup>46</sup> many modern authorities also permit an abortion to preserve the mother’s mental health, and this has been variously construed in narrow or lenient terms in modern times. To the extent that Jewish law makes special provision for an unusually young or old mother, an unmarried mother, the victim of a rape, or the participant in an incestuous or adulterous union, abortion is construed to preserve the mother’s mental health.<sup>47</sup>

There is no justification in the traditional sources for aborting a fetus because of the health of the fetus; only the mother’s health is a consideration. As a result, some people object to performing an amniocentesis, especially when the intent is to determine whether to abort a malformed fetus.<sup>48</sup> Others reason in precisely the opposite direction; they justify abortion of a defective fetus on the basis of preserving the mother’s mental health where it is clear that the mother is not able to cope with the prospect of bearing or raising such a child.<sup>49</sup>

Many Conservative and Reform rabbis, and even a few contemporary Orthodox rabbis, have handled the matter in a completely different way. They reason that traditional sources recognize only threats to the mother’s health as grounds for abortion because until recently it was impossible to know anything about the genetic or medical make-up of the fetus before birth. Our new medical knowledge, they say, ought to establish the fetus’s health as an independent consideration.<sup>50</sup>

Abortion is particularly problematic for the contemporary Jewish community because Jews are barely reproducing themselves in Israel and are falling far short of that in North America, where the Jewish reproductive rate is approximately 1.6 or 1.7 children per couple. Consequently, even rabbis who are liberal in their interpretation of Jewish abortion law are also calling for Jews to marry and to have children.

## NEW REPRODUCTIVE TECHNOLOGIES

### *Artificial insemination*

Since Judaism prizes children so much, it is no wonder that rabbinic authorities have permitted recourse to artificial assistance in having them. Nevertheless some have objections to some of the procedures.

When the semen of a man is united artificially with his wife’s ovum, there are no objections whatsoever.<sup>51</sup> This may be done by inserting the man’s sperm into the woman’s uterus directly or by uniting their sperm and ovum in a test tube and then inserting the fertilized egg cell into the woman’s uterus. Because of Judaism’s appreciation of medicine as an aid to God, there is no abhorrence of such means merely because they are artificial. The only issue is the means by which the husband’s sperm is obtained: some Orthodox rabbis prefer that it be collected from the vaginal cavity after intercourse rather than through masturbation to insure that there is no “destruction of the seed in vain,” and others require that the man wear a condom with some

small holes in it during sexual intercourse so that there is at least a chance that his wife would be impregnated through their intercourse. Most others, however, permit masturbation for this purpose on the ground that the man's ejaculation to produce semen for artificial insemination of his wife is not "in vain."<sup>52</sup>

The matter becomes more complicated when the donor is not the husband. Some rabbis object to such procedures on grounds of adultery. For others, however, it is called adultery only when the intercourse is conventional, rather than a laboratory procedure where the intent to have an illicit relationship is absent.<sup>53</sup>

More commonly, the objection to donor insemination is based on the fear for the next generation: that the progeny of the act may commit unintentional incest—a violation of the Torah's laws against incest (Leviticus 18, 20). Even for those who would invoke the lack of intent to excuse the couple from those laws, there still remains a critical health concern—namely, the increased likelihood among consanguineous unions of genetic diseases transferring from one generation to the next; this was a prime concern of the Conservative Movement's Committee on Jewish Law and Standards.<sup>54</sup>

This issue dissolves if the semen donor is known or if the donor would not likely be a marital partner for someone in the Jewish community. It was on the latter basis that prominent Orthodox Rabbi Moshe Feinstein ruled that donor insemination would be permissible if the donor were not Jewish, decreasing sharply the likelihood that progeny would meet and marry because, in his community, intermarriage between Jews and non-Jews was rare. Those Orthodox Jews who will use donor insemination will therefore often require that the donor be a non-Jew.

The Conservative Movement's Committee on Jewish Law and Standards has approved my rabbinic ruling, according to which donor insemination is permissible if the identity of the donor is made known or, lacking that, enough is known about him so that the child can avoid unintentional

incest in his or her choice of sexual partners (married or not) and can know as much as possible about his or her family traits, both medically and characterologically. In view of the psychological problems, however, that may ensue for the child, the donor, and the parents who raise the child (the "social parents"), all parties to the insemination should seek and receive appropriate counseling.<sup>55</sup>

Some Orthodox rabbis have voiced concern about an entirely different matter—namely, the morality of using someone else's body or semen in this way. Others worry that artificial insemination will increase the prospects of widespread licentiousness. Rabbi Jakobovits, former Chief Rabbi of the British Commonwealth, voices these moral concerns in strong language:

If Jewish law nevertheless opposes A.I.D. [artificial insemination by a donor] without reservation as utterly evil, it is mainly for moral reasons, not because of the intrinsic illegality of the act itself. The principal motives for the revulsion against the practice is the fear of the abuses to which its legalization would lead, however great the benefits may be in individual cases. By reducing human generation to stud-farming methods, A.I.D. severs the link between the procreation of children and marriage, indispensable to the maintenance of the family as the most basic and sacred unit of human society. It would enable women to satisfy their craving for children without the necessity to have homes or husbands. It would pave the way to a disastrous increase of promiscuity, as a wife, guilty of adultery, could always claim that a pregnancy which her husband did not, or was unable to, cause was brought about by A.I.D., when in fact she had adulterous relations with another man. Altogether, the generation of children would become arbitrary and mechanical, robbed of those mystic and intimately human qualities which make man a partner with God in the creative propagation of the race.<sup>56</sup>

Needless to say, this was not the view of the morality of donor insemination embedded in my rabbinic ruling, primarily because the procedure

most often is used for the sacred moral purpose of having a child when that is not possible through the couple's sexual intercourse.

### *Egg donation*

The considerations described above with regard to donor insemination apply as well to egg donation. If the identity of the egg donor remains confidential, the same problems arise with regard to possible unintentional incest in the next generation, and the same solutions by the various rabbinic authorities apply. Specifically, either the egg donor's identity should be shared with the couple who will raise the child and ultimately with the child herself, or the woman should be a non-Jew, or enough about the biological mother must be shared with the couple and child to enable the child to avoid unintentional incest and to know about her biological roots. Moreover, psychological counseling is appropriate for all concerned before the procedure and if problems arise in its aftermath.

Egg donation, though, raises some additional problems. Donor insemination poses virtually no medical risks to the semen donor, but that is not true of the egg donor. In order to procure as many eggs as possible during each attempt, the donor must be hyperovulated with drugs, and there is some evidence that repeated hyperovulation increases the risk of ovarian cancer.<sup>57</sup> This is especially troubling since the donor herself will not, by hypothesis, be gaining a child of her own but will rather be helping another couple have a child. For as much as Jewish law prizes procreation, it values the life and health of those already born even more. Consequently, while otherwise healthy women may undergo the procedure to donate eggs once or twice, they should not do so much more than that, unless subsequent studies allay the fear of increased cancer risk.

Normally, a child is defined as Jewish in traditional Jewish law if born to a Jewish woman. In cases of egg donation, however, some rabbis have maintained that it is the donor of the gametes who is the legal mother. Most, though,

have ruled that even if the egg comes from some other woman, as it does in egg donation, it is the bearing mother whose religion determines whether the child is Jewish or not,<sup>58</sup> and this has been the stance adopted by the Conservative Movement's Committee on Jewish Law and Standards.<sup>59</sup>

### *In vitro fertilization (IVF), gamete intrauterine fallopian transfer (GIFT), zygote intrauterine fallopian transfer (ZIFT)*

When a couple cannot conceive a fetus through sexual intercourse, even when assisted by timing their intercourse, by stimulating the ovaries, or by surgery to correct a problem in either the man or the woman, and when the couple prefers to use their own gametes to those of donors, they may try any of a number of new techniques, some of which are listed in the title of this section. Since the Jewish tradition does not frown upon the use of artificial means to enable people to attain permissible ends, much less sanctified ones like having a child, the mechanical nature of these techniques is not an issue. On the contrary, the important thing to note in recent Jewish rulings is that infertile couples are not obligated to use these means to fulfill the man's duty to procreate, even though they may choose to do so.<sup>60</sup>

### *Surrogate motherhood*

Surrogate motherhood is really two different forms of overcoming infertility: traditional or ovum-surrogacy, in which the surrogate mother's own egg is fertilized by the sperm of the man in the couple who are trying to have a baby (presumably not the husband of the surrogate); and gestational surrogacy, in which both the egg and the sperm are those of the couple, and the surrogate mother's womb is used to carry and deliver the baby. Since in ovum-surrogacy the surrogate mother supplies her own gametes (genetic materials), her claim to the baby is greater than that of a gestational surrogate. Custody battles so far in American law, although few, have therefore given some consideration to the claim of an

ovum-surrogate for custody of the child but virtually none to a gestational surrogate.

From a Jewish perspective, this method of overcoming infertility, or at least something much akin to it, is among the oldest ways recorded in the Jewish tradition. Sarai (later Sarah), after all, gives her handmaid Hagar to Abram (later Abraham) specifically to conceive a son who would be attributed to Sarai, and Rachel and Leah likewise have their handmaids conceive children with their husband Jacob.<sup>61</sup> These handmaids are all, in modern terminology, ovum-surrogates, and even so, because the handmaid belonged to the man's wife, the Bible attributes the child to the wife.

Unlike these biblical cases, modern surrogates choose to serve in that role, but surrogate motherhood nevertheless raises difficult emotional and legal problems. These include the following: (1) What happens if the surrogate mother changes her mind in the middle of the pregnancy and wants to keep the baby? (2) Can a woman make a binding contract to terminate her parental rights to a child not yet conceived with full intent and with no equivocation, as required by Jewish law?<sup>62</sup> (3) In light of Jewish law's strong insistence on preserving one's health and life, may one legally bind oneself in Jewish law to a course of action involving physical danger? (4) Is surrogacy just another form of baby buying? (5) Should there be any relationship between the surrogate mother and the couple, or should their identities be withheld from each other? Should there be any relationship between the surrogate mother and the offspring? (6) Should the child undergo the rites of conversion to assure his or her Jewish identity?<sup>63</sup> (7) If the woman who is to serve as the surrogate mother is married, does implanting another man's sperm in her (in traditional surrogacy) or the gametes of both members of a couple (in gestational surrogacy) constitute adultery, and is it therefore prohibited?

All of these issues, then, raise some concerns about the way in which a surrogacy arrangement should be handled, but they do not ultimately

prohibit it. Specifically, the couple must abide by civil law in their region and, in light of the recency of this matter in most systems of law, the couple must be informed of the possibility of legal challenges.<sup>64</sup> Furthermore, Jewish law would require that steps be taken to insure that the surrogate mother has full and informed intent to abide by the agreement—perhaps, in ovum-surrogacy, at least, by giving her a period of time (usually thirty days) after birth to cancel the agreement.<sup>65</sup> The surrogate mother must not have physical or other conditions that would make pregnancy dangerous for her beyond the risks normally associated with pregnancy. In ovum-surrogacy, the child must either be told the identity of the woman whose gametes he inherited or at least be given enough information to be able to avoid incest and to know about his physical and characterological background. Within these parameters, the few rabbis who have written on the subject have generally permitted surrogacy.<sup>66</sup>

There are undoubtedly other problems that will arise as reproductive medical procedures become more sophisticated. On the other hand, as medicine learns more about how to help infertile couples, some of the new procedures may become unnecessary, and whatever moral problems they raise will then become moot. While rabbis have sanctioned the new, artificial methods of conception in varying degrees, they clearly prefer methods that will help the couple have children through their own sexual intercourse—as the couples undoubtedly prefer as well. Then the emotional values of coitus and reproduction can be preserved, and the medical intervention is solely to aid a natural process.

### *Adoption*

When a couple cannot have children, adoption is an available and honored option. Rabbinic law did not have the institution of adoption as such, but it provided for the approximate equivalent. The Rabbinic court, “the father of all orphans,”<sup>67</sup> appoints guardians for orphans and children in need, and the guardians have the



same responsibilities as natural parents have. They are credited by the Talmud with doing right at all times:

“Happy are they who act justly, who do right at all times” (Psalms 106:3). Is it possible to do right at all times? . . . Rabbi Samuel bar Nahmani said: This refers to a person who brings up an orphan boy or girl in his house and [ultimately] enables the orphan to marry.<sup>68</sup>

Contrary to modern adoption, however, in Jewish law the natural parents continue to have the same obligations to the child as does the guardian, and the personal status of the child in matters of Jewish identity, ritual, and marriage depends upon the status of the natural parents.<sup>69</sup> One Rabbinic source, however, states that the people who raise the child, and not the natural father and mother, are called the parents,<sup>70</sup> and the Conservative Movement’s Committee on Jewish Law and Standards has ruled that both the biological and the social parents are to be considered the child’s parents, although in different respects.<sup>71</sup>

### *Prenatal diagnosis and treatment*

Both for their own good and for that of their fetuses, pregnant women should seek and get prenatal care. They should also take the preventive measures that modern medicine recommends to insure a healthy baby, by avoiding alcohol, smoking, and some prescription drugs; avoiding toxins (for example, in paints) and people with specific diseases (for example, German measles) that have been shown to cause fetal damage; and adopting generally health-promoting habits of eating, hygiene, exercise, and sleep. Since women untrained in medicine may not be aware of the special risk factors for pregnancy inherent in certain conditions, women should be sure to share with their obstetricians as much information about their medical history and everyday life as possible so that appropriate steps can be taken to avoid problems for both themselves and their fetuses.

More on this whole topic will be discussed in the section on genetics below.

### *Care of severely handicapped newborns*

Once children are born, they are full-fledged human beings and must be treated in their health care like all other human beings. That is true for disabled newborns (or adults, for that matter) just as much as it is for those with no disabilities. The image of God in each of us does not depend upon our abilities or skills; in this respect, the Jewish way of evaluating life is distinctly at odds with the utilitarian way.

Heroic measures need not be employed, however, to keep alive children born with severe disabilities that threaten their lives. Here the same rules that govern the withholding and removal of life-support systems from any human being apply to newborns, with all of the diversity of opinion among rabbis noted in that section below (see “Forgoing life-sustaining treatment”). Some rabbis, however, are more lenient with respect to the treatment of newborns than they are regarding people dying later on in life because of the possibility, noted in Jewish law, that the child was born prematurely. Specifically, until the child is thirty days old, she is not considered to be a person whose life is confirmed (a *bar kayyama*). Therefore, while we certainly may not do anything actively to hasten the child’s death, we may, according to these authorities, do less to sustain it than we would be called upon to do with regard to individuals who lived beyond thirty days. Thus even those who would insist on artificial nutrition and hydration for most dying people would not require it for life-imperiled infants less than thirty days old—except, of course, if the intervention holds out significant promise of curing the infant of the disease or condition. Some would require incubators, but most would not require surgery or medications beyond those necessary to relieve the child of pain.<sup>72</sup>



## GENETICS

As explained above, the Jewish tradition assumes that God controls who lives or dies and who is healthy or sick, but God also commands us both to take preventive measures to ward off illness and to seek to cure illness when it occurs. These commands are part of our general obligation to protect our bodies that remain God's property throughout our lives and even in death.

When applied to modern issues in genetics, these principles require us to balance that which is a permitted human intervention in the process of curing illness or enhancing life against that which is an interdicted human attempt to play God. As our ability to genetically alter people's lives increases, that balance is becoming harder and harder to strike.

### GENETIC RESEARCH

Because Ashkenazic Jews (those whose ancestors lived in Eastern Europe) constituted a relatively small, inbred population, and because Jews greatly respect medical research and therefore volunteer to participate in studies, there are a number of genetic diseases known to be more prevalent among Ashkenazic Jews than the general population. This in and of itself has caused a problem, for Jews worry that they will be identified as an especially sick population simply because scientists know more about the diseases to which they are prone. Such an identification could lead to discrimination in health insurance and employment.

Despite these dangers, Jews, in line with the great value that their tradition places on research and cure, may and do readily participate in genetic research. We certainly want to help in the effort to find ways to cure genetic diseases through new techniques of genetic engineering. At the same time, the Holocaust makes Jews very wary of the possibility that those very same techniques will be used to create a master race, however that is defined. Thus

we as a society must simultaneously work to acquire the genetic engineering tools to cure diseases while finding ways to ensure that this new technology will be used only for cure and not for eugenics.

### CLINICAL ISSUES

#### *Genetic screening and counseling*

Descendants of the Jews of Eastern Europe have ten times the chance of inheriting Tay-Sachs disease that members of the general population have, even though only 3 percent of Jews of Eastern European origin are carriers. Since genetic screening for Tay-Sachs became available, repeated educational sessions and notices in public media have reminded young Jews to have genetic screening for the disease. There is a concerted call for Jewish couples, in particular, to undergo genetic testing for Tay-Sachs before marriage to determine whether either or both are carriers. The disease is lethal within the first few years of life, and at present the only remedy for a fetus with Tay-Sachs is abortion. According to the vast majority of rabbis of all denominations, abortion of a fetus with a genetic disease like Tay-Sachs is warranted. As a result, couples who are both carriers may choose to test each fetus for the disease and abort those affected. Moreover, couples who are both carriers may act prophylactically by using in vitro fertilization, selecting to implant only those embryos that will not suffer from the disease.

A few rabbis in the Orthodox community object to genetic testing for Tay-Sachs because they object to abortion on any grounds not directly relevant to the life or health of the mother. They also define her "mental health" more narrowly than do most rabbis, even most Orthodox ones. Presumably, when it becomes possible to cure such diseases *in utero*, even such rabbis would permit genetic screening, for then the test would not potentially—or, at least, would not nec-

essarily—be a motivation for abortion.

While abortion of such fetuses is permitted, no active measures may be taken to hasten death once the child is born, and both child and parents must wait out the ravages of the disease.

Jews with a family history of any other less common but fatal genetic disease should be tested for it as well. Where there is concern regarding non-lethal genetic diseases, genetic screening may be done, and a decision may then be made whether to abort the child. So, for example, familial dysautonomia or Riley-Day Syndrome is very debilitating and is fatal before age 30 in approximately half of all cases. Since familial dysautonomia afflicts Ashkenazic Jews at the same rate as Tay-Sachs, and since a genetic test for the disease has just recently been created, Ashkenazic Jewish couples should be alerted to test for it, just as they do for Tay-Sachs. If the fetus will suffer from Downs Syndrome, some couples may choose to abort it on the grounds that the couple—officially, the mother—cannot stand the thought of bearing such a child, let alone rearing it, while others may choose to bear and raise the child. It is a borderline case of maternal mental health for it presents the challenge of raising a child lovingly and effectively despite disabilities. In addition, Ashkenazic Jews are largely unaware that they are even more prone to Gaucher's Disease than to familial dysautonomia. Gaucher's, however, is not fatal, and so testing for it is not nearly as critical.

### *Sex selection*

When we analyze amniotic fluid for the presence of diseases, we learn many other things about the child, including gender, eye color, and so forth. It is not permissible, according to all interpreters of Jewish law, to abort a child just because parents want a child of the opposite gender. On the other hand, since the Jewish mandate to procreate requires producing minimally a child of each gender, if a family has children of only one gender, some authorities would allow choosing an embryo in in vitro fer-

tilization that will produce a child of the opposite gender.

### *Selective reduction*

When a woman is impregnated with three or more fetuses, either naturally or artificially, an abortion is medically indicated in order to preserve both the life of the mother and the viability and health of the remaining fetuses. Therefore such abortions are permitted and possibly even required. When it can be determined through genetic testing that some of the fetuses have a greater chance to survive and to be healthy than others, then it is permissible to abort those less likely to survive. This is the same criterion to be used for triage decisions made at the end of life. If all of the fetuses are equally viable, the abortions must be done on a random basis.

### *Gene therapy*

While gene therapy is relatively new and is available only in limited areas, some principles have already emerged in Jewish discussions of this topic. Techniques of genetic therapy, for example, can cure such conditions as hydrocephalus while the fetus is still within the womb of its mother. Further research holds out the hope that other diseases will also be amenable to treatment in utero. There is already general agreement among rabbis that the legitimacy of human intervention to effect cure extends to procedures within the womb as well.<sup>73</sup> When used in this therapeutic way, genetic engineering is an unmitigated blessing.

The same techniques may be used, however, to screen out traits that are deemed merely undesirable by certain individuals or groups. How do we determine when we are using genetics appropriately to aid God in ongoing, divine acts of cure and creation, and when, on the other hand, we are usurping the proper prerogatives of God to determine the nature of creation? When do we cease to act as the servants of God and pretend instead to be God?

Our moral perplexity about genetic engineering does not mean that research into it should

stop since the potential benefits to our life and health are enormous. It does mean, however, that we must take care in deciding how we use

our new capabilities. The problem is not medical; it is moral.

## ORGAN AND TISSUE TRANSPLANTATION

### GENERAL PRINCIPLES

**W**hen considering the transplantation of an organ from a dead person, the overriding principles of honoring the dead (*kavod ha-met*) and saving people's lives (*pikkuah nefesh*) work in tandem. That is, saving a person's life is so sacred a value in Judaism that if a person's organ can be used to save someone else's life, it is actually an honor to the deceased person. That is certainly the case if the person completed an advance directive, either orally or in writing, indicating willingness to have portions of her body transplanted; but even if not, the default assumption is that a person would be honored to help another live.

In the case of living donors, the command to save lives (*pikkuah nefesh*) requires all Jews who can donate blood with virtually no risk to themselves to do so on a regular basis. Donating blood is especially imperative now that new surgical procedures have increased the need for blood, thereby reducing blood supplies nationwide and forcing some surgeries to be postponed or canceled.<sup>74</sup> When the risk to the donor is greater, as in donating bone marrow and organs, Jews may undertake the risk to help others but are not required to do so because our duty to preserve our own life and health supersedes our duty to help others.<sup>75</sup>

### CLINICAL ISSUES

#### *Living donors*

Since every organ donation from a living person involves surgery and therefore at least some risk, and since preserving one's own life takes precedence over helping someone else live, contem-

porary rabbis have generally permitted, but not required, such donations when the donation can be accomplished without a major risk to the life or health of the donor. Rabbi Immanuel Jakobovits, former Chief Rabbi of the British Commonwealth and author of the first comprehensive book on Jewish medical ethics, is typical. He ruled that a donor may endanger his or her life or health to supply a "spare" organ to a recipient whose life would thereby be saved as long as the probability of saving the recipient's life is substantially greater than the risk to the donor's life or health. "Since the mortality risk to kidney donors is estimated to be only 0.24 percent and no greater than is involved in any amputation, the generally prevailing view is to permit such donations as acts of supreme charity but not as an obligation."<sup>76</sup>

#### *Cadaveric donors*

Although the default assumption is that a person would be honored to help another live, there are some restrictions. Rabbis have differed on the circumstances under which organs may be transplanted. The most restrictive opinion would limit donations to cases in which there is a specific patient before us (*lefaneinu*) for whom life or an entire physical faculty is at stake. So, for example, if the person can see out of one eye, a cornea may not be removed from a dead person, according to this opinion, to restore vision in the other eye. Only if both eyes are failing, such that the potential recipient would lose all vision and therefore incur increased danger to life and limb, may a transplant be performed. Moreover, the patient for whom the organ is intended must be known and present; donation to organ banks is not permitted.<sup>77</sup>

That view is definitely an extreme position. Most rabbis, including Orthodox ones, would expand both the eligibility of potential recipients and the causes for which an organ may be taken. For reasons I shall delineate in the next section, all authorities would insist that the family agree to use their loved one's body for this purpose. Assuming such agreement, most rabbis would permit the transplantation of a cornea into a person with vision in only one eye on the grounds that impaired vision poses enough of a risk to the potential recipient to justify surgical invasion of the corpse to obtain the cornea. Some would not require that the recipient be nearby and ready for transplantation, but only that he or she be identified. In these days of organ banks, however, most rabbis would be satisfied when there is sufficient demand for the organ that it is known that it will eventually, but definitely, be used for purposes of transplantation. So, for example, the Rabbinical Assembly, the organization of Conservative rabbis, approved a resolution in 1990 to "encourage all Jews to become enrolled as organ and tissue donors by signing and carrying cards or drivers' licenses attesting to their commitment of such organs and tissues upon their deaths to those in need."<sup>78</sup>

The traditional practice of waiting for twenty to thirty minutes after cessation of breath and heartbeat to declare death (described in "Determining death," below) would generally be too long for doctors to be able to use the deceased person's heart. Consequently, Conservative Rabbis Daniel C. Goldfarb and Seymour Siegel suggested in 1976 that a flat electroencephalogram, indicating cessation of spontaneous brain activity, be sufficient on the grounds that this would conform to the medical practice of our time just as our ancestors determined Jewish law in light of the medical practice of their time.<sup>79</sup> In 1988, the Chief Rabbinate of the State of Israel approved heart transplantation, effectively accepting that a flat electroencephalogram guarantees that the patient can no longer independently breathe or produce heartbeat, and that ruling has become the accepted

opinion of virtually all Jews, with the exception of a few Orthodox rabbis.<sup>80</sup> The same consideration would apply to transplanting any other organ from a dying person, namely, whether the doctor is accelerating the death of the donor by removing the organ. If a flat electroencephalogram is confirmed, however, that concern is allayed, and removal is permissible.

According to the rulings of the vast majority of rabbis who have written on donation, then, cadaveric donations of skin, corneas, kidneys, lungs, colon, liver, pancreas, ovaries, testicles, the heart, bodily tissue, and, in general, any bodily part would be permissible, and even an act of special kindness (*hesed*), since using the body to enable someone else to live with full human faculties is not a desecration of the body but rather a consecration of it. At its meeting in December 1995, the Conservative Movement's Committee on Jewish Law and Standards approved a ruling by Rabbi Joseph Prouser making cadaveric organ donation not only an act of special kindness (*hesed*), but a positive obligation (*hovah*). The chief considerations that motivated the committee to take that position were the lives that can be saved through organ transplantation and the importance of ensuring that living relatives not be pressured into making risky donations of their own organs due to a shortage of organs from cadavers.

The only concern is to make sure that the donor is indeed dead before the donation takes place. For most rabbis, including the Chief Rabbinate of the State of Israel, that means, in the age of modern technology, the cessation of all brain wave activity; for a few, it still requires cessation of breath and heartbeat. In recent times, some want to return to the old criteria to justify transplantation from "non-heartbeating donors" even when some brain wave activity is detectable, while others worry that this will all too easily motivate physicians to curtail the treatment of the donor. At this stage, rabbinic opinion on this new procedure has not been settled.

Whichever definition of death is used, though, once death has occurred, the prohibitions against

desecration of the dead, deriving benefit from the dead, and delaying the burial of the dead are suspended for the greater consideration of saving the recipient's life or restoring his health, thus giving even greater honor to the deceased.<sup>81</sup>

### *Animal or artificial organs*

Because donated organs are in short supply, physicians have recently tried to use animal or artificial organs. The use of such organs would afford a reliable, relatively inexpensive supply for transplant, and it would also obviate the need to make precise determinations of the moment of death so that a vital organ might be transplanted. From a Jewish perspective, these are certainly great advantages.

Although some have raised questions about the use of animal parts for direct transplant or for making artificial organs, such uses are not a problem in Jewish law or ethics. Judaism, after all, does not demand vegetarianism, and, if we may eat the flesh of animals under Judaism's dietary rules (*kashrut*), then we may certainly use animal parts for saving a life. Indeed, as we have

seen, Jewish sources go further; they hold that if the use of animal parts can save a human life, we have a moral and religious obligation to use them. They do not even have to be from a kosher animal, for saving a human life takes precedence over the dietary laws. Consequently, those Jews who choose to be vegetarians (and there is support for this option within the tradition) would nevertheless be obliged to use animal parts for medical purposes if such therapy held the greatest promise for curing a person or saving a life.

While porcine valves and other animal derivatives have been successfully used in surgery, to say nothing of mechanical and other artificial devices, at present the use of animal or artificial organs is still in an early, experimental stage. Patients who have undergone such operations have not been cured, and sometimes they have given up what could have been several months of life. Even so, if there is no known cure for a disease, and if an experimental drug or surgical procedure offers any chance for cure, Jews may choose to use the drug or undergo the operation, although they are not obligated to do so.<sup>82</sup>

## MENTAL HEALTH

**T**he Bible describes in detail the paranoid psychopathia and perhaps the epilepsy of King Saul, and others in the Bible and Talmud suffer from visual and auditory hallucinations, insanity, and "possession by demons or spirits."<sup>83</sup> Because insanity has legal implications, the Rabbis of the Talmud tried to define it as specifically as possible:

Our Rabbis taught: Who is deemed an insane person? He who goes out alone at night, and he who spends the night in a cemetery, and he who tears his garments. It was taught: Rabbi Huna said: he must do all of them [to be considered insane]. Rabbi Johanan said: Even if [he does only] one of them [he is considered insane]. It was taught: Who is deemed insane? One who destroys everything which is given to him.<sup>84</sup>

Maimonides notes, however, that these are of course to be construed as examples, not as an exhaustive definition of insanity.<sup>85</sup> Moshe Halevi Spero, a contemporary Orthodox psychologist, suggests specific criteria for determining mental disorders in the cases of a person who commits suicide or a woman who seeks an abortion or permission to use contraceptive devices for reasons of mental health. "Generally speaking," he writes, "*shtus* [insanity] might denote one who has lost the ability to reason or make reality-based judgments. *Shtus* may also signify the loss of emotional control."<sup>86</sup>

The Talmud permitted lighting a candle in violation of the Sabbath rules for a woman in labor in order to spare her psychic anguish.<sup>87</sup> Citing that precedent, Nahmanides (thirteenth century)

specifically included mental illness in the category of “saving one’s life” (*pikkuah nefesh*) so that almost all obligations and prohibitions could be laid aside in order to save a person’s mental health as well as his physical health.<sup>88</sup>

The important thing to note here is that the Jewish tradition sees mental illness as an ill-

ness and not as a moral fault. Judaism therefore does not treat mental illness as something for which one should repent or be punished, but rather as something that one should seek to prevent or cure as part of the general Jewish obligations to take care of ourselves and to heal.

## MEDICAL EXPERIMENTATION AND RESEARCH

**B**ecause of the strong imperative within the Jewish tradition to heal, medical experimentation is not only condoned, but prized, and the artificial nature of the cures that researchers might concoct was never an issue. What is required is that the new therapy offer the hope that the person will be helped in a way, or to an extent, that any less dangerous therapy does not, and that due experimentation on animals be conducted before the new therapy is tried on human beings. If the patient—whether adult or child, born or unborn—suffers from an incurable illness, experimental procedures or drugs may be used in an attempt to cure the illness, even if they pose the risk of hastening the person’s death or fail to effect a cure. The intention of all concerned, though, must be to try to heal the person and not to commit active euthanasia.

If a fetus has been aborted for reasons approved by Jewish law, it may be used for purposes of transplantation or research. If a family member suffers from leukemia and no appropriate bone marrow match is available, a married couple may seek to have another child in an attempt to find such a match, but only if they will not abort the child even if it becomes clear that the child is not the match they seek. They may also choose to have a child through *in vitro* fertilization so that they can choose an embryo

that will be a match. Clearly, they must then treat the new child not simply as a means to an end, but as their full-fledged child.

A person may volunteer to undergo an experimental procedure that holds out no hope to improve his or her own health but may increase medical knowledge only if it subjects the person to minimal or no risk. One’s duty to preserve one’s own life takes precedence over one’s obligation to help other people preserve theirs.

Animal life is respected in the Jewish tradition: one may not subject animals to unnecessary pain. One must not, for example, yoke together a donkey and an ox for plowing (Deuteronomy 22:10) since the much greater strength of the ox would inevitably cause the donkey much pain. Animals to be used for food must be slaughtered according to Jewish law, which seeks to make the slaughter as quick and as humane as possible. Animals, however, occupy a lower place on the ladder of life than human beings do. Consequently, they may and should be used to test new drugs or procedures intended to help human beings maintain or regain their health. It would be irresponsible, in fact, not to do so. Only if a person were dying anyway would he or she be allowed to use an experimental drug or procedure without prior testing on animals.



## DEATH AND DYING

### GENERAL CONCEPTS AND CATEGORIES

**W**hen we consider issues at the end of life, a few definitions will set the stage for the discussion. Murder is the malicious taking of another's life without a legal excuse such as self defense. Active euthanasia is a positive act with the intention of taking another's life, but for a benign purpose, for example, to relieve the person from agonizing and incurable pain. Passive euthanasia is a refusal to intervene in the process of a person's natural demise.

Judaism prohibits murder in all circumstances, and it views all forms of active euthanasia as the equivalent of murder.<sup>89</sup> That is true even if the patient asks to be killed. Because each person's body belongs to God, the 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. No human being has the right to destroy or even damage God's property.<sup>90</sup>

The patient does have the right, however, to pray to God to permit death to come,<sup>91</sup> for God, unlike human beings, has the right to destroy his own property. Moreover, Judaism does permit passive euthanasia in specific circumstances, and in our day it is those circumstances that are of extreme medical interest.

Unfortunately the sources in this area are sparse, for until the advent of antibiotics in 1938, physicians could do very little to prevent death unless the problem could be cut out of the patient surgically. Since physicians can now do a great deal for the dying, Jews seeking moral guidance from the Jewish tradition must place a heavy legal burden on the few circumstances in the past in which people thought they had an effective choice about whether to delay death or not. The dearth of such cases leads to considerable disagreement on specific clinical issues; it also poses significant methodological questions as to how the tradition can be legitimately accessed and applied to contemporary circumstances so very different from the past.<sup>92</sup>

### CLINICAL ISSUES

#### *Determining death*

Classical Jewish sources use two criteria for death. One is the breath test, in which a feather is placed beneath the nostrils of the patient to see if it moves. The exegetical bases for this test are the verses in Genesis according to which "God breathed life into Adam" (2:6) and the Flood killed "all in whose nostrils is the breath of the spirit of life" (7:22),<sup>93</sup> but there clearly is also a cogent, practical reason for using the breath test—namely, that it is easy to administer.

Later codifiers insisted on both respiratory and cardiac manifestations of death. Some even held that the Talmud sanctioned the breath test only because it normally is a good indication of the existence of heartbeat, but actually it is the cessation of heartbeat that forms the core of the Jewish definition of death.<sup>94</sup> Moreover, in the sixteenth century Rabbi Moses Isserles ruled that "nowadays" we do not know how to distinguish death with accuracy from a fainting spell, and consequently even after the cessation of breath and heartbeat we should wait a period of time before assuming that the person is dead. Some contemporary rabbis claim that we should still wait twenty or thirty minutes after observing these signs, but others claim that the availability of the sphygmomanometer and electrocardiogram permit us to revert to the traditional mode of defining death as cessation of breath and heartbeat.<sup>95</sup>

#### *Forgoing life-sustaining treatment*

When does the Jewish obligation to cure end, and when does the permission—according to some, the obligation—to let nature take its course begin?

Authorities differ. All agree that one may allow nature to take its course once the person becomes a *goses*, a moribund person. But when does that state begin? The most restrictive position is that of Rabbi J. David Bleich, who limits it to situations when all possible medical means



are being used in an effort to save the patient, and nevertheless the physicians assume that he or she will die within seventy-two hours.<sup>96</sup> Others define the state of *goses* more flexibly as 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 medications more broadly.<sup>97</sup>

In a rabbinic ruling approved by the Conservative Movement's Committee on Jewish Law and Standards, I noted that Jewish sources describe a *goses* as if the person were "a flickering candle," so that he or she may not even be moved for fear of inducing death.<sup>98</sup> That applies only to people within the last hours of life. Consequently, I argued, the appropriate Jewish legal category to describe people with terminal, incurable diseases, who may live for months and even years, is, instead, *terefah*. Permission to withhold or withdraw medications and machines would then apply to people as soon as they are in the state of being a *terefah*, that is, as soon as they are diagnosed with a terminal, incurable illness.

One important operating principle in these matters is this: since Jewish law does not presume that human beings are omniscient, only the best judgment of the attending physicians counts in these decisions. Even if some cure is just around the corner, we are not responsible for knowing that. We must proceed on the best knowledge available at the time and place at hand. If the person is currently deemed incurable, then machines and medications may be withdrawn and palliative care administered.

### *Artificial nutrition and hydration*

In our own day, people in comas are fed through tubes. All available forms of intubation are uncomfortable and pose some risk of infection, but they do give comatose patients the fluids and nutrients they need while their bodies have a chance to recover from the coma.

If the person has been comatose for a number of months, however, and there seems to be little, if any, hope of recovery, may one remove such tubes? On the one hand, just as all of us

need food and liquids, the patient needs the artificial nutrition and hydration that flow through the tubes. Those who see it this way maintain that while we may withhold or withdraw medications and machines, we may not withhold or withdraw artificial nutrition and hydration.<sup>99</sup>

On the other hand, the nutrients that enter the body through tubes look exactly like medications administered that way and, more to the point, the Talmud specifically defines "food" as that which is ingested through the mouth and swallowed.<sup>100</sup> Consequently, in the ruling I wrote for the Conservative Movement's Committee on Jewish Law and Standards, I ruled that while we must go through the motions of bringing in a normal food tray at regular meal times to a comatose patient, we need not administer nutrition and hydration artificially. We may, of course, and we should do so as long as there is a reasonable chance that the patient may recover. When that outcome can no longer be reasonably expected, however, so that the artificial nutrition and hydration are just prolonging the dying process, they may be removed.<sup>101</sup>

### *Curing the patient, not the disease*

The important thing to note, however, is that there is general agreement that a Jew need not use heroic measures to maintain her life but only those medicines and procedures that are commonly available in the person's time and place. We are, after all, commanded to cure based on the verse in Exodus 21:19, "and he shall surely cure him." We are not commanded to sustain life *per se*.<sup>102</sup> Thus, on the one hand, as long as there is some hope of cure, heroic measures and untested drugs may be employed, even though this involves an elevated level of risk. On the other hand, though, physicians, patients, and families who are making such critical care decisions are not duty-bound by Jewish law to invoke such therapies.

This should help us deal with a common phenomenon. A person is suffering from multiple, incurable illnesses, one of which is bound to

cause death soon. It often happens that such a person develops pneumonia, and doctors are then in a quandary. A generally healthy person who contracts pneumonia would be treated with antibiotics, and often the drugs would bring cure. In those situations both the physician and the patient would be required to use antibiotics according to Jewish law, and few would need Jewish law to convince them to do so. But what happens in the case referred to above? The physician can probably cure the pneumonia, but that would only restore the patient to the pain and suffering caused by his or her other terminal maladies. The alternative would be to let the patient die of the pneumonia so that death would come more quickly.

From the perspective of Jewish law, the question is whether our inability totally to cure the person gives us the right to refrain from curing what we can. Normally we do not have this right. So, for example, we must try to cure the pneumonia of a child who has Down's Syndrome, even though we cannot cure the Down's Syndrome. If a person has a terminal illness, however, we would not need to intervene; we may rather let nature take its course. We must view the person as a whole rather than consider each individual disease separately. Therefore even though we could probably cure the pneumonia, and even though the means for doing so are not unusual at all, nevertheless the person cannot be cured, and therefore we may refrain from treating the pneumonia if that will enable the patient to die less painfully. This is in line with the strain in Jewish law that does not automatically and mechanically assume that preservation of life trumps all other considerations, but rather judges according to the best interests of the patient.<sup>103</sup>

### *Pain control and palliative care*

The fact that Jewish law does not require the use of heroic measures means that a Jew may enroll in a hospice program in good conscience and that rabbis may suggest this in equally good conscience. While there are some buildings

called "hospices," hospice care typically does not take place in a special facility. Rather the patient lives at home as long as possible, doing whatever he can do. The word "hospice" thus designates not so much a building, but a form of care. The goal of hospice care is not to cure the disease, but to make the patient as comfortable as possible. In doing so, it is permissible to prescribe a dosage of pain medication that may actually hasten the patient's death, as long as the intent is not to kill the person but rather to alleviate his or her pain.<sup>104</sup>

Hospice care also crucially includes all the non-medical ways in which people are supported when they go through crises. First on that list are the forms of care provided by family and friends who keep the patient company and make the patient feel that she is still part of their world and not simply a locus of illness and pain. Nurses, social workers, and rabbis may also be involved at various points in the patient's care.

Moreover, if the doctors can use extraordinary means but only at great cost or by inflicting great pain, and even then with only a slight possibility of cure, Jewish law would permit such action but would not require it. Consequently, a Jew may legitimately refuse supererogatory medical ministrations and may sign an advance directive for health care (sometimes called a "living will") indicating his desire to decline such care, choosing instead only to alleviate whatever pain is involved in dying. When cure is not possible, both the patient and the physician cease to have an obligation to do more medically than ease pain. Similarly, family and friends should not pressure the patient or physician to employ extraordinary or futile measures; they should instead focus on their continuing duties to visit the sick and provide all forms of non-physical comfort. 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, and while they differ in tone and substance on a number of matters, they all permit hospice care.

## CARE OF THE DECEASED

### *General principles*

The treatment of these topics in Jewish law depends on two primary principles. The general tenet that governs treatment of the body after death is *kavod ha-met*, that is, we should render honor to the dead body. This is not only demanded by respect for the deceased person; it also derives from the theological tenet that the body, even in death, remains God's property.

The other principle which affects the topics of this section is that of *pikkuah nefesh*, the obligation to save people's lives. That tenet is so deeply embedded in Jewish law that, according to the rabbis, it takes precedence over all other commandments except those forbidding murder, idolatry, and incestuous or adulterous sexual intercourse.<sup>105</sup> That is, for example, if one's choice is to murder someone else or give up one's own life, one must give up one's own life. If, however, one needed to violate the Sabbath laws or steal something to save one's own life, then one is not only permitted, but commanded to violate the laws in question to save a life. Jews are commanded not only to do virtually anything necessary to save their own lives; they are also bound by the positive obligation to take steps to save the lives of others. This imperative is derived from the biblical command, "Do not stand idly by the blood of your neighbor" (Leviticus 19:16). Thus, for example, if you see someone drowning, you may not ignore her but must do what you can to save her life.<sup>106</sup>

What happens, though, when you can only save your life or someone else's? Whose life takes precedence? The opinion that ultimately wins the day in Jewish legal literature is that of Rabbi Akiba.<sup>107</sup> Under morally impossible circumstances, when an untoward result will happen no matter what one does, Rabbi Akiba directs us to remain passive and let nature take its course.

With these underlying principles in mind, we are now prepared to address the subjects of this section.

### *Cremation*

Jewish law prohibits cremation as the ultimate form of dishonor of the dead. Cremation also represents the active destruction of God's property, and it is improper for that reason as well. In the generations after Hitler's gas chambers, burning the bodies of our own deceased seems especially inappropriate.

### *Autopsies*

The two procedures that are permitted to interrupt the normal Jewish burial process are autopsies and organ transplants (see "Organ and tissue transplantation," above). Autopsies were known in the ancient world, but Jewish sources indicate that they were largely looked upon as violations of human dignity. As the prospect of gaining medical knowledge from autopsies has improved, many rabbis have come to view them more favorably. Israeli Chief Rabbi Isaac Herzog enunciated a definitive position in his 1949 agreement with Hadassah Hospital. Under that agreement, autopsies would be sanctioned only when one of the following conditions occurred:

- a. The autopsy is legally required.
- b. In the opinion of three physicians, the cause of death cannot otherwise be ascertained.
- c. Three physicians attest that the autopsy might help save the lives of others suffering from a similar illness.
- d. Where a hereditary illness was involved, an autopsy might safeguard surviving relatives.

In each case, those who perform the autopsy must do so with due reverence for the dead and, upon completion of the autopsy, they must deliver the corpse and all of its parts to the burial society for interment. This agreement was incorporated into Israeli law four years later.

When an autopsy is justified for legal or medical reasons, it is construed not as a dishonor of the body, but, on the contrary, as an honorable use of the body to help the living. New procedures, such as a needle biopsy of a palpable

mass, or a peritoneoscopy with biopsy, may soon accomplish most of the same medical objectives in a less invasive way that would clearly be preferable from a Jewish point of view.<sup>108</sup>

### *Donating one's body to science*

May one donate one's entire body to science for dissection by medical students as part of their medical education? Objections to this practice focus on the desecration of the body involved in tearing it apart and the delay in its burial until after the dissection. Rabbi Bleich and others take a very hard line on this issue, claiming that any invasion of the corpse for purposes of autopsy or transplant is warranted only if there is a *holeh lefaneinu*, a patient who will benefit immediately thereby.<sup>109</sup> In contrast, Israeli Chief Rabbi Herzog issued the following statement in 1949:

The Plenary Council of the Chief Rabbinate of Israel . . . do not object to the use of bodies of persons who gave their consent in writing of their own free will during their lifetime for anatomical dissections as required for medical studies, provided the dissected parts are carefully preserved so as to be eventually buried with due respect according to Jewish law.<sup>110</sup>

This seems to me a much more sensible reading of the sources and the process of medical research than that of Rabbi Bleich. Dissection is crucial to the preparation of physicians. Consequently, participating in medical education in this way is an honor to the deceased and a real kindness in that it helps the living. The levity that sometimes accompanies dissection does not mean that medical students find dissection funny; it is perhaps a way for them to dissipate their discomfort in handling a corpse. No disrespect is intended, and therefore dissection is not objectionable on that ground.

Rabbi Isaac Klein cites yet another argument to permit the donation of one's body to science:

In a country where the Jews enjoy freedom, if the rabbis should refuse to allow the Jewish dead to be used for medical study, their action will result in

*hillul ha-shem* [a desecration of God's Name], for it will be said that the Jews are not interested in saving lives; there is (therefore) reason to permit it.<sup>111</sup>

This argument would not apply, however, if there are ample bodies available for dissection. Then the donor would be giving no special gift to future physicians and their patients, and there would be no particular taint involved if Jews do not generally donate their bodies for this purpose. Since medical schools currently have more than enough bodies from county morgues, largely bodies of unknown people that have been abandoned, Jews need not and therefore should not offer to have their bodies dissected, for there is no medical necessity to set aside the honor due a corpse according to the Jewish concept of *kavod ha-met*.

In sum, then, most Jewish authorities would not only permit, but would encourage people to arrange to donate their organs to others upon their demise, and some would even permit donating one's entire body to medical science. The only conditions are that the remains should ultimately be buried according to Jewish law and custom, and that the family of the deceased agree to donate.<sup>112</sup> By graphically indicating that the person has died, burial helps people gain the emotional catharsis and closure that they need. Therefore the permission of the family is necessary not only to accord with American law, but also to assure that, even without immediate burial, relatives of the deceased in the particular case at hand can effectively carry out the mourning process and thus have psychological closure and return to their lives in full. If they feel that closure would not be possible under these conditions, families may refuse to give permission for organ donation or dissection, and they should not feel guilty for doing so.

### **SOCIAL SUPPORT OF THE SICK**

Caring for a person is not a matter of physical ministrations alone. The Jewish tradition is well aware that recovery is often dependent upon the

social and psychological support—or lack thereof—that family and friends provide. Indeed, in cases where people ask to die, it is often because nobody is around to pay any attention to them.

To combat that, the Jewish tradition imposes the obligation on us of *biqqur holim*, visiting the sick. That is a *mitzvah*, a commanded act and an expected behavior, not only for rabbis, but for all Jews. Each synagogue and Jewish social group should have an active *biqqur holim* society. Rabbis, psychologists, and social workers might train the members of the society on how to visit a bedridden person. This should include simple techniques like not standing over the bed

but rather sitting down next to the patient so that the two of you are on the same plane, and it should also include more complex matters, like how to engage the patient in conversation about matters beyond the food served for lunch that day. The Jewish tradition, then, not only obligates us to cure, but to care. Our medical facilities and our residence homes need to be not only medically sound, but warm, caring places. Moreover, our communities must consist of caring people who know that the Torah is serious when it says, “Love your neighbor as yourself” (Leviticus 19:18).

## SPECIAL CONCERNS

### JEWISH DIETARY LAWS

**T**raditional Jews observe the Jewish dietary laws (*kashrut*); they “keep kosher.” The Hebrew word means “ritually fit” (in this case, for eating). The rules of *kashrut* restrict permitted foods to meat that comes from animals that have split hooves and that chew their cud (primarily cows and sheep), domestic fowl (primarily chicken, turkey, and duck), and to fish with scales and fins (trout, cod, whitefish, salmon, pike, etc.; *not* shellfish like shrimp, mussels, lobster, etc.). (See Leviticus 11 and Deuteronomy 14 for these rules.) The animals and fowl must then be slaughtered in a specific way (*shehitah*) to minimize pain to the animal, and the blood must be drained from the meat through a washing and salting process or through broiling. Finally, meat and dairy products may not be prepared or eaten together.

In the hospital setting, some Jews want to order kosher meals. If medical concerns preclude that (if, for example, the patient may not have salt), kosher meals prepared with such restrictions in mind may be available. If not, fruits, vegetables, and many dairy products may be eaten without rabbinic certification of their *kashrut*.

If the physician asserts that the patient’s medical condition requires non-kosher food of a particular sort, the patient both may and must obey, for saving life and health takes precedence over the dietary laws. Such instances, however, are rare, for it must be a true medical necessity for that concern to override the dietary laws.

Generally, even if the patient may not eat some particular foods, other kosher foods that supply the patient’s nutritional needs are available.

### RELIGIOUS OBSERVANCES BASED ON THE TORAH

In the Jewish calendar, days begin and end at sunset. Sabbaths begin eighteen minutes before sunset on Friday night and end forty minutes after sunset on Saturday night to make sure that the Sabbath is not violated.

#### *The Sabbath*

During the Sabbath (in Hebrew, *shabbat*, or, in Yiddish, *shabbes*), thirty-nine types of activity are prohibited. These include writing, doing business, washing clothes, cooking, carrying from one person’s domain to another’s or to the

public thoroughfare, and lighting or extinguishing a fire. Some Jews understand that last interdiction to prohibit the use of electricity (except that which has been turned on before the Sabbath begins or that which is turned on by a non-Jew who does it on his or her own), while others distinguish between lighting a fire and using electricity, prohibiting the former but permitting the latter. Even those who use electricity may or may not use the television or radio on the Sabbath; those who do not permit listening to radio or watching television on the Sabbath refrain from this because of the commercial nature of the advertisements every few minutes. Shaving, using electricity or not, is prohibited on the Sabbath.

In addition to these prohibitions, the Sabbath involves positive commandments. In preparation for the Sabbath, one is supposed to clean one's home, shower, wear clean clothes, make festive meals. These are all part of the honor due to the day and the joy that is to accompany it. The day should include prayer and study of the Torah.

All of these rules are observed, albeit in somewhat different ways, by Jews in the Orthodox or Conservative movements who take seriously their movements' commitment to Jewish law. Members of those movements who nevertheless do not live by that commitment, and Jews in the Reform or Reconstructionist movements, which ideologically assert that contemporary Jews are not bound by Jewish law, and secular Jews whose Jewish affiliation is solely ethnic and not religious, may abide by some of these restrictions and may perform some of the positive acts associated with the Sabbath and the other holy days, but will probably not practice all of them. Such Jews—and they are the vast majority—will instead pick those traditional practices that are meaningful to them, observing them in their own way. Non-Jews caring for Jews, then, must be keenly aware of the wide variation among Jews vis-à-vis all of the traditional practices described here and in the following sections. As Jews are wont to say, “Where there are two Jews there are at least three opinions!”

### *Rosh Hashanah, Sukkot, Shemini Atzeret, Simhat Torah, Passover, Shavuot*

Because the Jewish calendar is lunar, the days on which the seasonal holy days occur do not always coincide with the same day in the solar calendar generally in use. A yearly Jewish calendar, available from synagogues and other Jewish institutions, must be consulted.

The laws governing these biblical holy days are exactly the same as those governing the Sabbath, except that one is permitted to carry and to cook on a fire that was lit before the holiday began or was transferred from such a fire. Each has its own special character, message, and observances. Passover, in particular, involves special dietary restrictions, and even Jews who are otherwise lax in their religious observances may want to order kosher-for-Passover food during the holiday.

### *Yom Kippur*

Yom Kippur (the Day of Atonement) is the holiest day of the year. Jews fast throughout the day, and they spend most of the day in the synagogue praying, meditating, listening to the Torah reading and the rabbi's sermons, and trying to achieve the moral and spiritual cleansing to which the day is devoted. A memorial prayer for the dead (*Yizkor*) is said on this day as part of the liturgy, and Jewish hospital patients may want to gather together at least to hear that prayer. (It is also recited on Shemini Atzeret and on the last days of Passover and Shavuot.)

All of the other restrictions of the Sabbath apply on Yom Kippur as well. With regard to the fast, though, if a physician instructs a Jew that he or she must eat on Yom Kippur because his or her physical condition cannot tolerate the fast, the Jew is bound by Jewish law to follow the doctor's instructions.

## **HISTORICAL HOLIDAYS AND DAYS OF MOURNING**

In addition to the holy days mandated in the Torah, Jews observe a number of holidays and



days of mourning that commemorate events in Jewish history. None of the legal restrictions of the Torah's holy days applies to these days, but they do have special requirements and customs of their own.

### *Hanukkah*

Near the time of the winter solstice, Jews celebrate Hanukkah, the festival of lights and of religious freedom. Jews light a *menorah* (or *hanukkiyah*), beginning with one candle on the first night (in addition to the one used to light all the rest) and lighting one additional candle on each succeeding night. This is preceded by blessings and followed by songs. It is customary to eat foods made with oil on Hanukkah—typically fried potato pancakes (*latkes*) or doughnuts.

### *Purim*

Purim takes place about a month before Passover, usually in March. The biblical Book of Esther is read, and *Hamentaschen*, three-cornered baked goods shaped that way to resemble the hat of Haman, are eaten.

### *Yom Ha-Shoah*

Holocaust Remembrance Day is a relatively new observance within the Jewish community. It takes place about a week after Passover, and it generally includes commemorative worship services and lectures and study sessions about the Holocaust.

### *Israel's Day of Independence (Yom Ha-Atzma'ut)*

Jews the world over celebrate the reestablishment of a Jewish state in the homeland on the fifth of the Hebrew month of Iyyar, which usually falls sometime in May. Jews celebrate the day in a variety of ways, often with walks to raise money for Israel, Israeli dancing, the eating of typically Israeli foods, study sessions about Israel, and the like.

### *Tisha B'Av and the minor fasts*

In late July or early August, the Fast of the Ninth of the Hebrew month Av occurs. Along

with Yom Kippur, it is the only full fast day (from sunset to sunset). It commemorates the destruction of the first Jewish commonwealth in 586 B.C.E., as well as the fall of the second Jewish commonwealth in 70 C.E. In later times, it also became the national day of mourning for other tragedies that befell the Jewish people during the Crusades and Inquisition.

Four other “minor” fast days (that is, from sunrise to sunset) occur during the year and are observed by some Jews.

## PRAYER

Traditional Jews pray three times a day, morning, afternoon, and evening. For the morning prayers, men (and now sometimes women) wear a prayer-shawl (*tallit*) and phylacteries (*tefillin*), black boxes with black leather straps that are bound to the biceps and the forehead. The boxes contain the four passages in the Torah where Jews are commanded to wear such symbols, and they help to dedicate worshipers to God and God's commandments. Whenever praying or studying Jewish texts, Jewish men (and now some Jewish women) traditionally wear a head covering (*kippah* in Hebrew, *yarmulke* in Yiddish) or hat as a mark of reverence for God. If one can, one is supposed to pray with a prayer quorum (*minyan*) of ten Jews, but if that is not possible, one should pray on one's own. All of the American Jewish movements have published their own prayer books, all of which come in versions with English translations accompanying the traditional Hebrew prayers. A rabbi is not needed to lead a community in prayer; any Jew who knows how may do so.

In addition to the daily prayers, Jews may pray to God at any time. Those in distress often use selections from the Book of Psalms as a source of comfort and hope. Prayers are traditionally offered in the synagogue on behalf of those who are ill, for Jews believe that physicians are God's partners in the ongoing act of healing but that ultimately life and death and sickness and health are in God's hands.



## NOTES

In all of the following, M. = Mishnah (edited c. 200 C.E.); T. = Tosefta (edited c. 200 C.E.); J. = Jerusalem Talmud (edited c. 400 C.E.); B. = Babylonian Talmud (edited c. 500 C.E.); M.T. = Maimonides' Mishneh Torah (1177 C.E.); and S.A. = Joseph Caro's Shulhan Arukh (1565 C.E.) with the glosses of Moses Isserles.

1. Della Pergola, "World Jewish Population, 1997," 549, 578.
2. See also Isaiah 51:4. All biblical references are based on *TANAKH: The Holy Scriptures* (Philadelphia: Jewish Publication Society, 1988).
3. The percentages of affiliated Jews: Kosmin, et al., *Highlights*, 37. For a thorough description of the Conservative movement, together with a comparison of the theories of revelation and law of each of the movements, see Dorff, *Conservative Judaism*, 96–192.
4. In Dorff, *Matters of Life and Death*, 14–34, I describe seven foundational principles for Jewish medical ethics, but these three will suffice for purposes of this handbook.
5. See, for example, Deuteronomy 10:14; Psalms 24:1. See also Genesis 14:19, 22 (where the Hebrew word for "Creator" [*koneh*] also means "Possessor," and where "heaven and earth" is a merism for those and everything in between); Exodus 20:11; Leviticus 25:23, 42, 55; Deuteronomy 4:35, 39; 32:6.
6. J. *Kiddushin* 66d; cf. B. *Sanhedrin* 17b.
7. Hillel: *Leviticus Rabbah* 34:3; Maimonides: M.T. *Laws of Ethics (De'ot)*, chaps. 3–5.
8. B. *Shabbat* 32a; B. *Bava Kamma* 15b, 80a, 91b; M.T. *Laws of Murder* 11:4–5; S.A. *Yoreh De'ah* 116:5 gloss; S.A. *Hoshen Mishpat* 427:8–10.
9. B. *Hullin* 10a; S.A. *Orah Hayyim* 173:2; S.A. *Yoreh De'ah* 116:5 gloss.
10. S.A. *Yoreh De'ah* 255:2.
11. Bleich, "Smoking"; Freehof, *Reform Responsa*, chap. 11; *Proceedings* 1983: 182; all reprinted in Dorff and Rosett, *A Living Tree*, 349–359.
12. Genesis 9:5; M. *Semahot* 2:2; B. *Bava Kamma* 91b; *Genesis Rabbah* 34:19 states that the ban against suicide includes not only cases where blood was shed, but

also self-inflicted death through strangulation and the like; M.T. *Laws of Murder* 2:3; M.T. *Laws of Injury and Damage* 5:1; S.A. *Yoreh De'ah* 345:1–3. Cf. Bleich, *Judaism and Healing*, chap. 26; and cf. Dorff, *Matters of Life and Death*, 176–198 and 375–376, where the official statement on assisted suicide of the Conservative Movement's Committee on Jewish Law and Standards is reprinted (also in Mackler, *Life and Death*, 405–434).

13. M.T. *Laws of the Sabbath*, chap. 30.
14. This is based on Exodus 21:10. Cf. M. *Ketubbot* 5:6–7, and the later commentaries and codes based on those passages. This topic will be treated in a more expanded way below.
15. The law of the Nazirite appears in Numbers 6:11, and the Rabbis deduce from that law that abstinence is prohibited: B. *Ta'anit* 11a. Cf. also M.T. *Laws of Ethics (De'ot)* 3:1.
16. M.T. *Laws of Ethics (De'ot)* 3:3.
17. *Sifra* on Leviticus 19:16; B. *Sanhedrin* 73a; M.T. *Laws of Murder* 1:14; S.A. *Hoshen Mishpat* 426.
18. E.g., Exodus 15:26; Deuteronomy 32:39; Isaiah 19:22; 57:18–19; Jeremiah 30:17; 33:6; Hosea 6:1; Psalms 103:2–3; 107:20; Job 5:18.
19. B. *Bava Kamma* 85a, 81b; B. *Sanhedrin* 73a, 84b (with Rashi's commentary there). See also *Sifrei Deuteronomy* on Deuteronomy 22:2 and *Leviticus Rabbah* 34:3. Nahmanides, *Kitvei Haramban*, Bernard Chavel, ed. (Jerusalem: Mosad Harav Kook, 1963 [Hebrew]), vol. 2, p. 43; this passage comes from Nahmanides' *Torat Ha'adam (The Instruction of Man)*, *Sh'ar Sakkanah (Section on Danger)* on B. *Bava Kamma*, chap. 8, and is cited by Joseph Caro in his commentary to the *Tur*, *Bet Yosef*, *Yoreh De'ah* 336. Nahmanides bases himself on similar reasoning in B. *Sanhedrin* 84b.
20. S.A. *Yoreh De'ah* 336:1.
21. *Midrash Temurah* as cited in *Otzar Midrashim*, J.D. Eisenstein, ed. (New York, 1915), II, 580–581. Cf. also B. *Avodah Zarah* 40b, a story in which Rabbi expresses appreciation for foods that can cure. Although circumcision is not justified in the Jewish tradition on medical grounds, it is instructive that the rabbis maintained that Jewish boys were not born circumcised specifically because God created the world such that it would need human fixing, a similar idea to the one articulated here on behalf of physicians' activity despite God's rule; see *Genesis Rabbah* 11:6; *Pesikta Rabbati* 22:4.

22. B. *Shabbat* 10a, 119b. In the first of those passages, it is the judge who judges justly who is called God's partner; in the second, it is anyone who recites Genesis 2:1–3 (about God resting on the seventh day) on Friday night, thereby participating in God's ongoing act of creation. The Talmud, in B. *Sanhedrin* 38a, specifically wanted the Sadducees *not* to be able to say that angels or any being other than humans participates with God in creation.
23. See Dorff and Rosett, *A Living Tree*, for more on the sources, methods, and guiding beliefs of Jewish law.
24. For a thorough discussion of these methodological issues, including why and how Judaism uses law to discern moral duties and the relationship of law to duties beyond the law, see Dorff, *Life and Death*, 395–417.
25. B. *Bava Mezia* 85b. On this subject generally, see Reisner, "Halakhic Ethic," 60–62 [in Mackler, *Life and Death*, 250–53].
26. B. *Bava Mezia* 49a; M.T. *Laws of Ethics (De'ot)* 2:6; cf. 5:13. Exodus 23:7; in context, that passage, like Exodus 20:13 in the Ten Commandments, may be talking specifically about the legal setting, warning that one not allege a false charge, but the later Jewish tradition understood it more broadly to forbid all falsehood. See, for example, B. *Ketubbot* 17a; B. *Shevuot* 30b, 31a. Moreover, other verses in the Bible itself, such as Psalms 101:7, Psalms 119:163, and Proverbs 13:5, condemn falsehood in general.
27. B. *Ketubbot* 16b–17a; S.A. *Even Ha'ezer* 65:1; cf. M.T. *Laws of Ethics (De'ot)* 7:1.
28. On this entire matter, the Rabbinical Assembly, the rabbinic body of the Conservative Movement within Judaism, has created a rabbinic letter designed for use with adults and with teenagers discussing the concepts, values, and laws of Judaism governing intimate relations, marriage, non-marital sex, and homosexuality. See Dorff, *Conservative Judaism*.
29. *Midrash Psalms* on Psalms 59:2.
30. *Zohar Hadash* 4.50b. See also B. *Yevamot* 63a, where the Talmud cites Genesis 5:2 to prove that "An unmarried man is not a man in the full sense," and B. *Kiddushin* 29b, where a prominent rabbi (Rabbi Huna) turns his back on a single man of great learning, telling him to return only after he has married.
31. B. *Megillah* 27a.
32. B. *Yevamot* 62b, based on Isaiah 45:18 ("Not for void did He create the world, but for habitation [*lashevel*] did He form it.") and Ecclesiastes 11:6 ("In the morning, sow your seed, and in the evening [*la'erev*, understood to mean "in your older years"] do not withhold your hand"). M.T. *Laws of Marriage* 15:16.
33. M. *Ketubbot* 5:6–7.
34. Maimonides, *Commentary to the Mishnah, Sanhedrin* 7:4.
35. Cf. Feldman, *Birth Control*, 120 and part three generally; M.T. *Laws of Ethics (De'ot)* 4:19.
36. Cf. Feldman, *Birth Control*, part four.
37. M.T. *Laws of Forbidden Intercourse* 16:2, 6; S.A. *Even Haezer* 5:2.
38. B. *Shabbat* 110b.
39. Bleich, *Judaism and Healing*, 65; Feldman and Rosner, *Compendium*, 46–47; Freehof, *Reform Responsa*, 206–208.
40. B. *Yevamot* 69b.
41. B. *Niddah* 17a.
42. Feldman, *Birth Control*, 265–266 and chap. 15.
43. M. *Niddah* 3:5.
44. M. *Oholot* 9:6.
45. Jakobovits, *Jewish Medical Ethics*, 186–87; 378–79, n. 173.
46. Mizrahi, *Responsa*, vol. 3; *Yoreh De'ah* no. 2.
47. Feldman, *Birth Control*, 284–294; Spero, *Judaism and Psychology*, chap. 12; Jakobovits, *Jewish Medical Ethics*, 189–190.
48. Bleich, *Contemporary Halakhic Problems*, 112–115; Rosner and Bleich, *Jewish Bioethics*, chap. 9, esp. 161 and 175, n. 97.
49. Feldman, *Birth Control*, 284–294.
50. Waldenberg, *Tzitz Eliezer*, vol. 9, no. 51, and vol. 13, no. 102; S. Israeli, *Amud Hayemini*, no. 35, cited in *No'am*, 16 (K.H.) 27 (note); Lev Grossnass, *Responsa Lev Aryeh* 2:205; Goldman, *Judaism Confronts*, chap. 3, esp. 52–62.
51. Jakobovits, *Jewish Medical Ethics*, 264; Bleich, *Judaism and Healing*, 82–84.
52. Bleich, *Judaism and Healing*, 84, n. 3.
53. Bleich, *Judaism and Healing*, 80–84, cites all of the following as requiring physical contact of the genital organs for adultery to occur: R. Shalom Mordecai Schwadron, *Teshuvot Zekan Aharon*, II, no. 97; R. Yehoshua Baumol, *Teshuvot Emek Halakhah*, no. 68; R. Ben Zion Uziel, *Mishpetei Uziel, Even Ha-Ezer*, I, no. 19; R. Moshe Feinstein, *Iggrot Moshe, Even Ha-Ezer*, I,

- no. 10; and R. Eliyahu Meir Bloch, *Ha-Pardes*, Sivan 5713. Nevertheless, as he points out, these Orthodox rabbis would prohibit donor insemination on the grounds of potential incest in the next generation, as discussed in the next paragraph. Moreover, some Orthodox rabbis Bleich cites (R. Yehudah Leib Zirelson, R. Ovadiah Hadaya, R. Eliezer Waldenberg) do not require genital contact for adultery, and so they would object to donor insemination on that ground as well.
54. Dorff, *Matters of Life and Death*, 69–72, 104, and chap. 4 generally; Mackler, *Life and Death*, 40–41.
  55. Dorff, *Matters of Life and Death*, chap. 4; Mackler, *Life and Death*, chaps. 2 and 3.
  56. Jakobovits, *Jewish Medical Ethics*, 248–49.
  57. Spirtas, Kaufman, and Alexander, “Fertility Drugs,” 291–92. I want to thank my friend, Dr. Michael Grodin, for sharing this article with me. The 1988 Congressional report also reported a number of other possible complications caused by drugs commonly used to stimulate the ovaries, including early pregnancy loss, multiple gestations (fetuses), ectopic pregnancies, headache, hair loss, pleuropulmonary fibrosis, increased blood viscosity and hypertension, stroke, and myocardial infarction (U.S. Congress, Office of Technology Assessment, *Infertility*, 128–129).
  58. Feldman, “Ethical Implications.”
  59. Mackler, *Life and Death*, 108–113.
  60. Bleich, *Judaism and Healing*, 85–91; Dorff, *Matters of Life and Death*, 41–42, 44–45, 66; Mackler, *Life and Death*, 30, 38, 63, 102, 112.
  61. Genesis 16:2 uses a play on words in Hebrew when Sarai says to Abram, “Look, the Lord has kept me from bearing. Consort with my maid [Hagar]; perhaps I shall have a son [also, I shall be built up] through her.” This indicates that Ishmael, the son who resulted from this union, was not only to be considered Abram’s son, but Sarai’s as well. Similarly, Rachel tells Jacob, “Here is my maid Bilhah. Consort with her, that she may bear on my knees and that through her I too may have children” (Genesis 30:3). At that time, Rachel was infertile (she gave birth to Joseph and Benjamin only later), but Leah, who had already had four sons, also gave her handmaid, Zilpah, to Jacob, and when Zilpah bore two sons, Leah said, “What fortune!” meaning, “Women will deem me fortunate” (Genesis 30:13)—indicating that those two sons were ascribed to Leah as well. That Leah had stopped bearing and therefore resorted to the use of her handmaid Zilpah: Genesis 30:9. That she later bore three more children: Genesis 30:14–21.
  62. B. *Bava Batra* 168a; cf. B. *Bava Mezia* 48b, 65b, 104a–b.
  63. The differences among the denominations of Judaism on defining Jewish identity come into play here as well as various rabbis’ application of their own criteria to surrogacy. The Conservative movement’s position is that the bearing mother determines Jewish identity; see Mackler, *Life and Death*, 108–110, 174–187. For a description of some of the Orthodox positions, see Bleich, *Judaism and Healing*, 93–95. For the Reform position on the criteria for conferring Jewish status on children of mixed marriage and on surrogacy, see Jacob, *American Reform Responsa*, 505–507, 547–550, and Jacob, *Contemporary American Responsa*, 61–72, esp. 70–71 (dated February 1984).
  64. “The law of the land is the law”: B. *Nedarim* 28a; B. *Gittin* 10b; B. *Bava Kamma* 113a; B. *Bava Batra* 54b–55a. On this principle generally, see Dorff and Rosett, *A Living Tree*, 515–23, 527, 539–45. That Jewish law would never permit to Jews what is forbidden to non-Jews: B. *Sanhedrin* 59a.
  65. Gold, *And Hannah Wept*, 123.
  66. See, for example, Bleich, *Judaism and Healing*, 92–95. While Rabbi Bleich generally prohibits or limits the use of new medical procedures, here he specifically argues against Rabbi Jakobovits’ claim that surrogacy is inherently immoral and spends most of his discussion on the question of the Jewish identity of the child. See also Gold, *And Hannah Wept*, 120–127, and, especially, a new, detailed paper on the subject by Rabbi Elie Spitz, approved by the Conservative Movement’s Committee on Jewish Law and Standards (in Mackler, *Life and Death*, 129–161)—although another ruling approved by the Committee, by Rabbi Aaron Mackler, takes a decidedly less liberal stance (Mackler, *Life and Death*, 162–173).
  67. B. *Bava Kamma* 37a; B. *Gittin* 37a.
  68. B. *Ketubbot* 50a.
  69. Cf. *Encyclopedia Judaica*, “Adoption,” 2: 298–303; “Apotropos,” 3: 218–222; and “Orphan,” 12: 1478–1480, for a summary of Jewish laws on adoption.
  70. *Exodus Rabbah* 46:5; cf. also B. *Sanhedrin* 19b.
  71. Dorff, *Matters of Life and Death*, 72–79 [in Mackler, *Life and Death*, 42–49].
  72. Rabbi Avram Reisner reasons this way in a *responsum* entitled “Peri- and Neo-Natology,” included in Mackler, *Life and Death*, 386–402. That a child’s life is not confirmed until thirty days of age is according to B. *Shabbat* 135b. M. *Niddah* 5:3, however, states that from

the moment of birth a child is, to his or her parents and relatives, “like a bridegroom [or bride]”—that is, that the parents and relatives, if not the rest of society, assume that the child is alive and well and will ultimately marry. Based upon that opinion, and our advanced scientific knowledge that enables us to determine the gestational age of a child more accurately, the Conservative Movement’s Committee on Jewish Law and Standards endorsed a *responsum* by Rabbi Stephanie Dickstein, “Mourning Practices for Infants Who Die Prior to the Thirty-First Day of Life,” requiring that full mourning rites be used for a child who dies within the first thirty days of life—contrary to the traditional practice of simply burying the child privately without communal participation and without the traditional rites of the seven days of mourning following burial.

73. Bleich, *Judaism and Healing*, 106.
74. Ornstein and Hernandez, “Hospitals Face Dire Shortage.”
75. B. *Bava Metzia* 62a.
76. Jakobovits, *Jewish Medical Ethics*, 291; see also 96–98. That this is the generally held opinion regarding living donors is true not only for Orthodox rabbis, some of whom he references, but also for Conservative and Reform rabbis. For Orthodox opinions, see Moshe Feinstein, *Igrot Moshe, Yoreh De’ah* 229 and 230 (Hebrew); Eliezer Waldenberg, *Tzitz Eliezer*, vol. 9, no. 45, and vol. 10, no. 25 (Hebrew); Obadiah Yosef, *Dinei Yisrael*, vol. 7 (Hebrew). For a Conservative position—the only one I know of to date on living donors—see Dorff, *Matters of Life and Death*, 226. For Reform positions, see Freehof, *New Reform*, 62ff; Freehof, *Current Reform*, 118–125; and Jacob, *Contemporary American Responsa*, 128–133.
77. Bleich, *Judaism and Healing*, 129–133, esp. 132; 162–168, esp. 166–67.
78. *Proceedings* 1990: 279. Although somewhat dated, a good summary of the positions of all three movements, with relevant quotations from *responsa* and other official position statements, can be found in Goldman, *Judaism Confronts*, 211–237. That source includes quotations from two *responsa* approved by the Conservative Movement’s Committee on Jewish Law and Standards. A similar stance can be found in the work of two other Conservative rabbis, namely, Klein, *Responsa*, chap. 5, and Feldman, *Health and Medicine*, 103–108.

For a summary of Orthodox positions, see Jakobovits, *Jewish Medical Ethics*, 278–291, and Fred Rosner, “Organ Transplantation in Jewish Law,” in Rosner and Bleich, *Jewish Bioethics*, 387–400.
79. Goldfarb, “Definition of Death”; Siegel, “Updating”; Discussion.
80. For a summary of some of the varying Orthodox opinions on this subject up to 1978 in America, England, and Israel, see Goldman, *Judaism Confronts*, 223–229. See also Rosner and Bleich, *Jewish Bioethics*, 367–71; Bleich, *Judaism and Healing*, 146–157. For the Israeli Chief Rabbinate’s ruling, see Jakobovits, “[Brain Death and] Heart Transplants.”

For Conservative positions, see the opinion of Jack Segal, cited in Goldman, *Judaism Confronts*, 229–230, n. 42; Siegel, “Fetal Experimentation” and “Updating”; Goldfarb, “Definition.” The first official endorsement of the new criteria for the Conservative Movement came in the approval of the Conservative Movement’s Committee on Jewish Law and Standards in December 1990 of the *responsa* by Rabbis Elliot N. Dorff and Avram Reisner (see Dorff, “Jewish Approach”; Reisner, “Halakhic Ethic”), both of which assume and explicitly invoke the new medical definition.

The Reform Movement officially adopted the Harvard criteria (presumably as modified by the medical community) in 1980 (Jacob, *American Reform*, 273–274).
81. Feldman and Rosner, *Compendium*, 67–71; Goldman, *Judaism Confronts*, 211–37.
82. Jakobovits, *Jewish Medical Ethics*, 263, n. 69; Bleich, *Judaism and Healing*, chap. 20.
83. Preuss, *Biblical and Talmudic Medicine*, chap. 11; Gorlin, “Mental Illness.”
84. B. *Hagigah* 3b–4a.



85. M.T. *Laws of Testimony* 9:9–11.
86. Spero, *Judaism*, 175, 174–78.
87. B. *Shabbat* 128b.
88. Nahmanides, *Writings*, vol. 2, p. 43.
89. M. *Semahot* 1:1–2; M. *Shabbat* 23:5 and B. *Shabbat* 151b; B. *Sanhedrin* 78a; M.T. *Laws of Murder* 2:7; S.A. *Yoreh De'ah* 339:2, and the comments of the Shakh and Rama there. The prohibition of murder, though, as in the sixth of the Ten Commandments, does not interdict all killing of humans. On the contrary, Judaism requires self-defense, even to the extent of killing one's attacker, both for individuals (Exodus 22:1; B. *Berakhot* 58a; B. *Yoma* 85b; B. *Sanhedrin* 72a) and for communities (as in war) (Deuteronomy 20–21; M. *Sotah* 8:7 [44b]). See Dorff, *Time for War*.
90. This includes even inanimate property that “belongs” to us, for God is the ultimate owner. Cf. Deuteronomy 20:19; B. *Bava Kamma* 8:6, 7; B. *Bava Kamma* 92a, 93a; S.A. *Hoshen Mishpat* 420:1, 31.
91. Cf. RaN, B. *Nedarim* 40a. The Talmud records such prayers: B. *Ketubbot* 104a, B. *Bava Mezia* 84a, and B. *Ta'anit* 23a. Note that this is not a form of passive euthanasia, for there people refrain from acting, but here God is asked to act.
92. For a discussion of the methodological issues involved in deriving legal guidance from such stories, see the articles by David Ellenson, Louis Newman, Elliot Dorff, and Aaron Mackler in Dorff and Newman, *Contemporary Jewish Ethics*, 129–193.
93. B. *Yoma* 85a; *Pirkei de-Rabbi Eliezer*, chap. 52; *Yalkut Shim'oni*, “Lekh Lekha,” no. 72.
94. Cf. Rashi on B. *Yoma* 85a; Rabbi Tzevi Ashkenazi, *Hakham Tzvi*, no. 77; Rabbi Moses Sofer, *Teshuvot Hatam Sofer*, *Yoreh De'ah*, no. 338.
95. Cf. Isserles, S.A. *Yoreh De'ah* 338; Bleich, *Judaism and Healing*, 152–154.
96. Bleich, *Judaism and Healing*, 141–42.
97. Jakobovits, *Jewish Medical Ethics*, 124 and n. 46; Reisner, “Halakhic Ethic,” esp. 56–62 [in Mackler, *Life and Death*, 245–53].
98. Dorff, “Jewish Approach,” esp. 19–26 [in Mackler, *Life and Death*, 292–358, esp. 316–325]; cf. also Dorff, *Matters of Life and Death*, chaps. 7–9, esp. 198–202.
99. Reisner, “Halakhic Ethic,” 62–64 [in Mackler, *Life and Death*, 265–67].
100. B. *Sanhedrin* 63a.
101. Dorff, “Jewish Approach,” 34–39 [in Mackler, *Life and Death*, 348–54]; Dorff, *Matters of Life and Death*, 208–217.
102. Thus the Talmud specifically says, “We do not worry about mere hours of life” (B. *Avodah Zarah* 27b). The Talmud also says, however, that we may desecrate the Sabbath even if the chances are that it will only save mere hours of life (B. *Yoma* 85a). The latter source has led some Orthodox rabbis to insist in medical situations that every moment of life is holy and that therefore every medical therapy must be used to save even moments of life; see, for example, Bleich, *Judaism and Healing*, 118–19, 134–45. The only exception is when a person is a *goses*, which Rabbi Bleich defines as within seventy-two hours of death, at which time passive, but not active, euthanasia may be practiced. He then uses the source in *Avodah Zarah* only to permit hazardous therapies that may hasten death if they do not succeed in lengthening life. Rabbi Bleich's position is not, however, necessitated by the sources. On the contrary, they specifically allow us—or, on some readings, command us—not to inhibit the process of dying when we can no longer cure, even long before seventy-two hours before death, however that is predicted.
103. Tosafot, B. *Avodah Zarah* 27b, s.v., *lehayyei sha'ah lo hyyshenan*. See Dorff, *Matters of Life and Death*, 202–208, or Dorff, “Jewish Approach,” 15–17 and 43, n. 22 [in Mackler, *Life and Death*, 311–14]. For a contrasting interpretation of this source, see Reisner, “Halakhic Ethic,” 56–57 and 72, n. 21 [in Mackler, *Life and Death*, 245–47 and 255–57, n. 22].
104. Rabbi Reisner does not accept this “double effect” argument, but he would agree that pain should be alleviated as much as possible up to, but not including, the dosage that would have the inevitable effect of hastening the person's death, even if not intended for that purpose. See Reisner, “Halakhic Ethic,” 66 and 83–85, notes 50–52 [in Mackler, *Life and Death*, 269–70 and 283–86, notes 12–14]; and see, in contrast, Dorff, *Matters of Life and Death*, 185–86, 218–19, and 379, n. 76; Dorff, “Jewish Approach,” 17–19 and 43–45, notes 24–27 [in Mackler, *Life and Death*, 314–16 and 328–330, notes 7–10]. See also Rabbi Reisner's summary of the differences between the Dorff and Reisner positions, in Reisner, “Mai Beinaihu.”
105. B. *Sanhedrin* 74a–b.
106. B. *Sanhedrin* 73a.
107. B. *Bava Mezia* 62a.
108. Cf. Jakobovits, *Jewish Medical Ethics*, 150, 278–283, and, more generally, 132–152. A thorough discussion

of the history of Jewish attitudes toward autopsies and dissection against their non-Jewish background appears at 132–152. The Chief Rabbinate’s ruling and the Israeli Anatomy and Pathology Act of 1953 are cited at 150, and Rabbi Jakobovits’ own opinion can be found in 278–283.

109. Bleich, *Judaism and Healing*, chap. 27

110. Quoted in Jakobovits, *Jewish Medical Ethics*, 150.

111. Klein, *Responsa*, 41.

112. Permission of the donor or his family must be procured so that the transplant does not constitute a theft, according to Chief Rabbi Unterman’s *responsum* in Goldman, *Judaism Confronts*, 226. Feldman and Rosner, *Compendium*, 68, say that the family’s permission is only advisable in Jewish law, but it is mandatory in American law; that, however, would make it religiously required of American Jews as well under the Jewish legal principle of “the law of the land is the law.” See note 28 above. Cf. also Klein, *Responsa*, 40–41.

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# Introduction to the series

**R**eligious beliefs provide meaning for people confronting illness and seeking health, particularly during times of crisis. Increasingly, healthcare workers face the challenge of providing appropriate care and services to people of different religious backgrounds. Unfortunately, many healthcare workers are unfamiliar with the religious beliefs and moral positions of traditions other than their own. This booklet is one of a series that aims to provide accessible and practical information about the values and beliefs of different religious traditions. It should assist nurses, physicians, chaplains, social workers, and administrators in their decision making and care giving. It can also serve as a reference for believers who desire to learn more about their own traditions.

Each booklet gives an introduction to the history of the tradition, including its perspectives on health and illness. Each also covers the tradition's positions on a variety of clinical issues, with attention to the points at which moral dilemmas often arise in the clinical setting. Finally, each booklet offers information on special concerns relevant to the particular tradition.

The editors have tried to be succinct, objective, and informative. Wherever possible, we have included the tradition's positions as reflected in official statements by a governing or other formal body, or by reference to positions formulated by authorities within the tradition. Bear in mind that within any religious tradition, there may be more than one denomination or sect that holds views in opposition to mainstream positions, or groups that maintain different emphases.

The editors also recognize that the beliefs and values of individuals within a tradition may vary from the so-called official positions of their tradition. In fact, some traditions leave moral decisions about clinical issues to individual conscience. We would therefore caution the reader against generalizing too readily.

The guidelines in these booklets should not

substitute for discussion of patients' own religious views on clinical issues. Rather, they should be used to supplement information coming directly from patients and families, and used as a primary source only when such firsthand information is not available.

We hope that these booklets will help practitioners see that religious backgrounds and beliefs play a part in the way patients deal with pain, illness, and the decisions that arise in the course of treatment. Greater understanding of religious traditions on the part of care providers, we believe, will increase the quality of care received by the patient.



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