

מאי בנייהו?

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In the spirit of the Talmudic interrogative “מאי בנייהו?” (What is the Practical Difference?) the subcommittee on Biomedical Ethics of the CJLS undertook a careful consideration of the practical differences of law that remain between the presentations of Rabbi Reisner and Rabbi Dorff. It was felt that, although the legal reasoning differs strongly, both papers tend toward a consensus of treatment in most areas, which would perhaps obviate the need to fight it out on theoretical grounds. The following are our conclusions:

The primary difference in theory between the positions of Rabbi Reisner and Rabbi Dorff may be summarized by their key phrases, “neither the quality of life nor its likely short duration are admitted as mitigating circumstances” as against Rabbi Dorff, “The fetus and the טריפה are both cases of human beings whose blood is indeed judged to be ‘less red’ than that of viable people.” Rabbi Reisner insists on the inviolability of the principle of protecting even חיי שעה, life of short duration, whereas Rabbi Dorff feels that principle is made moot by the status of טריפה and the need to consider the patient’s best interests (עברדין לטובתו). Rabbi Dorff might center his objection to Rabbi Reisner’s paper in the comment that it is too literalist and not sufficiently alert to the real emotional needs of patients and their families. Rabbi Reisner might frame his objection to Rabbi Dorff’s paper in the comment that it arrives at its sensitivity to patients by degrading the status of their God-given lives, which we are constrained not to do.

Nevertheless, both agree in principle and practice on the large area of autonomy that the patient holds with regard to his or her own treatment where risk and prognostic uncertainty exist, as they almost always do. Thus both would allow patients to rule certain treatment options off limits, to choose hospice care as a treatment option, to draft advance directive documents but only within the parameters established to be in accord with Jewish law. Both permit withdrawal of *mechanical* life support where unsupported life has been shown to be impossible, under the primary precedent of removing impediments to the death of a גוסס.

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

Both are in agreement concerning the use of CPR and DNR orders, though for fundamentally different reasons. They agree that CPR need not be done where it is unlikely to succeed in restoring the patient to a meaningfully healthy life. That is perforce a medical judgment call. It is not clear that they would adjudge all cases equally, but on a case by case basis this judgment will fall neither to Rabbi Dorff nor to Rabbi Reisner, but to the family attending physician, and any member of the clergy advising them.

The points on which they differ are few, but significant.

A. With regard to medication to treat a terminally ill patient and with regard to artificial nutrition/hydration:

Rabbi Dorff would permit withholding or withdrawing such medication, since the patient is categorized as a טריפה whose life does not require our full protection. Rabbi Dorff would assimilate artificial nutrition/hydration to medication in such a case.

Rabbi Reisner would prohibit withholding medication, nutrition or hydration as long as they are believed to be beneficial, since we are obligated to maintain even חיי שעה (N.B. and as long as the patient has not ruled out said treatment in a valid treatment directive).

B. With regard to the patient in a persistent vegetative state:

Rabbi Dorff would permit withholding/withdrawal of artificial nutrition and hydration, viewing this patient, like the טריפה, as an impaired life (N.B. after due tests and time, of course).

Rabbi Reisner finds no grounds for denying even this limited life, and therefore requires full maintenance pending God's own determination.

C. With regard to pain relief:

Both Rabbis Dorff and Reisner regard treatment for pain as medical treatment to be pursued. They differ on the question of "double effect" – of whether pain medication must be capped at that point at which its probable effect would be to hasten the patient's death.

Rabbi Dorff argues that the intent to alleviate pain controls. Rabbi Reisner that the probable result controls. Although they do not argue this point clearly in terms of the primary premises of their papers, it appears clear that Rabbi Reisner's concern for חיי שעה and Rabbi Dorff's vacating of that principle inform their rulings here.

Both Rabbis Dorff and Reisner point out, however, that the best medicine available today should permit sufficient relief of pain without approaching this dilemma; both hope that it quickly recedes to a footnote about antiquated medical ethical problems.

D. A minor note:

Rabbi Dorff's reasoning, and a citation of his source, Dr. Sinclair, on p. 11, appear to permit the early termination of a terminally ill patient for purposes of saving life through organ transplants. It is clear that

Rabbi Reisner would disapprove. It is unclear whether Rabbi Dorff would care to proceed, in fact, upon the logic of that position.

We note these matters in this statement of reconciliation so that both powerful attempts to deal with one of today's greatest ethical and halakhic dilemmas might be properly read and understood side by side. We believe both represent cogent, Conservative responses to the demands of God's Torah and our times, and commend them, as such, to the attention of the full Committee on Jewish Law and Standards.