

Jewish Guidance on the Loss of a Baby or Fetus

By: JASON WEINER

Facing the loss of a potential human life—whether it is the death of a newborn infant, a stillbirth, a necessary abortion, or a miscarriage—is very challenging and can be a source of tremendous grief. Mourning is normally guided by Jewish law, which provides a theological perspective on the loss through detailed rituals serving as an anchor and whose structure aids in gradually comforting and healing the mourners. However, when it comes to the death of an unborn fetus or infant who lives less than thirty days after birth, Jewish law requires no such observance.¹ As a result, the

¹ A fetus that dies in the womb or is born dead (stillbirth) is called a “*nefel*,” and no laws of mourning apply. If the baby is born alive, the rules are more complex. Generally, a baby who lives for less than thirty days is in a category of uncertainty and is categorized as a “*safek nefel*” (even if the baby died from an external cause, such as an accident [*Gesher Ha-Chaim* 19:3(4)]). Since Jewish law is lenient when it comes to mourning, one is not obligated to observe the laws of mourning for the death of a baby who dies within thirty days of birth (*Semachot* 3:1; *Shabbat* 136a; Rambam, *Hilkebot Avel* 1:6; *Shulchan Arukh*, YD 374:8, all based on *Torat Kohanim*, *Emor* 1:6). For discussion, see R. Avraham Stav, *Ke-Chalom Ya’uf*, 23–4; for explanation of the word “*nefel*,” see *ibid.*, 33; Steinberg, *Encyclopedia Hilkebatit Refu’it*, vol. 3, 901.

The thirty days conclude at the beginning of the evening of the thirty-first day from the birth. (This is the ruling of *Gesher Ha-Chaim* 19:3(4) and *Yabia Omer* 8:YD 33; see various opinions in *Ke-Chalom Ya’uf*, 94.) However, if it is certain that the baby was born after nine full months of gestation (certainty would require the parents to not have had relations since conceiving nine months prior to the birth), then if the baby is born alive, even if he or she dies that day, the baby is not a “*safek nefel*,” but rather a “*ben kayama*”—a “viable” baby, the term normally given to a baby that survives more than thirty days. In this case, one observes all mourning laws and customs (*Shabbat* 136a; *Niddah* 44b; Rambam, *Hilkebot Avel* 1:7; *Shulchan Arukh* YD 374:8), but not the traditional funeral practices. However, in practice, many are not accustomed to observe the mourning

Jason Weiner is the senior rabbi and director of the spiritual care department at Cedars-Sinai in Los Angeles and the rabbi of Knesset Israel synagogue of Beverlywood. He is author of *Jewish Guide to Practical Medical Decision-Making* (Urim).

tremendous sense of pain and loss that such a death may entail can be compounded by feelings of disconnection, loneliness, and lack of guidance.²

Every person mourns differently, and it is possible that each parent may mourn very differently from the other and have unique needs in response to the death. This article will therefore seek to provide a detailed overview of the various options, and a checklist to serve as a source of guidance and structure for Jewish parents facing this loss. It also offers several strategies for easing the suffering and confusion such a death entails.

Why Some Do Not Advise Observing Traditional Mourning Customs

Jewish mourning customs are not necessarily intended to tell us when it is appropriate to be sad in the aftermath of a death. There are times when one must mourn for a close relative even if they are not pained by the death, whereas there are no laws of mourning for a close friend despite the terrible sadness such a loss may entail.³ The Jewish laws of mourning are not a reflection of the sadness caused to the mourner, but of the loss to the world.⁴

customs in this situation unless the baby survives at least a few days after birth (*Ke-Chalom Ya'uf*, 95).

If the baby lived for thirty days in an incubator, see the summary of opinions in *Encyclopedia Hilkbatit Refu'it*, vol. 3, 903–5, 921; *Nishmat Avraham*, YD 374(2); *Yabia Omer* 9:YD 37; and *Ke-Chalom Ya'uf*, 98. See also discussion in *Torat Ha-Yoledet*, 573 (2nd ed.). More recently, R. Moshe Feinstein has been quoted as ruling that if a baby survived longer than a month, but only because of medical interventions such as an incubator, and it is clear that without such interventions the baby would not have survived naturally on its own, the baby is classified as a *nefel* (*Masorat Moshe*, vol. 2, 191). This was also the ruling of R. Wosner (*Shevet HaLevi* 3:143) and R. N. Rabinovitch (*Siach Nachum* 81), but not R. Elyashiv (*Torat Ha-Yoledet*, 57, n. 8, and *Shiurei Torah Le-Rofim*, vol. 2, 630). R. Feinstein is also quoted as ruling that a *pidyon ha-ben* should not be performed for a baby in an incubator (R. Aaron Felder, *Rishumei Aharon*, vol. 1, 69). However, R. Sternbuch disagrees (*Teshuvot Ve-Hanhagot* 3:330).

² *Ke-Chalom Ya'uf*, 21; R. Yamin Levy, *Confronting the Loss of a Baby* (Ktav Publishing, 1998), xvii, 49, 55. Levy argues that not having specific Jewish laws of mourning in these circumstances makes some parents feel abandoned, as though their loss is not significant in the eyes of Judaism.

³ *Ke-Chalom Ya'uf*, 21.

⁴ *Ibid.*, 22.

The death of a fetus or newborn is a death of a potential life that never became a “viable” person. From a technical perspective, the world never merited to have this child dwell within it, and the child was thus not “lost” to the world. This may explain why it is customary to observe the Jewish mourning rituals only for a baby who was viable (*bar kayama*), even though the Talmud recognizes the tremendous suffering that the loss of a “non-viable” fetus entails.⁵

Indeed, from a spiritual perspective, the pure soul of a fetus or newborn never completely entered the human realm, and thus never severed its total attachment to God.⁶ The soul of the baby thus remained pure and holy; it merits going directly to the World to Come, and to eventually return to life with the resurrection of the dead.⁷ There is thus no need to engage in rituals to “elevate” the soul. From this perspective, equating the baby with an adult life only serves to diminish the exalted nature of its unblemished soul.

This is not intended to minimize the terrible pain that the parents often experience. We live in the human realm; despite these spiritual realities, we see things from our perspective and often cannot help but be devastated by such a tragic loss. Parents may thus grieve and mourn, but are not required to observe the traditional Jewish mourning customs and

⁵ The *mishnah* (*Niddah* 5:3) states, “A one-day-old child who dies...is to his parents and family like a full-grown bridegroom.” Furthermore, Abba Shaul rules (*Kiddushin* 80b) that certain rules related to *yichud* are waived while one is in mourning, even for a *nefel* for whom one is not obligated to mourn, since one’s evil inclination is broken while mourning. See *Ke-Chalom Ya’uf*, 22. Furthermore, King David’s servants were surprised that he did not mourn when his baby died, as some form of weeping and mourning is appropriate even for a week-old baby (Radak, II Samuel 12:20, 22). Indeed, there is disagreement over whether King David mourned for his baby son who died. Ralbag (II Samuel 13:37) maintains that he did indeed mourn for the baby, which he argues is natural and expected. Abarbanel (II Samuel 13:37), however, demonstrates from the verses that King David did not mourn at all since the baby was always sick, and King David knew it was going to die young.

⁶ *Ke-Chalom Ya’uf*, 23, 110–2. There have been great rabbis who requested specifically to be buried amongst the fetuses in the cemetery because of their exalted purity and holiness.

⁷ *Iggerot Moshe*, YD 3:138; see also *Ke-Chalom Ya’uf*, 108–10, 141–2; R. Zilberstein, *Torat Ha-Yoledet*, 36, 226.

rituals.⁸ Indeed, included in the Jewish laws of mourning is the requirement not to mourn excessively by observing more mourning rituals than are required.⁹

It may be that our great rabbis did not require mourning observances in such situations because they wanted to help parents suffering from such a loss to return to their normal course of life as quickly as possible so that they might be able to start over and possibly even attempt to have another child (although the time frame is dependent upon a given couple's emotional well-being at the time).¹⁰ Indeed, part of the reason that some Rabbinic authorities oppose engaging in Jewish mourning rituals for a fetus or baby under thirty days old is a result of their perspective that it is emotionally ideal to simply forget about such a loss as quickly as possible.¹¹ Whatever the reason, it has not been customary to observe Jewish mourning rituals in these circumstances, and some oppose doing so as an attempt to safeguard age-old customs.¹²

Why Some Recommend Ritualized Expression of Grief

On the other hand, Jewish law permits one to voluntarily observe the various mourning customs for people for whom they are not obligated to ritually mourn, as long as they don't violate any prohibitions in so doing (for example, not learning Torah).¹³ People often want to express their pain in the traditional Jewish manner and to be guided fully by the laws of mourning.

⁸ *Ke-Chalom Ya'uf*, 23.

⁹ *Shulchan Arukh*, YD 394:1, based on *Mo'ed Katan* 27b. This may also apply to mourning too much for a fetus or infant (*Ke-Chalom Ya'uf*, 26). The obligation not to mourn excessively in these circumstances is related to the idea that one who experiences such a loss is called upon to maintain a sense of faith and trust in God and accept God's will that this baby not live for whatever reason. Engaging in mourning rituals despite this may demonstrate a lack of faith and trust in God (R. Elchonon Zohn, personal communication, Winter 2016).

¹⁰ R. Yosef Tzvi Rimon, in *Ke-Chalom Ya'uf*, 23, n. 8; R. Goldman, *Me-Olam Ve-Ad Olam*, 96–7, suggests that for these reasons (favoring life over death, not mourning excessively, and emphasizing continuation and the return to normal life), it has become customary for the mortuary (*Chevrah Kadisha*) to carry out the burial without the presence of the family.

¹¹ *Ke-Chalom Ya'uf*, 39, fn. 75.

¹² *Ibid.*

¹³ Rema, YD 374:6. See *Ke-Chalom Ya'uf*, 25; *Encyclopedia Hilkhatit Refu'it*, vol. 3, 923, fn. 447.

Miscarriages and early infant death are no longer as common as they were in the distant past, and some have suggested that the sages did not apply the laws of mourning in these cases because they *were* quite common in their time.¹⁴ Since these events are not as common in our day and many people do not have as many children as was once customary, the grief associated with such death is intensified. There is therefore a greater need to deal with that grief through a recognized Jewish set of rituals and through concrete acts that help people fully express and come to terms with their sorrow, should they so desire.¹⁵ Indeed, the argument continues, avoiding talking about the loss intensifies the sense of loneliness and fear of forgetting the life (or potential life) lost. Parents thus need to do something to remember and affirm that life so they can more appropriately grieve and adjust to life without the baby.¹⁶

Some maintain that it is crucial to allow structured time for grief. It can be therapeutic to take time to feel the pain of the loss, share it, and discuss the hopes and dreams the parents had for their child, whereas denial of these feelings can be more destructive in the long run than recognizing them at the appropriate time.¹⁷ The Jewish mourning customs and rituals in such circumstances may thus play an important role, allowing the emotional and psychological needs of the mourner to be addressed

¹⁴ *Encyclopedia Hilkehatit Refu'it*, vol. 3, 923, fn. 447; Levy, *Confronting the Loss of a Baby*, xviii. Levy also suggests that since families often lived together in one home or in close proximity, they did not need a formal mourning gathering to comfort the parents. In contrast, when a baby dies in our day, the parents may have no community of their own and are left to mourn alone. *Ke-Chalom Ya'uf*, 22, fn. 5, cites studies that show that cultures with high infant mortality tend not to have specific mourning rituals for such losses.

¹⁵ *Encyclopedia Hilkehatit Refu'it*, vol. 3, 923, fn. 447; Levy, *Confronting the Loss of a Baby*, xix. Others might argue that the very fact that infant death was so common in the days of our sages but they still chose not to institute the mourning observances shows that they did not feel that it was necessary in this situation. However, the Ramban claims that the reason our sages did not institute the practices of mourning for a baby under thirty days or a fetus is because one does not feel as anguished over such a loss (*Torat Ha-Adam, Sha'ar Ha-Avel, Inyan Ha-Aveilut*, 210–1 in Mosad HaRav Kook, Chavel Edition of *Kitvei Ha-Ramban*, vol. 2, based on *Bava Batra* 111b; see also *Badei Ha-Shulchan*, YD 374:8[70]). Now that such losses are much more infrequent, this might not be true for many parents.

¹⁶ Levy, *Confronting the Loss of a Baby*, 34.

¹⁷ *Ibid.*, 37. Levy writes, “Based on my personal experience and the experience of others, there is no question in my mind but that some sort of religious response is necessary in order to allow the grief process to progress, so that bereaved parents can get on with their lives” (72).

with profound understanding, sensitivity, and compassion. This approach is not suggesting that Jewish law be changed to accommodate grieving parents' needs, but simply that they may utilize certain approaches that are already found within the framework of Halakhah.¹⁸

A Middle Approach

Some of those who permit engaging in Jewish mourning rituals in these circumstances distinguish between a fetus that was not born alive (i.e., a miscarriage or stillbirth) and a baby who was born alive but died within thirty days of birth. Although there is no obligation to engage in mourning customs in either case, these authorities discourage parents from engaging in these practices if the fetus was not born alive, but they permit¹⁹ or even encourage²⁰ doing so if the baby was born alive.

Furthermore, some rule that even those who choose to voluntarily take upon themselves the Jewish mourning observances should only observe some of the customs; it is improper to observe all of them.²¹ I will therefore detail many of the traditional mourning practices, listing what is customary in such circumstances and what may be done if one chooses. I will also present some suggested ways to maintain the spirit of the traditions without engaging in all of the requirements of full mourning observance.

¹⁸ Ibid., 52.

¹⁹ R. Asher Weiss (personal correspondence, Summer 2015) told this author that it is not customary to have a funeral or observe the laws of mourning for a fetus, and it is not even recommended to know where the fetus is buried, since the *mishnah* says that a fetus is not even a *nefesh* (*Ohalot* 7:6 and Rashi, *Sanhedrin* 72b, s.v. *yatz'a rosbo*). However, R. Weiss suggests that a baby that has been born is challenging to categorize as easily, and may be mourned if one so chooses. Indeed, some rule that certain mourning customs (pouring out water) may apply to a baby that has actually been born, but not to one that dies while still in the womb (see *Nishmat Avraham*, YD 339:5(11), 522 in 3rd ed.). Similarly, a woman whose fetus died has a different *Yibum* status than one whose baby is born alive, even if it dies immediately (*Shulchan Arukh* EH 156:4).

²⁰ R. Rimon, *Ke-Chalom Ya'uf* 39, fn. 75. R. Rimon (personal conversation, Summer 2015) told this author that it is not ideal to observe the laws of mourning for a fetus that was never born, since elevating it to the status of an actual child who died may make the loss more painful for the family. However, a baby who was born alive is emotionally different for the family. If the parents developed a connection to the baby, a funeral or *shivah* may be recommended to help them cope. (This may apply to saying *Kaddish*, even for an entire year, since this ritual may have a positive influence on the one saying *Kaddish*.)

²¹ *Pitchei Teshuvah*, YD 374:6, quoted in *Penei Baruch* 9:10, n. 21.

In the Hospital

Upon the death of a fetus or a baby in the hospital, parents are often given a choice. They can permit the mortuary to handle everything—from taking the baby to burying him or her—allowing the parents to go home and try to heal. Alternately, the parents can be involved in the various steps in the process, beginning with seeing the baby and holding and talking to him or her, particularly in the case of a stillbirth or a baby who lived a short time after birth. While the first option is more traditional, many advise that the second option is not only permissible, but also preferable.²² While it may be more difficult in the moment, in the long run, confronting the loss directly facilitates gradual healing, while trying to shut out the loss tends to keep people bound to it.²³ Research has shown that holding the baby after death not only does not make the grief more painful, but actually helps bereaved parents face their loss and relieves later uncertainties about how the baby looked and felt.²⁴ Of course, we should respect parents who are not comfortable with this option for religious or emotional reasons; they should not be pressured into holding the baby.

Many hospitals will also give the parents the option of taking pictures of the baby. Some Rabbinic thinkers discourage²⁵ or even prohibit this,²⁶ while others encourage it.²⁷ Hospital nursing staff often take these pictures because they find that parents frequently request and cherish them later on. Parents should do what is best for them, ideally after seeking the advice of someone who knows them and understands human psychology and Jewish law.²⁸

²² Yonit Rothchild in *To Mourn a Child: Jewish Responses to Neonatal and Childhood Death*, Jeffrey Saks, Joel B. Wolowelsky, eds. (OU Press, 2013), 42; *Ke-Chalom Ya'uf*, 47, notes that it is customary not to kiss the corpse, but it is not prohibited.

²³ Saks and Wolowelsky, eds., *To Mourn a Child*, 43–44.

²⁴ Levy, *Confronting the Loss of a Baby*, 73–74.

²⁵ *Ke-Chalom Ya'uf*, 47, n. 119, quotes R. Yuval Cherlow and R. Avraham Stav as suggesting that this is improper from an emotional/psychological perspective and may constitute an excessive focus on death.

²⁶ *Kol Bo al Aveilut* 1:3(10); *Nitei Gavriel* 42:8; *Ke-Chalom Ya'uf*, 46.

²⁷ Levy, *Confronting the Loss of a Baby*, 59, 73. *Ke-Chalom Ya'uf*, 46, notes that despite the suggestion by some that this is prohibited because it is improper to look at the deceased, it is not technically prohibited.

²⁸ *Ke-Chalom Ya'uf*, 47, n. 119.

Close to the time of losing a baby or fetus,²⁹ or upon finding out that the fetus has died,³⁰ it is appropriate to recite the blessing of “*Dayan Ha-Emet*” (“Blessed are You, Lord our God, King of the universe, the True Judge”), which is said whenever one hears tragic news.³¹ However, some are accustomed not to say this blessing in these circumstances³² (and if one is not experiencing suffering and grief they should not say it³³). One who is unsure can say the blessing without using God’s name.³⁴

One is not obligated to tear their garment (*keria*) for a fetus or a baby for whom one is not obligated to mourn, and it is not customary to do so.³⁵ However, parents may do so if they so desire.³⁶ Parents should seek guidance from their rabbi as to the appropriate time to tear the garment (e.g., in the hospital immediately after the death or at the burial, etc.), since there are different customs and this is a unique case given the differences in the extent of the parents’ involvement in the burial (see below).

²⁹ Ideally, one should make the blessing as close as possible to the time the news is revealed and at least on the same day, but if one did not make the blessing that day, it may also be said at the time of the burial. After that point, it should ideally be said without God’s Name (*Ke-Chalom Ya’uf*, 28).

³⁰ Many suggest that the time to make the blessing upon a miscarriage is when one hears the bad news, but others argue that it should be said at the time of the delivery since that is the most sorrowful moment (*Ke-Chalom Ya’uf*, 28, n. 25).

³¹ R. Felder, *Mourning and Remembrance: “Yesodei Semachot”* 2 (in the name of R. Moshe Feinstein). However, it is possible that R. Feinstein only referred to saying this blessing for a baby that was born and died, but not necessarily for a fetus. Accordingly, it is possible that one should not recite the blessing for an early stage miscarriage (*Ke-Chalom Ya’uf*, 27, n. 22. See there for other authorities who rule that one should recite this blessing when losing a baby or fetus that one does not mourn for).

³² R. Tucuzinsky, *Gesher Ha-Chaim* 4:21. See *Ke-Chalom Ya’uf*, 27, n. 22, who writes that the debate may be related to the root of this blessing. If it is connected to the practice of tearing a garment (*keriah*), then according to those who maintain that one should not tear a garment over a death for which he is not obligated to mourn, one should similarly not recite this blessing in such circumstances.

³³ *Ke-Chalom Ya’uf*, 28, based on *Mishnah Berurah* 222:3.

³⁴ *Zichron Meir* 6:1(2); *Ke-Chalom Ya’uf*, 27. Similarly, other relatives of the parents should only say the blessing without God’s name (*Ke-Chalom Ya’uf*, 28).

³⁵ *Shulchan Arukh*, YD 340:30.

³⁶ *Ke-Chalom Ya’uf*, 29, fn. 28, based on the Rambam in his commentary on *Mo’ed Katan* 3:7: “Anyone who wants to tear his clothing or remove his shoes should not be prevented from doing so.” R. Levy (*Confronting the Loss of a Baby*, 110) further argues that this is not considered wasting a garment (*bal tashchit*), since it serves the purpose of relieving anguish and frustration to some degree.

The body of the baby must be treated with respect and should not be unnecessarily studied or operated on.³⁷ An autopsy is only permitted if the information gained is likely to prevent the mother from experiencing future miscarriages or infant deaths.³⁸ One should inquire if the autopsy is indeed absolutely necessary or if the necessary information can be determined by a less invasive biopsy or simply by taking blood or imaging. If an autopsy is deemed necessary, the entire body must be buried afterwards.³⁹

Preparing for the Burial: Circumcision and Naming

It is customary to circumcise a baby boy who dies within thirty days of birth⁴⁰ and a fetus who dies before birth⁴¹ before burying him.⁴² It is also customary to name a baby boy at the time of the circumcision,⁴³ and to

³⁷ *Nishmat Avraham*, YD 349:2(4:6) (577 in 3rd ed.).

³⁸ *Minchat Shlomo* 3:103(6). See also *Ke-Chalom Ya'uf*, 48; *Encyclopedia Hilkhatit Refu'it*, vol. 3, 919. *Nishmat Avraham*, YD 349:2(4:6) (577 in 3rd ed.), writes in the name of R. Neuwirth that there is much less of a prohibition to perform an autopsy on a fetus whose limbs have still not developed. See also *Torat Ha-Yoledet* 38:11, end of n. 12 (2nd ed.).

³⁹ *Ke-Chalom Ya'uf*, 48. Making use of the placenta or umbilical cord blood is permissible.

⁴⁰ *Shulchan Arukh*, YD 263:5. See discussion in *Ke-Chalom Ya'uf*, 39, and R. Immanuel Jakobovits, *Jewish Medical Ethics*, 199–200.

⁴¹ *Minchat Shlomo* 2:96(2).

⁴² The *Shulchan Arukh*, YD 263:5, writes that the circumcision should take place immediately before the burial, although many perform it before that point, such as at the time of the ritual bathing (*tabarab*); see *Gesher Ha-Chaim* 1:16:3(2). It is generally done by the mortuary as part of their preparations of the body for burial (*Ke-Chalom Ya'uf*, 41). See *Ke-Chalom Ya'uf*, 40–2, for a detailed description of the reasons for circumcision in this situation and the differences between circumcising these babies and circumcising living babies (for example, no blessing is made on these circumcisions). To underscore the seriousness of this requirement to circumcise a deceased baby, R. J.B. Soloveitchik notes that some authorities require opening the grave in order to perform the circumcision if it was not done before burial. R. Soloveitchik notes, however, that if a baby boy was not circumcised, he may still be buried in a Jewish cemetery (Ziegler, *Halakhic Positions of Rabbi Joseph B. Soloveitchik* [Aaronson Inc., 1998], 151). See R. Akiva Eiger, YD 263, 353. However, if a fetus was buried uncircumcised with his mother, their grave should not be opened to circumcise him (*Pitchei Teshuvah*, YD 263:11).

⁴³ *Shulchan Arukh*, YD 263:5; *Kol Bo Avelut* 3:3(6); *Gesher Ha-Chaim* 1:16:3(2); *Ke-Chalom Ya'uf*, 42, n. 93, points out that at one time in many communities, the custom was to name babies only if they were born alive, but that is not the

name a girl at the burial⁴⁴ (although this can be done later if it was not done at that time, and a *minyan* is not necessary for this⁴⁵). It is customary to give the baby or fetus a name that is somewhat uncommon,⁴⁶ but some advise choosing a more usual name.⁴⁷ Parents should therefore seek Rabbinic guidance and choose a name that they prefer.⁴⁸

From the time of death until the burial of a fetus or baby who died within thirty days, there is no *aninut* period in which the parents are exempt from any *mitzvot*.⁴⁹ However, if they are involved in planning the burial, there is room to be strict, and they may avoid eating meat or drinking wine during this time (but they are not exempt from performing any *mitzvot*).⁵⁰

prevailing custom today. The baby is given a name so he or she will merit resurrection in the Messianic era (*Shulchan Arukh*, YD 263:5), and so the parents will be able to recognize the child at that time (Rosh, *Mo'ed Katan* 3:88; see *Ke-Chalom Ya'uf*, 42). Based on these reasons, many advise that a name be given to a fetus at any stage of development, even if it is too early to discern the gender of the fetus, in which case it should be given a name that could fit both a boy and a girl (*Ke-Chalom Ya'uf*, 43, n. 99). In most locales, however, it is customary to name the fetus only from the time that it has the form of a person (from about the end of the third month of pregnancy), as mentioned below regarding burial (*Ke-Chalom Ya'uf*, 43). Some permit naming the fetus even earlier—any time after 40 days from conception (*Ke-Chalom Ya'uf*, 43, based on Chazon Ish below). However, others recommend not doing this so as not to increase the severity of the pain of the loss (*Ke-Chalom Ya'uf*, 43, in the name of R. Yosef Tzvi Rimon).

⁴⁴ *Sedei Chemed, Aveilut* 202.

⁴⁵ *Pitchei Teshuvah*, YD 263:1. *Ke-Chalom Ya'uf*, 44. This can be done simply by reciting *El Malei Rachamim* with the name inserted.

⁴⁶ *Minchat Shlomo* 2:96(2); *Nishmat Avraham*, YD 263:5(14) (365 in 3rd ed.). R. Auerbach gives the examples of Metushelach and Rachamim (in those communities in which this would not be a common name). See *Ke-Chalom Ya'uf*, 102 for other examples of commonly used names in these circumstances. R. Elchonon Zohn told this author that another commonly used name is Yonah, particularly if the gender is indistinguishable, because of a *midrash* stating that the prophet Yonah ben Amitai had been a child who died and was resurrected.

⁴⁷ *Ke-Chalom Ya'uf*, 44.

⁴⁸ *Ibid.*, 43–4. If the parents do not choose a name, the mortuary (Chevrah Kadisha) will often choose one.

⁴⁹ *Gesher Ha-Chaim* 1:18:3(2); see *Ke-Chalom Ya'uf*, 24; *Encyclopedia Hilkhatit Refu'it*, vol. 3, 921.

⁵⁰ *Ke-Chalom Ya'uf*, 25.

Burial

It is customary to bury babies who were born alive but died within thirty days of birth, even though there is no obligation to mourn for them,⁵¹ and the parents should ensure that this is done.⁵² Similarly, from the point that a fetus has the form of a person (from about the end of the third month of pregnancy), it should also be buried.⁵³ It is best to transfer the fetus to

⁵¹ *Shulchan Arukh*, OH 526:10, rules that there is no actual commandment to bury these fetuses and babies, whereas the *Magen Avraham* there (526:20) rules that there is indeed a commandment to do so. See *Encyclopedia Hilkehatit Refu'it*, vol. 3, 914; *Ke-Chalom Ya'uf*, 34, n. 50; *Gesher Ha-Chaim* 16:3(1); and *Kol Bo al Aveilut* 3:3(2) for a summary of the various opinions of contemporary authorities. Even if there is no commandment, there is an obligation to bury these fetuses and babies due to the following considerations: 1) a human body is compared to a Torah scroll that requires burial; 2) the prohibition against benefiting from the body in any way; 3) concerns for ritual impurity; 4) respect for the dead; 5) to enable the deceased to rise from the grave at the time of the resurrection of the dead. See *Ke-Chalom Ya'uf*, 34–35, for a summary of these reasons and their sources.

⁵² Relatives of the deceased are obligated to ensure proper burial and to prevent the hospital from delaying burial or treating the body inappropriately; see *Ke-Chalom Ya'uf*, 35 and *Torat Ha-Yoledet* 38:11, n. 12 (2nd ed.).

⁵³ The precise point from which the obligation to bury a fetus begins is a matter of some dispute. The majority view is that the main criterion is that the fetus is developed enough to have the form of a person (see *Nitei Gavriel*, *Niddah* 112:17; *Mei-Olam Ve-Ad Olam* 7:64; *Ke-Chalom Ya'uf*, 35, fn. 57). Some rule that the fetus must be buried only after five months of gestation (*Teshuvot Ve-Hanhagot* 2:602), while others rule that the fetus must be buried after three months of gestation (*Shevet HaLevi* 10:211[3]), and some even require burial after 40 days of gestation (*Chazon Ish*, *Orchot Rabbeinu*, vol. 4, 109; *Olot Yitzchak* 2:227). See also *Encyclopedia Hilkehatit Refu'it*, vol. 3, 916–7; *Nishmat Avraham*, YD 263:5(11) (362 in 3rd ed.). Within the first 40 days of pregnancy, there is certainly no obligation to bury (*Ke-Chalom Ya'uf*, 35). One may allow the hospital to dispose of the remains of such an early fetus in the usual fashion (Levy, *Confronting the Loss of a Baby*, 88–89), but it is ideal to treat it with respect and even to bury it if possible (*Encyclopedia Hilkehatit Refu'it*, vol. 3, 917). R. Moshe Feinstein is quoted as ruling that it is not certain that a fetus must be buried even up to four months of gestation (although if possible it is best to bury any fetus once it has some flesh and skin). If there is some obligation, it is only in order to prevent a Kohen from coming into contact with it. Thus, if one is unable to have the fetus released from the hospital, R. Feinstein argues that there is no need to put up a fight in order to have it released (*Masorat Moshe*, vol. 1, 376).

the local Jewish mortuary (Chevrah Kadisha), which will handle it in accordance with local customs.⁵⁴

It is customary to bury fetuses and babies who died within thirty days in a special section of the Jewish cemetery.⁵⁵ There is traditionally no individual monument or tombstone placed on the grave in these situations, but if the family would like to place such a marker, they may do so if the mortuary and cemetery allow it.⁵⁶

Funeral

There is no requirement to have full funeral proceedings for a fetus or baby younger than thirty days, and it is not customary to do so.⁵⁷ Instead, it is customary for the Jewish mortuary (Chevrah Kadisha) to privately bury the body themselves.⁵⁸ However, if the parents want to be present for the burial, they may be.⁵⁹ It is not customary to say a eulogy in these

⁵⁴ *Ke-Chalom Ya'uf*, 36. The requirement to have a person dedicated to watching the body and reciting prayers (*shemirah*) does not apply to a fetus or baby that dies within thirty days (*Nitei Gavriel* 135:2–3, based on *Taz*, YD 371:11 and *Shakeh* 371:17 in the name of the Bach, who rules that the laws related to honoring the dead do not apply in such a case). However, it should be kept in a protected area (*Gesher Ha-Chaim* 1:12:6(8); see *Ke-Chalom Ya'uf*, 38). There are different customs regarding ritual washing (*tabarah*) in such cases. *Gesher Ha-Chaim* 1:12:6(2) says it should be done, whereas *Yesodei Semachot*, 29, and *Zichron Meir* 14:2(1) say not to do it. Therefore, it is customary to simply clean the body without observing all of the traditional rituals of the washing (*Ke-Chalom Ya'uf*, 38, fn. 70). It is not customary to dress a fetus or baby who dies within thirty days in ritual shrouds (*takbrikhim*), but rather to wrap the body in a white sheet (*Ke-Chalom Ya'uf*, 38; *Gesher Ha-Chaim* 1:12:6[2]).

⁵⁵ *Ke-Chalom Ya'uf*, 36. If the burial does not take place in a cemetery, the burial place should be properly marked so that Kohanim can avoid it (*Gesher Ha-Chaim* 1:28:1[3]).

⁵⁶ *Gesher Ha-Chaim* 1:12:6(13).

⁵⁷ *Shulchan Arukh*, YD 353:4. See also the discussion in R. Zilberstein, *Shiurei Torah Le-Rofim*, vol. 2, 634–7.

⁵⁸ *Ke-Chalom Ya'uf*, 38.

⁵⁹ *Ibid.*, 38–9; *Badei Ha-Shulchan* 353:4(7). The extent of the parents' involvement in the burial/funeral is dependent on their ability to handle it (*Ke-Chalom Ya'uf*, 34).

situations,⁶⁰ but one may say some farewell remarks, as is often done when someone is buried on a day on which formal eulogies are forbidden.⁶¹

Although many parents follow the custom of allowing the mortuary to handle the burial while they themselves are not present, for those who want to accompany the body to the cemetery, some have suggested the following understated and less ceremonial “funeral” proceedings:⁶²

- Hold a graveside service directly before the interment, rather than in a full funeral setting in the chapel.
- Say a few words of consolation and farewell.
- Choose readings from the Psalms and chapters from the Prophets that express your feelings.⁶³ It is customary not to recite the *Tzidduk Ha-Din* prayer at the burial of a baby or fetus.⁶⁴ If one wants to say *Kaddish* at the cemetery, there must be a *minyán* present and the burial *Kaddish* should be recited.
- Select close friends and relatives to join the parents to demonstrate respect for the deceased child and comfort the family. It is not customary to conclude such a funeral with the mourners passing through rows of friends (*shurot*), as is done at the funeral of an adult.⁶⁵

⁶⁰ *Shulchan Arukh*, YD 344:4, 8. *Arukh Ha-Shulchan*, YD 344:8 writes that it is forbidden to eulogize a fetus or baby who dies before thirty days.

⁶¹ *Ke-Chalom Ya’uf*, 30–1, which quotes R. Yosef Tzvi Rimon as suggesting that these remarks be focused on inspiring those listening to repentance, repair, and building, each according to their own way, as a sort of restoration for the one that was lost. It is difficult to eulogize one who lived so briefly, but often the silence and the painful image of the small corpse in the arms of its parent is the most profound eulogy.

⁶² R. Maurice Lamm, *The Jewish Way in Death and Mourning* (Jonathan David Publishers, 2000), 221–2.

⁶³ A sample service might include reciting the *El Malei Rachamim* prayer, Psalms 121, 116, 61, 98, 100, and possibly 23, as well as saying the *Birkat Ha-Banim* prayer.

⁶⁴ *Shulchan Arukh*, YD 376:4. Some have suggested reciting *Tzidduk Ha-Din* privately after the funeral, not as a public prayer (Levy, *Confronting the Loss of a Baby*, 90; see there for a contemporary English rendering of *Tzidduk Ha-Din* that may be recited). See *Zichron Meir* 17:6:1(4) for a special *Tzidduk Ha-Din* prayer that has been composed for children who die within thirty days (quoted in full in *Ke-Chalom Ya’uf*, 29, fn. 30). See also Nina Beth Cardin, *Tears of Sorrow, Seeds of Hope: A Jewish Spiritual Companion for Infertility and Pregnancy Loss* (Jewish Lights Publishing, 1999), 136.

⁶⁵ *Shulchan Arukh*, YD 353:4.

Shivah

After the funeral, if the parents want to be alone, there is no requirement to provide a first meal (*seudat havra'ah*),⁶⁶ and their request to remain alone should be honored. However, people should ensure, in an appropriate manner, that the mourners' needs are cared for, whether they be personal, emotional, dietary, etc.⁶⁷ Although there is technically no requirement to “comfort the mourners,” since the Jewish customs of mourning are not obligatory for such mourners, it is important to remember that comforting mourners is part of the more general commandment to “love your neighbor as yourself,”⁶⁸ and it is thus still a mitzvah to support the family of the deceased in whatever way is best for them.⁶⁹

Furthermore, as mentioned above, should the parents so desire, they may choose to engage in what some call a “non-halakhic *shivah*.” Like one obligated to sit *shivah*, they may voluntarily stay at home, possibly sit on low chairs (although this obviously is not required, and as with all of this, one should keep in mind that the mother has just given birth, and all of the physical and emotional ramifications thereof), and accept close friends and family for visits to provide comfort, whether for just the first day, the first few days, or an entire week.⁷⁰ Additionally, the parents may accept upon themselves some of the customs of the *shivah* period, such as not shaving or cutting their hair, not wearing leather shoes, not washing their clothing, and not bathing.⁷¹ It is not customary to light a candle in the house of mourning for a fetus or baby that died within thirty days, but if the parents so desire, they may light a candle in the house, particularly if the baby was born alive but died later.⁷²

Kaddish, Year of Mourning, and Yahrtzeit

There is no obligation to say *Kaddish* after the passing of a fetus or baby younger than thirty days, and it is not customary to do so.⁷³ However, if

⁶⁶ *Gesher Ha-Chaim* 20:2(8).

⁶⁷ Levy, *Confronting the Loss of a Baby*, 96–97.

⁶⁸ Rambam, *Hilkhot Avel* 14:1; *Gesher Ha-Chaim* 1:20(5).

⁶⁹ Ke-Chalom Ya'uf, 26.

⁷⁰ For a description of one parent's experience sitting a “non-halakhic *shivah*” and the therapeutic benefits it afforded, see *To Mourn a Child*, 43.

⁷¹ *Ke-Chalom Ya'uf*, 26.

⁷² *Ibid.*, 31, 122.

⁷³ *Shulchan Arukh*, YD 344:4.

a parent so desires, it is not prohibited,⁷⁴ and some argue that it is in fact appropriate to do so.⁷⁵ In circumstances in which one is obligated to mourn, it is customary not to say *Kaddish* for more than thirty days for anyone other than parents, and thereafter to say it only on a *yahrtzeit* (day of death) and at *Yizkor* services four times a year, although one may say it more often if they prefer.⁷⁶

During a period of obligatory mourning, one is forbidden to participate in joyous gatherings. One who is not obligated to mourn is obviously permitted to take part in such events and gatherings, but it may not be in the spirit of bereavement. Some have therefore suggested that voluntary mourners should adopt the practice not to participate in these events, at least to some extent.⁷⁷ It is certainly permitted, and indeed praiseworthy, to perform good deeds, say prayers, study Torah, and give charity to a worthy cause for the sake of the elevation of the soul of the deceased fetus or baby (even though such a pure soul needs no elevation).⁷⁸ It is not customary to assemble to recite prayers in memory of the deceased (*azkara*) or to recite *Yizkor*, but if parents want to, they may memorialize the baby or fetus by, for example, lighting a candle for the soul of the deceased⁷⁹ or having a memorial gathering with close friends and family.⁸⁰

⁷⁴ *Tzitz Eliezer* 7:49 (*Kuntres Even Yaakov* 6:7) states that “those who recite *Kaddish* for even the youngest baby are correctly observing the tradition,” and he provides kabbalistic reasons for the benefits of doing so. Although “even the youngest baby” could mean one older than thirty days, R. Levy argues that this may very well include babies less than thirty days old (*Confronting the Loss of a Baby*, 93; see detailed discussion there, 92–96). R. Moshe Feinstein is quoted as ruling (*Mesorat Moshe*, vol. 2, 190) that one does not even have to recite *Kaddish* for a four-year-old child who dies because a child has no sins and does not need his parents to accrue merits for him. However, if one wants to recite *Kaddish* for the child, he may do so for thirty days as an act of *Tzidduk Ha-Din* (acceptance of the Divine judgement).

⁷⁵ *Ke-Chalom Ya’uf*, 30; see the detailed discussion of the kabbalistic value of this practice (although they would not take priority in a synagogue over another mourner who has an obligation to lead prayers, etc.).

⁷⁶ Lamm, *The Jewish Way in Death and Mourning*, 222.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*; *Ke-Chalom Ya’uf*, 31, 119. Although the baby is pure and was never contaminated by this world, according to most opinions the baby does have a soul that can be elevated to higher levels of heaven.

⁷⁹ *Gesher Ha-Chaim* 1:12:6(14); *Ke-Chalom Ya’uf*, 32; Levy, *Confronting the Loss of a Baby*, 119.

⁸⁰ Levy, *ibid.*

However, they should keep in mind that they are not thereby taking a vow to observe every *yahrzeit* for the rest of their lives.⁸¹

Remembering

For some parents, it is most beneficial to simply try moving on with life after their loss and not let it depress them. However, many recommend finding ways to remember and affirm the life of their baby or fetus and help them acknowledge their grief, adjust to life without the baby, and mitigate their sense of loneliness and fears of forgetting the life that was.⁸² There are many ways to do this. For example, although it is not customary to light an extra Shabbat candle each week for a fetus or baby who dies within thirty days (although it would not be prohibited to do so), some have suggested taking on the custom of lighting two candles after the departure of Shabbat every week (after completing *Havdalah*) and intending those for the memory of the deceased fetus or baby.⁸³ Other suggestions include collecting mementos to help remember the baby, which may include writing a letter or poem to the baby or creating artwork.⁸⁴ The hospital will often offer a memory box with a picture, foot/hand prints, a lock of hair, and other meaningful items that many people find valuable years later. Some specifically Jewish suggestions, as mentioned above, include studying extra Torah in memory of the deceased, adding a new practice to one's religious observance, and making charitable donations in the baby's memory.⁸⁵ Others have suggested using the occasion of the mother's first immersion in the *mikvah* after the loss as a meaningful experience of letting go of the loss and preparing for the future.⁸⁶

⁸¹ Lamm, *The Jewish Way in Death and Mourning*, 222. R. Shlomo Zalman Auerbach ruled that it is not customary to observe the *yahrzeit* in these situations (*Ve-Aleihu Lo Yibol*, vol. 2, 136–7).

⁸² Levy, *Confronting the Loss of a Baby*, 34.

⁸³ *Ke-Chalom Ya'uf*, 122.

⁸⁴ Levy, *Confronting the Loss of a Baby*, 75, 116.

⁸⁵ *Ibid.*, 116–7.

⁸⁶ Miriam Berkowitz, *Taking the Plunge* (Schechter Institute of Jewish Studies, 2009), 156–8; Cardin, 83, 142. Cardin's book includes numerous contemporary prayers and suggested rituals to help parents mourn and heal, such as planting healing plants (like aloe), baking challah, synagogue rituals, *Havdalah* rituals, and various ceremonies.

Conclusion

As detailed in this article, Jewish tradition does not require mourning for the loss of a fetus or newborn baby. Parents may choose to follow the traditional approach, but if they feel the need to engage in some level of ritualized mourning, some support can be found for doing so (as detailed above). If parents choose to voluntarily engage in this non-obligatory mourning, they should try to do so in moderation.

No bereaved person should ever be cajoled or imposed upon to observe rituals that our wise sages did not require. We cannot know with certainty what is best for another person. If we are not sure that something is appropriate in a given situation, perhaps we should rely on Jewish law and custom, which does not require mourning in these situations.⁸⁷ Nevertheless, there are many challenging moments and circumstances that arise for a couple after this tragic loss, and many decisions that must be made at a time when it is very difficult to think clearly. The grieving parents should be made aware of their range of options, as detailed in this article.

Below is a list of some things to be aware of and ways in which people can be helpful during these most intense and traumatic moments:⁸⁸

1) Before Seeing Your Baby

- a. Consider finding a bereavement doula who may be able to lend support to you and your family during the birth/loss process.
- b. Discuss with the nursing staff the possibility of moving to a room on another floor away from the maternity ward to mitigate the grief, if you can forgo the specialized care of the maternity floor.
- c. Ask the nurse to give you a description of what your baby may look like after he or she is born, so that you can be aware of changes in your baby's skin. Be prepared that if the baby is not born alive, there will be no responsiveness or crying, and the lips may appear red or blue. Your baby's body will become cooler and start to stiffen over a short period of time.
- d. If your baby is born alive, ask the nurse to describe what you might see or hear during your baby's dying process

⁸⁷ Lamm, *The Jewish Way in Death and Mourning*, 220–2.

⁸⁸ Based partially on guidelines written up by David and Maytal Shainberg of “Forever My Angel,” drivymargulies.com, and returntozerohealingcenter.com.

(e.g., breathing patterns), so that you will be more prepared and less afraid.

2) Before Departing the Hospital

- a. You can hold, bathe, and dress your baby as much as you would like.
- b. Feel free to take your time with your baby. Although many hospitals have a time limit before a body must be picked up or taken to the morgue, staff can sometimes accommodate more time if necessary.
- c. You may want to sing, play music, read, or speak to your baby, especially if he or she is born alive, because hearing is often the last of the senses to decline.
- d. You may want to have skin-to-skin contact and rock, hold, kiss, and/or cuddle your baby.
- e. Consider which family and friends should be with you at the hospital and when you return home. Some of your closest friends and family may unintentionally say things that are hurtful, and you should not feel obligated to speak to or spend time with anyone.
- f. You may want to ask hospital staff to make hand/foot prints of your baby and/or to cut a lock of the baby's hair.
- g. Consider taking pictures of your baby. Many people cherish these photographs for the rest of their lives and only have this one opportunity to capture these images.
- h. Consider speaking with a hospital chaplain or rabbi.
- i. You or someone close to you should:
 - i. arrange for completing a death certificate
 - ii. arrange for the burial
 - iii. arrange for a *bris* if your baby is a boy (a Jewish mortuary will often handle this)

3) In Preparation for the Difficult Days Ahead:

- a. You have no obligation to behave in any specific manner. Everyone grieves differently, and your grief is your own.
- b. Consider if, when, and how you feel comfortable letting family and friends know what happened.
- c. When the time is right, consider both grief counseling and marital counseling.⁸⁹

⁸⁹ For an excellent article on some of the marital challenges faced after the loss of a baby, see the chapter by Miriam Benhaim in *To Mourn a Child*, 137–47.

- d. Empower one individual to “manage” communications to family members and friends informing them of the news and arranging support, such as delivery of meals when you arrive home. Other needs may include:
 - i. Dismantling and removal of baby furniture and other items from the home, car, etc.
 - ii. Removal of any wrapped gifts that may be in the house
 - iii. Babysitting
 - iv. Carpooling
 - v. House cleaning
 - vi. Payment and administration of hospital bills
 - vii. Grief counselors
 - viii. Introductions to others who have experienced a similar loss and are available to meet or speak with you
 - ix. Obtaining post-delivery care and supplies
 - x. Removal of parents’ names from mailing lists of companies so you do not receive information about baby products and services
 - xi. Planning a memorial service