Medical Malpractice and the Halakhah

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Should physicians and other healthcare providers be held liable for damages they cause to patients during the course of medical treatment? We might answer that question with a question: why should physicians be exempt from the general requirement to compensate those whom we injure through our negligence? As a rule, the law does not grant such an exception. Ancient legal sources such as the Code of Hammurabi[1] and Roman jurisprudence[2] subject the physician to damages for injury, and modern law follows this tendency. Today in most countries medical malpractice is a recognized tort, a legal cause of action for damages resulting from substandard medical care.[3]

What about Jewish law? Well, it's complicated, largely because there exist two distinct trends in halakhic thinking about the subject. Each of these is expressed in a *Tosefta* passage.

<u>*Tosefta Makot* 2:5 (Zuckermandel)</u>

שליח בית דין שהיכה ברשות בית דין הרי זה גולה רופא אומן שריפא ברשות בית דין הרי זה גולה.

> The emissary of the court who inadvertently[4] kills a person while acting with the permission of the court is punished by exile. The expert[5] physician who inadvertently kills a patient while providing medical treatment while acting with permission of the court is punished by exile.

<u>*Tosefta Gitin* 3:8 (Lieberman)</u>

> שלוח בית דין שהכה ברשות בית דין והזיק בשוגג פטור במזיד חייב מפני תיקון העולם
> רופא אומן שריפא ברשות בית דין והזיק בשוגג פטור במזיד חייב מפני תיקון העולם.

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> The emissary of the court who inadvertently injures a person while acting with the permission of the court is exempt from liability. If the injury was caused intentionally, the emissary is culpable. This is an enactment for social betterment.
> The expert physician who acts with the permission of the court and inadvertently causes injury is exempt from liability. If the injury was caused intentionally, the physician is culpable. This is an enactment for the betterment of society.

One trend or outlook (*Makot*) holds the physician liable for inadvertent damage, much as do the other ancient legal sources, while the other (*Gitin*) exempts the physician from those damages.

One way to resolve this tension is to speculate that these passages, taken consecutively, tell a story of legal development. The original *halakhah* (*Makot*) may have held physicians liable for damages, but the communal legal authorities at some point enacted a rule (*takanah*) "for the betterment of society" (*mipnei tikun olam*) shielding them from that liability (*Gitin*). The "betterment" they were seeking, presumably, was that without such protection few if any

physicians would practice medicine in the face of potentially crushing liability. The *Gitin* passage raises the possibility that "medical malpractice" as a cause for legal action does not exist – or no longer exists - in the *halakhah* and that patients (and their families) who suffer injury or worse as a result of a physician's treatment have no basis upon which to demand compensation.

Whatever the historical record, these classical Rabbinic texts reflect fundamental – and conflicting – principles of Jewish law. The more stringent principle (*Makot*) holds that physicians are like all other members of the community in their obligation to compensate those whom they injure through negligence. The more lenient principle (*Gitin*) is based in the doctrine that the practice of medicine is a *mitzvah*:[6] physicians who perform the sacred work of healing illness and saving lives deserve a level of protection that the rest of us do not. The Jewish law of medical malpractice is essentially the record of how halakhists over the centuries have tried to draw the proper balance between these two principles.

<u>The Lenient Tradition.</u>

The lenient tradition on medical malpractice, rooted in *Tosefta Gitin*, is given its classic expression by Ramban, R. Moshe b. Naḥman (Nachmanides; Catalonia, d. 1270), whose *Sefer Torat Ha'adam* contains the earliest[7] treatise on the *halakhah* of medical practice.[8]

בפרק החובל תנא דבי ר׳ ישמעאל ורפא ירפא מכאן שניתנה רשות לרופא לרפאות. פי׳ שמא יאמר הרופא מה לי בצער הזה שמא אטעה ונמצאתי הורג נפשות בשוגג לפיכך נתנה לו תורה רשות לרפאות.

> A *baraita* of the school of R. Yishmael (*Bavli Bava Kama* 85b) states: the phrase *v'rapo y'rapei* teaches that the physician is given permission (*r'shut*) to practice medicine. The physician might think: "why should I risk the pain and suffering [*tza`ar*] I would incur should I make a mistake [in diagnosis or treatment] and end up accidentally killing a person?" Therefore, the Torah gives him a permit to practice medicine.

Ramban begins by identifying a Toraitic license for the practice of medicine, the function of which is to shield the physician from claims of liability. But this contradicts the *Tosefta Makot* passage that we read above.

וקשיא לי הא דתניא בתוספתא רופא אומן שרפא ברשות ב״ד והזיק ה״ז גולה, אלמא עונש שוגג יש בדבר.

> If so, then why do we read in the Tosefta that "the expert physician who practices with the permission of the *beit din* and injures a patient must go into exile" – meaning the physician is punished for damages he causes accidentally?

Ramban resolves the contradiction by drawing an analogy between the physician and the judge.

ויש לומר הכי, הרופא כדיין מצווה לדון, ואם טעה בלא הודע אין עליו עונש כלל, כדאמרינן (סנהדרין ו׳ ב׳) שמא יאמר הדיין מה לי בצער הזה ת״ל עמכם בדבר המשפט אין לדיין אלא מה שעיניו רואות, ואעפ״כ אם טעה ונודע לב״ד שטעה משלם מביתו על הדרכים הידועים בו, ואף על גב דהתם אם דן ברשות ב״ד פטור, אף כאן מדיני אדם פטור מן התשלומין אלא שאינו פטור מדיני שמים עד שישלם הנזק ויגלה על המיתה, הואיל ונודע שטעה והזיק או המית בידים.

> The physician resembles the judge (*dayan*), who is obligated (*m'tzuveh*) to perform his judicial function. If the judge errs and is not aware of his mistake, he is not penalized at all… As we read (*B. Sanhedrin* 6b): "The judge might think: 'why should I risk the pain and suffering [*tza`ar*] (of erring in judgment)?' Therefore Scripture says (II Chronicles 19:6: 'God is with you when you pass judgment': a judge can act only on the basis of his best judgment [literally: "the judge knows only that which he sees"].[9] However, if he becomes aware of his mistake, he pays damages in accordance with the stated procedures. Even though one who judges with the permission/license of the *beit din* is exempt from liability, that exemption applies only to human law – the judge is exempt from the duty to pay compensation. But he is not exempt under Divine law until he pays compensation or goes into exile if he should execute an innocent person.

The formula פטור מדיני אדם וחייב מדיני שמים – "he is exempt from penalty under human law but obligated under Divine law" – means that while the judge has a *moral* obligation to compensate litigants who were wrongly damaged by his rulings, he has no *legally* enforceable obligation to do so. It's only fair; after all, by performing his judicial role the judge is fulfilling a *mitzvah*, and he is doing it as best he can ("on the basis of his best judgment"). The physician, who also fulfills a *mitzvah,* qualifies for similar protection.

וכן אמרו בתוספתא דב״ק גבי פטורים מדיני אדם וחייבין בדיני שמים, רופא אומן שריפא ברשות ב״ד פטור מדיני אדם ודינו מסור לשמים, ומ״מ בלא הודע שלו אינו חייב כלום כמו שהדיין פטור לגמרי בין מדיני אדם בין מעונש שמים.

> Likewise we read in *Tosefta Bava Kama* 6:17 concerning those who are exempt from liability under human law but obligated under Divine law: "The expert physician who practices medicine with the permission/license of the *beit din* is exempt from liability under human law, but his fate is handed over to Heaven." Nonetheless, if he is unaware of his error he is exempt as well from Divine punishment.

This is a remarkably broad grant of protection to the physician. Though he bears a moral duty to compensate for his negligence, whether he actually fulfills that duty is left to him and his conscience. The court cannot compel him to pay. The upshot is that "medical malpractice" as a cause for *legal* action under the *halakhah* simply does not exist. Ramban expresses some hesitation in the face of this conclusion. As he ends this section:

והוא שיזהר כמו שראוי ליזהר בדיני נפשות ולא יזיק בפשיעה כלל.

> The above is true, provided that the physician acts with the level of caution appropriate to matters of life and death (literally, "cases involving the death penalty") and that he not cause injury through any sort of negligence.

Again, Ramban compares the doctor to the judge. As with the judge, we expect the physician to perform his or her duty carefully – that is, avoiding negligence. But this expectation has no legal force. Ramban stops short of saying that negligence counts as an exception to the rule that the physician who errs is "exempt from liability under human law."

The major codifiers adopt Ramban's theory of medical malpractice, We read in *Tur, Yoreh De`ah* 336:

אם ריפא ברשות ב״ד וטעה והזיק פטור מדיני אדם וחייב בדיני שמים ואם המית ונודע לו ששגג גולה על ידו ומ״מ א״צ לימנע מפני חשש טעות כדפרישית.

> The physician practicing with the permission/license of the *beit din* who damages the patient inadvertently is exempt from liability under human law but obligated under Divine law. Should he inadvertently kill a patient and is made aware of his error he is penalized with exile. Nonetheless, the physician should not refrain (from practicing medicine) out of fear of causing accidental injury, as I have (previously) explained.

And in *Shulḥan Arukh, Yoreh De`ah* 336:1:

ואם ריפא שלא ברשות בית דין, חייב בתשלומין, אפילו אם הוא בקי. ואם ריפא ברשות ב״ד, וטעה והזיק, פטור מדיני אדם וחייב בדיני שמים. ואם המית, ונודע לו ששגג, גולה על ידו.

> A physician who practices medicine without the permission/license of the *beit din* is culpable for damages, even if he is an expert physician. And if he practices with the permission/license of the *beit din and* damages the patient inadvertently, he is exempt from liability under human law but obligated under Divine law. Should he inadvertently kill a patient and is made aware of his error he is penalized with exile.

Like Ramban, these great codes grant broad protection to the physician from legal liability for injuries. Neither expresses his warning about the physician's negligence. This doesn't mean that the *halakhah* is unconcerned about the safety of patients but simply that its concern is expressed up front, through the procedure by which the local authorities examine the physician and grant him/her the "license" (*r'shut*) to practice. As the *Tur* puts it, שאין ב״ד מרשין למי שאינו בקי, "the *beit din* does not grant a license to anyone who is not an expert." But once this precaution is taken, it seems that the law has nothing to offer to the patient who suffers inadvertent harm at the hands of the expert (though negligent) physician.

R. Shimeon b. Tzemah Duran (15th-c. Spain-Algeria), commonly known as Tashbetz, adopts Ramban's basic structure of medical malpractice law, with one interesting exception.[10]

ונראה כי פי׳ רופא אומן הוא רופא החבורות במלאכת היד ששגגתו וזדונו היא חבלה ורציח׳ בברזל ...

אבל רופא חולים במשקים ובמשלשליות ובמרקחות ובמרחצאו׳ והנחות אינו נקרא רופא אומן אלא רופא סתם ואינו בכלל זה שאינו בא לידי חבלה להתחייב בניזקין ואם שגג או הזיד והמית או הוסיף מכאוב על מכאובי החולי ונתכוון לרפאת ולא נתכוון להזיק פטור הוא אף מדיני שמים שאין לו אלא מה שעיניו רואות.

> I believe that the term "expert physician" refers to the surgeon, the one who treats wounds, because the damage or death he causes, whether unintentionally or intentionally, is done with iron tools…
> However, the physician who treats patients with potions, laxatives, and powders is not called an "expert physician" but simply a "physician." He does not fall into the former

> category because he does not cause harm that would render him liable for damages. When *that* physician [= the internal medicine physician] in the course of treatment – whether he errs or intends that treatment – should injure or kill the patient or add to the patient's suffering, so long as the physician intends the treatment for the proper purpose of healing and does *not* intend to cause injury, the physician is exempt from culpability even under Divine law, for he can act only on the basis of his best judgment.

Tashbetz holds that the internal medicine doctor does not cause the sort of injury "that would render him liable for damages." After all, who can see or measure that damage? If a patient shows ill effects after taking a drug, how do we know it is the drug rather than some other factor that has caused them? By contrast, injuries resulting from surgery are obvious and observable. Tashbetz's distinction between surgery and internal medicine is, of course, an empirical one; it rises and falls on its factual validity, and given the state of contemporary medical knowledge, we must reject it. But exempting as he does an entire category of physicians from liability for damages, Tashbetz offers additional support for the *halakhah*'s lenient ("pro-physician") stance on the question of medical malpractice. (But see below.)

R. Nissim b. Reuven Gerondi (Catalonia; d. ca. 1375), known as RaN, is among all authorities the most consistent in his protection of physicians from claims for damage. In his *ḥidushim* to *Bavli Sanhedrin* 84b he addresses the question of whether a son is permitted to remove a thorn from his father. The concern, halakhicly, is whether in drawing blood the son violates the prohibition of Exodus 21:15, "One who strikes his father or mother shall surely be put to death"; the act of "striking" includes the making of a wound.[11] One might argue that the son should be exempt from liability because his intention is toward *r'fu'ah*, healing. But what if the procedure is unsuccessful and does *not* bring about healing? Should the son in that case be liable under the prohibition? RaN replies that the same objection could be made against all medical practice, since any medical procedure is inherently dangerous. But if so, why are physicians permitted to practice at all? And why would any of them do so, at the risk of liability for the injury and death they might cause inadvertently?

אלא בכל דבר של רפואה יש לך לומר כן שכולן הם סכנה לחולה שאפשר שסם זה אם יטעה הרופא בו ימית החולה אלא ע״כ אית לן למימר שהרופא המומחה כשיטעה ברפואתיו אינו שוגג אלא אנוס שברשות הוא מרפא כדאמרינן בפ׳ החובל שנתנה רשות לרופא לרפאות ואין לו אלא מה שעיניו רואות כדאמרינן בדיין שטעה דליבי׳ אנסיה וא״כ המקיז את חבירו בהסכמת הרופא פטור ומות׳ אף על גב דאיכא שגגת הרג אביו נמי אם מקיזו לרפואה אף על גב דאיכא שגגת חנק שרי. וטעמא דרב דלא הוה שביק לבריה למשקל סילוא ולמפתח כוותא דלמא חביל ה״ט דשמא יעשה חבורה לאביו ללא צריך שיחשוב ליטול הסילוא ויחבלוהו במקום אחר אבל הקזה לרפוא׳ מותר כמו שמותר להקיז לאחר.

> With any medical procedure one must be concerned about (mortal injury), since all of them involve danger to the patient. If a physician errs in administering a particular medication, that might kill the patient. Therefore, you must conclude that the expert physician, should he err in his practice, is not considered an accidental killer (*shogeg*) but one who is coerced (*ahnus*) into committing that error, because the physician is permitted by the Torah to practice medicine, as we learn in *B. Bava Kama* 85a. And the physician must work on the basis of his best judgment, as is the case with the judge (*dayan*) who rules mistakenly: we say that the judge's thought process (mind, "heart") coerced him into making that ruling.

RaN transfers medical error from the category of *sh'gagah*, an "accidental" transgression for which the transgressor is still liable, to that of *ones*, "coercion," a sin committed under duress from which the transgressor is held blameless.[12] The "coercion" here is exerted by the Torah itself, which commands the physician to perform the *mitzvah* of healing. RaN does not speak of damages in cases of negligence. Because they do God's work, physicians are apparently exempt from *all* liability for all damages, including death, resulting from medical treatment.

This exemption of doctors from liability even in cases of outright negligence is most clearly enunciated in the turn-of-the-20th-century*Arukh Hashulḥan* of R. Yechiel Mikel Epstein:[13]

אם ריפא ברשות וטעה והזיק פטור מדיני אדם וחייב ובדיני שמים אם היתה ע"י התרשלותו ולא עיין יפה דאם עיין אין לו שום חטא שהרי מצוה לרפאות וכבר אמר החכם שגגת הרופא כונת הבורא

> If the licensed physician errs and causes damage, he is exempt from liability under human law but culpable under Divine law, provided that he was negligent and did not examine the patient carefully. For if the physician did examine the patient carefully, he has done nothing wrong, for indeed, it is a *mitzvah* to heal. As the proverb states: "the doctor's mistake is the will of Heaven."

Epstein follows Ramban and the codes: when the physician "errs" (*ta`ah*) he is morally – but not legally - culpable for damages. But he goes farther when he describes this error as resulting from the physician's *hitrashlut*. That word literally means "sloppiness," but in this case it must be translated as "negligence," since the physician "did not examine the patient carefully" as he should have done. Yet even so, the physician is not legally liable for damage resulting from his or her "error."

<u>The Stringent Position</u>

Thus far, we've seen the *halakhah* tilt toward the *Tosefta Gitin* principle and away from the stricter standard enunciated in *Tosefta Makot*. But the opposing tendency exists as well. We find it in the responsum of Tashbetz, cited above.

העולה מזה הוא כי רופא אומן ונתנו לו רשות ב"ד לרפאת וטעה והזיק והכירו טעותו רופאים אחרים אומנים חייב הוא בין בשוגג בין במזיד מן הדין כדין חובל ...
ואם לא טעה ועשה הראוי לו לעשות אלא ששגג בפשיעתו וחבל פטור מפני תקון העולם ודינו מסור לשמים.

> We conclude from the foregoing analysis that the expert physician, who has received permission/license from the *beit din* to practice and who errs (*ta`ah*) and causes injury whether intentionally or accidentally is obligated under the law of damages to compensate the patient for that injury *in cases where other expert physicians recognize his error*… (our italics).
> If he did not err but rather provided the proper standard of care (literally, "he did what was proper for him to do"), yet he injured the patient accidentally (*shagag*) through his negligence (*p'shi`ato*), he is exempt from liability for the betterment of the world (*mipnei tikun olam*). His judgment is handed over to Heaven.

Tashbetz draws a line between *ta'ut* (טעות), an "error" that no knowledgeable physician should make, and *sh'gagah* (שגגה), an "accident" that causes injury, even if that accident results through negligence (*p'shi`ah*; פשיעה). The former involves legal culpability; the latter brings about moral culpability ("his judgment is handed over to Heaven"), but the earthly court cannot force the physician to pay damages. His terminology is far from clear; why is a physician culpable for an "error" but *not* for an "accident" caused by "negligence"? Still, we can see what he's getting at: Tashbetz doubles down here on the concept of *professional standards.* Some doctors' errors are so egregious that they fall outside the boundary of proper medicine. A physician who makes such an error, even though his intention is to perform the *mitzvah* of healing, is culpable for that mistake precisely because he did *not* "do what was proper for the physician to do." At that moment the physician is no longer doing "medicine" and therefore loses the protection of the ancient *takkanah.* He or she reverts to the status of an ordinary human being, liable like the rest of us for the injuries we inflict upon others.

Following in the wake of Tashbetz is Rabbi Eliezer Yehudah Waldenberg (d. 2006), a leading Israeli *posek* whose responsa collection *Tzitz Eliezer* includes numerous opinions on medical topics. In this decision, he surveys the various approaches to the subject of medical malpractice and then sets forth his own stance:[14]

> ונראה דמסתבר לומר דבטעה הרופא בעשיית זריקה והחליף והזריק לחולה זריקה כזאת שגרמה למיתת החולה או לחבלתו דבכה"ג חייב אליבא דכו"ע, וכן אותו הדבר בהחליף סמי - הרפאה שהיה צריך לתת לו, דדווקא בטעה הרופא וחשב לזריקה זאת או לסם זה למרפא הוא דיש מקום לומר דאנוס הוא ואין לו אלא מה שעיניו רואות או דאין לך ברפואה שלא תהא בה מדת מה של סכנה ומה שמרפא לזה ממית לזה ... משום דהא בכל זאת התעסק במצות הריפוי כפי הבנתו בחכמת הרפואה שבידו, אבל משא"כ בגוונא הנ"ל בהחליף הזריקה או סם - המרפא דבזה הרי מתברר דגם לפי הבנתו הוא לא התעסק כלל וכלל במצות הריפוי אלא בפחזותו החליף סם - החיים בסם - המות,
> וא"כ מסתבר דכל בכגון דא אמרינן דאדם מועד לעולם, דדרכן של רופאים להתבונן בדרכי נתינת סמי - המרפא היטב ולכן שגגתו עולה לו בזה לזדון אליבא דכו"ע.

> It stands to reason that if a physician errs and gives the wrong injection to a patient, or switches the proper drug for a harmful one, causing death or injury, then he is liable for damages according to all opinions. For it is only when the physician administers a drug that he thinks will be therapeutic that we can consider him *ahnus* ("coerced"), either because he has acted according to his best judgment or because all medications involve a degree of danger… Even though the patient was harmed, the physician acted according to his medical knowledge and training. This is not the case when he mistakenly administers the wrong injection, for even according to his own knowledge and training he has not engaged in the *mitzvah* of healing. Rather, in his haste he has exchanged the lifesaving drug for one that causes the patient's death.
> In all such cases, we apply the rule that a human being is always liable for damages that she or he causes [אדם מועד לעולם] for it is proper procedure for doctors to carefully examine medications before administering them. Thus, according to all opinions, the physician's inadvertent act is considered intentional.

Rabbi Waldenberg maintains Tashbetz's distinction while avoiding his clumsy language, using an example readers can readily understand. The physician who thoughtlessly administers the

wrong injection to a patient commits an error so egregious error that it falls outside the parameters of "medicine." That physician does not keep to professional standards and is not practicing the *mitzvah* of *r'fu'ah*. Therefore, he or she is no longer entitled to an exemption from liability. When making such an error the physician, like the rest of us, falls under the Mishnaic rubric *adam mu`ad l'olam* – human beings are always liable for damages caused by their negligent action.[15] The only "error" for which the physician is exempt from liability is a treatment that medical science holds to be therapeutic ("the physician acted according to his medical knowledge and training ") but that in this case injures the patient. Such a treatment, of course, is hardly an "error" at all, since the physician in that case provided the accepted standard of care. \

Summary.

As progressive halakhists, we agree with Waldenberg. It does not "stand to reason" to exempt physicians from liability for damages caused through negligence during the course of treatment. We would add that his position (and that of Tashbetz), holding physicians liable for errors that occur when the physician "does not do what is proper for him to do" or does not act "according to his medical knowledge and training" parallels that of contemporary Western malpractice law.

> To show that medical negligence occurred, the aggrieved patient must show that a duty of professional care existed, that such duty was breached when the physician deviated from the standard of care, and as a result of such breach there was injury, and that such injury is measurable in damages that the court can use to calculate the redress owed to the plaintiff. These legal elements of a medical malpractice case must be proven by the patient suing the doctor, to the applicable standard of proof required by law.[16]

The "stringent" position, which holds doctors liable for negligence, "stands to reason" precisely because in contemporary medicine it is usually possible to identify a standard of care that distinguishes proper practice from *mal*practice. This reduces the degree of uncertainty that was always inherent in the science – or should we say "art"? – of *r'fu'ah*. As Ramban puts it:[17]

ואין לך ברפואות אלא ספק סכנה, מה שמרפא לזה ממית לזה.

> Every aspect of medical practice is suffused with potential danger to life, for that remedy which cures one person will kill another.

This situation argued for a lenient approach to medical malpractice. It was arguably unjust to hold doctors liable when they seemed to be doing the best they couldto fulfill a *mitzvah* that involved such danger and uncertainty. Today, thankfully, medical science has advanced to the point where we are much more certain about the risks that doctors take, the damages that may result from treatment, and the standard od care that is expected in most cases.

For these reasons, the "stringent" position in the *halakhah* is the one that best fits the present-day medical situation. Physicians and other medical practitioners are, like everybody else, liable for the results of their negligence. Of course, that implies that we know what constitutes "negligence," as opposed to "the standard of care," in any particular situation. The judgment in each case must be based upon its facts. And in each case, we must find that proper balance

between protecting the patient and enabling physicians and other professionals to engage in the practice of *r'fu'ah*…

for the betterment of society (*mipnei tikun olam*).

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[1] See https://sites.ualberta.ca/~egarvin/assets/hammurabi.pdf, section 218: "If a physician makes a large incision with the operating knife, and kills him, or opens a tumor with the operating knife, and cuts out the eye, his hands shall be cut off."

[2] Alan Watson. "Medical Malpractice Law in Ancient Rome," *Failures of the Legal Imagination* (Philadelphia: University of Pennsylvania Press, 1988), pp. 65-86; J.C. Zietsman, "Medical Negligence in Ancient Legal Codes," *Akoterion* 52 (2007), pp. 87-98, https://akroterion.journals.ac.za/pub/article/view/55.

[3] The standard in the United States is that "The injured patient must show that the physician acted negligently in rendering care, and that such negligence resulted in injury"; B. S. Bal, "An Introduction to Medical Malpractice in the United States," *Clinical Orthopedics and Related Research* 467(2) 2009, pp. 339-347; https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2628513/#CR4 .

[4] The word "inadvertently" reflects the Biblical law of homicide committed accidentally (*bishgagah*), for which the specified penalty is exile to a city of refuge (Numbers 35:9*ff*; Deuteronomy 4:42).

[5] I.e., one who is trained and is recognized as a knowledgeable practitioner. The license ("permission") granted by the *beit din* is the recognition of his/her expertise.

[6] See Freehof Institute, "The Mitzvah of Medicine," http://www.freehofinstitute.org/uploads/1/2/0/6/120631295/the_mitzvah_of_medicine_1.pdf.

[7] We don't mean to slight the role of Rambam (Maimonides) in his *Mishneh Torah*, which appeared in 1187. But while that work, particularly in *Hilkhot De`ot*, chapter 4, does speak to medicine and healing, the information it offers has more to do with hygiene – the substance of medical practice – than with *halakhah*.

[8] H. D. Chavel, ed., *Kitvei Rabbeinu Moshe b. Naḥman* vol. 2 (Jerusalem: Mosad HaRav Kook, 1964), pp. 41-42.

[9] See Rambam, *Hil. Sanhedrin* 23:9.

[10] *Res. Tashbetz* 3:82.

[11] *B. Sanhedrin* 84b.

[12] *B. Bava Kama* 28b (ר"יאונס רחמנא פטריה), based upon Deuteronomy 22:26; Rambam, *Hilkhot Isurey Bi'ah* 1:9.

[13] *Arukh Hashulḥan, Yoreh De`ah* 336, par. 2.

[14] *Resp, Tzitz Eliezer,* v. 5, *Ramat Raḥel,* no. 23. The section is part of a commentary on the "medical" section of *Arukh Hashulḥan, Yoreh De`ah* 336

[15] *M. Bava Kama* 2:6. This refers to the distinction between the שור תם, an "innocent" ox, and a שור מועד, an ox that has been "witnessed" - i.e., proven by testimony to be prone to goring. If the *shor tam* should gore another animal, its owner is liable for only half the damages of that animal, since the *shor* is considered domesticated and unlikely to engage in such behavior. But once the *shor* has been declared *mu`ad*, its owner is liable for full damages, since the owner is expected to keep it penned up and under control. The phrase אדם מועד לעולם emphasizes that this

distinction does not apply to human beings: because we are always prone to cause damage to property and to people, we are always required to compensate fully for that damage.

[16] See note 3, above.

[17] Chavel (note 8, above), p. 43.