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JEWISH ETHICAL ISSUES IN HAZARDOUS MEDICAL THERAPY

In Jewish tradition a physician is given specific Divine license to practice medicine. According to Maimonides and other codifiers of Jewish law, it is in fact the physician's obligation to use his medical skills to heal the sick. Not only is the physician permitted and even obligated to minister to the sick but the patient is also obligated to care for his health and life. Man does not have title over his life or body. He is charged with preserving, dignifying and hallowing that life. He must eat and drink to sustain himself. And he must seek healing when he is ill.

A cardinal principle in Judaism is that human life is of infinite value. The preservation of human life takes precedence over all biblical commandments, with three exceptions: idolatry, murder and incest. Life's value is absolute and supreme. Thus, an old man or woman, a mentally retarded person, a monster baby, a dying cancer patient and their like, all have the same right to life as you or I. In order to preserve a human life, the Sabbath and even the Day of Atonement may be desecrated and all other rules and laws, save the above three, are suspended for the overriding consideration of saving a human life. The corollary of this principle is that one is prohibited from doing anything that might shorten a life even for a very short time since every moment of human life is of infinite value.

How are these basic principles applied when a physician is confronted with the following dilemma? His extremely ill patient will, under normal circumstances, die shortly, perhaps in a few days or weeks. His patient's only chance for survival is unique surgery or therapy. However, if the surgery or therapy fails to heal, the patient

will die immediately. What should the physician do? Should he risk the definite short period of life remaining for the patient by administering the drastic remedy in the hope that the patient may be cured and live a prolonged period? In other words, should the physician abandon the *definite* short life span of the patient in favor of the *possible* significant prolongation of his life?

The difficult problem confronts not only the physician but also the patient and the family. They too must be able to decide this question which is not purely medical. Is the patient allowed to accept hazardous surgery or experimental therapy? These are basic decisions which include medical, moral and legal aspects. What is the view of Jewish law for the physician, the patient and the family to follow?

Let me use a case illustration to exemplify the problem:

A nine-year old girl with acute lymphoblastic leukemia was treated with the best chemotherapeutic regimens available yet failed to achieve remission of her disease after eight months of treatment. Further chemotherapy had less than 5 percent chance of success. She had a very low white blood cell count and was in constant danger of developing serious and even life-threatening infection. She also had a very low platelet count and was in constant danger of serious bleeding.

The pediatric hematologists suggested bone marrow transplantation as a final resort. Tissue typing was done and the father of the child was found to have the same tissue type as the child. The chances for a successful bone marrow transplant were thought to be about 60 percent but the procedure itself is associated with a 25 percent mortality and a high morbidity. Most patients suffer from a complication called graft-versus-host disease in which the donor bone marrow (in this case it is the father's) causes serious and sometimes fatal signs and symptoms in the recipient. Without the transplant, the child was thought to have no chance of remission or cure and life expectancy was weeks or months at best. On the other hand, long-term remissions following bone marrow transplants for acute leukemia, although unusual, do occur in perhaps 10 to 15 percent of patients.

Let us now examine the Jewish moral and ethical issues raised by this case. The child is nine years old. Does age play a role in deciding whether a bone marrow transplant is sanctioned in Jewish law? The disease afflicting the patient, acute leukemia, if untreated, is invariably fatal.

Does Judaism recognize the concept of risk-benefit ratio? Does Judaic law consider the statistical probability of prolonging life versus the mortality rate or the odds of shortening life? May a hazardous therapeutic procedure be instituted for a dying patient if there is a slim chance of a cure even though the chances of survival are much less than even? How does one define "slim"? Is a bone marrow transplant a recognized and accepted procedure as is a widely used modality of treatment like a kidney or eye transplant? Or is a marrow transplant still a highly experimental procedure? Does Jewish law dif-

ferentiate between therapeutic approaches which are hazardous in nature and hazardous procedures which are entirely experimental?

The use of certain drugs such as daunorubicin to treat acute leukemia is certainly fraught with hazard since the toxicity is considerable. However, the efficacy of these and other drugs is also well known. They are able to produce long survival in about 50 percent of children with acute lymphoblastic leukemia. We as physicians administer these drugs in anticipation of a cure despite the known risks. Does Judaism sanction such risks in the use of a new experimental drug or procedure whose curative potential is unknown?

In the case at hand: may the child undergo bone marrow transplantation? Must she undergo this treatment? Is bone marrow transplantation therapeutic or experimental or both? May the doctor offer this form of hazardous treatment? Must he do so? Does Judaism have a discretionary or mandatory attitude toward procedures which involve significant risk? What is significant risk? Does Jewish law sanction bone marrow transplantation in this case because of the life-threatening nature of the underlying illness, even though the procedure itself may lead to an early death of the patient?

Numerous other ethical questions are involved in this case. If the procedure is sanctioned, is consent required? From whom? May the father subject himself to the danger and risk, albeit small, of serving as a donor? If the child dies following the transplant, may an autopsy be performed?

Theological and philosophical questions can also be raised by this illustrative case. If God ordained that this child should die at age nine of acute leukemia, how dare we interfere with God's will and attempt a bone marrow transplant to cure the child? How can we as physicians add harm over and above the harm produced by the disease itself? If a physician cannot recommend a specific experimental treatment or procedure on the basis of sound scientific principles, may he offer it as "one chance in a million"? Would Judaism prefer an approach in which a patient is left to chance?

These are some of the Jewish ethical issues in hazardous medical therapy. They are being addressed by a variety of Jewish rabbinic and medical scholars. The dean of the American Orthodox rabbinate, Rabbi Moshe Feinstein, states that one is permitted to submit to dangerous surgery even though it may hasten death because of the potential, however small, of the operation being successful and effecting a cure.¹ Israel's Chief Rabbi, Shlomo Goren, writes that one should use hazardous experimental therapy in a case not only where

the patient will certainly die without the medical or surgical therapy but also where the possibility exists of prolonging the patient's life by the therapy.² Britain's Chief Rabbi, Immanuel Jakobovits, also agrees that hazardous therapy may be given to patients if it may be potentially helpful to the patient, however remote the chances of success are.³

Two earlier rabbinic sources also clearly enunciate the Jewish legal view concerning human experimentation. Rabbi Hayim Ozer Grodzinski (1863-1940) was asked about the permissibility of performing a dangerous surgical procedure on a seriously ill patient. He answered that if all the attending physicians, without exception, recommend such an operation, it should be performed, even if the chances for success are smaller than those for failure.⁴ A similar pronouncement is made by Rabbi Jacob Reischer (1670-1733) with regard to dangerous medical therapy for a seriously ill patient. Reischer permits such therapy since it may cure the patient although it may hasten the patient's death.⁵ Reischer also requires a group of physicians to concur in the decision.

The basic tenet of Judaism is the supreme value of human life. This principle is based in part upon our belief that man was created in the image of God. Therefore, when a person's life is in danger, even when there is no hope for survival for a prolonged period but only for a very short time, all commandments of the Bible are set aside. Any act which can prolong life supercedes all the biblical commandments except the three cardinal ones.

NOTES

1. Moshe Feinstein, "Responsa *Iggrot Moshe*" in *Yoreh Deah*, Part 2, No. 58 (New York: 1973).
2. Shlomo Goren, *Shanah BeShanah* (Jerusalem: Hechal Shlomo, 1976), pp. 149-55.
3. Immanuel Jakobovits, "Medical Experimentation on Humans in Jewish Law," in *Jewish Bioethics*, ed. F. Rosner & J.D. Bleich. (New York: Hebrew Publishing Co., 1979) pp. 377-383.
4. Hayim Ozer Grodzinski, "Responsa *Ahiezer*." *Yoreh Deah*, Responsum, No. 16:6, (Jerusalem: 1946).
5. Jacob Reischer, "Responsa *Shevut Yaakov*," Section 3, Responsum No. 75, Lemberg, 1860).