VI. A CONTEMPORARY HALAKHIC STATEMENT

How are all of these issues and principles followed today given so

many advances in medical knowledge and technology? By following

the argument in a recent Responsum issued by the Reform movement,

we can see that the principles explained above are applied in our time.70

In this Responsum, a rabbi asks about care for two relatives of a

congregant who are at end-stages of fatal neurological diseases, one an

infant and the other elderly. The Responsum begins with an

explanation of why Jewish tradition does not consider active euthanasia

an option:

Our duty to the sick is to heal them or, when this is no longer possible,

to care for them; it is not to kill them. The sick, the terminally-ill,

have a right to expect compassion from us, for such flows from the

respect we ought to display to ourselves and to others as children of

God. But they are not entitled to ask that we take their lives, and

should they make that request, we are not entitled to grant it. For

when we define ‘compassion’ so as to include the killing of human

beings, we have transgressed the most elemental of Jewish moral

standards and the most basic teachings of Jewish tradition as we

understand it. We believe that compassion toward the dying is a

moral responsibility. But we also believe that this responsibility can

and must be discharged without resort to assisted suicide and active

euthanasia.71

*A. Ending Medical Treatment*

The Responsum goes on to discuss the question of the cessation of

medical treatment for a terminal patient. Other authorities from

different times and places are cited to explain permissible treatment for

terminally ill patients and to show that Jewish law allows pain relief

even when there is a risk of death.72

The Responsum then specifically addresses the ability of doctors to

provide strong pain medication for dying patients:

Physicians may administer powerful anti-pain medications such as

morphine to dying patients, even though such a course of treatment

may shorten the patients’ lives, for pain itself is a disease and its relief

70*. See, e.g.,* NEUSNER, *supra* note 7, at 136–139 (explaining that Reform Judaism emerged as

a modern response to the changing social, political, and economic circumstances experienced by

Jews).

71. Responsum No. 5754.14, *supra* note 60.

72. “Patients may undergo risky surgery to relieve pain, even though the surgery may hasten

their death; such surgery is, after all, legitimate medicine.” *Id.* Responsa are always based on the

arguments and decisions of earlier authorities, and here, we can see how the passage from

*Shulhan Arukh* cited above is brought to bear on our issue.

2006] The Shattered Vessel 115

is a proper medical objective. In addition to permitting such active

measures, the *halakhah* also supports the withdrawal of medical

treatment under some circumstances from terminal patients. The

classic source for the discussion of this issue is the comment of R.

Moshe Isserles in *Shulchan Arukh Yore De’ah 339:1*. Drawing upon

material from the 13th-century *Sefer Chasidim*, Isserles rules that

while it is forbidden to take any measure that would hasten the death

of the *goses* (*e.g.*, by moving him or by moving the pillow or mattress

from beneath him), “if there exists any factor which prevents the soul

from departing, such as the sound of a woodcutter near the house or

salt on the patient’s tongue . . . it is permitted to remove that factor.

This is not considered a positive act (*ma’aseh*) but merely the removal

of an impediment.”73

The application of the example of “salt on the patient’s tongue” to the

modern era is then described in detail in the Responsum. A distinction

is made, separating actions into forbidden actions, termed “active”

euthanasia, and permissible courses of action.74

Nevertheless, the Responsum reveals an underlying problem that

hinders clear determination of permitted versus forbidden activities and

thus demonstrates the potential existence of a contradiction in Rabbi

Isserles’ logic.75 Distinguishing between actions that cross over into the

realm of active euthanasia from those that only reach the level of

“removal of an impediment” can be difficult, particularly in the modern

age, where technology can permit the survival of patients in conditions

not considered by the original theorists. The Responsum, however,

continues to describe various arguments that support differentiating the

two actions using different analytical approaches.76 The Responsum

73. Responsum No. 5754.14, *supra* note 60 (citations omitted). Rabbi Eliezer Waldenberg, a

Twentieth Century rabbi, cautions in this passage that the intent of the procedure must be to

relieve pain and not to hasten the patient’s death. Rabbi Isserles’ classic statement can be found

in CODE OF HEBREW LAW, *supra* note 23, at § 339:1.

74. This article will adopt the definitions of “active euthanasia” and “letting nature take its

course” as used in the paragraphs of the Responsum cited here.

75. Responsum No. 5754.14, *supra* note 60. The distinction between “active euthanasia” and

“letting nature take its course” can also be found in CODE OF HEBREW LAW, *supra* note 23, §

339:1 at 16. *See also* Freehof, *supra* note 44, at 258 (discussing the limits on the actions a

physician may take when treating a terminally ill patient).

76*.* Responsum No. 5754.14, *supra* note 60.

What is the difference between the two? Why may we remove the salt but not the

mattress? Halakhic authorities have addressed this contradiction in various ways.

Some, opting for extreme caution, declare Isserles wrong and prohibit the removal of

the salt altogether. Others allow the removal of the salt as but an “insignificant”

contact with the patient. A third approach is provided by R. Yehoshua Boaz b.

Barukh, the 16th-century author of the *Shiltey Giborim* commentary to Alfasi. He

notes that while it is forbidden to hasten the death of the *goses* it is likewise forbidden

to take any action that unnecessarily impedes it. Salt, which cannot bring healing but

116 Loyola University Chicago Law Journal [Vol. 37

ultimately adopts the *Shiltey Giborim’s* argument and continues to

analyze what actions can be properly taken to ease a terminal patient’s

passing by looking to the purposes that motivate the action.77

Finally, the Responsum concludes its analysis of this issue by

returning to modern application of the theory, applying the conclusions

developed above. Applying the bar against “active” euthanasia, the

Responsum authors apply this theory to a specific situation in which a

respirator is used to sustain the life of an otherwise terminal patient.

This theory helps to translate the medieval language of the texts into a

usable contemporary vernacular. Does there not come a point in a

patient’s condition when, despite their obvious life-saving powers, the

sophisticated technologies of modern medicine—the mechanical

respirator, for example, or the heart-lung machine—become nothing

more than mere “salt on the tongue,” mechanisms which maintain the

patient’s vital signs long after all hope of recovery has vanished?

Answering “yes” to this question, some contemporary *poskim* allow

the respirator to be disconnected when a patient is clearly and

irrevocably unable to sustain independent heartbeat and respiration.

Even though the machine is considered part of routine medical therapy

(for patients are as a matter of course connected to it during

emergency-room and surgical procedures), it has at this juncture

ceased to serve any therapeutic function. They can no longer aid in the

preservation or prolongation of life. Once their therapeutic function is

exhausted, the machines “merely prolong in an artificial way the

process of dying. We must disconnect the patient from the machines,

leaving him in his natural state until the soul departs.”78

only impede the patient’s death, should never have been put on his tongue. Whoever

put it there has acted improperly; thus, its removal, even though it involves physical

contact, is permitted as the restoration of the correct *status quo ante*.

*Id.* (citations omitted).

77. *Id.*

The advantage of the *Shiltey Giborim*’s analysis is that it turns our attention away from

blurry distinctions between “active” and “passive” measures and toward the nature and

purpose of those actions. The essential issue is the medical efficacy of the factor we

seek to remove. Certain measures must never be applied to the *goses* because they lack

any trace of therapeutic value. Offering no hope of cure or successful treatment, they

serve only to delay his or her otherwise imminent death. Since it is forbidden to do

this, to unnecessarily prolong the death of the dying person, these measures may be

discontinued even if we must touch the patient’s body in order to do so.

*Id; see also* QUESTIONS AND REFORM JEWISH ANSWERS, *supra* note 24, at 266–264 (suggesting

that artificial nutrition and CPR methods should never be used on patients who are dying (*goseys*)

because they are so close to death that they will not be helped by such methods).

78. Responsum No. 5754.14, *supra* note 60 (citations omitted). *See also* Walter Jacob,

*Euthanasia*, *in* AMERICAN REFORM RESPONSA, *supra* note 24, at 272–73 (“Absolute certainty of

death, according to the halachic authorities of the last century, had occurred when there had been

no movement for at least fifteen minutes . . . after the halt of respiration and heart beat.”) (citation

2006] The Shattered Vessel 117

*B. The Duty to Heal*

The Responsum also addresses the principle of the duty to heal. The

issue is that we cannot know with certainty how close to death a patient

is until the patient has reached the stage at which Moses Isserles says

“the soul is struggling to depart from the body.”79 Until that last

extremity, vital medical treatments should be continued. This raises

very basic questions as to the philosophy of medical practice. Some

would argue that the duty to heal does not apply in the terminal stages

of an illness in the same way as before. When there is no longer hope

for a cure or recovery, some would argue that the responsibility of the

medical practitioner changes.

A physician is obligated to administer those measures which in the

judgment of the profession are therapeutic: *i.e.*, they are regarded in

medical opinion as contributing to the successful treatment of the

disease. On the other hand, treatments which do not effect “healing”

are not *medicine* and thus are not required. While we may be entitled

to administer such treatments we are not commanded to do so,

inasmuch as they do not partake in the saving of life.80

Thus, the Responsum distinguishes between therapeutic and nontherapeutic

care. Because there is an obligation to provide therapeutic

care, many modern-day problems in medical ethics arise. Addressing

these modern-day problems, the Responsum makes clear that palliative

care practices, such as provision of high dosage pain medication, are

permitted under Jewish law.81

*C. Refusing Medical Treatment*

The Responsum continues its analysis of modern-day medical ethics

problems under Jewish law by discussing the issue of refusal of medical

treatment by a patient. The obligation to accept necessary therapeutic

care is balanced against the desire to alleviate pain and end one’s life

prematurely by refusing care.82

The Responsum ultimately precludes a Jewish patient from

committing deliberate suicide, and obligates such a patient to accept

treatments that are considered non-experimental in nature. Thus, once a

treatment is deemed tested, proven, and reasonably likely to succeed, it

omitted). “*Poskim”* is the Hebrew word meaning “legal decisors.”

79*.* Responsum No. 5754.14, *supra* note 60 (citations omitted).

80. *Id.*

81*. Id.*

82. *Id*. “On the other hand, should a particular remedy be experimental in nature, if its

therapeutic effect upon the disease is uncertain at best, then the patient is not required to accept

it.” *Id.*

118 Loyola University Chicago Law Journal [Vol. 37

must be accepted as a commandment for which there is no right to

refuse.83 The Responsum makes a clear distinction between those

treatments that are obviously therapeutic and those that are more

controversial in their categorization. Ordinary treatments used in

everyday medical practice that either cure or control a disease state are

obligatory treatments under Jewish law.84

Although the distinction between obligatory and non-obligatory

treatments can be made clearly in some cases, this distinction is blurred

when a patient is in a terminal condition. A terminal cancer patient is

used to illustrate the difference in treatment obligations under Jewish

law.85

Thus, a terminal patient’s obligations to receive care differ from

those of a non-terminal patient. Unfortunately, however, making such a

distinction between those treatments that must be accepted as a nonterminal

versus a terminal patient creates additional problems that must

be taken into account. The following section of the Responsum

addresses this very concern, making clear that the decision to end

medical treatment leads to the patient’s death, and therefore must be a

decision that must be made with great care and prudence.

83*. Id.* (quoting R. Moshe Feinstein, a twentieth century *Halakhic* authority).

84. *Id*.

The standard of therapeutic effectiveness, as a tool by which to make judgments

concerning medical treatment, allows us to draw some conclusions with moral

confidence. Under the heading “therapeutic” and “successful” treatments we would

certainly include all medical and surgical procedures, such as antibiotics and routine

surgeries, which physicians expect will lead to a cure for the illness in question. These

treatments are “obligatory” under the traditional Jewish conception of medicine. Other

therapies, though they do not produce a cure, would nonetheless fall under this

category because they are able to control the disease and allow the patient a reasonable

degree of function. Included here are such therapies as insulin for diabetes (so long as

the patient has not developed another, terminal illness; see above) and dialysis for

chronic renal disease. These procedures can be unpleasant, true, and they do not offer

a cure, but they do offer life; they are to be considered as *pikuach nefesh*.

*Id; see generally* Freehof, *supra* note 44, at 258 ( defining the limits of freedom of action of a

physician with a terminal patient).

85*.* Responsum No. 5754.14, *supra* note 60 (citations omitted).

When, however, a patient has entered the final stages of terminal disease, medical

treatments and procedures which serve only to maintain this state of existence are not

required. A cancer patient, for example, would accept radiation and/or chemotherapy

so long as according to informed medical judgment these offer a reasonable prospect

of curing, reversing, or controlling the cancer. Once this prospect has disappeared and

the therapies can serve only to increase suffering by prolonging the patient’s inevitable

death from the disease, they are no longer to be regarded as *medicine* and may

therefore be withdrawn.

*Id; see also* QUESTIONS AND REFORM JEWISH ANSWERS, *supra* note 24, at 264–66 (describing

the time when a patient becomes a *goses* as when he or she is being kept alive artificially without

hope of improvement).

2006] The Shattered Vessel 119

While this standard is useful in helping to direct our thinking, it is by

no means free of difficulty. Terms such as “therapeutic” and

“successful treatment” are inherently vague and impossible to define

with precision. In many situations it will be problematic if not

impossible to determine when or even if the prescribed regime of

therapy has lost its medical value. Yet the decision to continue or to

cease the treatment must nonetheless be made, and those who must

make it will confront an element of doubt and uncertainty that cannot

be entirely resolved. Every such decision is inherently a matter of

*choice*, a choice between two or more alternatives when none is the

obviously correct one. This kind of uncertainty is disturbing to many,

who believe (as we all do) that fundamental issues of life and death

must be handled with an attitude of reverence and caution. Yet their

laudable search for moral certainty has led some authorities toward an

extremist position, rejecting the very possibility that treatment can

ever be withdrawn from a dying patient. Says one: “every person is

obligated in every case to seek out medical treatment, even though he

believes that the treatment will not heal him but only prolong his

suffering; for we must hope for and await God’s deliverance to the

very last moment of our lives.” This conviction is based upon the

reasoning that, inasmuch as medicine is not a precise science, even the

most definitive medical prognosis is a matter of *safek*, of doubt. We

must work to preserve life until the very end, for while it can never be

established with certainty that a patient has absolutely no hope for

recovery, it is indeed certain that, should we withdraw medical care,

the patient will die.86

*D. Artificial Nutrition and Hydration*

The Responsum then takes up the question of artificial nutrition and

hydration, which is a difficult boundary issue. Is this a medical

procedure or is it ordinary care using modern technology? Given the

deep controversy on this issue, the Responsum proceeds with caution.87

As we have seen, Jewish tradition offers strong support for the

cessation of medical treatments for the terminally-ill when these

treatments have lost their therapeutic effectiveness. We are not

commanded to do medicine when our actions are *not* medicine, when

they do not heal. We violate no moral obligation if we refuse to offer

86*.* Responsum No. 5754.14, *supra* note 60 (citations omitted). This passage quotes R. Natan

Zvi Friedman, Resp. Netser Mata’i, No. 30 and cites J. David Bleich, *The Quinlan Case: A*

*Jewish Perspective*, *in* JEWISH BIOETHICS 266–76 (Fred Rosner & J. David Bleich eds., Hebrew

Publ’g Co. 1979).

87. The Responsum presents this as a question: “May we discontinue the supply of nutrients

or disconnect the tubes altogether on the grounds that, as all hope for recovery or satisfactory

control of the illness has vanished, this feeding serves only to prolong the patient’s death?”

Responsum No. 5754.14, *supra* note 60 (citations omitted).

120 Loyola University Chicago Law Journal [Vol. 37

a patient drugs or technologies that are medically useless. By contrast,

we do violate such an obligation under normal circumstances when we

withhold food and water: we have starved that person to death.

Though we might respond that a dying patient fed through a tube

hardly constitutes a “normal circumstance,” artificial feeding differs

from other hospital procedures in one crucial aspect: it can be argued

that the feeding tube has nothing to do with “medicine” at all. Its

function is not to treat the disease but to provide essential nutrients to

the patient, and so long as the patient is capable of digesting these

nutrients, the tube is successfully performing its task. In this analysis,

artificial nutrition and hydration are not medical treatments, do not

lose any “therapeutic” effectiveness, and therefore may not be

withdrawn.88

Thus, a patient may not refuse artificial nutrition and hydration,

because food and water are obligations under normal circumstances.

The purpose of the artificial nutrition and hydration is to continue life

rather than to treat the condition.

The Responsum then rejects an argument that favors categorizing

artificial hydration and nutrition as medicine based upon the conditions

that trigger their use.89 Even though artificial nutrition and hydration

are frequently used in medical settings such as hospitals and hospices,

because food and water are required to sustain life, artificial nutrition

and hydration are not to be considered medical treatment. However, the

Responsum recognizes that the disagreement about the nature of

88. *Id.*; *see also* QUESTIONS AND REFORM JEWISH ANSWERS, *supra* note 24, at 263–66

(responding to the question: “Should nutrition in contrast to medicine be continued for a

comatose patient who is suffering from incurable cancer?”); *supra* Part VI.C (discussing a

patient’s right to refuse medical treatment in certain situations); THE BABYLONIAN TALMUD,

*supra* note 1, at Sanhedrin 77a. The Talmudic passage deals with homicide and states that, “If

one bound his neighbor and he died of starvation, he is not liable to execution.” *Id.* This

indicates that such an act would be manslaughter but not murder.

89. Responsum No. 5754.14, *supra* note 60 (citations omitted).

One could argue that artificial feeding devices are indeed “medical”, [sic] a response to

disease. They are utilized precisely because a patient is unable to ingest nutrients in

the “normal” manner. As such they are medical interventions and can be withdrawn

when the intervention is no longer medically justified. There is no reason to

distinguish between feeding tubes and other, indisputable “medical” procedures such

as cardiopulmonary resuscitation: both keep the terminal patient alive, and the

withholding of either will result in death from the very disease which warranted its

introduction in the first place. On the other hand, unlike sophisticated medical

procedures, food and water are universal human needs. All of us, whether sick or well,

require food and water in order to survive. Moreover, the fact that these nutrients are

supplied by a machine does not transform them into exotic medical substances; we all

receive our food at the end of a long chain of production, transportation, and

distribution technologies. A real and desirable distinction can therefore be made

between artificial feeding and medical treatment.

*Id.*

2006] The Shattered Vessel 121

artificial nutrition and hydration continues throughout society.90 The

dispute about the nature of artificial nutrition and hydration cannot be

resolved here.91 Yet, whether it is a medical procedure or not, Jewish

law supports the use of artificial nutrition and hydration as a basic

means of sustaining life, but does not absolutely oppose its removal.92

Thus, a patient cannot refuse artificial hydration and nutrition under

Jewish law, not because of the interventional nature of the treatment,

but because of its basic purpose to sustain the basic functions of life.

90*. Id.*

Opinions on this question are deeply divided. A broad coalition including medical

ethicists, the American Medical Association, and the United States Supreme Court

supports the definition of artificial nutrition and hydration as a medical procedure that

may be withdrawn from terminal patients. On the other hand, this “emerging medical,

ethical and legal consensus” has been challenged by some ethicists, who argue that the

withdrawal of nutrition resembles killing more than it does the cessation of purely

“medical” treatment.

*Id.*

91*. Id.*

The dispute among halakhic scholars is the mirror image of that among ethicists. Most

authorities prohibit the withdrawal of food and water; “the reason, quite simply, is that

eating is a normal physiological process, required to sustain life, necessary for all,

including those who are healthy.” Food and water are not, therefore, medicine; their

presence cannot be defined as medically illegitimate. At the same time, some

halakhists have suggested the opposite, that artificial nutrition is a medical procedure

and may be withdrawn. Reform *halakhic* opinion is also split: one Responsum

opposes the removal of the feeding tube, though several others permit it.

*Id; see also* Hospital Patient Beyond Recovery, CCAR Responsa Committee Archives no.

5750.5, *available at* http://data.ccarnet.org/cgi-bin/respdisp.pl?file=5&year=5750 (stating that

because “the patient is not dying the withdrawal of the feeding tube is not permissible in the light

of Jewish tradition”); Walter Jacob, *Nutrition and Incurable Cancer*, *in* QUESTIONS AND REFORM

JEWISH ANSWERS, *supra* note 24, at 263–69; Freehof, *supra* note 44, at 257 (permitting the

physician to refrain from connecting or refilling the nutrition apparatus of a dying patient).

92. Responsum No. 5754.14, *supra* note 60 (citations omitted).

Given this division of opinion, we cannot claim that Jewish tradition categorically

prohibits the withdrawal of food and water from dying patients. It can be plausibly

argued that artificial nutrition and hydration are medical interventions which, on the

Judaic grounds that we have cited in the previous two sections of this *teshuvah*, may be

discontinued upon a competent finding that they no longer provide therapeutic benefit

to the patient. At the same time, we stress the plausibility of the opposing argument.

Food and water, no matter how they are delivered, are the very staff of life (*lechem*

*chuki*) for the human being. They sustain us at every moment of our lives, in health as

well as in illness. It is therefore not at all obvious that we should look upon these

substances as “medicine” merely because they come to us in the form of a tube

inserted by medical professionals. Moreover, the moral stakes in removing the feeding

tube are considerable. As one authority who rules permissively admits, “there is

something which is, minimally, highly unaesthetic” about withholding food and water

from terminal patients. We agree. Indeed, some of us would use stronger adjectives,

for—let us neither mince words nor hide behind comforting euphemisms—we cannot

overlook the fact that by removing them we are starving these human beings to death

*Id.*

122 Loyola University Chicago Law Journal [Vol. 37

Having dismissed the argument based upon the supposed “medical”

nature of artificial hydration and nutrition provision, the Responsum

concludes by giving instructions on how the bar against refusal of such

therapeutic care should be applied.

We would therefore caution at the very least that the removal of

artificial nutrition and hydration should never become a routine

procedure. It is preferable that artificial feeding of terminal patients

be maintained so that, when death comes, it will not have come

because we have caused it by starvation. Nonetheless, because we

cannot declare that cessation of artificial nutrition and hydration is

categorically forbidden by Jewish moral thought, the patient and the

family must ultimately let their conscience guide them in the choice

between these two alternatives.93

VII. CONCLUSION

Jewish law is an organic body of law running from scriptural sources

to rabbinic experts responding to the latest advances and problems in

medicine today. What we find in these sources is not always uniformity

of opinion. Instead, we find legal experts trying to conform to basic

ethical principles in deciding how to act on specific cases. Jews who

seek religious authority for their medical decisions are not required to

choose a single rabbinic authority or rabbinic body to consider the case

at hand. Instead of regarding any one code of law or any one person as

an ultimate authority, Jewish tradition incorporates thousands of years

of legal and ethical tradition embodied both in codes and in case law

(the *Responsa* literature). On life-and-death questions, there is unity of

commitment to such principles as the saving of life and the duty to heal.

It is well understood, however, that a decision on a specific case must

consider a variety of sources and opinions. Jewish law is therefore a

living process that stands on tradition and depends on scholarship and

creative thought.

93*. Id.*