

## *The Mitzvah of Medicine*

### The Freehof Institute of Progressive Halakhah

The halakhic tradition is replete with discussion about the practice of medicine. This is the case, obviously, because *halakhah* understands *r'fu'ah* (“medical practice” or “healing”) to be a *mitzvah* and therefore a fit subject for those discussions. But given that the Torah never declares explicitly that we are commanded to practice medicine in response to disease – indeed, neither does the Talmud - it’s fitting to ask that classic Rabbinic question מנא לן, “how do we know this?” On what basis do halakhic authorities make the assertion that medical practice is a *mitzvah*, a “commandment,” a required and obligatory act?

There are two major theories in the literature, each proposed by one of the giants among the *rishonim*, the “early” (pre-16<sup>th</sup> century) Talmudic and halakhic authorities.

#### Ramban (Nachmanides).

Ramban begins his *Torat Ha'adam*, a work devoted to the *halakhot* concerning death, burial, and mourning, with a discussion of care for the sick (*bikur ḥolim*) and the practice of medicine (*r'fu'ah*). In that section<sup>1</sup> we read:

בפרק החובל (פ"ה ב') תנא דבי ר' ישמעאל ורפא ירפא מכאן שניתנה רשות לרופא 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 *baraita* is referring to Exodus 21:18-19:

וְכִי יִרְיֹבֵן אֲנָשִׁים וְהָכָה אִישׁ אֶת־רֵעֵהוּ בְּאֶבֶן אֹדוּ בְּאֶגְרֹף וְלֹא יָמוּת וְנָפַל לְמִשְׁכָּב׃  
אִם־יָקוּם וְהִתְהַלֵּךְ בַּחוּץ עַל־מִשְׁעָנֵתוֹ וְנָקָה הַמַּכָּה בֶּקֶל שְׁבִיתוֹ יִתֵּן וְרָפָא יִרְפָּא׃

When individuals quarrel and one strikes the other with stone or fist, and the other does not die but takes to his bed,  
Should he get up and walk around outside on his cane, the assailant is cleared of wrongdoing, except that he must pay for the other’s idleness and surely cause him to be healed (*v'rapo y'rapei*).

The highlighted Hebrew words represent a phenomenon common in Biblical grammar, where the *makor* (absolute) form of the verb is followed immediately by the verb’s imperfect tense. It is generally understood to supply emphasis to the sense of the verb, as in the translation here “surely cause him to be healed” (i.e., if *y'rapei* means “he shall heal him,” then *rapo* adds the sense of “make sure to do this” to the sentence). The Rabbis, however, tend to apply *midrash* to

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<sup>1</sup> *Inyan hasakanah*, s.v. *b'ferek haḥovel*. H. D. Chavel, ed., *Kol Kitvei Haramban* (Jerusalem: Mosad Harav Kook, 1964), vol. 2, p. 41.

the formulation, for in their view the repetition of the verb adds a different shade of meaning to the verse, something we would not derive from a single instance of the verb. For example, Rashi to the Torah, following *Targum Onkelos*, reads *rapo y'rapei* to mean that the assailant must pay the injured person's medical expenses (i.e., *y'rapei* means "he shall heal him," and *rapo* adds the requirement to pay for a doctor should the assailant not personally provide the treatment). In the *baraita*, *rapo* adds the sense of *permission* to the verse: not only shall a physician be called upon to heal the victim, but physicians possess a Divine warrant or license to provide medical treatment in the first place.

But if this is so, then *why* does the Torah need to grant to physicians the license to practice *r'fu'ah*? Ramban offers two reasons.

פ"י שמא יאמר הרופא מה לי בצער הזה שמא אטעה ונמצאתי הורג נפשות בשוגג לפיכך נתנה לו תורה רשות לרפאות.

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.

This "permit" or license is not the same as the license granted to an individual physician who is judged qualified to practice. It is the license for medical practice in general, protecting physicians from liability for inadvertent damages caused in the normal operation of their profession.<sup>2</sup> In the absence of such protection, who would risk practicing medicine at all? Thus, says Ramban:

ומסתברא דהא דאמרין נתנה תורה רשות לרופא לרפאות, לומר שאינו אסור משום חשש השגגה.

It stands to reason that "the Torah grants the physician the license to practice medicine" means that medicine is not forbidden on the grounds that the physician might accidentally harm the patient.

And, says Ramban, there's a second explanation for this "license."

אי נמי שלא יאמרו הקדוש ברוך הוא מוחץ והוא מרפא, שאין דרכן של בני אדם ברפואות אלא שנהגו, כענין שכתוב גם בחליו לא דרש את ה' כי אם ברופאים:

This permission also means that we should not say: "If the Holy One smites a person, shall a physician heal them?"

And why might we say such a thing? Because it has been stated (*B. B'rakhot* 60a): "Human beings ought not to engage in medicine, but it has become a habit with them."

We find a similar sentiment in the Bible (II Chronicles 16:12): "Even in his sickness King Asa did not seek out Adonai but turned to physicians."

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<sup>2</sup> The *halakhah* of medical malpractice is more complicated than this, but all discussion of the subject begins with this premise.

Is it permissible in the first place to call the doctor ads a response to disease? The Chronicler seems to fault King Asa for doing that rather than, say, resorting to a prophet. And from the perspective of ancient religious belief, which tended to explain disease as a sign of God's displeasure – “If the Holy One smites a person” – then surely the proper response to disease is a spiritual or ethical one. We should do *t'shuvah*, *t'filah*, or *tz'dakah* in an effort to placate God and address the root cause of our illness. By contrast, resorting to natural or “scientific” medicine could logically be seen as an effort to frustrate the Divine will. For Ramban, the text in *B. Bava Kama* 85b (*rapo y'rapei*) serves as a necessary corrective to this line of thinking: the Torah in fact approves of the practice of medicine, and we should not imagine otherwise.<sup>3</sup>

But to call medicine a “permitted” practice is hardly sufficient. As Ramban tells us,

אבל האי רשות רשות דמצוה הוא דמצוה לרפאות ובכלל פקו"נ הוא

This “permit,” however, is actually the permission to perform a *mitzvah*, for it is a *mitzvah* to practice medicine, since it falls under the category of saving human life (*pikuah nefesh*).

We know that *pikuah nefesh* is a *mitzvah* and that it overrides virtually every other obligation under Torah law, so that *if* medicine is an example of *pikuah nefesh*, then medicine is itself a *mitzvah*. Ramban now moves to demonstrate that medicine (*r'fu'ah*) is defined as *pikuah nefesh*.

כדתנן מאכילין אותו ע"פ בקיאים. ותניא (יומא פ"ג ב') מי שאחזו בולמוס מאכילין אותו ע"פ בקיאים דבש וכל מיני מתיקה מפני שהדבש וכל מיני מתיקה מאירין את העינים, וכל אלו על פי בקיאים מאכילין אותו, שאם היתה אישתא צמירתא בבולמוס שלו והאכילוהו דבש הרי אלו הורגין אותו ותנן נמי החושש בפיו מטילין לו סם בשבת, וכן רבינא (פסחים כ"ה ב') דשייף ליי לברתיה בגוהרקיי דערלה משום אישתא צמירתא.

As the Mishnah (*Yoma* 8:5) states: “one who is ill on Yom Kippur is fed according to the instruction of experts (*b'ki'in*).” And a *baraita* in *B. Yoma* 83b states: “one who has been seized by *buleimos* is fed, on the instruction of experts, honey and other sweet foods, since those substances bring light to the eyes.” All of these are done at the instruction of experts, because if the *buleimos* is accompanied by an inflammatory fever and the patient is fed honey, it would kill him.

Another *baraita* (*B. Yoma* 84a) states: “If one is experiencing pain in the throat, he is given medicine on Shabbat.” And similarly (*B. P'sahim* 25b): “Ravina rubbed his daughter with unripe olives of *orlah* to combat an inflammatory fever.”

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<sup>3</sup>Except that Ramban himself *does* imagine otherwise. See his commentary to Leviticus 26:11, where he posits that the original intent of the Sinai covenant was that the people of Israel should live according to Divine law and *not* the law of nature. Under that original dispensation, should any one of them fall ill, that person would seek help from God through the aid of a prophet and not consult physicians. The Biblical texts that speak negatively about the practice of medicine reflect this ideal arrangement. Ultimately, the people chose to live in accordance with natural law. Medicine “became a habit with them, so that God left them to the workings of nature” (אבל הם נהגו ברפואות) (והשם הניחם למקרי הטבעים). In this *new* dispensation, which the people of Israel chose voluntarily, permission had to be granted to the physician to practice medicine.

In each of these instances an action that is normally forbidden by the Torah is permitted for the purpose of treating a serious disease. It follows, then, that medical practice is an example of *pikuaḥ nefesh* and is therefore an obligatory act.

Ramban now moves to describe the *nature* of “medical practice.”

כלן בדרכים של מלאכת הרפואות עושין אותן, ואי אפשר לדעת אותן אלא ע"פ אותה חכמה.

All of these things are done according to the procedures of the art/craft (*m'lekhet*) of medicine, and one cannot perform them without knowing that science (*ḥokhmah*).

*Halakhah* understands “healing” as a *ḥokhmah*, a “science” (in the classical sense of that term) or a “learned practice” or craft (*m'lakhah*). Such a practice is constituted by “procedures” (דרכים) that are mastered by recognized practitioners; hence the requirement in *Mishnah Yoma* 8:5 that one is fed on Yom Kippur on the instruction of *b'ki'im*, “experts” or learned physicians. The inescapable conclusion is that medicine is a practice that demands and is defined by expertise. Not everybody who presumes to give medical advice is a *baki*. The expert, the one whom we are required to heed concerning matters of medicine, is the one whom other knowledgeable practitioners of the field recognize as an expert. This distinction between real *r'fu'ah* and quackery has always been a significant one, and it continues to be relevant in an era of fake news and Internet irresponsibility.

The upshot, for Ramban, is that it is indeed a *mitzvah* to act – and act quickly – to fulfill the instructions of the physician.

ופקוח נפש מצוה רבה היא, הזריז בחכמה זו משובח והנשאל מגונה והשואל שופך דמים, וכ"ש המתיאש ואינו עושה. וש"מ כל רופא שידוע בחכמה ומלאכה זו חייב הוא לרפאות, ואם מנע עצמו ה"ז שופך דמים.

*Pikuaḥ nefesh* is a great *mitzvah*. One who is quick to perform this science is worthy of praise.

One who entertains a *sh'elah* about it (in cases of emergency) is worthy of contempt. And one who inquires about it (i.e., who delays in performing medicine by asking whether it is halakhically proper to do so), let alone the one who gives up and refuses to act, is a shedder of blood.

We learn from this that any physician who is an expert in this science is obligated (*ḥayav*) to perform it, and should one refuse to do so, that person is deemed a shedder of blood.

The *Shulḥan Arukh* (*Yoreh De'ah* 336:1)<sup>4</sup> codifies Ramban's essay into a succinct rule:

נתנה התורה רשות לרופא לרפאות. ומצוה היא. ובכלל פיקוח נפש הוא. ואם מונע עצמו, הרי זה שופך דמים.

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<sup>4</sup> A shortened version of *Tur*, *Yoreh De'ah* 336.

The Torah grants to the physician the permission to practice medicine. This is a *mitzvah*, falling under the category of saving human life (*pikuaḥ nefesh*). The one who abstains from practicing medicine is considered like a shedder of blood.

Rambam (Maimonides).

We might expect Rambam, the most famous Jewish physician in history, to address our question. He does, although he doesn't treat this issue in the place where we would expect him to do so, that is, in his great code the *Mishneh Torah*. To be sure, in that work he rules that important medical treatment is permitted on Shabbat even though that treatment may involve actions normally considered *m'lakhah* and forbidden on that day.<sup>5</sup> And in *Hilkhot De'ot*, chapter four, he offers a treatise on preventive medicine, which he justifies on the grounds that "having a healthy body partakes of the ways of God."<sup>6</sup> Yet it is only in his Commentary to the Mishnah that Rambam sets forth his theory as to why the practice of medicine is defined as *mjka mitzvah*.

In *Mishnah N'darim* 4:4 we read:

המודר הנאה מחבירו ונכנס לבקרו עומד אבל לא יושב ומרפאהו רפואת נפש אבל לא רפואת ממון

If one is forbidden by vow to benefit from his fellow, and the fellow visits him [i.e., to perform the *mitzvah* of *bikur ḥolim*], his fellow may stand but not sit, and his fellow may heal his life but not his property.

A bit of explanation here. Say the *P'loni* has taken a vow not to benefit in any way from *Almoni*. If *P'loni* falls ill, *Almoni* is permitted to visit him, since the *mitzvah* of *bikur ḥolim* is not considered a "benefit," provided that *Almoni* doesn't remain with *P'loni* for an extended time ("his fellow may stand but not sit"). *Almoni* is also allowed in spite of the vow to provide medical treatment to *P'loni* though not to his animals ("his property"). Rambam's commentary:<sup>7</sup>

ולא נאסר זה לחולה עצמו מפני שהיא מצוה כלומר שחייב הרופא מן הדין לרפאות חולי ישראל והרי הוא בכלל אמרם בפירוש הכתוב והשבתו לו לרבות את גופו שאם ראהו אובד ויכול להצילו הרי זה מצילו בגופו או בממונו או בידיעתו.

This medical treatment is not forbidden to the patient because it is a *mitzvah*, that is to say the physician is obligated (*ḥayav*) under Torah law to heal Jews who are ill. The Sages derive this *mitzvah* in their understanding of the verse (Deuteronomy 22:2) "you shall restore it to him." This means one is obligated to save the life of another. Thus, if one

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<sup>5</sup> *Mishneh Torah, Hil. Shabbat* 2:1: כל סכנה עושין לו כל – צרכיו בשבת על פי רופא אומן של אותו מקום דחוייה היא שבת אצל סכנת נפשות כשאר כל המצות, לפיכך חולה שיש בו סכנה עושין לו כל – "Shabbat, like all other *mitzvot*, is set aside in cases of danger to life. Therefore, a patient who is seriously ill is given all necessary treatments at the instruction of a skilled (*uman*, "expert," similar to *baki*) physician of that locale."

<sup>6</sup> *Mishneh Torah, Hil. De'ot* 4:1: "for it is impossible to have knowledge of God [to study Torah and metaphysics] if one is ill."

<sup>7</sup> The text is that of the Kafich edition (Jerusalem: Mosad Harav Kook, 1965).

sees another in danger and has the ability to save him, he must do so, whether through physical action, with money, or with his knowledge.

The obligation to save life therefore takes precedence over a conflicting obligation, in this case P'loni's vow against receiving any benefit from Almoni.

Of course, the Deuteronomy verse from which Rambam derives the obligation to save life does not appear to say any such thing. It refers, in fact, to the duty to restore a lost animal to its owner. Rambam bases himself upon a midrash in *B. Sanhedrin* 73a:<sup>8</sup>

מנין לרואה את חברו שהוא טובע בנהר או חיה גוררתו או לסטין באין עליו שהוא חייב להצילו?  
תלמוד לומר לא תעמד על דם רעך.  
והא מהכא נפקא? מהתם נפקא: אבדת גופו מניין - תלמוד לומר והשבתו לו!  
אי מהתם הוה אמינא: הני מילי - בנפשיה, אבל מיטרח ומיגר אגורי - אימא לא, קא משמע לן.

How do we know that one is obligated to rescue his fellow whom he sees drowning in the river, being attacked by a wild beast, or beset by robbers? Scripture says (Leviticus 19:16): you shall not stand idly by the blood of your neighbor.

Does the obligation stem from that verse? Doesn't it stem from here: how do we know that one is obligated to restore [i.e., to save] the life of one who is threatened (*aveidat gufo*)? Scripture says (Deuteronomy 22:2): you shall restore it to him.

If we only had the Deuteronomy verse, I might have learned from it that one is obligated to save another only when he can do it personally but that one is not obligated to take the additional step of hiring hire another rescuer if one cannot personally save the victim. Therefore, the Torah gives us the Leviticus verse.

Thus, for Rambam, *r'fu'ah* is a *mitzvah*: one is obligated (*חייב*, *hayav*) to provide/pay for medical treatment for P'loni, even against his vow, because such is required by the Toraitic duty to rescue those in danger. Notice that, unlike Ramban in *Torat Ha'adam*, Maimonides (we'll use that Latinate name from now on to avoid confusion between "Rambam" and "Ramban") does not bother to cite texts in order to demonstrate that *r'fu'ah* is defined as an instance of *pikuah nefesh*. He simply assumes that medicine is one way to save life, much as rescuing a drowning person is one way to save life. This, presumably, results from his rationalistic bent: it is so obvious that medicine is a scientifically attested lifesaving technique that there is no need to demonstrate its halakhic legitimacy.<sup>9</sup>

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<sup>8</sup> The midrash is based upon a linguistic peculiarity: the verb והשבתו – *v'hasheivoto* – can be interpreted to mean that there are two direct objects, indicated in the transliteration in red. That is, one is required to restore *two* things to an owner. The first is the lost animal, the subject with which the verse deals on the literal (*p'shat*) level. The second, according to the midrash, is life, i.e., a duty to rescue.

<sup>9</sup> See, for example, Maimonides' commentary to *M. P'sahim* 4:10, one of those passages that seemingly disparages the practice of medicine. He unequivocally condemns the literal interpretation of that text as foolish and worthless. Medicine, he insists, is not a frustration of the Divine will. It is rather the creation of God, who provided it to us as the remedy for disease. Texts that literally speak of medicine in negative terms therefore are referring to healers who utilize idolatrous or magical practices that are *not* medicine in the scientific sense of the term and that the Torah at any rate clearly forbids.

מאי נפקא מינה - Does It Make a Difference?

Since both Ramban and Maimonides holds that the practice of medicine is a *mitzvah*, we may wonder: do these two halakhic theories lead to differences in their practical outcome? Possibly not, but give us a chance to argue the other case.

If we follow Ramban, we can assert with confidence that *r'fu'ah* is an obligation of the physician, the knowledgeable practitioner, and perhaps of the patient as well.<sup>10</sup> But his proof does not address the wider community or social setting. Maimonides, by contrast, derives the *mitzvah* of medicine from the duty of rescue, which itself is derived from a Torah verse that speaks of the obligation to return lost property to its owner. In other words, our duty to heal is an aspect of our responsibility *as members of a community* to take care of each other's goods and lives. In this reading, *r'fu'ah* is not simply a *mitzvah* in the micro-context of physician-patient relations but a communal *mitzvah*, a duty incumbent upon us as a collective body. The moral or ethical community is the one that rescues its members from danger by, among other things, making sure that medical care is made available to them when they are ill. From this *social* obligation, it would follow that society is responsible for making sure that adequate medical care is accessible – and affordable - to all its citizens.

Maimonides' theory, unlike that of Ramban, allows us to assert that the provision of adequate medical care to all is a duty incumbent upon the community as a whole. That is a point that we *progressive* halakhists should never tire of making in the political life of our own communities.

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<sup>10</sup> Though see his commentary to Lev. 26:11.