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Arba`ah Turim of Rabbi Jacob ben Asher on Medical Ethics

Rabbi David Fink, Ph.D.

Rabbi Jacob ben Asher was a leading halachic authority of the early part of the fourteenth century. As a young man he accompanied his father, Rabbi Asher ben Yechiel (Rosh), from Germany to Spain. In Toledo he wrote a number of basic halachic and exegetical works. The most important of these are the *Arba`ah Turim*, which later became the basis of Rabbi Joseph Karo's *Shulchan Aruch*.

The following passage is taken from section 336 of the second book (*Yoreh De`ah*) of the *Arba`ah Turim*. It deals with the obligations of medical practitioners. Rabbi Jacob's opinions on this topic became the subject of commentary and analysis by the leading halachic scholars of subsequent generations.

At the School of Rabbi Ishmael it was taught that the verse "*And he shall heal* (Ex. 21:19)" implies that the physician is permitted to heal.¹ One should not disregard pain for fear of making a mistake and inadvertently killing the patient. Rather one must be exceedingly cautious as is proper in any capital case. Further, one should not say that if God has smitten the patient, it is improper to heal him, it being unnatural for mortals to restore health, even though they are accustomed to do so.²

Thus it says, "*Yet in his disease he sought not to the Lord, but to the physicians* (2 Chr. 16:12)". From this we learn that the physician is permitted to heal and that healing is a part of the commandment of lifesaving. Alacrity is praiseworthy. Refraining from treatment is

1. *Baba Qama* 85b.

2. Ramban, *Torat haAdam*, p. 42 (c.f. Berakhot 60a).

tantamount to killing, even if the patient has another physician, since that other physician may not succeed.³

However, no one ought to engage in healing unless he is well versed in both the theory and the practice of medicine and unless no greater physician is available.⁴

Anyone who is unfamiliar with the practice of medicine should not engage in it. Similarly, if a greater physician is available, one should not engage in medical practice. This follows from the general principle that no one should deal with matters of life and death whenever a greater scholar is available. Nonetheless, failure to engage in healing [when no greater physician is available]⁵ is tantamount to killing and will be punished in hell.

Whoever practices medicine without first obtaining a license from a rabbinical court is liable to pay for any injury he does, even if he is well versed in his field. But whoever injures a patient by mistake after having obtained such a license is exempt from liability in the eyes of the mundane judicial system while remaining liable in the eyes of heaven.

If a licensed practitioner inadvertently kills a patient, he is bound to flee to a city of refuge.⁶ In any event, fear of error need not deter him, as I have explained.⁷

May a son bleed his father? Nachmanides (1194-1270), although himself permissive, noted that Rabbi Isaac Alfasi (1013-1103) favored the position of Rabbi Pappa, who did not even allow his son to remove a thorn from him.⁸

The physician may accept payment for his time and effort. But payment for his advice to patients is forbidden, since restoring a patient's health is comparable to the act of returning his lost property. When the Lord commanded "*and thou shalt restore it to him* (Deut. 22:2)," He referred to the restoration of health as well as the return of lost property. Further, we say that just as the Lord did instruct us at Mount Sinai without fee, so ought you always to give instruction without fee.

3. Y.Berakhot 4:2.

4. Ramban, p. 43-44.

5. Translated according to the reading of Bet Yosef.

6. Cf. Numbers 35:9-34.

7. Ramban.

8. Injuring one's father is a violation of "*Honor thy father* (Ex. 20:12)." See Sect. 241.

Therefore, payment for knowledge or for advice is prohibited while compensation for effort and time is permissible.⁹

He who has drugs which are needed by a patient may not raise their price beyond what is proper. If an exorbitant price were agreed to because of the immediate need (the drugs being otherwise unavailable), the patient is later not obligated to pay more than the proper price.¹⁰

If a physician, however, stipulated excessive compensation, the patient is later obligated to pay in full. This is because the physician sold his knowledge, which is beyond all value. This is true even though healing is a commandment. For an agreement to pay a fee for the performance of a commandment which others might have performed cannot be abrogated.

This is unlike the case where the court voids an agreement involving the payment of interest.¹¹ Regarding the prohibition of interest the verse says “*that your brother might live with you* (Lev. 26:36),” implying that the interest payment must be returned so that he might live with you.

If Reuben vowed to give no financial benefit to Simon and Simon took ill, then Reuben may directly treat Simon as long as it is not the custom in their locality to pay for a physician’s services. This is so even if another physician is available. But if one normally pays for medical care, then he may not treat him without fee.¹²

Source: *ASSIA – Jewish Medical Ethics*,
Vol. I, No.1, May 1988, pp. 3-4

9. Ramban (c.f. *Berakhot* 29a).

10. Ramban.

11. See Sect. 161 for the voiding of contracts which stipulate illicit interest.

12. See Sect. 221 for the relevant principles of vows.