Proposed Emergency/ICU Triage Protocol based on Jewish Values

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Under normal circumstances, terminal extubation (removing a patient from a ventilator that is sustaining their life) is forbidden by most rabbinic authorities.[1] However, there is a minority opinion based on the Rema's ruling (YD 339:1) that one may actively remove an external impediment to death of a patient who is already almost certainly in the process of dying imminently (*gosses*).[2] Some rule that a ventilator can be categorized as an artificial impediment to dying, since it mechanically prevents the soul from departing. Thus, it is not only permitted to remove a ventilator from a dying patient, but it may even be required to do so to relieve suffering.[3] Since there are conflicting opinions on this matter, and some argue that deactivating a ventilator falls under the severe prohibition of murder, many conclude that we must be strict and forbid deactivation of a ventilator at the end of life.[4] However, in a difficult situation in which there is a

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[1] *Tzitz Eliezer* 17:72(13); *Iggerot Moshe*, YD 3:132.

[2] The Rema prohibits removing a pillow or cushion from under a dying patient, because it is said that the feathers of certain fowl cause a prolongation of dying, but he permits removing salt from the patient's tongue that is preventing their soul from leaving them. Some explain that the problem with moving the feathers is that it would involve significant moving of the dying patient (unlike the minor touch involved with removing salt from the tongue), and these movements could lead to the frail patient's death (*Taz*, YD 339:2; *Shakh*, YD 339:7).

[3] R. Zalman Nechemia Goldberg permits actively removing a ventilator from a suffering terminal patient if their death is preferable to life (or for one who has no purpose left in their life because of complete lack of comprehension), but only if it does not directly cause the patient to die right away, in which case removing a ventilator would not be seen simply as removing an impediment, but rather a forbidden act of killing the patient. R. Goldberg bases his opinion on the claim that the person is dying of their own underlying illness and we are not obligated in "do not stand idly by" in the case of a *gosses* unless one benefits more from continued life than death. R. Goldberg argues that a person in excruciating pain may have no will to live on, and while the prohibition against murder would be violated by an "indirect cause" (*grama*), simply removing an object that can save a person, such that the patient does not die as a result of one's action but because of his or her own underlying illness, is not considered even an "indirect cause." It is thus not forbidden for a suffering dying patient who would prefer death to life (*Moriah* 4–5:88–9, [Elul 5738], 48–56).

R. Chaim David HaLevi, (*Techumin* 2 (5741), 304; *Aseh Lekha Rav* 5:29–30) argues that removing a ventilator parallels the Rema's permission to remove salt from a dying patient's tongue. The salt is also put on the tongue with the hope of prolonging life (according to *Beit Lechem Yehudah*), but now that the patient is in the dying process and the salt is only prolonging their suffering, it is an impediment that may be removed to allow the soul to depart (as the experience of the soul trying to leave the body is considered spiritually painful), since there is no prohibition of "do not stand idly by" for a person who is already a *gosses*.

For other similar rulings, see R. Menashe Klein (*Mishneh Halakhot* 7:287); R. Baruch Rabinowitz, "Symposium on Establishing the Moment of Death and Organ Donation," *Assia* 1 (5736), 197–8; R. Shlomo Goren (*Me'orot* 2 [5740], 28); R. Pinchas Toledano (*Barkai* 4 [5747], 53–59).

On the pain caused to a dying patient's soul by prolonging their life, see *Iggerot Moshe*, YD2:174 & CHM 2:74.

[4] *Be-Mareh Ha-Bazak* 8:39, n. 35; R. Moshe Hershler, "*Chiyuv Hatzalah Be-Cholim U-Mesukanim*," in *Halakhah U-Refuah*, vol. 2, 33. See also *Nishmat Avraham*, YD 339(2) (552 in 3rd ed.).

severe shortage of ventilators, and the purpose of the removing one patient from a ventilator is to save another patient's life, there may be stronger basis to permit doing so in some cases.[5]

This approach can enable the saving of many lives. Indeed, one of the fundamental principles of triage in Jewish law is that priority must be given to **saving as many people as possible**.[6] For this reason, rabbinic authorities encourage the approach to triage that bypasses treating those who are too sick to benefit or too well to absolutely need it. Their reasoning is that since treating them requires more time and resources, many others will die waiting. Treating the more moderately ill should be the focus of efforts since that generally takes overall less time and fewer intensive resources, thus enabling treatment of more people (*hatzalat rabim*).[7]

Although saving one or even many lives does not override an act of killing in Jewish law,[8] this "*hatzalat rabim*" perspective favors the position that terminal extubation is not *killing* but *allowing to die*/failing to save, which can be permitted for a dying patient (see footnote 3).

Priorities

In an emergency situation, such as the current COVID-19 crisis, choices will be made about who gets intubated (put on a ventilator) in the first place or who is extubated in order to save other lives. Whether or not rabbis support that decision, it would be most prudent for rabbinic authorities to take part in the triage decision-making process so that we can ensure that the most appropriate approach is taken. Some of the following relevant priorities are detailed in Jewish law:

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[5] R. Shlomo Zalman Auerbach seems to support the approach of his son in law, R. Z.N. Goldberg, (quoted in note 3 above), in a triage situation. R. Auerbach writes that, "Regarding a ventilator, it depends on the medical considerations, and if most opine that the ventilator is no longer serving a purpose, it is better to remove it so it can be used by another" (quoted in full in *Assia* 59-60, vol. 15, 3-4, Iyar 5757; see also Steinberg, *Ha-Refuah Ke-Halakhah* 6, 359, fn. 16).

[6] R. Zilberstein, *Shiurei Torah Le-Rofim* 3:161, pp. 67–68. Indeed, some have argued that in cases in which there are many patients in need, all arriving simultaneously, and there are insufficient resources to treat all of them at that time, this approach of prioritizing the moderately injured (ignoring the severe and minor injuries) so that the greatest number of lives can be saved, is the ideal approach ethically and Halakhicaly (A. Steinberg, *Ha-Refuah Ke-Halakhah* 5, 82). However, in this approach the medical professionals must be careful to frequently reevaluate the patients who are awaiting treatment since their conditions may change, as may the staff availabilities.

[7] *Teshuvot Minchat Asher* 1:115, 2:126; *Shiurei Torah Le-Rofim* 3:161, pp. 66–7, 73. R. Zilberstein has approved of healthcare professionals abandoning a patient who is not certainly salvageable, even if they have already begun treating him or her, in order to save many who are certainly salvageable since abandoning one patient need not be seen as an act of murder, but as an act of saving life. However, this must be a situation in which the medic is simply allowing the patient to die in order to save the many, but not actually performing an action that *causes* the patient's death, but if a medic did so, it would not be classified as *murder*, but rather as a merciful act of *lifesaving* (69–70).

[8] *Rema* YD 157:1.

- **Situations in which treatment was already initiated**: Although above we noted that terminal extubation may sometimes be permitted in order to save another patient's life, ideally a patient who is already intubated or being treated, even if not certainly salvageable, acquires a certain right to continued treatment. It follows that whenever possible, treatment should not be removed from this patient in order to treat another.[9] However, a patient who is terminal or has a very low likelihood of recovery may be moved out of the emergency room or intensive care unit in order to make room for a patient who is more likely to benefit more from that higher level of treatment, provided that nothing is done to actively shorten that patient's life.[10]
- **Certainty**: In Jewish Law, a definite danger takes precedence over a uncertain danger.[11] Therefore, in a situation in which one patient can certainly or likely be saved and the outcome for the other patient is uncertain, priority must be given to the person who has better chances of being saved.[12]
- **Potential for full life**: When there are two patients waiting for a ventilator but only one available, if one patient has the potential to live a full lifespan after being saved and the

[9] *Iggerot Moshe*, CM 2:73(2); A. Steinberg, *Ha-Refuah Ke-Halakhah* 5, 84. *Nishmat Avraham*, YD 252 (319), quoting R. Shlomo Zalman Auerbach and R. Asher Weiss (*Teshuvot Minchat Asher* 1:115[4]) argue that this is not because one has been granted a right to the continued treatment, but rather because of the Talmudic ethical principle that we may never sacrifice one life for another, "*ein dochin nefesh mipnei nefesh*." Similarly, R. Zilberstein (*Shiurei Torah Le-Rofim* 3:161, pp. 67, 102) argues that a medic who is working on one patient cannot leave that patient for the sake of another, because of the principle that one currently involved in performing a mitzvah may not leave it in order to perform another mitzvah, "*osek bemitzvah patur min hamitzvah*." This remains true even when the second mitzvah opportunity involves a bigger mitzvah (*mitzvah chamurah*) and one is currently engaged only in a smaller mitzvah (*mitzvah kallah*), unless one can do more *mitvzot* (i.e., save many lives) by abandoning the first patient. In the latter case, one patient can be left behind to save the many (ibid., 73). However, as stated above, one may not do anything to cause the patient that is being abandoned to die, unless saving the other is more certain (ibid.). However, R. Z.N. Goldberg has ruled that the principle that one currently involved in performing a mitzvah may not leave that mitzvah in order to perform another mitzvah ("*osek bemitzvah patur min hamitzvah*") should not be applied to this case, and that one should indeed abandon the terminal patient in favor of one who arrives later but can potentially live a full lifespan, unless halting interventions for the terminal patient will cause immediate death ("*Hafsakat Tipul BeGosses Leshem Hatzalat Choleh Acher*," Techumin 36, 209–13; A. Steinberg, *Ha-Refuah Ke-Halakhah* 5, 84-5).

[10] *Teshuvot Minchat Asher* 1:115(4).

[11] *Nishmat Avraham*, YD 252 (319 in 3rd ed.), based on *Pri Megadim* 328:47(1); *Tzitz Eliezer* 9:17 (10:5) and 28:3.

[12] *Iggerot Moshe*, CM 2:73(2); *Minchat Shlomo* 2:82(2); *Shevet HaLevi* 10:167; *Kovetz Teshuvot* 3:159; *Teshuvot Minchat Asher* 2:126. R. Zilberstein, *Shiurei Torah Le-Rofim* 3:161, p. 67, bases this on *Mishnah Berurah* 334:68, who rules that if two people are in a burning house, one healthy and the other in life-threatening danger, and both cannot be saved, one should save the healthy person first, since the other one is not certainly salvageable.

other is terminal,[13] one should prioritize the patient who is more likely to live a full lifespan.[14]

- Although great care should be made to save all human beings equally,[15] with no priority based on socioeconomic status, race, gender etc., an individual who is desperately **needed by the masses** may gain priority.[16]
- If there is a choice of which patient to extubate, it is ideal not to extubate someone who will **die immediately**[17] and instead choose someone who may be able to breath on their own for some time after they are extubated.[18] If the respirator of the patient who is

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[13] Many rabbinic authorities rule that anyone who will not survive for more than twelve months is considered "terminal" (*Nishmat Avraham*, YD 155 (84–85 in 3rd ed.), whereas others argue that six months is a more precise definition of "terminal," (*Minchat Asher* 1:115(2)).

[14] *Iggerot Moshe*, CM 2:73(2) and 75(2); *Teshuvot Minchat Asher* 2:126. Age should not be a factor. As long as a person is alive and well, they should be treated equally regardless of whether one is very elderly or very young, and one who can live longer than a year takes precedence, regardless of how much longer than a year one can live (*Iggerot Moshe*, CM 2:75[2, 7]). Nor may ability to pay be a factor (*Teshuvot Minchat Asher* 2:126).
If a terminal patient is currently in need of limited medical resources, but there is a strong likelihood that a patient who can still live a full lifespan may arrive in need of this treatment at any time, many leading authorities argue that one who has a chance for a full lifespan still takes priority over the one who is terminal. The hospital thus has the right to designate its devices only for such patients who may arrive, even though the patient who can live a full lifespan is not actually present at the time (*Teshuvot Ve-Hanhagot* 1:858; *Tzitz Eliezer* 17:72; *Minchat Shlomo*, *Tinyana* 2–3:86:1; *Ha-Refuah Ke-Halakhah* 5, 85-6). On the other hand, some argue that since we currently have no obligation to save anyone else before us, we should give preference to the terminal patient who is present and in immediate need, even if the goal is simply to relieve suffering and not save a life, unless perhaps if the patient with better likelihood of survival is already en route to the hospital (*Shevet HaLevi* 6:242; *Shiurei Torah Le-Rofim* 3:164, pp. 93, 96, 103–4). *Teshuvot Ve-Hanhagot* 1:858 writes that since extubation is categorized as killing, one cannot remove from a ventilator a patient who can only live *chayei sha'ah* for the sake of one who can live *chayei olam*.

[15] The ranking of priorities detailed in the *mishnah* in *Horayot* (13a) is not generally followed today (*Iggerot Moshe*, CM 2:75[7]; *Masorat Moshe*, vol. 1, 489; *Minchat Shlomo* 2:82[2]; A. Steinberg, *Ha-Refuah Ke-Halakhah* 5, 80, 88). This is because we do not always know how to properly make these determinations, nor do we know which patient has more merits or proper lineage (see *Tzitz Eliezer* 18:1 and 69[1]).

[16] *Shiurei Torah Le-Rofim* 3:161, pp. 66–7, 73. R. Zilberstein compares this to the option to save one boat when two are sinking, in which case the boat with more passengers on board should be saved. He ruled this way in answer to a question from first responder medics who are charged with such missions. R. Zilberstein (ibid., and p. 52) also argues that an individual who is needed by the community can be compared to "many" and may thus take precedence over another individual in some cases (See also A. Steinberg, *Ha-Refuah Ke-Halakhah* 5, 90).

[17] R. Z.N. Goldberg, in citation in footnote 3 points out that if a patient was to die immediately upon extubation, that can not be seen merely as "allowing to die" but as causing to die. So too, *Tzitz Eliezer* 17:72 (13) rules that extubation is forbidden only when the death ensues immediately (*meyad*).

[18] *Lev Avraham* 32:9) reports that R. Shlomo Zalman Auerbach ruled that the patient must be able to survive for at least 48 hours, whereas according to Prof. Steinberg (personal communication and *Encyclopedia Hilkhatit Refu'it*, vol. 5, 145), also in the name of R. Auerbach, there is no set time period; even a few hours can be enough to determine if the patient was clinically stable enough for withdrawal. (R. Asher Weiss, in a personal communication, concurred with this second approach.)

completely vent dependent will also be needed eventually, if there is time they may be allowed to die in other ways besides for terminal extubation.[19]

This document is not meant to imply that Jewish patients should be treated differently than others, but as a guide in decision-making based on Jewish values. Although some healthcare providers might find these rulings to be arbitrary, illogical or impractical, these excruciating decisions can induce severe moral distress. The more that we can do to help people make decisions in accordance with religious teachings and wisdom, the more we can prevent some of the distress associated with this crisis and maintain integrity between each other and God. Jewish law is an ancient and wise ethical system that has thought long and hard about these issues of life and death for thousands of years and has profound practical wisdom that can assist in making the most difficult of decisions.

[19] Some authorities rule that vasopressor medications ("pressers" for maintaining blood pressure), such as dopamine, may be withheld from a dying patient who is suffering (but not actively withdrawn, especially if it may lead to an immediate drop in blood pressure and death), by simply refraining from restarting the treatment once the infusion pouch has emptied on its own, because this can be considered a medical therapy and not a basic need, such as nutrition or oxygen (Prof. Avraham Steinberg in the name of R. Auerbach and R. Wosner, *Assia* 63–64 [5729], 18–19; "The Halachic Basis of the Dying Patient Law," *Assia* 6[2] [2008], 30–40, reprinted in *Jewish Medical Ethics*, vol. 3, 419). Similarly, R. Moshe Feinstein has been quoted as ruling that a dying patient who is on a respirator does not need to be given medications to extend his life (R. Aaron Felder, *Rishumei Aharon*, vol. 1, 70).