

ematai

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Navigate Healthcare Choices
with Jewish Wisdom

From “Halachic [Jewish Law] Living Will” to Conversations with a Proxy: A New Approach

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Presenter Disclosure

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LEARNING OBJECTIVES

At the conclusion of this presentation, participants will be able to:

The development of halakhic (in accordance with Jewish law) living wills

The advantages and disadvantages of each model

Approach #1: Rabbi Lord Immanuel Jakobovits (1990)

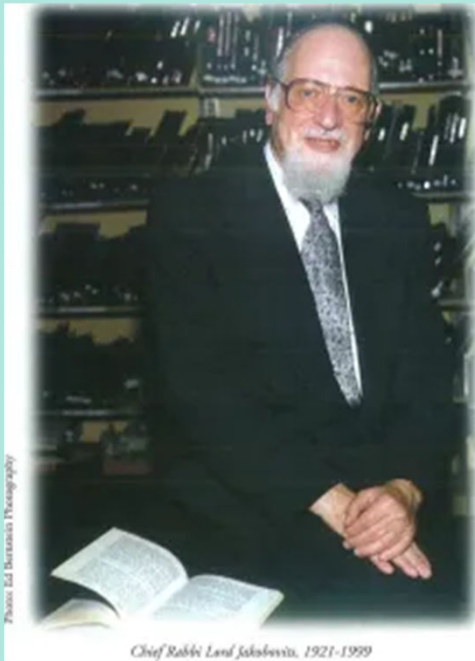


Photo: Ed Bernstein Photography

Chief Rabbi Lord Jakobovits, 1921-1999

I also question Rabbi Tendler's reference to "the quality of life." I believe in the Jewish view this has no bearing on the value of life which is absolute and infinite, and certainly not subject to assessment by the patient or anyone else.

This leads me to my main critique. I believe the whole notion of a "Living Will" is alien to Jewish thought and law. As Yoel observes, the Jewish imperatives on saving life (or allowing it to expire under certain circumstances) are incumbent equally on patient, doctor, rabbi and friends. Of these, the patient is obviously the least objective, being the most interested party. Moreover, these decisions are made while in good health under conditions which may be vastly different when the relevant circumstances arise. The next-of-kin should by all means consult rabbinical and medical opinion when the difficult decisions on maintaining life by "heroic methods" arise. The wishes previously expressed by the patient have no bearing on this decision, since no one can dispose of his own life any more than of anyone else's. The difficult judgment should be as objective, dispassionate and personally disinterested as possible, and this may exclude even the closest relatives from having a decisive say.

Moreover, I fear that "Living Wills" may often be an excuse for taking liberties in the premature suspension of treatment where the doctor may otherwise feel inclined to continue his medical efforts. I

Dr. Fred Rosner, 1986

Fundamental Concern:

In essence, Judaism is opposed to the concept of the living will in that the patient may not have the “right to die.” He has an obligation to live. Only God gives and takes life. Man does not have full title over his life or body. He is charged with preserving, dignifying and hallowing that life.

Practical Concerns:

1. Difficult to give prognosis >> provisions of the living will may be activated prematurely.
2. Existence of a living will may deprive the patient of the full efforts of the medical team.
3. Changes mind without changing directive
4. Pain relief options develop that would solve the problem better
5. “The living will only protects refusal of treatment but does not guarantee a peaceful easy death.”

Approach #2: Rabbi Dr. Moshe D. Tendler

... both the Living Will form and the health care agent document are halakhically acceptable if two additional clauses are added:

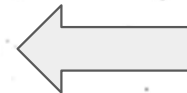
1. Procedures that can be withheld or withdrawn do not include hydration and nutrition. They may include: CPR, surgical procedures, ventilators, balloon pumps, haemo- and peritoneal dialysis, pacemakers, vasopressor drugs, blood transfusions. The failure to provide food and water to a dying patient is viewed, halakhically, as active, not passive, euthanasia.

2. In the Living Will you find the requirement for the input by your attending physician. A similar requirement should be recorded for your Rav or Posek. Assuming that your chosen Rav clearly approves of your decision to prepare a Living Will, he should serve as part of the check/balance controls.



Health Care Proxy — A GENERAL

- (1) I, _____
hereby appoint _____
(name, home address & telephone number)
as my health care agent to make any and all health care decisions for me, except to
the extent that I state otherwise. This proxy shall take effect when and if I become
unable to make my own health care decisions.
- (2) *Optional instructions: I direct my agent to consult with Orthodox halachic authority
prior to making his/her decisions.
*(Your agent will not be allowed to make decisions about artificial nutrition and hydration.)
- (3) Name of substitute or fill-in agent if the person I appoint above is unable, unwilling
or unavailable to act as my health care agent _____



RCA 1991 Proxy

Health Care Proxy — B (DETAILED DIRECTIVE)

MY MEDICAL DIRECTIVE

My Medical Directive expresses, and shall stand for, my wishes regarding medical treatments in the event that illness should make me unable to communicate them directly. I make this Directive, being 18 years or more of age, of sound mind, and appreciating the consequences of my decisions.

SITUATION A

SITUATION A
If I am in a coma or a persistent vegetative state and, in the opinion of my physician and several consultants, have no known hope of regaining awareness and higher mental functions no matter what is done, then my wishes regarding use of the following, if considered medically reasonable, would be:

SITUATION B

SITUATION B
If I am in a coma and, in the opinion of my physician and several consultants, have a small likelihood of recovering fully, a slightly larger likelihood of surviving with permanent brain damage, and a much larger likelihood of dying, then my wishes regarding use of the following, if considered medically reasonable, would be:

SITUATION C

SITUATION C
If I have brain damage or some brain disease that in the opinion of my physician and several consultants cannot be reversed and that makes me unable to recognize people or to communicate in any fashion, and I also have a terminal illness, such as incurable cancer, that will likely be the cause of my death, then my wishes regarding use of the following, if considered medically reasonable, would be:

SITUATION D

SITUATION D
If I have irreversible brain damage or some brain disease that in the opinion of my physician and several consultants cannot be reversed and that makes me unable to recognize people or to communicate in any fashion, but I have no terminal illness, and I can live in this condition for a long time, then my wishes regarding use of the following, if considered medically reasonable, would be:

	I Want	I Do Not Want	I Want	I Do Not Want	I Want	I Do Not Want	I Want	I Do Not Want
Cardiopulmonary Resuscitation: if at the point of death, using drugs and electric shock to keep the heart beating; artificial breathing.								
Mechanical Breathing: breathing by machine								
Major Surgery: such as removing the gall bladder or part of the intestines.								
Kidney Dialysis: cleaning the blood by machine or by fluid passed through the belly.								
Chemotherapy: using drugs to fight cancer.								
Invasive Diagnostic Tests: such as using a flexible tube to look into the stomach.								
Blood or Blood Products: such as giving transfusions.								
Antibiotics: using drugs to fight infection.								
Simple Diagnostic Tests: such as performing blood tests or x-rays.								
Pain Medications, even if they dull consciousness and indirectly shorten my life.								

RCA 1991 Proxy

Health Care Proxy — B (CONTINUED)

DURABLE POWER OF ATTORNEY

I understand that my wishes expressed in these four cases may not cover all possible aspects of my care if I become incompetent. I also may be undecided about whether I want a particular treatment or not. Consequently, there may be a need for someone to accept or refuse medical interventions for me in consultation with my physician. I authorize

as my proxy(s) to make the decision for me whenever my wishes expressed in this document are insufficient or undecided.

Should there be any disagreement between the wishes I have indicated in this document and the decision favored by my above-named proxy(s),

(Please delete one of the following two lines.)

I wish my proxy(s) to have authority over my Medical Directive.

(or)

I wish my Medical Directive to have authority over my proxy(s).

In matters concerning halacha, should there be any disagreement between the wishes of my proxies, a prominent orthodox halachic authority must be consulted and shall have final authority. Halachic authorities I would prefer to be consulted are:

1. _____
2. _____
3. _____

or

4. If above not available, my proxy may choose anyone he prefers.

ORGAN DONATIONS

I hereby make this anatomical gift to take effect upon my death for the sole purpose of transplantation of life saving organs such as: cornea, kidney, heart, lung, liver, pancreas. An orthodox halachic authority must be consulted as to proper protocol to follow.

RCA 1991 Proxy

The "Halachic Health Care Proxy": An Insurance Policy With Unique Benefits *by Chaim Dovid Zwiebel (1990)*

Some people do not have family members with whom they retain contact or upon whom they can rely to contact their *morei hora'ah* (halachic decisors) in times of emergency. And, even for those who do, not always will the *she'eilos* arise under circumstances where those family members will be available to contact the individual's halachic authority. When, for example, a person is involved in an accident far from home, emergency decisions will be made for him by doctors and nurses who may not even know that he is Jewish, let alone who his relatives are or who his rabbi is. **The likelihood is all too great in such situations that medical procedures will be performed, or withheld, in ways that constitute a violation of *halachah*.**

The problem arises even more frequently in the context of post-mortem procedures. Many horror stories have come to light involving autopsies, post-mortem procedures and non-halachic burials of Jewish decedents who have passed away under circumstances where nobody was available to ensure that *halachah* would be followed after the person's death.

Hence the need for some form of protection -- a mechanism whereby one can obtain at least a measure of assurance that when he becomes incapable of making his own health care decisions, when he dies and is unable to direct the course of his own burial, when he becomes incapable of asking the *she'eilos* himself, that others will take the steps necessary to ensure that *halachah* will be followed. As detailed below, the "halachic health care proxy" is designed to respond to that need.

Practical Concerns about Advance Directives

1. Difficult to give prognosis >> provisions of the living will may be activated prematurely.
2. Existence of a living will may deprive the patient of the full efforts of the medical team.
3. Changes mind without changing directive
4. Pain relief options develop that would solve the problem better
5. “The living will only protects refusal of treatment but does not guarantee a peaceful easy death.”

Agudath Israel: Proxy & General Directive

First, it is a proxy: the appointment by a competent adult (the “principal”) of another person to serve as an agent to make health care decisions on the principal’s behalf if the principal becomes incapable of making such decisions on his own.

Second, the form is a directive: **an instruction by the principal to the agent to make all health care decisions, as well as post-mortem decisions, in accordance with *halachah*.** In order to ensure that the agent will direct *she’eilos* to the rabbinic authority the principal himself would consult were he able to do so, the form includes a section **allowing the principal to designate a specific rabbi to be consulted by the agent whenever a *she’eilah* arises.**

Limitations: Cannot Spell Out Types of Procedures

There are some things the “halachic health care proxy” does *not* do. **For one, it does not attempt to spell out precisely what types of procedures, under what types of circumstances, should or should not be undertaken as a matter of Jewish law.** This omission reflects a conscious policy decision by the *Moetzes Gedolei HaTorah*. They concluded that the range of halachic issues was too great, the changes in medical technology too rapid, the *she’eilos* too dependent upon individual circumstances, to presume to identify in advance the precise course of action to be taken under all future hypothetical situations. Rather than engage in such a speculative and possibly misleading exercise, the *Moetzes Gedolei HaTorah* felt that the form should simply provide a mechanism that would ensure that *she’eilos* would be posed in whatever circumstances may eventually arise.

Yet another thing the forms do not purport to do is tell individuals which rabbis or organizations they should choose to serve as halachic consultants/decisors with respect to medical and post-mortem procedures. This, too, was a conscious decision of the *Moetzes Gedolei HaTorah*. As noted above, there is a diversity of viewpoints among contemporary *poskim* with respect to a number of the issues an agent may have to decide...

Rather, each individual should designate as a halachic consultant the particular *moreh hora’ah* whose guidance he himself would seek -- recognizing, of course, the specialized and highly complex nature of some of the *she’eilos* that may arise.

The 1990 Agudah Model >> RCA 2009 Model

2. Jewish Law to Govern Health Care Decisions: I am Jewish. It is my desire, and I hereby direct, that all health care decisions made for me be made pursuant to Jewish law and custom as determined in accordance with strict Orthodox interpretation and tradition. Without limiting in any way the generality of the foregoing, it is my wish that Jewish law and custom should dictate the course of my health care with respect to such matters as the performance of cardio-pulmonary resuscitation if I suffer cardiac or respiratory arrest; the performance of life-sustaining surgical procedures and the initiation or maintenance of any particular course of life-sustaining medical treatment or other form of life-support maintenance, including the provision of nutrition and hydration; and the criteria by which death shall be determined, including the method by which such criteria shall be medically ascertained or confirmed.

Pending contact with the agent and/or Orthodox Rabbi described above, it is my desire, and I hereby direct, that all health care providers undertake all essential emergency and/or life sustaining measures on my behalf.

RCA Announcement

The document does not stipulate particular treatments or situations, and does not attempt to anticipate medical conditions or responses that may arise. Few people are able to anticipate such detailed developments that may or may not occur many years in the future. By designating trusted parties to act in one's stead in case one is personally unable to do so, one allows for reasonable decisions by one's agent, in consultation with an informed rabbi, under all situations.

Agudah Text: Declaration of Values

[Legal Question: Who's the Proxy?]

In determining the requirements of Jewish law and custom in connection with this declaration, **I direct my agent to consult with the following Orthodox Rabbi and I ask my agent to follow his guidance**

[Florida Medical Halacha Directive] **Request to Medical Providers:** I have made the decisions set forth in this document, particularly those stating that I want my health care decisions to be made by my health care agent (should I not be capable of making my own decisions) in accordance with Orthodox Jewish law in consultation with an Orthodox rabbi, after a great deal of thought and in view of my very deeply-held religious beliefs. **I am aware that there may come a time when I am asked to reconsider these decisions, possibly when I am in a hospital or other institutional setting with serious health issues and my ability to think clearly and articulate my views has been compromised by illness, medication, or physical or emotional pain.** If I am no longer capable of making my own decisions then of course I want my health care agent to make health care decisions for me. But if I am still capable of making my own decisions, while I wish to maintain autonomy to do so, **I do not want to be subjected to pressure by any health care provider to change the position I have taken in signing this document. I therefore implore all medical providers to please (a) not try to persuade me to vary from the position I have articulated in this document and (b) if you are going to have a discussion with me about my health care decisions, that you only do so with my health care agent (or alternate agent) and if possible my rabbi as well, participating in the discussion, ideally in person or by phone if necessary, and with this document in front of you and read to me as part of that conversation.**

Ontario Chayim Aruchim Model

Jewish Law to Govern Health Care and Post Mortum Decisions:

I am Jewish. Jewish law and custom inform and indeed govern every decision I make and as such, must be applied to any decision for my health care. I regard my right to live in accordance with my religious values and beliefs as a precious **right guaranteed to me by Canadian law under the Charter of Rights and Freedoms**. It is therefore my desire that all health care decisions be made for me in accordance with Jewish religious law and custom as determined in accordance with **strict Orthodox Jewish interpretation** and tradition should any uncertainty arise as to my wishes. I **fully subscribe to the values and beliefs of Judaism that every moment of life is of infinite value**. I therefore direct that, unless determined by my Rabbinic Advisor that such actions would be contrary to Jewish Law, **my life be prolonged for as long as possible by any means medically available**.

Medical Orders for Life Sustaining Treatment: I wish to always **receive all possible life-sustaining health care to sustain my life for as long as possible**. For further clarity, I direct that this wish of mine be carried out to treat all medical conditions **unless my Rabbinic Advisor rules that it is contraindicated under Jewish Law**, notwithstanding: (1) the seriousness of my future medical conditions, (2) my life expectancy, (3) the nature of any disease or diseases from which I may be suffering, (4) the disability and discomfort that from which I may be expected to suffer as a result of (a) my present or my future medical conditions and (b) any life sustaining health care for present or future medical problems, (5) the limitations on my present and future quality of life, resulting from such life-sustaining health care or the treatment of any medical conditions from which I suffer or from which I may suffer in the future, (6) any expense or inconvenience that may be caused or incurred as a result of such health care being provided to me.



Helping people share their wishes for care through the end of life.

Free Guides

[Conversation Starter Guide »](#)

[Guide to Choosing a Health Care Proxy »](#)

What's New



Get Involved

Join us on [February 26th](#) 12:00 -1:00 pm ET for our annual National Healthcare Decisions Day (NHDD) community planning call with special guests Lin Sue Flood from Hospice of the Valley and Stefanie Elkins from Be Present Care/Death Over Drafts. Learn what they and others are planning, how to adapt our/others' resources to fit your community and more. [Register here.](#)



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ADVANCE HEALTHCARE DIRECTIVE
& CONVERSATION GUIDE



RABBINICAL COUNCIL
OF AMERICA VERSION

NAVIGATE AGING AND END-OF-LIFE WITH JEWISH WISDOM & HALACHA

Ematai's Advance Healthcare Directive

I DECLARE

My proxy has full authority to make decisions for me about my health care, including end-of-life care, if I am not able to make or communicate healthcare decisions for myself. This includes my desire, which I hereby direct my proxy, that all decision-making about my healthcare should be done in accordance with Jewish law and custom.

RABBINIC CONSULTANT

As to the requirements of Jewish law and custom, I advise my proxy to consult with the following rabbi or religious institution.

Name: _____

Cellphone Number: _____

Other Number: _____

Email Address: _____



Conversation Guide: Instructions



What is the purpose of the conversation guide?

The job of your proxy is to make decisions on your behalf in accordance with your wishes and beliefs. For them to fulfill that role to the best of their ability, they need to know your values and preferences regarding your healthcare. The conversation guide will help you speak with them about these critical matters. **This is not a formal legal directive and does not need to be signed or witnessed.** This guide is designed to help you articulate your preferences and values within the framework of Jewish law. It is also an invitation to discuss these matters with your rabbi who can provide you with halachic insight and help you and your proxy navigate complex scenarios. These conversations are not just about crisis planning but about building an ongoing relationship of trust and understanding between you, your proxy(s), your family and your rabbi. The ultimate goal is to generate healthy communication and ongoing conversations about these sensitive topics in an open and loving manner. This guide was created by Ematai with the advice of many rabbis, healthcare professionals and social workers and endorsed for use by Rabbi Hershel Schachter shlit"a and Rabbi Mordechai Willig shlit"a.

Ematai's Conversation Guide

PAIN AND RISK TOLERANCE

I value undergoing potentially painful treatments if they have the potential of prolonging my life—even if they will not cure my underlying illness and may lead to significant discomfort:

I value undergoing potentially painful treatments to try prolonging my life toward the goal of participating in a specific occasion (like a family wedding, bar/bat mitzvah, or birth), even if they will not cure my underlying illness and may lead to significant discomfort:

It is my medical team's responsibility to try to balance pain relief with maintaining my alertness. When it is difficult to maintain both, I would prefer for them to prioritize: (mark one)

Strongly Disagree	Disagree	Mixed Feelings	Agree	Strongly Agree
☐	☐	☐	☐	☐
☐	☐	☐	☐	☐

Pain relief ☐
(even if it means I am not as alert or awake);

Alertness ☐
(even if it means I may suffer pain and/or other symptoms):

Ematai's Conversation Guide



Conversation Guide

Further Thoughts

If you would like to share any further thoughts, please do so here. You may elaborate on your healthcare preferences, emphasize particular guidelines that are important to you, or express any concerns you may have about aging or end-of-life care, including invasive procedures, pain management, organ donation, and decision-making.

You may also use this space to express your preferences about where, and with whom, you would want to be at the end of your life, or to describe in your own words what would be a "good death" or a "bad death" for you. You may find it helpful to invoke memories of the dying process or death of loved ones and discuss what you found meaningful or disturbing about the experience (e.g., "I hated how Uncle David suffered from so many painful procedures," or "I admired my friend Sarah for fighting until the end," or "It meant a lot that my mother died in her own home surrounded by her family.") You may want to try finishing this sentence: "What matters to me at the end of life is ____."