

Jewish Religious Perspectives in the Israeli Healthcare System

Jonathan Halevy & Adina Halevy

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The Jewish religion has, since Biblical times and through the generations, developed a body of law, known in Hebrew as Halakhah. Still evolving by means of continual rabbinical debate, the Halakhah provides the orthodox Jew with rulings on all aspects of life, from birth to the grave. Nevertheless, the legislation of the modern State of Israel is a separate entity based on secular foundations.

Let us examine briefly the character of Israeli law, which was based initially on a blend of the legal systems of the Ottomans and the British Empire, both previous rulers of the region. Except in one particular area - family life, marriage and divorce being regulated for the Jewish population by Halakhah - Israeli laws, as they have evolved from rulings of the Supreme Court since 1948, are secular. (The majority of Israeli citizens define themselves as being secular.) However, as we propose to illustrate, Jewish religious elements and values are deeply embedded in the decisions of the legislative bodies that concern the Israeli health care system.

We would like to examine in detail five of the most important laws pertaining to the Israeli healthcare system.

The National Health Insurance Law, 1994 sets forth the state's responsibility to provide health services for all citizens of the country. The law opens with the statement: "Medical insurance, under this law, shall be based on principles of justice, equality and mutual assistance." In full keeping with Article 14 of the UNESCO declaration on bioethics and

human rights, through the 4 Health Maintenance Organizations (HMO), all citizens of Israel are entitled to a very wide basket of services which includes:

- Medical diagnosis and treatment both at clinics and at the home of the patient.
- Preventive medicine and health education (i.e. early diagnosis of embryo abnormalities, vaccinations, counseling for pregnant women, mothers and the elderly).
- Hospitalization (general, maternity, psychiatric and chronic).
- Surgery and transplant. If medical treatment is not available in Israel, treatment abroad will be covered.
- Preventive dental care for children.
- First Aid and transportation to a clinic or hospital.
- Medical services at the workplace.
- Medical treatment for drug abuse and alcoholism.
- Medical equipment and devices.
- Obstetrics and fertility treatment.
- Treatment of injuries caused by violence.
- Medication, in accordance with a list issued by the Ministry of Health.
- Treatment of chronic diseases.
- Paramedical services (i.e. physical therapy, occupational therapy, etc.).

An additional note on two of the above: Fertility treatment - Israel is perhaps the only country in the world which provides treatment from public funding until two children are born (not two cycles of treatment) - an expression of the great importance Jewish culture gives to the family unit.



General Director,
Shaare Zedek
Medical Center;
Jerusalem



MSW,
Psychotherapist,
Jerusalem

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Medication and devices - modern medicine is characterized by the very rapid progress continually occurring in new technologies - both medications and devices for diagnosis and treatment. In order to reflect this, the Office of Technology Assessment of the Ministry of Health annually issues a call for senior doctors, medical school deans and other professionals to submit suggestions of recent innovations which should be publicly funded. A public committee including senior physicians, health economists, bioethicists and public representatives, meets to prioritize these items, depending upon factors such as efficacy in saving and prolonging life, quality of life attainable and cost. Thus, the basket available to all citizens is revised and updated, as required in UNESCO Article 14, item 2.

However, since in this era of costly modern medicine no country in the world can supply its citizens through public funding everything that contemporary medicine can offer, the question arises: what are the ethical principles that should underlie the process of prioritization? The aim of the committee described above is to determine the best use of the limited resources that Israel, in common with all countries, can provide for its health services.

The use of scarce resources is a topic that arose in Halakhic discussions many centuries ago. The basic question addressed is whether society is an entity with its own interests or whether it is merely the sum of all the individuals it encompasses. If the latter is true, every individual has the right to expect that society will meet all his particular needs in full. If, however, it exists above and beyond all the individuals it comprises, then society has its own needs, ethical and legal standards which must take precedence over those of any single individual¹.

According to Halakhah, society is, indeed, judged to be a separate entity and discussions within the context of redemption of

captives have ruled that society cannot override the present and future requirements of the entire community by investing a disproportionate amount of money to redeem a single prisoner. Society must take into account its own needs even if it may thereby harm or interfere with the needs of an individual².

In keeping with this, the Israeli committee which determines the content of the medical basket must give priority to drugs and treatments that will answer the basic needs of all its citizens, although with limited funding available, this results in the inevitable exclusion

of effective but expensive treatments required by some patients. (It is, of course, perfectly acceptable that patients who are able to finance such treatments from their own pocket may do so).

Jewish religious elements and values are deeply embedded in the decisions of the legislative bodies that concern the Israeli health care system

It should be noted that the public basket is vast and all medications that are overtly life-saving or prolong life of quality are included. Usually excluded for budgetary reasons are medications that prolong life to a very limited extent (mainly chemotherapy that prolongs life by a matter of weeks at the optimum), or new medications and technologies whose efficacy is still under debate in current literature and which may not eventually hold a permanent place in treatment.

The National Health Insurance Law provides Israeli citizens with universal health coverage. A system of progressive medical insurance premiums requires that low-income earners pay 3.1% of their income towards this, while the majority pay more, on the basis of 4.8% of income. It should be stressed that those receiving welfare payments are entitled to the services basket outlined above free of charge. The high quality of medical care available to all is reflected in statistics that place Israel high in the table of developed countries with a life expectancy in 2012 of 83.6 years for women and 79.9 years for men, and an infant mortality rate of 3.4 per 1000 live births³.

Such health care coverage for all citizens, which has not yet been achieved by a large number of countries, including the US, is primarily an expression of the priority Israel's legislation gives to social justice, a value Judaism holds dear.

Passed in 1996, *The Israeli Patients' Rights Law* defines the right of every individual, irrespective of gender, ethnic origin, age or religion, to receive quality medical care with dignity. In keeping with the move towards patient autonomy, emphasis was laid on the necessity of detailed informed consent from patients for any diagnostic or therapeutic procedure they undergo.

However, a religious consideration strongly influenced an additional aspect of this law. The original intention was to include an article which would also establish a legal right "to die with dignity". This may have involved withdrawal from life-support systems, or even assisted suicide, both of which are in negation of the Jewish tenet, - held, indeed, in common with other faiths - which places the sanctity of life above all considerations. The obligation to save life is one of the cardinal principles of Judaism⁴. Taking into account the beliefs of the considerable religious sector of the population, and thus expressing both democratic and Jewish values, the legislative body of the Knesset (Israel's Parliament) could not reach consensus on this point. The law was passed without dealing with this specific matter.

However, an issue of such major importance could not be ignored. Seven years later, after much further deliberation in the Knesset and in public media, a committee of 59 physicians, nurses, social workers, psychologists, rabbis, philosophers and lawyers and headed by one of Israel's leading bioethicists was appointed by the Minister of Health. Following two years of intense discussion, *The Dying Patient Law 2005* was enacted to direct the manner of end of life care in terminal illness. This law epitomizes the consideration for all sectors of the Israeli population: for the religious, it recognizes the sanctity of life and the belief that the soul is G-d's and at His will; for the secular, the autonomy that each per-

son has over his own body. It also expresses the right of the patient not to suffer. As the opening of the law states:

Goal and Fundamental Principle

Goal:

a. This Law regulates the medical treatment of the terminally ill patient based on an appropriate balance between the value of the sanctity of life, the value of the individual's autonomous will and the importance of quality of life.

b. This Law is based upon the values of the State of Israel as a Jewish and democratic state and on fundamental principles in the realm of morality, ethics and religion.

Fundamental Principle:

In prescribing the medical treatment of the terminally ill patient, his medical condition, his will and the degree of his suffering are the exclusive considerations.

This law forms a comprehensive legal guide to all physicians who attend those dying of an incurable disease. First, it defines the "dying patient" as one whose condition must be assessed by two senior physicians and it must be determined that he has less than six months to live because of an incurable disease which greatly erodes quality of life. The patient's autonomy is held in high regard: if an advanced medical directive (living will) has been made ruling out life-support, dialysis or any treatment which purely prolongs life without curing, it must be implemented. To ensure the fulfillment of living wills, a registry for such documents has been established by the Ministry of Health.

However Jewish ethics are also prominent - most Rabbinic authorities⁵ forbid active euthanasia in any form, thus, for example, it is not permitted to disconnect life support systems to which the patient has been attached. Life is sacred, not within man's jurisdiction. Optimal palliative care must be provided to minimize suffering.

This law is another manifestation of how Israeli legislators try to balance the heterogeneous views held by the various main groups comprising Israeli society - secular Jews, orthodox Jews, Moslems, Christians and Druze. The law was passed in the Israeli Par-

liament by an overwhelming majority from all political parties.

The Brain/Respiratory Death Law, 2008. Cadaveric organ donation is of maximal benefit to the recipient where the circumstance of death of the donor is brain death, usually a result of head trauma or major stroke. Of the approximately 40,000 deaths that occur annually in Israel, only a very small proportion, around 200, are brain deaths, the remainder being cardiac deaths. The Harvard Criteria for pronouncing brain death were formulated in 1968⁶ - describing a situation where extensive and severe brain damage is well-documented at both clinical level (characterized by deep coma with no response to external stimuli, no spontaneous breathing, no pupillary and corneal reflexes, support of heart and circulation by artificial means) and at laboratory level (flat EEG indicating no electrical activity of the brain). Modern technologies now enable us to assess brain death even more accurately, and there are also more recent requirements of no electrical activity under stimulation or no blood supply to the brain on ultrasound doppler (Transcranial Doppler - TCD).

Most Jewish authorities today have joined with modern science in recognizing brain death as defined above, but there are rabbis who do not accept the concept and oppose organ donations from brain dead cadavers.

The Israeli Brain/Respiratory Death Law stipulates that in Israeli hospitals it is the prerogative of the patient (by completing an organ donor card during his lifetime) or his family to choose or reject the option of donating organs. However, should they choose against this, frequently because they do not recognize brain death as death, the medical staff is committed to continue supportive measures until cardiac death occurs.

The law further stipulates that only certain doctors who have undergone special training on the matter of brain death may determine whether this is such a case, and confirmatory laboratory tests stimulating the brain or demonstrating no blood supply (not merely a flat EEG, deep coma and basic reflexes) are mandatory.

Thus we see that this law reflects the convergence of the individual's autonomy with the religious views of that segment of the population i.e. the ultra-orthodox (chiefly Jews but also of other religions or secular), who do not recognize brain death. The ethical principles deeply rooted in this section of the population are democratically preserved.

In common with many countries, Israeli law requires that all those in immediate severe danger should receive assistance from those in the close vicinity. Following Christian tradition, this law is frequently known as the "*Good Samaritan Law*"⁷. In most countries, this law provides legal protection to people who give reasonable assistance to those who are injured, ill, in peril or otherwise incapacitated. In some cases, Good Samaritan laws encourage people to offer assistance and this legal protection is intended to reduce a bystander's hesitation to act for fear of being sued or prosecuted for causing unintentional injury or wrongful death. In Israel, the law, passed in 1998, takes its name from the biblical source: "thou shall not stand idly by the blood of thy neighbor"⁸. The Israeli law concurs with that of other countries in specifying that the person giving help cannot be sued and is entitled to reimbursement of expenses that may be incurred. However, there is an additional requirement here, the "savior" *must* assist any person whom he sees to be in severe immediate danger, when he is able to do so without endangering himself or another person.

In conclusion, Israel's legal code is secular, but incorporates principles and perspective of Jewish law, especially in the areas of danger to life and the provision of health care to all. These principles and perspectives are in full keeping with Article 14 of the UNESCO Declaration on Bioethics and Human Rights. The five examples discussed above bear testament to the manner in which Israel's legislative body, the Knesset, has encompassed these values within the laws of the modern State of Israel.

NOTE

¹ A. STEINBERG, *Encyclopedia of Jewish Medical Ethics*, Vol. I, Feldheim, Jerusalem, 2003, 45.

² *Bavli Talmud*, Tractate Gittin 45a.

³ *Israel Statistics Bulletin*, 2012.

⁴ *Bavli Talmud*, Tractate Sanhedrin 37a.

⁵ *Responsa Igrot Moshe*, Yoreh Deah, Part3 #132; *Responsa Tzitz Eliezer*, Part 17#72:13.

⁶ AA. VV., “A Definition of Irreversible Coma: Report of the Ad-hoc Committee of the Harvard Medical School to examine the definition of Brain Death,” *JAMA* 205:6, (1968), 337-340.

⁷ “Good Samaritan Law”, in http://en.wiki-pedia.org/wiki/Good_Samaritan_law.

⁸ *Leviticus* 19:16.