

**Department of Anesthesiology
and Critical Care Medicine
Hadassah Medical Center**



THE ISRAELI TERMINALLY ILL LAW

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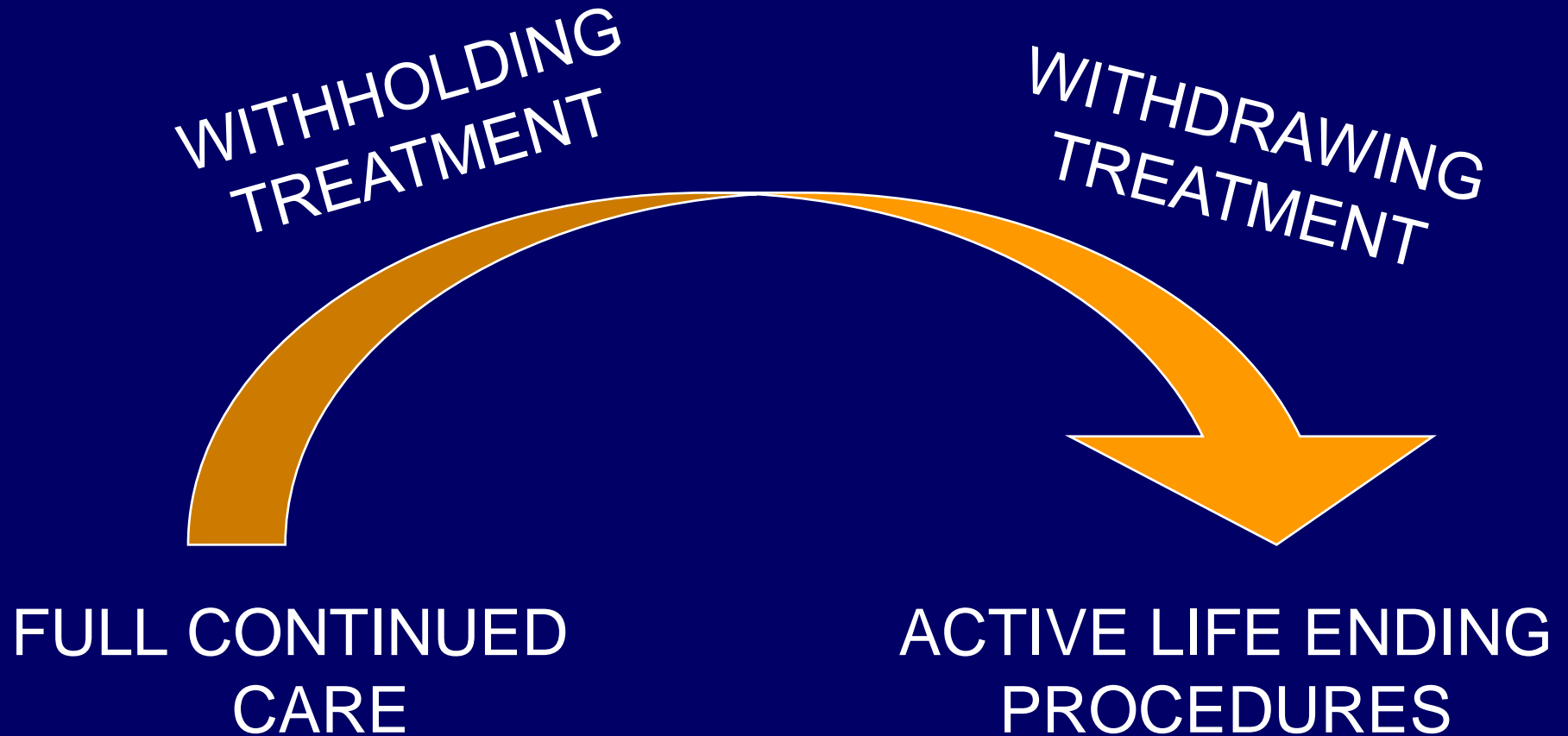
CHANGE IN DYING PROCESS

- 50 Years ago – Person stopped breathing – Died
- 1950s – Mechanical Ventilation
- 1956 – External Countershock
- 1960 – Cardiopulmonary Resuscitation (CPR)
for sudden cardiac death
- 1960s- Intensive Care Units
- New medical therapies that save many lives

CHANGE IN DYING PROCESS

- 1970s- All patients in ICU underwent CPR
- 4-14% patients undergoing in-hospital CPR survive
 - More than half are discharged to chronic facilities
- Many patients do not survive or remain with severe disabilities
- 1980s – Do not resuscitate (DNR) orders

OPTIONS AT THE END OF LIFE



CHANGES IN MEDICINE

Removal of respirator from a non-brain dead patient considered a deviation from medical practice, standards and traditions

In Re Quinlan 355 A. 2d 647 (1976)

WHY STUDY ICU DEATHS?

- **Approximately 20% of patients dying in the United States die in ICUs**

Angus DC, et al. Crit Care Med 2004; 32: 638-643

- **Of patients who die in the hospital, approximately half are cared for in an ICU within 3 days of their death**

Support Investigators. JAMA 1996;274:1591-1598

END OF LIFE DECISION MAKING

The majority of patients dying in ICUs do so after the decision to limit therapy

Levin PD. Crit Care Med 2003; 31:S1-S4

END OF LIFE DECISION MAKING IN DIFFERENT COUNTRIES

- Majority of physicians withhold and withdraw treatments in North America and Europe

Prendergast TJ. Am J Resp CCM 1998; 158:1163

Sprung CL. JAMA 2003;290:790

- Physicians in Holland and Belgium perform active euthanasia

Hendin H. JAMA 1997; 277:1720

Dellens L. LANCET 2000; 356:1806

- Physicians withhold and do not withdraw therapies

Eidelman LA. Intensive Care Med 1998;24:162-166

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ETHICUS: PROSPECTIVE, OBSERVATIONAL STUDY OF END OF LIFE DECISION MAKING IN EUROPEAN INTENSIVE CARE UNITS



מדינת ישראל
STATE OF ISRAEL



END-OF-LIFE CATEGORIES

	n (%)	RANGE (%)
CPR	832 (20)	7 – 48
BRAIN DEATH	330 (8)	0 – 15
WITHHOLD	1594 (37)	16 – 70
WITHDRAW	1398 (33)	5 – 69
SDP	94 (2)	0 – 19
TOTAL	4248 (100)	



HALACHA OR BIBLICAL ETHICS

- Halacha is the collective corpus of Jewish religious law, including biblical law (Tanach) and later talmudic and rabbinic law as well as customs and traditions.
- Judaism draws no distinction in its laws between religious and non-religious life.
- Hence, Halacha guides not only religious practices and beliefs but most aspects of day-to-day life.
- Jews are bound to Halacha by their voluntary consent

HALACHIC SOURCES

- Biblical mandate for the physician to heal
- And thou shalt restore it to him (heal his body)

Deuteronomy 22:2

- One who is in a dying condition (goses) is regarded as a living person in all respects

Talmud Semachot 1:1

- One may not close the eyes of the dying person. He who moves them (i.e. hastening death) is shedding blood **Talmud Semachot 1:2-4**

HALACHA OR BIBLICAL ETHICS

- Physician is required to do everything in his power to prolong life
- Physician is not required to prolong the life of hopelessly ill patients or prolong the dying process

HALACHA OR BIBLICAL ETHICS

- The value and sanctity of human life is infinite and beyond measure
- Therefore, any part of life is of the same worth
- Active or passive euthanasia is prohibited

HALACHA OR BIBLICAL ETHICS

- **The omission of life-sustaining treatments is allowed**
- **The termination of a life-sustaining therapy once begun or withdrawing is prohibited**
- **An act that hastens a patient's death, no matter how laudable the intentions, is equated with murder**

THE DYING PATIENT ACT, 2005



- This Israeli law is the first law worldwide whose scope is the regulation of medical care at the end of life
- The law also contains novel concepts and approaches to the care of the terminally ill



Steinberg A. Intensive Care Med 2006;32:1234

Barilan YM. Perspect Biol Med. 2007;50:557-71

PROBLEMS WITH SITUATION BEFORE THE LAW

- **Doctors didn't know what was or was not allowed**
- **Many patients not capable of deciding**
- **Doctors didn't know what patient desires**
- **Living wills not legally binding**
- **No legal standing for family or close friends**
- **Patients received unwanted therapy or did not receive desired treatment**

PROBLEMS WITH SITUATION BEFORE THE LAW

- **Decisions not always communicated to the patient or family**
- **Patients remained comatose or in pain for long periods of time**
- **Adequate pain relief or symptomatic sedative therapy did not always occur**
- **No mechanism to resolve disputes between doctors and patients/families**

THE ISRAELI DYING PATIENT LAW

- The Law is based upon an expert consensus process
- The Law provides mechanisms for advance medical directives, the appointment of surrogate decision-makers and accepting family information
- A National bank of advance medical directives
- Legally-binding palliative care as a citizen's right
- Clear guidelines for physicians to know what is permitted and prohibited
- The appointment of a senior physician with clear directives of his responsibilities- documentation and communication
- Dispute resolution with the establishment of local and a National Ethics Committee to avoid the courts

THE ISRAELI DYING PATIENT LAW

- February 20, 2000, Minister of Health appointed Prof. A Steinberg to head a National Committee to enact a law regulating all matters concerning dying patients
- A multidisciplinary, broad based Committee of experts was established
- The Committee was divided into 4 subcommittees

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW

- **The 4 sub-committees included:
Medical/scientific, philosophical/ethical, legal
and Halachic (Jewish law) sub-committees**
- **From April 2000 to January 2002, intense
committee debates occurred without the media**
- **Diverse opinions were freely expressed and
discussed with mutual respect**

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW

- A serious attempt was made to reach as wide a consensus as possible, despite strong opinions and emotionally charged issues
- The final version of the proposed law was presented to the Minister of Health on January 17, 2002, accepted by the Israeli government on May 23, 2004 and legislated by the Knesset on December 6, 2005 as the “Dying Patient Act”

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW

- Despite the complexity of the subject and deep differences of opinions, the committee reached a wide consensus on most issues
- Dissenting opinions were on the issues of withdrawing continuous treatments (ventilator) and withholding food and fluids
- Disagreements were minimized by accepting the concept of a timer attached to a ventilator

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW

Fundamental assumptions

- **The majority of people do not want to die**
- **The majority of people do not want to suffer at the end of life and do not want their lives prolonged artificially**
- **There should be a balance between the value of life and the principle of autonomy, based upon the value system of Israel as a Jewish and Democratic state**

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW

- **Decisions concerning dying patients should be based upon the medical condition of the patient, his wishes and his degree of suffering**
- **No other considerations should matter when deciding how to treat the dying patient including race, sex, age, economic status, mental status, life style, etc.**

THE ISRAELI DYING PATIENT LAW

- Every person is assumed to want to continue living unless proven otherwise; if reasonable doubt one should err in favor of life
- Every adult person is assumed to be competent unless proven otherwise
- A dying patient is defined as one who will die within 6 months despite medical therapy

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW

BALANCING VALUES

- The most important dilemma is striking a balance between the sanctity of life and the principle of autonomy
- Since no one advocates accepting an extreme and absolute position concerning either the value of life (prolonging any life by all means at all times and at all costs, even when it adds only pain and suffering) or the principle of personal autonomy (accepting autonomous wishes for active euthanasia of healthy people), there is an obvious need to decide on where the line between these values should be placed
- Any distinguishing boundary-line, however, is debatable

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW

- When the autonomous wishes of the patient are in opposition to the sanctity of life, if the competent dying patient refuses treatment, he should not be forced against his wishes; respect for autonomy and human dignity is preserved and overrides the respect for value of life
- This does not include active euthanasia or physician-assisted suicide, which are prohibited even if the patient autonomously requests them

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW

- Sanctity of life overrides autonomy by prohibiting any action that intentionally and actively shortens life, even if these acts are requested by the patient
- The principle of autonomy overrides the sanctity of life by permitting the withholding of treatments directly related to the dying process, if this was the wish of the patient.

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW

- The Law prohibits stopping continuous life-sustaining therapies (ventilator) because this is viewed as an act that shortens life
- The Law permits stopping intermittent life-sustaining therapies (intubation, dialysis, chemotherapy)
- Terminating intermittent life-sustaining treatments is viewed as an omission of the first or next treatment rather than commission of an act of withdrawal

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW

BIBLICAL ETHICS OR HALACHA

- **These decisions are founded in the Jewish legal system (Halacha) where there is no obligation to actively prolong pain and suffering of a dying patient but any action that intentionally and actively shortens life is prohibited**
- **The withdrawal of a ventilator (a continuous form of treatment) is considered an act that shortens life and is therefore forbidden**

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW

- **As continuing unwanted ventilatory treatment would prolong suffering, the Law allows the possibility of changing the ventilator from a continuous form of treatment to an intermittent form**
- **This is performed by connecting a timer and allowing the ventilator to stop intermittently**

THE ISRAELI DYING PATIENT LAW

- The Law is based on the Jewish legal concept that not only the end has to be morally justified (the death of a suffering terminally ill patient) but also that the means to achieve the end must be morally correct
- This innovative approach of a timer on a ventilator is also psychologically helpful to health-care providers who have problems executing the wishes of the patient and withdrawing ventilators

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW TIMER ATTRIBUTES

- **CPAP 5-8 cmH₂O when ventilator stops**
- **Warnings and alarms- for medical reevaluations**
 - **One week before stopping the ventilator**
 - **24 hours before stopping the ventilator**
 - **2 hours before stopping the ventilator**
 - **at time of stopping to OK no reconnection**
- **Time period changes- additions or subtractions**



THE ISRAELI DYING PATIENT LAW

- The Law prohibits withholding food and fluid from an incompetent dying patient
- The value of life in such situations overrides the previous autonomous wishes of the patient which are now unknown
- Food and fluid are regarded as a basic need of any living being, rather than treatment
- Dying of starvation or dehydration is regarded in Jewish philosophy as an indignity to life

THE ISRAELI DYING PATIENT LAW

- **Withholding food or fluid is unrelated to the dying process and hence is regarded as a form of euthanasia.**
- **This, however, changes as the patient approaches the final days of his life, where food and even fluids may cause suffering and complications, and hence the Law permits abstaining from it in the final stage**

THE ISRAELI DYING PATIENT LAW

- Based upon the notion of the dignity of man and upon the moral requirement to alleviate pain and suffering, the Law requires providing palliative care according to current medical standards to the patient and to his family
- This includes palliative treatment that might unintentionally shorten life, based on the principle of double effect

THE ISRAELI DYING PATIENT LAW

- The Law requires appointing a senior physician as the responsible health-care provider to establish the patient's medical situation; to analyze all relevant facts with all other experts; to establish the patient's wishes; to formulate a plan of treatment; to document all decisions in a clear and explicit manner; and to inform all relevant parties of the decisions
- Decisions are based on medical facts and the patient's wishes.

Steinberg A. Intensive Care Med 2006;32:1234

THE ISRAELI DYING PATIENT LAW

- The Law establishes advance medical directives or the appointment of a surrogate decision-maker
- Testimonies by family members or friends are also accepted.
- A detailed form is filled out by the person with the aide of a physician or nurse; re-evaluating the statement when diagnosed with a serious illness, with the aide of an expert physician; and establishment of a national pool of advanced medical directives

THE ISRAELI DYING PATIENT LAW

- **The Law establishes problem-solving mechanisms for a variety of situations**
- **These include institutional ethics committees and a National Ethics Committee as an appealing authority and with the mandate to solve more difficult problems as well as establishing policies**
- **These committees are composed of experts in the fields of medicine, nursing, social work, psychology, law, ethics and the clergy**
- **This mechanism is meant to avoid the courts**

Steinberg A. Intensive Care Med 2006;32:1234

CRITICAL CARE PRACTITIONERS ATTITUDES CONCERNING WITHHOLDING & WITHDRAWING THERAPY

WITHHOLDING AND WITHDRAWING IS THE SAME	275 (46%)
WITHHOLDING IS MORE ACCEPTABLE THAN WITHDRAWING	255 (43%)
WITHDRAWING IS MORE ACCEPTABLE THAN WITHDRAWING	39 (6%)

CRITICAL CARE PRACTITIONERS ATTITUDES CONCERNING WITHHOLDING & WITHDRAWING THERAPY

SOMETIMES WITHHOLD THERAPY 93%

SOMETIMES WITHDRAW THERAPY 77%

**BOTH WITHDRAWAL OF THERAPY AND DELIBERATE
ADMINISTRATION OF LARGE DOSES OF DRUGS UNTIL
DEATH ENSUED ARE UNACCEPTABLE 28%**

VINCENT. CCM 1999;27:1626

PROBABILITY OF DEATH OVER TIME

	<u>Withhold</u>	<u>Withdrawal</u>	<u>SDP</u>
• 24 Hours	50%	80%	93%
• 48 Hours	61%	89%	97%
• 72 Hours	68%	93%	99%
• 7 Days	77%	97%	100%

Sprung et al. JAMA 2003;290:790

THE ISRAELI DYING PATIENT LAW

- **The present Israeli solution is contrary to most Western countries where no distinctions are made between continuous and intermittent therapies, actions and omissions, withholding and withdrawing treatments or nutrition and other treatments**

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THE ISRAELI DYING PATIENT LAW SUMMARY

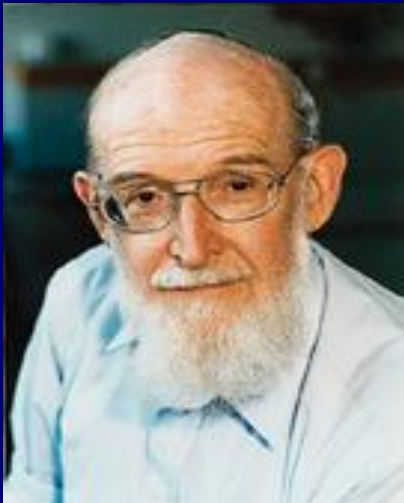
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THE ISRAELI DYING PATIENT LAW

- **Although some specifics of the new Israeli Law may not be suitable for other countries with different religious and value systems, the consensus process and the explicit mechanisms to help dying patients can be helpful for other countries in building what is best for their citizens**

END OF LIFE DECISION MAKING

The process of terminating life by an overt act is much easier for an ethicist or lawyer who does not personally have to throw the switch.



Prof. Shimon Glick