

**Shlomo M. Brody**

**A GUIDE  
TO THE  
COMPLEX**

**CONTEMPORARY  
HALAKHIC DEBATES**

Maggid Books

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# Section I

## *Medical Ethics*

## Chapter 1

# Doctors in Judaism

*Should we always embrace modern medicine?*

Someone recently told me that every Jewish family needs at least one doctor...and one rabbi. I think this person was simply trying to patronize me. Frankly, I myself have bemoaned the lack of a doctor in my immediate family, especially a pediatrician! Nonetheless, despite the sociological fixation on Jewish doctors, our tradition has at times expressed ambivalence toward medicine and its practitioners.

Judaism emphasizes the importance of saving lives, most explicitly in the biblical injunction, “You shall not stand idly by the blood of your fellow” (Lev. 19:16). This verse, however, applies more directly to ad hoc cases of saving a person from a precarious situation, such as drowning (Sanhedrin 73a). The Torah similarly exhorts, “Live by the commandments” (Lev. 18:5), enjoining us to violate almost any prohibition in order to preserve life (Sanhedrin 74a).

Perhaps the most explicit biblical commandment relating to medicine appears in connection with remunerations owed for battery assault. The Torah states, “he shall surely be healed,” thereby obligating reimbursement for medical expenses (Ex. 21:19). The sages derive from this verse that a physician has permission to treat the wounded (Bava Kamma 85a). Though we might have thought that we dare not interfere with God’s choice to strike the patient, the Torah indicates here that we may attempt to heal him (*Tosafot*).

A patient’s right to seek treatment, however, remains subject to greater scrutiny, as his efforts might reflect a lack of trust in God and

His healing powers. King Asa was severely criticized for his reliance on medicine to the exclusion of prayer and self-reflection (11 Chr. 16:12). The Talmud likewise relates that the sages praised King Hezekiah for concealing the “Book of Cures” because it was too effective, rendering supplications superfluous (Rashi, Pesahim 56a). The Torah, moreover, refers to God as the Great Healer who prevents those loyal to Him from falling ill, which might suggest that the righteous do not require medical intervention (Ex. 15:26).

Indeed, according to one Babylonian sage, R. Aḥa, the entire enterprise of medicine was initially undesirable; prayer was the preferred response. Once humans resorted to medical intervention, however, R. Aḥa composed a prayer to recite before treatment (such as blood-letting, the preferred remedy in his era!), so the patient would remember that healing ultimately depends on God (Berakhot 60a). This theme was later adopted by Nahmanides (thirteenth century, Spain), himself a doctor, who contended that in truly righteous eras, medicine was unnecessary, and further implied that even today the pious could rely solely on faith to heal them (Lev. 26:11). Rabbi Chaim Soloveitchik (d. 1918) was so shocked by this statement that he claimed Nahmanides never said it.

The dominant stream of Jewish thought, however, embraced medicine as a tool God grants humans to heal themselves. “One may not rely on miracles,” the Talmud declares (Shabbat 32a); rather, one must use all available resources to keep himself alive (*Otzar HaMidrashim*, p. 580). The sage Abbaye rebutted the sentiment of R. Aḥa, stating that the requirement to compensate for rehabilitation constitutes an implicit endorsement of medical treatment (*Tzitz Eliezer* 5:20). Not surprisingly, Maimonides, the great scholar of both Torah and medicine, deemed medical care a mitzva (Commentary on the Mishna, Nedarim 4:4), a position later codified into law (YD 336:1). He further contended that King Hezekiah buried the Book of Cures because it was quackery that endangered lives. Maimonides derided those who abstained from medical treatment as hypocrites for consuming food, a natural resource that, like medicine, God provides for our well-being (Commentary on the Mishna, Pesahim 4:9).

Nonetheless, the sages remained concerned with the spiritual pitfalls of medicine, best encapsulated by their declaration that “the best

doctors are destined for hell” (Kiddushin 82a). Some commentators explain that this scathing remark refers to physicians who suffer from a “God complex,” becoming overconfident and arrogantly claiming healing powers. Others understand it as a censure of the over-commercialization of medicine, to the point where the poor might not be treated. Alternatively, this statement might criticize medical malpractice stemming from negligence, laziness, or a haughty refusal to consult other experts (Rashi).

These pitfalls notwithstanding, medicine remains both praiseworthy and a mitzva. To maintain the appropriate perspective on their vocation, many physicians recite a short daily prayer, erroneously attributed to Maimonides, which reads, in part:

You have blessed Your earth...with healing substances.... You have chosen me to watch over the life and health of Your creatures.... Support me, Almighty God, in these great labors, that they may benefit mankind, for without Your help not even the least thing will succeed.... Do not allow thirst for profit, ambition for renown and admiration, to interfere with my profession, for these are the enemies of truth and of love for mankind, and they can lead astray in the great task of attending to the welfare of Your creatures.

Amen.



## Chapter 2

# Medical Fees

*May physicians dispute their wages?*

**W**hile work stoppages are a contentious topic within Jewish law, doctors' strikes remain particularly complex, because health care is essential. The extended labor dispute between physicians and the Israeli government in 2011, for example, delayed many elective surgeries and other important procedures. Those of us, including myself, who had loved ones in the hospital during the strike certainly understand the angst created by these slowdowns. Though most medical services remained intact, it behooves us to reflect on the morality of such methods.

Significantly, in the 2011 strike, doctors claimed they sought not only increased wages, but also better health care conditions, including more hospital staff and beds. Indeed, the state comptroller contended that shortages have caused neglect in certain circumstances, leading four eminent religious Zionist decisors – Rabbis Aharon Lichtenstein, Yaakov Ariel, Ḥayim Druckman, and Dov Lior – to support the strike. This essay will not take sides on any particular dispute, but instead elucidate general halakhic principles.

Saving a life fulfills the biblical injunction, “You shall not stand idly by the blood of your fellow” (Lev. 19:16), as well as the obligation to restore someone's property (Deut. 22:2), which includes his physical welfare (Sanhedrin 73a). While one need not become a doctor, these commandments dictate that all medical treatment fulfills a biblical imperative (YD 336:1). As a rule, one should not receive money for performing commandments, and therefore judges,

teachers, and rabbis were classically forbidden to charge for their services (Bekhorot 29a).

Yet the Talmud is replete with discussions about responsibilities for medical fees. The Torah itself mandates that victims of violence are entitled to compensation for medical expenses (Ex. 21:19), with the ancient *Targum* translating the relevant phrase as “he shall pay the doctor’s fee.” As Rabbi Yisrael Meir Lau has noted (*Yahel Yisrael* 2:59), some medieval commentators understood this verse as permitting doctors to receive remuneration, even though medical care is a mitzva (*Tosefot HaRosh* Berakhot 60a). The Talmud goes so far as to say that the victim may refuse free health care provided by the assailant’s friend, on the assumption that “a physician who heals for nothing is worth nothing,” since he will be less attentive (Bava Kamma 85a).

However, Nahmanides (thirteenth century, Spain), himself a physician, asserted that health care providers, like judges, may receive remuneration only for their trouble (*tirḥa*) and lost time, but not for their knowledge, diagnoses, and treatment (YD 336:2). While commentators debate the parameters of these variables, they clearly limit medical fees. Doctors who charge more are reproached, though most decisors rule that a patient must pay in full, since one cannot compel a physician to treat someone in a non-emergency situation (YD 336:3). Nonetheless, if a medical practitioner has unique expertise in an illness (*Shu”t HaRadbaz* 3:556), or an indigent person cannot get health care elsewhere (*Teshuva MeAhava* 3:408), local authorities may force a doctor to offer his services, with some asserting that society must (minimally) establish health care systems for the underprivileged (*Tzitz Eliezer, Ramat Raḥel* 5:24).

Despite these historical sentiments, most decisors justify the contemporary reality in which doctors receive salaries well beyond their effort and loss of time. Rabbi Shaul Yisraeli asserted that the extensive time and money necessary for medical training permits greater compensation (*Ḥavvat Binyamin* 3:110), with others further noting all the hours physicians spend on call and in hospitals (*Nishmat Avraham* 336:9). Rabbi Moshe Feinstein (d. 1986) contended that unlike in earlier eras, doctors today have no other profession and therefore may receive full compensation (as do rabbis and teachers), especially since their fees are agreed upon by their patients (IM YD 4:52). Others have argued that

physicians must be paid enough to make it worth their while to risk costly malpractice suits (*Teshuvot VeHanhagot* 1:897).

Despite these dispensations, health care providers may not endanger patients – thereby neglecting the commandment of saving lives – while disputing wages. As Rabbi Dr. Mordekhai Halperin has documented, this stance was highlighted in 1983, when Israel suffered from a four-month physicians' strike, which included mass walkouts from hospitals and hunger strikes (*Assia* 5). While acknowledging that his directive would impair the strike, Rabbi Shlomo Goren criticized any neglect of patient care, even as he permitted doctors to demand higher wages and collect private payment in the interim. Rabbis Shlomo Zalman Auerbach and Yitzhak Weiss asserted that while physicians could implement slowdowns (such as working on Shabbat schedules, meaning fewer doctors on duty), they could not simply walk away from their treatment responsibilities. This was definitely true, asserted Chief Rabbis Avraham Shapira and Mordechai Eliyahu, once the government agreed to mediation.

Looking toward the future, one can only hope that all parties in the health care system will work together to ensure that the crucial mitzva of saving lives is performed to the highest possible standard.