Physician Assisted Suicide and the Orthodox Healthcare Provider | Torah Musings

by R. Micah Segelman

In this paper I provide background on the legalization of physician assisted suicide, and analyze whether and to what extent the halacha precludes a healthcare provider from assisting a patient who seeks help in ending their own life.

Physician Assisted Suicide in 21st Century America

The legalization of physician assisted suicide (PAS) is an area of great controversy in contemporary American society.1 Supporters tout the values of individual autonomy and compassion for those faced with unbearable suffering2. Opponents argue that legalization could lead to seriously ill individuals feeling pressured to take their lives rather than burdening others, as well as to the erosion of trust between doctors and patients. Pointing to the experience of the Netherlands, they also argue that when PAS is permitted under specific guidelines, it will not remain confined to the guidelines, and will be applied even where there is no consent such as with newborns3. Furthermore, opponents assert the incompatibility of PAS with the intrinsic dignity or sanctity of human life4. Interestingly, discussion of PAS played a prominent role in the recent confirmation hearings for Supreme Court Justice Neil Gorsuch, who authored a book on the subject 5.

Beginning with its legalization in Oregon in 1997, PAS has been legalized in five additional US states: Washington, Montana, Vermont, California, and most recently, Colorado, in November 20166. The American Medical Association has historically opposed the practice of PAS although that may be changing 7. The American Academy of Hospice and Palliative Medicine (AAHPM) is officially neutral on the question 8, and 62% of Americans support the right of patients to elect to end their lives under specific conditions9.

The practice of PAS in the US remains relatively rare, accounting for only about 0.4% of deaths in Oregon and Washington. This contrasts with 2.9% of deaths in the Netherlands and 4.6% in Belgium10. PAS in the US has, however, steadily become more common – with the number of prescriptions in Oregon written annually growing nearly 10-fold between 1998 and 201511.

As Orthodox Jews, the legalization of PAS is noteworthy for three reasons. First, there is the concern that society may place limitations on dissent / conscientious objection. Obergefell v. Hodges raised this possibility for us in the context of same sex marriage – with the Solicitor General and the Chief Justice of the Supreme Court12 acknowledging the concern that religious institutions that reject same sex marriage could lose their tax-exempt status. This concern pertains to healthcare providers and is the focus of the current paper. Currently, all of the US laws respect conscientious objection, with concern even expressed that the refusal of Catholic hospitals in Colorado to allow PAS may make it difficult to access PAS13. However, the rights of conscientious objectors have not received the same level of respect in Canada14. Prominent bioethicists have argued15 against allowing for conscientious objection, and as American society becomes more secular, one can envision the possibility of this perspective becoming more widespread.

Second, the legalization of PAS may impact medical practice and thus could affect Orthodox Jews as patients. While the dominant ideology in US medicine currently is that care should be patient centered and therefore treatment decisions should be guided by patient preferences, competing considerations – such as the existence of resource constraints – could factor in. The legalization of PAS reflects and could also accelerate cultural changes that could lead to more pressure being placed on patients and their families to

discontinue aggressive (and expensive) treatments for the seriously and terminally ill. Third, the legalization of PAS represents a new area where laws which aligned with our religious values have been supplanted by a more secular value system. This is relevant to all Orthodox Jews who are functioning in a culture whose values are increasingly so different from our own.

Halachic **Implications**

Given the legalization of PAS in multiple US states as well as a number of other countries, I would like to ponder what role, if any, a *halacha*-observant physician or healthcare provider could play in providing assistance to a patient who wishes to end their own life. Certainly, the first step for any provider faced with such a request would be to attempt to understand the request and to offer appropriate care to address whatever unmet needs of the patient triggered the request. This is the advice of the AAHPM:

"to understand the complexity of the request for assisted death, to provide an educated systematic response, and to use the best practices of palliative care to alleviate the suffering of patients that triggers a desire to pursue PAD16"

The recent position statement of the International Association of Hospice and Palliative Care (IAHPC) also reflects the fact that requests for help in ending one's life are likely to reflect inadequate palliative care17. The IAHPC maintains that:

"no county or state should consider the legalization of euthanasia or PAS until it ensures universal access to palliative care services and to appropriate medications, including opioids for pain and dyspnea18."

And in the words of Rabbi Jason Weiner (who cites a number of relevant studies that have explored the reasons that individuals with serious illness seek to end their life), which are addressed to rabbis as well as to clinicians19:

"… the best way to encourage people who are seeking physician-assisted suicide to explore other options would be to focus on interventions that help them maintain a sense of control, independence, and the ability to care for themselves, ideally in a home environment. Instead of trying to convince people about how wrong physician-assisted suicide is, it seems that it is most effective for clinicians to focus on eliciting and then addressing worries and apprehension about their future, with the goal of reducing anxiety about the dying process, educating them about how their disease may progress, and offering information about how to manage pain and discomfort while maintaining function and cognition, if that is what they would prefer. For rabbis, this means providing information to empower the patient and modeling a non-anxious presence, while allowing the patient to work through their fears so they can make another choice. Many of the patients studied report sensing a lack of purpose and meaning in life as a reason for pursuing physician-assisted suicide, which implies that assessing their existential concerns may be crucial in enabling them not to pursue this option."

But if the patient persists in seeking to end their life, what is an Orthodox physician to do?

While emphasizing that I am only presenting the tentative thoughts of a non-*Posek* (*halachic* decisor), merely intended to stimulate discussion and more careful consideration by those qualified to decide on such issues, I would like to consider how to apply the *halachic* principles of *lifnei iver* (not to place a stumbling block in front of a blind man), *mesayei'a* (assisting a sinner), and *lo taamod* (the requirement to act when someone's life is in danger), to a Jewish healthcare provider faced with a request to assist a patient in committing suicide. I'll consider three specific situations.

1. Can a Jewish physician provide a prescription for a lethal drug to a patient?
2. If the answer to the above question is that the Jewish doctor must refuse, can he/she at least provide the patient with the name and contact information of a different doctor who may be willing to write such a prescription?
3. Can a Jewish pharmacist fill the prescription for a patient?

Lifnei Iver

Lifnei iver in general proscribes a Jew from rendering assistance to someone (whether a Jew or a non-Jew) seeking to commit a prohibited act[20] and thus helping a terminally ill individual commit suicide, which is prohibited (for both Jews and non-Jews)[21], appears problematic. However, there are several qualifications to the *issur* of *lifnei iver* which are relevant to this issue.

Perhaps the most well-known limitation of *lifnei iver* is that it only applies in a scenario of *trei ivra denahara* – where the sinner was only able to commit the sin based on the assistance rendered. One example offered by the *gemara* (*Avoda Zara* 6) of this principle is that *lifnei iver* prohibits selling an item to someone who will use it for *Avoda Zara* only when he does not already own a similar item. If he already owns the item, selling him a second one is not a violation of *lifnei iver*. The *gemara's* second example is that one cannot hand a prohibited item to someone who will use it for sin when it was on the opposite side of the river and thus inaccessible. But where it was accessible, there is no concern of *lifnei iver*.

What if the eventual sinner does not currently own a similar item but would be able to purchase an equivalent item from a different seller?[22] This is the subject of a dispute among *Poskim*. The Mordechai (*Avoda Zara* 795) permits one to loan money to a non-Jew who will use that money for *Avoda Zara* provided the loan is for a small amount of money. The assumption is that the prospective borrower would be able to obtain a small sum from a non-Jewish lender. The Ramo (YD 151:1) extends this to a sale where the prospective buyer could buy a similar object from someone else.

The Gra (YD 151:8) disagrees with the Ramo (and Mordechai) and brings proof from several Talmudic passages including a discussion in *Nedarim* (62b) that justifies the sale of wood to an idolater who will use this wood in worship based on the principle of *teliya* – that the wood can be assumed to be intended to be used for a permitted purpose – but does not justify the sale based on the principle of *trei ivra denahara*. The Gra asserts that it is untenable to suggest that this *gemara* is discussing a situation where there were no other wood sellers – and nonetheless the only justification for the sale was *teliya*.

According to the Ramo, is the mere theoretical possibility of being able to buy the item from a different seller sufficient? Perhaps the Ramo requires that the item must be readily available from a different seller. There are several reasons to argue for this interpretation. First, it would offer the possibility of suggesting that the *gemara* in *Nedarim* described a situation where no other wood sellers were readily available (which is more reasonable than suggesting it is a case where no other wood sellers existed). Second, the Mordechai himself limits his ruling to a small amount of money. Presumably a larger amount of money could also be obtained from an alternative lender – but only with difficulty – while a small amount of money could be easily obtained. Third, Meiri (*Avoda Zara* 6b) says that where the potential buyer/sinner is able to buy the item elsewhere it is permitted to sell it to him. However, he adds that where it could only be purchased through the investment of effort, it is forbidden to make it more convenient for him by selling it to him[23]. The Chavos Yair (185) similarly distinguishes between selling something that could be readily obtained elsewhere and selling something where it would require effort on the part of the buyer to purchase the item from someone else. Finally, the K'sav Sofer (YD 83) says that *trei ivra denahara* does not refer to a situation where it would be physically impossible for the future sinner to obtain the item – only that it

would be difficult. And he similarly limits the leniency of the Ramo to where he could readily obtain the item 24.

In the situation of a request for PAS, there presumably are other doctors who are available to write the prescription. Would the Ramo permit writing such a prescription? Based on the way we have limited the leniency of the Ramo, it appears that even the Ramo would agree that it is forbidden for a doctor to write such a prescription because it may require great effort for the patient to arrange to be seen by another doctor and to convince the other doctor to write the prescription. Even doctors who are willing to write such prescription would not be expected to take this matter lightly. However, merely providing the patient with the name and contact information of a different doctor who may be willing to write the prescription should be permitted according to the Ramo (but still forbidden according to the Gra) because this information is relatively easy to obtain. The same appears to be true for filling a prescription – it should be relatively easy to find other pharmacists to fill the prescription.

Mesayei'a

Although we have suggested that the Ramo's leniency may apply to our situation, this in of itself does not mean it is permitted to render assistance. *Lifnei iver* is only one of the issues we need to consider. Another important issue is the potential Rabbinic prohibition of *mesayei'a* which applies even where *lifnei iver* does not apply. *Rishonim* who mention the prohibition of *mesayei'a* include the Ran (*Avoda Zara* 1b), Ritva (*Avoda Zara* 6b), Tosafos (*Shabbos* 3a), and Rosh (*Shabbos* 1:1). *Rishonim* who appear to not hold there is such a prohibition of *mesayei'a* include the Mordechai (*Avoda Zara* 795), Tosafos (*Avoda Zara* 6b), and Rosh (*Avoda Zara* 1:2).

There are several approaches among the *Poskim* to harmonizing (or not harmonizing) these *Rishonim*. We consider the approaches of the Ramo, Shach, and K'sav Sofer. The Ramo writes that there is a dispute whether or not there is in fact a Rabbinic prohibition of *mesayei'a* and refers to the strict opinion as "*yesh machmirin*." The Shach (YD 151:6), however, partly motivated by a desire to avoid the apparent contradiction in the Rosh, understands the *Rishonim* differently and says that all *Rishonim* agree there is a Rabbinic prohibition of *mesayei'a* – but there is no prohibition when the potential sinner is a non-Jew or even a *mumar*. The Dagul Mervava understands the Shach's exclusion of *mumar* to be based on the idea that where the sin is intentional there is no *mesayei'a*. The Gra (YD 151:8) disagrees and holds there is *mesayei'a* by a non-Jew. The Mogen Avraham (OC 347:4) also disagrees and holds there is *mesayei'a* by a *mumar* but agrees there is no *mesayei'a* by a non-Jew, although he says that according to Rashi there is *mesayei'a* even by a non-Jew. See Igros Moshe YD 1:72 and Chavos Yair (185) who are lenient in specific cases by a *mumar* based on a number of factors (neither rely purely on the Shach's opinion). See also Igros Moshe OC 3:27 who allows one to rely on the Shach by a non-Jew in cases of great need. Finally, the K'sav Sofer, also trying to avoid a contradiction in the Rosh, defines conditions under which the Rosh holds there is no *mesayei'a*: when the help is nonessential, and does not occur at the time of the transgression, there is no *mesayei'a*.25

The Ran disagrees and says there is *mesayei'a* even in this case. This is all by a Jewish potential sinner. But by a non-Jew, there is no *mesayei'a* unless the reverse of both of the above conditions are met: it is essential and takes place at the time of the transgression. In this situation, Rashi holds there is *mesayei'a*, and it is even possible everyone agrees on this point. I note that our situation is clearly one in which the assistance does not take place at the time of the transgression26.

Thus, in summary it seems that the prohibition of *mesayei'a* may preclude a Jewish healthcare provider

from rendering assistance to a patient who seeks help in ending their lives even where *lifnei iver* may not apply – such as by merely providing contact information or a pharmacist filling a prescription. Importantly, *mesayei'a* is more likely to present a problem with a Jewish patient than with a non-Jewish patient27.

Lifnei d'Lifnei

Another interesting feature of *lifnei iver* is that it applies where person A enables person B to commit a sin but does not apply in a situation of *lifnei d'lifnei* – when person A enables person B to enable person C to commit a sin. The case of the *gemara* (*Avoda Zara* 14a) which illustrates this point is the case of selling an item which is used for *avoda azara* to a merchant who will then sell the item to someone who will use it for *avoda zara*. There are opinions (Tosafos *Avoda Zara* 14b "*Chatzav"*, Bach YD 139) that this leniency does not apply when it is known that it will be sold for a forbidden purpose while others are lenient in this case as well. The Ramo (YD 139:15) cites both opinions in discussing the sale of prayer books for *avoda zara* ((See K'sav Sofer YD 83 for another possible limitation to the leniency of lifnei d'lifnei. Furthermore, there are opinions that lifnnei d'lifnei does apply when "person C" is Jewish. See Rabbi Yair Hoffman p103.)).

The concept of *lifnei d'lifnei* seems to apply in a situation where doctor A doesn't write the prescription but enables doctor B to write the prescription to be ultimately used by the patient (person C). This would provide an additional, independent reason why *lifnei iver* does not apply in the case of providing contact information. Upon further reflection, however, this comparison is likely incorrect. In the permitted case of *lifnei d'lifnei*, the wholesaler (who sells to the merchant) has no direct contact with the one who is worshipping *avoda zara*. Here, however, despite the fact that doctor B writes the prescription, doctor A is providing assistance directly to person C.

Lo Taamod

Until this point, I have only considered this question vis a vis *lifnei iver* and *mesayei'a*, which prohibit the healthcare provider from assisting the patient to commit an act which is forbidden for the patient to do28. However, there is an additional consideration. The mitzva of *Lo Taamod* is a requirement which is incumbent upon the bystander – which in this case would be the healthcare provider himself. *Lo Taamod* requires that one intervene in order to stop someone from being killed and presumably also from killing themselves.29 It seems to me that based on *Lo Taamod*, one would not be allowed to assist someone in taking their own life even if that assistance does not reach the threshold of *lifnei iver* or *mesayei'a*. Ostensibly, *Lo Taamod* would even require the healthcare provider (or anyone else, for that matter) to attempt to prevent the patient from taking their own life30 Importantly, however, *To Taamod* is a *mitzva* which applies with fellow Jews only.

To summarize, I've suggested that there is a *lifnei iver* issue with a physician providing a lethal prescription to a patient. I've also suggested that according to the Ramo (and not the Gra), there may be no prohibition of *lifnei iver* for a physician to provide the contact information of a doctor who would be more likely to accede to their wishes, or for a pharmacist to fill a prescription. In terms of *mesayei'a*, it seems there is a stronger basis to argue that there is no *mesayei'a* by a non-Jewish patient and a weaker basis to make this argument by a Jewish patient. I have also argued that based on the principle of *Lo Taamod*, it would never be permissible to provide any assistance to a Jewish patient in ending their own life.

1. Even the terminology one employs is politically sensitive: "physician assisted suicide" is preferred by opponents, "medical aid in dying" may express a more supportive or at least neutral position – and "death with dignity" connotes support.

Note that “euthanasia” refers to the doctor actually actively taking the patient’s life rather than providing the patient with the means to take their own life. Euthanasia is not currently legal in the US but is legal in some other countries including Canada: https://www.nytimes.com/2017/05/25/world/canada/euthanasia-bill-john-shields-death.html?_r=0.

Critics have argued that the same arguments that justify PAS can be used to justify euthanasia and those who advocate for the former and not the latter are being intellectually dishonest. See Ryan Anderson, Always Care, Never Kill: How Physician-Assisted Suicide Endangers the Weak, Corrupts Medicine, Compromises the Family, and Violates Human Dignity and Equality, Heritage Foundation, 2015. http://www.heritage.org/health-care-reform/report/always-care-never-kill-how-physician-assisted-suicide

↩ 2. https://www.compassionandchoices.org/

↩ 3. Ezekiel Emanuel, Whose Right to Die, The Atlantic, March 1997, https://www.theatlantic.com/magazine/archive/1997/03/whose-right-to-die/304641/

↩ 4. Ryan Anderson, 2015

↩ 5. https://www.statnews.com/2017/03/23/gorsuch-assisted-suicide/

↩ 6. Note that recent efforts to legalize PAS in New York State have attracted the attention of Agudath Israel of America: http://cross-currents.com/2017/05/01/homicide-prevention/

↩ 7. https://www.fpiw.org/blog/2016/09/30/ama-reconsidering-position-on-euthanasia-and-suicide/

↩ 8. http://aahpm.org/positions/pad

↩ 9. http://www.pewforum.org/2013/11/21/views-on-end-of-life-medical-treatments/

↩ 10. Emanuel, Ezekiel, et al. Attitudes and Practices of Euthanasia and Physician-Assisted Suicide

in the United States, Canada, and Europe, Journal of the American Medical Association, 2016. http://jamanetwork.com/journals/jama/article-abstract/2532018

↩ 11. Blanke, Charles, et al. Characterizing 18 Years of the Death with Dignity Act in Oregon, JAMA Oncology, 2017. http://jamanetwork.com/journals/jamaoncology/article-abstract/2616352

↩ 12. see page 28 of Justice Roberts' dissent available at https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf

↩ 13. https://www.statnews.com/2017/01/19/aid-in-dying-catholic-hospitals-colorado/

↩ 14. See http://www.canadiansforconscience.ca/blog and https://www.firstthings.com/web-exclusives/2016/03/canada-declares-war-on-christian-doctors-and-nur and http://news.nationalpost.com/news/canada/0429-na-opting-out

↩ 15. Savulescu, Julian, Schuklenk, Udo. Doctors Have No Right to Refuse Medical Assistance in Dying, Abortion, or Contraception, Bioethics. http://onlinelibrary.wiley.com/doi/10.1111/bioe.12288/full

↩ 16. http://aahpm.org/positions/padbrief.

↩ 17. Palliative care is care which is designed to alleviate the symptoms of serious illness without necessarily attempting to cure the illness (which may be incurable).

↩ 18. De Lima, Liliana, et al. International Association of Hospice and Palliative Care Position Statement: Euthanasia and Physician-Assisted Suicide, Journal of Palliative Medicine, January 2017, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5177996/

↩ 19. *Rabbi Jason Weiner, When a Jew Requests Assisted Suicide, Torah Musings, April 21, 2015, https://www.torahmusings.com/2015/04/when-a-jew-requests-assisted-suicide/#rf14-39320*

↩ 20. *Lifnei iver also restricts someone from providing the motivation to commit a prohibited act. For example, it is a violation of lifnei iver for a parent to hit a grown child because this could lead to the child hitting the parents back (YD 240). Here, the parent did not supply the means but rather the impetus to commit this sin. See footnote to Chofetz Chaim Hilchos Lashon Hara 9:1. See Rabbi Yair Hoffman, Misguiding the Perplexed: The Laws of Lifnei Iver, Israel Bookshop, 2004, pages 76-77, who writes that this issue is actually the subject of a dispute. This aspect of lifnei iver would generally not be relevant to the situation of PAS.*

↩ 21. *According to most opinions, suicide is prohibited based on Lo Tirtzach (murder) and thus applies equally to Jews and non-Jews. The Minchas Chinuch (mitzva 34), however, maintains that while suicide is biblically prohibited, Lo Tirtzach does not apply and thus suicide is not prohibited for a non-Jew. (For further discussion of the approach of the Minchas Chinuch, see the discussion below about Lo Taamod).*

It is also noteworthy that the opinion of the Besamim Rosh, as explained by Rabbi Yitzchak Breitowitz, based on the biblical story of Saul, is that suicide is permitted in cases of terminal illness where the person is experiencing or anticipates experiencing unbearable pain. This is not an accepted halachic approach. See Rabbi Yitzchak Breitowitz, Physician – Assisted Suicide: A Halachic Approach, https://www.jlaw.com/Articles/suicide.html.

↩ 22. *I am discussing here where it could be obtained from a non-Jewish seller. If the only other seller is Jewish, this is more problematic according to some opinions. See Mishna Lamelech Malve V'love 4:2, Minchas Chinuch 232, Ksav Sofer YD 83.*

↩ 23. *This was pointed out by R. Dovid Lichtenstein in Dovid Lichtenstein, Headlines Halachic Debates of Current Events, OU press, 2014, page 332.*

↩ 24. *Note that the rationale offered by the K'sav Sofer is that where it is inconvenient to obtain the item, it is possible that the potential sinner would not have expended the effort to obtain the item. Thus, by providing him with the item it is considered to be enabling the sin. It follows that where we know the potential sinner would have exerted great effort to obtain the item, it may not be considered lifnei iver to merely make it easier to obtain.*

↩ 25. *Note that the K'sav Sofer writes that one is required to stop someone who is sinning unintentionally based on the mitzva of tochacha. This position is echoed by the Chofetz Chaim in Shaar Hatzion OC 347:8. Both the K'sav Sofer and Chofetz Chaim hold this is a Torah obligation (it certainly seems that the Dagul Mervava doesn't agree with this). PAS is clearly an intentional sin.*

↩ 26. *Note also that where the assistance is essential but not at the time of the transgression, the K'sav Sofer says it is permitted when required for darchei shalom.*

↩ 27. *Someone pointed out to me after writing this article that Professor Steven Resnicoff in Physician-Assisted Suicide Under Jewish Law, Journal of Halacha and Contemporary Society volume XXXVII, available at http://www.jlaw.com/Articles/phys-suicide.html#Note90, has a brief discussion applying the principles of lifnei iver and meyayei'a to physician assisted suicide. His discussion is based on the framework of Rabbi Michael Broyde, in The Pursuit of Justice and Jewish Law: Halakhic Perspectives on the Legal Profession, Yashar Books, New York, 2007, Chapter 7. See also Michael Broyde and David Hertzberg, Enabling a Jew to Sin: The Parameters, Journal of Halacha and Contemporary Society, 19:5, 17-30 (1990) available at http://www.broydeblog.net/uploads/8/0/4/0/80408218/enabling_a_jew_to_sin__1990_.pdf*

↩ 28. *And as discussed above, according to most opinions it is forbidden for the patient to take their own life because of Lo Tirtzach.*

↩ 29. *It is actually the opinion of the Minchas Chinuch (Mitzva 237) that Lo Taamod does not apply in a situation of suicide. However, most authorities disagree with this (see Minchas Chinuch, Machon Yerushalayim, Mitzva 237 note 5, Nishmas Avraham YD 345:1 (page 531), Nishmas Avraham OC 328:3 (page 441)). See above for the related opinion of the Minchas Chinuch that suicide, while forbidden, is not a violation of Lo Tirtzach.*

↩ 30. *The parameters of this require elaboration. See above where I cite Rabbi Jason Weiner's evidence-based suggestions for the most effective ways for clinicians and rabbis to dissuade patients from pursuing PAS.*